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LEGAL UPDATE

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For For For For
Susanne K. Reed
(1947 – 2010)

To: Superintendents, Member School Districts (K-12)

From: Frank Zotter Jr., Sen. Assoc. General Counsel *FZ*

Subject: Individual Teacher's Academic Growth Over Time (AGT) Scores
Held not to be Public Records
Memo No. 18-2014

On July 23, 2014, the court of appeal in Los Angeles decided *Los Angeles Unified School District v. Superior Court (Los Angeles Times)* (2014) ___ Cal.App.4th ___. The court held that Academic Growth Over Time, or "AGT," scores of individual teachers were not public records. The court found that the public interest in keeping these scores confidential clearly outweighed the public interest served by their disclosure because Los Angeles Unified School District (LAUSD) had demonstrated that releasing the AGT scores of identifiable individual teachers would undermine the district's ability to perform its statutory duties to educate children.

FACTS:

The case involved a statistical model developed by LAUSD to create what is known as an Academic Growth Over Time, or "AGT" score, to measure a teacher's effect on his or her students' performance in the California Standard Tests. The AGT is a complex mathematical formula comparing students' predicted scores on standard tests with their actual scores. LAUSD had released most AGT scores for over 650 schools, as well as AGT scores for every grade level and subject matter. LAUSD also posts AGT scores on its website for a given school broken down by race, sex, English language learner, and other variables. It also had released AGT scores for individual teachers, but with their names redacted.

The Los Angeles Times sought *unredacted* AGT scores for individual teachers. It also sought "location codes" for schools where individual teachers taught. LAUSD, however, had agreed in its collective bargaining agreement that it would not use AGT scores for performance evaluations and that it would keep individual AGT scores confidential. The Times then brought a lawsuit seeking unredacted AGT scores and location codes. The district defended the lawsuit in part by submitting a declaration of its superintendent, which stated that releasing unredacted scores would create various problems in running the district. Among those problems were spurring unhealthy comparisons among teachers, thereby breeding discord; discouraging

recruitment of candidates or causing teachers to resign; disrupting a balanced assignment of teaching staff; and adversely affecting the teacher disciplinary process. The trial court, giving little weight to the superintendent's declaration, ordered the unredacted AGT scores released. Both the district and the union appealed this order.

THE COURT'S DECISION:

The court of appeal overturned the trial court's decision. That court disagreed with the trial court's rejection of the superintendent's declaration. It found that he qualified as an expert in his field given his extensive experience as a school administrator. The court found that the opinions he expressed "clearly demonstrate a legitimate concern for what may occur if the names of teachers are released along with the AGT scores," and found that there was a public interest in avoiding such consequences.

The Times argued there was also a public interest in parents knowing individual teachers' scores, suggesting that parents who knew that a given teacher's score was low could sit in the classroom to "see what is working and what is not working" in terms of raising the students' scores on standard tests. The court of appeal responded that, "One need not be an expert in education to foresee the potential disruptive effect on the ability of the District to do its job if parents (or newspaper reporters) were involved in this way." The court concluded instead that any interest parents had in knowing individual teachers' scores was ultimately a private interest, not a public one.

IMPLICATIONS FOR DISTRICTS:

Past court decisions have held that both sustained complaints against teachers and public employee salary information are public records, but this court distinguished those cases. Assuming that this decision survives (see below), even for districts that do not use statistical modeling like the AGT scores, it stands as precedent for two notions. First, records of individual teacher performance (except for records of sustained complaints) do not advance any public interest in knowing how a school district is carrying out its public duties. Second, "the interest in having one's child get the best teacher is, at bottom, a private [interest]," not a public one.

The decision can still be appealed to the California Supreme Court (which seems likely to happen), but the Supreme Court can choose not to review it. Alternatively, someone can request that the decision be "depublished," so that even if the Supreme Court chooses not to take up the case, it could order that this decision not set precedent. Finally, even if the Supreme Court rejected both such requests, the Legislature can always change the law to redefine such statistical information as a public record, despite the court of appeal's reasoning.

If you have any questions, please contact one of the attorneys in our offices.