

Value-Added Models Of Teacher Effectiveness in U.S. Public Education And The Teachers' Constitutional Right To Due Process

1. Objectives:

Due to widespread discontent with the quality of public education in the United States, legislatures at the state level are demanding greater accountability from teachers for their students' academic performance (Jewell, 2017, p. 369). To meet this goal, school districts are increasingly adopting data-driven evaluation models —known as “value-added models,” or VAMs— that link teacher effectiveness to student growth, as measured by changes in standardized test scores over time. However, VAM's “substantial” technical flaws may result in the nonrenewal and discharge of competent teachers, especially in states where student academic growth accounts for at least 50% of the teachers' evaluation ratings (Green, Baker, & Oluwole, 2012, p. 2). This paper will (1) analyze why courts tend to uphold the school districts' implementation of VAMs while dismissing the teachers' claims of violations of their constitutional right to due process; and (2) propose increasing the weight accorded other performance measures, such as peer observations, to reduce the school districts' likelihood of losing truly effective teachers.

2. Theoretical Framework:

In *Brown v. Bd. of Ed. of Topeka, Shawnee Cty., Kan.* (1954, pp. 488-489), the U.S. Supreme Court (1954, p. 493) ordered that the right to an education be made “available to all [children] on equal terms,” in accordance with the Equal Protection Clause of the Fourteenth Amendment to the federal Constitution. Sixty-four years later, advocates for educational rights are directing their efforts to the mismanagement of state allocations of educational funds (Koski, 2017, pp. 1916, 1921). For instance, *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell* (2016) focused on this approach even without the advocates' urging (Koski, 2017, p. 1922). The judge agreed that the State of Connecticut was wisely spending most of its education funding on teachers “because good teachers are the key to a good school system.” However, he (2016, pp. 62-63) criticized the “illusory” evaluation system that deemed 98% of the teachers as “proficient or exemplary” with no corroborating evidence. Because the judge (2016, p. 63) found the evaluation system insufficient to provide the state's students a “constitutionally adequate educational opportunity,” he ordered the State to supersede it with measures that rationally connect student learning to the teachers' terms of employment (2016, p. 90).

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Pending an appeal, this decision echoes the motivation behind the American Recovery and Reinvestment Act of 2009 (“ARRA”), which allocated \$4.35 billion for the Race to the Top Fund (RTTT), a competitive grant program. The weightiest selection criterion, “Great teachers and leaders,” encompassed aspects such as the State’s design and implementation of evaluations where student growth plays a “significant” role; and the State’s use of these evaluations to make decisions about “[c]ompensating, promoting, and retaining teachers” (U.S. Department of Education, 2009, pp. 9, 12).

The ARRA’s enticements contributed to “unprecedented legal and political momentum to increase teacher effectiveness primarily through . . . evaluation and accountability” (Superfine, 2014, p. 592). Between 2010 and 2015, 38 of the nation’s 50 states and the District of Columbia modified their laws regarding the evaluation of public-school teacher performance (Umpstead, Blankenship, & Weiss, 2015, p. 581). At least 25 of those states mandated measures of student growth incorporated into the *teacher* evaluation policies, and 15 of them required that this component accounted for 50% of the overall evaluation (Umpstead, Pogodzinski, & Lund, 2013, p. 803). As a result, statistical tools for measuring a teacher’s effectiveness in facilitating student learning —known as “value-added models” or VAMs— have become prevalent in U.S. public education (*Trout v. Knox Cty. Bd. of Educ.*, 2016, p. 494, n. 2). For example, in 2010, the school district of Houston, Texas transitioned to EVAAS, a teacher-assessment system. The EVAAS score for each teacher was determined by comparing the average test score growth of his/her students to the Texas average for students in that grade or course.

School districts then link their VAM ratings to employment decisions as serious as the dismissal of a tenured teacher. For example, the application of the EVAAS in Houston was accompanied by a policy change allowing the district to not renew a teacher’s contract for “insufficient student academic growth” (*Houston Fed’n of Teachers, Local 2415 v. Houston Indep. Sch. Dist.*, 2017, p 1174). Similarly, Louisiana state teachers lose their tenure upon receiving an “ineffective” performance rating, per § 17:442(C)(1) of the Louisiana Revised Statute.

However, statisticians, psychometricians, and economists agree that school authorities should not make high-stakes personnel decisions based *solely* on student test scores because these scores lack enough statistical reliability and validity to measure teacher effectiveness confidently (Green, Baker, & Oluwole, 2012, pp. 21-22). Baker et al. (2010, August 29, p. 3) mention, for example, “the nonrandom assignment of students to classrooms and schools[.]. . . and the wide variation in students’ experiences at home and at school.” Similarly, Green, Baker, & Oluwole (2012, p. 10) warn of the spillover effect, which occurs when VAM scores deem a teacher as inefficient simply because of the inefficiency of *other* teachers serving the same students. Ironically, then, linking these statistically flawed evaluation systems to employment sanctions may contribute to the educational inequality that the *Brown* decision sought to remedy. Put differently, this policy risks forcing talented public-school teachers to avoid teaching high-



needs students out of frustration or demoralization¹ over their VAM-based scores (Baker et al., 2010, August 29, p. 4).

Aggrieved teachers may try seeking redress in court by claiming a violation of their Fourteenth-Amendment right to due process and equal protection under the laws². Due to space considerations, this paper will focus on due-process claims. Due process comprises two types. The first one, *procedural* due process, forbids the deprivation of an individual's legitimate property or liberty interest without minimum procedural guarantees, including timely notice of the deprivation, and a hearing at which to refute the charges, thereby minimizing erroneous deprivations (*Armstrong v. Manzo*, 1965, p. 545; *Arnett v. Kennedy*, 1974, p. 164; *Cleveland Bd. of Educ. v. Loudermill*, 1985, p. 541). For example, tenured faculty have a legitimate property interest in continued employment, as spelled out in their institutions' policies (*Collins v. Parsons Coll.*, 1973, p. 598). The second type, *substantive* due process, protects an individual from arbitrary or capricious decisions by the government (e.g., *Fisher v. Snyder*, 1973, p. 377). To succeed in a due-process claim, plaintiffs must demonstrate that the challenged practice fails to advance *rationality* a legitimate governmental purpose (e.g., *Delahoussaye v. City of New Iberia*, 1991, p. 149). This rational-basis standard, therefore, proves "very forgiving . . . for policymakers" (*Houston Fed'n of Teachers, Local 2415 v. Houston Indep. Sch. Dist.*, 2017, p. 1180), as will be shown below.

3. Methodology:

This paper draws on up-to-date scholarly law reviews and judicial opinions obtained through Westlaw's online legal database. Due to the binding nature of *stare decisis* in the U.S. legal system—which directs lower courts to follow the opinions of higher courts—the search prioritized, whenever possible, decisions by the U.S. Supreme Court, and the thirteen appellate circuit courts below.

4. Discussion of Data, Evidence and Objects or Materials:

Regarding *procedural* due process, the court that reviewed the VAM in Houston concluded that the system threatened the teachers' property interests in their employment (2017, p. 1175). The court (2017, p. 1177) reasoned that a vendor calculated the teachers' scores through complex calculations that the vendor refused to divulge to either the school district or the teachers, thus

¹ To be fair, school districts also reward "effective" teachers, as determined by the VAM. For instance, in 2010, the city of Denver, Colorado began to supplement its teachers' base salary with an incentive-pay system partly determined by student scores on standardized tests (Omps, 2012, p. 1066). This "Pay for Performance" system, however, is fraught with instances of wrongdoing, such as teachers supplying students with answers to the state tests (Bates, 2016, pp. 560-561).

² Although outside the scope of this paper, some teachers could also assert a violation of Title VII of the Civil Rights Act of 1991, which forbids race-based discrimination with respect to the conditions of a plaintiff's employment (Green, Baker, & Oluwole, 2012, p. 23).

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preventing concerned teachers from verifying the accuracy of their scores, and refute them, if necessary.

Though not explicitly grounded on substantive due process, the decision in *Lederman v. King* (2016) also highlights the statistical and legal pitfalls of VAMs. In this case, a New York State teacher challenged her growth score of only 1 out of a possible 20 points. The previous academic year, she had received, for statistically similar students' test scores, 14 out of 20 points, which corresponded to an "Effective" rating. Partly relying on affidavits from researchers and principals, the teacher characterized the system as "arbitrary and capricious" (2016, p. 888). For instance, Dr. Darling-Hammond, of Stanford University, noted the system's inability to measure growth accurately for students with skills already above grade level, like the high-performing students in the teacher's classes; and the statistically larger error ranges yielded by small classroom sizes like the teacher's (2016, pp. 891-892). Based on this evidence, the court (2016, pp. 897-898) agreed on the "arbitrary and capricious" growth score and rating as applied to the teacher.

Courts, however, have generally ruled that state legislatures were properly exercising their authority by designing and implementing VAMs (Umpstead, Blankenship, & Weiss, 2015, p. 597). For example, in *Cook v. Bennett* (2015, p. 1296), a group of Florida teachers alleged, in part, a violation of their *substantive* due-process rights because the policies "arbitrarily and illogically" evaluated them "based on test scores either of students or in subjects [that] they did not teach" (2015, p. 1300). Applying the rational-basis standard, the court (2015, pp. 1300-1301) held that even though Florida's VAM was not designed to evaluate the plaintiff-teachers, it was *rationaly* related to the state's legitimate interest in improving student performance through quality of instruction. A Tennessee court reached the same conclusion in *Wagner v. Haslam* (2015, p. 696), a case dealing with the state's own VAM. Specifically, the court concluded that it was "rational to believe that a[n effective] teacher can impact the school-wide performance of both her own students and *other* [emphasis added] students at that school."

5. Results and/or conclusions

As explained by the court in *Houston Fed'n of Teachers, Local 2415 v. Houston Indep. Sch. Dist.* (2017, p. 1182), the "loose" rational-basis standard allows school districts to use "blunt tools," such as VAMs, which yield "only marginal results." Obviously, these judicial decisions warrant criticism from a scientific viewpoint because they favor a "marginal relationship to the state's [educational] goals" over the statistical validity of the results (Black, 2016, p. 148, n. 158). Therefore, administrators cannot judge one teacher over another based solely on their students' test scores with enough accuracy to make adverse personnel decisions (Baker et al., 2010, August, 29, p. 3).

Since student-growth measures are limited in demonstrating instructional quality, researchers (e.g., Goe, Holdjeide, & Miller, 2011, pp. 20-21) have stressed the integration of other measures into the teaching evaluation, such as peer observations. In fact, some school districts have implemented Peer Assistance and Review ("PAR") programs, in which new and struggling teachers work closely with

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mentor-reviewers under the supervision of an administrative PAR panel (Rippeth, 2016, pp. 168-169). Furthermore, recent legislative changes in at least two states, Ohio and Wisconsin, are moving in that direction, i.e., increasing the weight of teacher performance gleaned through instruments other than VAMs, such as peer observations (Umpstead, Blankenship, & Weiss, 2015, pp. 583). If more states begin to be swayed by this tendency, their efforts will contribute to providing their schoolchildren with a high-quality education while reducing significantly the likelihood of losing competent teachers.

6. Contributions and Scientific Importance of this work:

Through law reviews and judicial decisions published as recently as 2017, this paper has aimed to enlighten members of the school community — particularly, policymakers, administrators, and teachers— on a controversial topic currently in continuous flux in U.S. public education.

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