

CLIENT NEWS BRIEF

Court Rules School Districts not required to Use Standardized Test Scores in Teacher Evaluations

A California trial court has ruled that the Stull Act does not require school districts to use the results of standardized test scores in teacher evaluations. (*Doe v. Antioch Unified School District* (Super.Ct. Contra Costa County, 2016, No. MSN15-1127.)

The court examined the text of Education Code section 44662(b)(1), which states that a school district “shall evaluate and assess certificated employee performance as it reasonably relates to [t]he progress of pupils toward the standards established pursuant to subdivision (a) and, if applicable, the state adopted academic content standards as measured by state adopted criterion referenced assessments.” Because the court found the statute was ambiguous, it analyzed the legislative history of section 44662 and other related teacher evaluation and student testing statutes.

The court noted that Education Code section 44660 requires the use of “objective evaluation and assessment guidelines” in teacher evaluations. Education Code section 44661.5 provides that a district may utilize the California Standards for the Teaching Profession (CSTP) when developing “objective evaluation and assessment guidelines.” The court noted that Standard 5 of the CSTP addresses “assessing student learning” and focuses on how teachers use tests to guide instruction. Standard 5 does not require evaluation of teachers based on how their students score on standardized tests, nor does it require the use of standardized test results in teacher evaluations.

The court next analyzed Assembly Bill (AB) 484, which was enacted in 2013 and authorizes the use of the CAASP test to assess progress on Common Core standards. The court noted that nothing in AB 484 requires the use of test scores from CAASP in teacher evaluations. The court also looked at teacher evaluation statutes from Florida and Michigan, which specifically require a percentage of a teacher’s evaluation to be based on “student growth and assessment data.” The court reasoned that if the California Legislature wanted to specifically require the use of standardized test scores as part of the evaluation process, it could have done so by writing section 44662 more clearly.

For these reasons, the court ruled that section 44662 does not *require* school districts to use standardized test results in teacher evaluations. The court found additional grounds for its ruling based on statistical and practical problems with standardized tests. First, the court noted that because California schools have recently begun using the CAASP instead of the STAR test, there is an inadequate baseline for measuring teacher performance. Second, the court found that there is no reliable statistical “regression” tool available to disaggregate teacher performance from other sociodemographic factors, such as gender, race, English language learner status or special education status. Finally, the court noted that teacher evaluations are to be completed no later than 30 days prior to the end of the school year, which means that most evaluations are completed by July but the test results are not available until

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Michael E. Smith
Partner
Fresno Office
msmith@lozanosmith.com



Dulcinea Grantham
Partner and Co-Chair
Labor and Employment Group
Walnut Creek Office
dgrantham@lozanosmith.com



Stephen Mendyk
Of Counsel
Fresno Office
smendyk@lozanosmith.com



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August, thereby creating a timing problem for use of test results in evaluations.

Even though the court in *Antioch* ruled that section 44662 does not require the use of standardized test scores in teacher evaluations, the issue continues to be hot topic in education. On September 30, 2016, Governor Jerry Brown vetoed AB 2826, which would have allowed the use of standardized tests; school district, school or department-developed tests; curriculum and end-of-course tests; and other tests as a means to measure the “progress of pupils” when evaluating teacher performance under Education Code section 44662.

Although section 44662 does not *require* the use of standardized test scores in teacher evaluations, the court did not find that consideration of student test scores on performance on such tests is prohibited. However, because teacher evaluations are subject to collective bargaining, the use of test scores in teacher evaluations must be negotiated.

Finally, districts should keep in mind that the *Antioch* case is a Contra Costa County Superior Court decision, not an appellate court decision. Thus, while the reasoning and analysis provide guidance in interpreting section 44662, this decision is only binding on the particular parties in this case.

If you have any questions about the decision or teacher evaluations in general, please contact the authors of this Client News Brief or an attorney at one of our [10 offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).