

Who Is Really Accountable?

The accountability movement based on student test scores became prominent under the No Child Left Behind Act and continues under the successor legislation, the Every Student Succeeds Act. More and more principals and teachers face the challenge of standardized student achievement test scores being a factor in their continued employment. For principals, the unit of analysis is their school; for teachers, it is the students in their classes. The latest variation of this accountability approach is value-added measures (VAM) for performance evaluation.

The following case illustrates the legal issues of principal accountability based on school performance and the legal issues and trends in applying variations of this approach to teachers.

The Case

In fall 2002, the Natchez-Adams School District in Mississippi promoted Ms. I, who had been a third-grade teacher, to principal of West Elementary School. She is Caucasian.

In July 2012, the superintendent and deputy superintendent, who are African American, renewed her contract for 2012-2013, which was the first school year that the school participated in the Mississippi Statewide Accountability testing.

In the previous year, the school had been part of a districtwide grouping limited to pre-K and kindergarten, but for 2012-2013 the school was reorganized into a K-5 configuration.

However, the building did not have sufficient classrooms, and the district was slow in arranging for portable classrooms, causing continuing disruption to students. According to Ms. I, as part of the reorganization, the superintendent and associate superintendent subjected several of her good teachers to involuntary transfer and replaced them with subpar teachers from the school of an African American principal. In October, the central administration reassigned Ms. I's experienced assistant principal, who was African American, to another

school in place of a white principal, filling the vacated slot at Ms. I's school with an inexperienced assistant principal, who was African American.

During the first part of second semester that year, the district renewed Ms. I's contract. However, in June 2013, the superintendent and deputy superintendent summoned her to a meeting regarding her assignment for the coming year. They informed her that based on the test scores in her school, she could be subject to transfer or termination. Her subsequent version of the meeting, which they disputed, is that they gave her the choice of early retirement or a demotion based on the preliminary results of the accountability testing, which amounted to a Failing (F) rating for the school.

In early July 2013, Ms. I submitted notice of retirement. The final results were an F for her school, but it had the second-highest score in the district. Her replacements at the original school and the one where she would have been transferred were African American. She alleges various other acts of reverse racial discrimination by the central administration, including a reprimand, unannounced visits, and rude, intimidating and "constantly belittling" treatment that similarly situated African American administrators did not receive.

In May 2014, after exhausting the procedures of the U.S. Equal Employment Opportunities (EEO) Commission, Ms. I filed suit in federal court,

alleging racial discrimination under Title VII of the EEO Act and various claims under the Constitution and state law. At the foundation of her claims was her argument that her resignation amounted to a constructive discharge, which arises when an employer makes working conditions so intolerable that a reasonable employee would feel compelled to resign. Ms. I named the school district, the superintendent, and deputy superintendent as defendants. The defendants responded with a motion for summary judgment, which would, if granted, dispose of her claims without a trial.

The Ruling

Here's a closer look at the court's ruling on the district's and individual defendants' motion for summary judgment for Ms. I's claims.

(a) Racial discrimination under Title VII

The court denied the district's motion for summary judgment, preserving this claim for trial. As the first step of the applicable flowchart-type three-step analysis, the court concluded that Ms. I's allegations met the threshold criteria under Title VII: A prima-facie case of discrimination requires that the plaintiff show: (a) membership in a protected group—includes, on a reverse basis, the racial majority; (b) qualification for the position at issue—her principal's certification regardless of the school's F rating; (c) adverse employment action—meeting the criteria for constructive discharge; and (d) replacement by an employee, or less favorable treatment than other similarly situated employees, outside the protected group—here, both.

Moving to the second step, the court reasoned that poor performance based on the accountability approach, "especially after being given an opportunity to improve, is a legitimate, non-discriminatory justification." Thereby reaching the third step, the court concluded that her allegations of disparate treatment

were “sufficient to create a jury question as to whether the proffered reasons for [Ms. I’s] constructive discharge were a mere pretext disguising the School District’s discriminatory motive.”

However, the court granted the superintendent’s and deputy superintendent’s summary judgment motion for this claim because individuals are not liable under Title VII.

(b) Racial discrimination under the 14th Amendment’s equal protection clause

The court denied the district’s motion for summary judgment, concluding that Ms. I’s allegations sufficiently equaled a municipal policy of reverse racial discrimination. The court postponed deciding whether the individual defendants were entitled to qualified immunity.

(c) Violation of 14th Amendment procedural due process

The court granted the defendants’ motion for summary judgment for this claim, finding that Ms. I did not meet the applicable precedent, which requires at the threshold an allegation that the reason for the forced discharge was to avoid a pre-termination hearing.

(d) Intentional infliction of emotional distress

The court granted the district’s motion but denied the individual defendants’ motion for summary judgment for this claim because of the boundaries of the state’s governmental immunity legislation.

(e) Defamation

The court granted the defendants’ motion for summary judgment because Ms. I failed to provide the factual foundation for defamation, which in Mississippi requires not only dissemination to others of false information but also specificity. Here, the school board member’s deposition showed that any implication that Ms. I was constructively discharged for incompetence was merely conjecture.

(f) Breach of contract

The court granted summary judgment for the individual defendants because neither was a party to the contract, but it denied summary

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judgment for the district, because the constructive discharge, if proved, could be a violation of her express or implied contract.


The Verdict

After a five-day trial in 2015, the jury rendered a verdict in favor of Ms. I for all of the remaining claims, awarding damages of \$271,737 plus 3.5 percent postjudgment interest against the district for Title VII and 14th Amendment race discrimination; \$75,000 against the superintendent and \$25,000 against the deputy superintendent for intentional infliction of emotional distress; and \$84,500 against the district for breach of contract. Subsequently, the court upheld the district’s verdict and awarded \$175,210 (in response to the requested amount of \$245,340) in attorney’s fees, \$12,474 in expert witness fees and court costs, \$108,495 in front pay and retirement benefits, and postjudgment interest.

The Trends

Ms. I’s judicial success, which was more extensive in dollar amount than legal claims, was relatively unusual in light of case law concerning principal accountability based on school performance. In general, principals have largely found the slope too steep for race and other discrimination (e.g., disability and age) claims in relation to performance evaluations. Similarly, such accountability systems have posed a high hurdle for suing principals. For example, in *Young-Gibson v. Board of Education* (2011), an Illinois appellate court upheld the district’s removal of a principal from her position because of her lack of progress in correcting the probationary status of her school, including the students’ low test scores. And in *Giles v. Shaw School District* (2016), a federal appellate court rejected the sex discrimination suit of a principal in the wake of the nonrenewal of her contract because of “failing” ratings of her school.

The recent trend in law concerning performance evaluation of teachers has been deferential to evaluation systems that are based, in part, on student achievement. In *State v. Skandera* (2015), New Mexico’s highest court rejected a challenge, based on state legislation, to new state regulations for performance evaluation that included student performance as a measure of teacher competency. Federal courts have also rejected constitutional challenges to Florida’s and Tennessee’s value-added approaches to teacher evaluation.

So, whether the significant role that student test scores play in the evaluations of principals or teachers continues to expand will depend more on federal and state policymaking than litigation. Principals can collectively play a key role in the shaping of such laws, but individually, the judicial odds generally depend on which side of the suit the principal is. If the principal is the plaintiff, the odds are not favorable. But if the principal is at the defendants’ table, the odds are against the teacher. 

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