



## Bumping HR: Giving Principals More Say Over Staffing

October 2010

In what may come as a surprise to many, principals have remarkably little control over who teaches in their schools. For the most part, the human resources (HR) department in a district's central office, not individual school principals, makes the final call about when to hire teachers, whom to hire and in which schools they are placed.

Districts generally downplay the authority of their HR offices, insisting that principals play an integral role in staffing. Such assertions are only partly true. Aside from a few notable exceptions, most districts sharply limit the authority of principals to staff their schools.

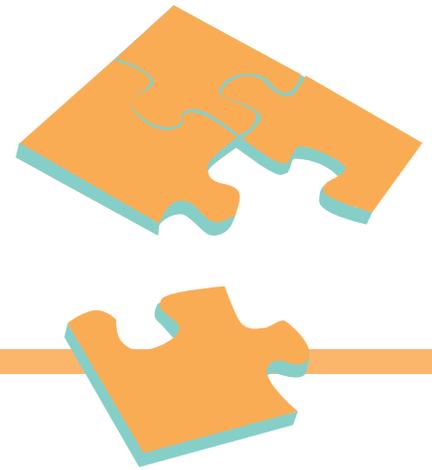
So who, exactly, hires teachers? Almost all districts routinely give principals an opportunity to interview teachers for vacancies. Many also allow principals to independently advertise for, recruit and recommend good candidates for hire. *If* the district determines that a school vacancy is legitimate, *if* it has not already hired a full slate of new teachers and *if* it does not need to fill a vacancy with a teacher who was "excessed" from another school, then the principal may select the teacher.

The problem with this system is that principal authority depends on too many "ifs."

Even plans for reauthorizing the Elementary and Secondary Education Act, or ESEA (more recently known as NCLB), would likely give HR departments yet another reason to intervene in hiring and transfer decisions. In the goal of achieving "comparability," or ensuring that high-quality teachers are spread throughout a district, the new ESEA would tie funding to districts on the basis of whether teachers are equitably distributed throughout the district.

This paper explores the problems, including this latest, that get in the way of the "ifs" and what districts and state legislatures can do differently to provide greater principal autonomy over school staffing. We tap into the 101 large school districts in NCTQ's TR<sup>3</sup> database ([www.nctq.org/tr3](http://www.nctq.org/tr3)) to examine state laws, regulations and district policies.

# OBSTACLES & Solutions



## OBSTACLES

Five factors currently prevent a district from giving principals full autonomy over staffing and teacher assignment. They are generally the result of the culture of the district, the rules agreed to in the teacher contract and, in some cases, restrictions imposed by the state. The factors are:

1. The strong pull of centralized hiring and assignment.
2. The failure of school districts to properly evaluate their teachers.
3. The role seniority plays in teacher excessing.
4. The role seniority plays in teacher placement.
5. The limitations imposed by states on districts seeking to nullify contractual obligations.

### 1. The strong pull of centralized hiring and assignment

Most American school districts centrally hire and assign teachers to schools. There is one location in the central office where applications are received and processed and where candidates are interviewed, hired and placed. Because the school district, and not individual schools, enters into legal contracts with teachers, it makes sense that the district controls the hiring and transfer process. This way it does not find itself with more teachers than it needs or can afford.

Nevertheless, this centralized approach has one major drawback that overrides any benefits: It gives principals little or no say in hiring, which is not good for student achievement. As the nationwide sampling of districts in the table below demonstrates, it is hard to hold principals accountable for results when they have no control over the quality of their school staffs.

**Figure 1. Moving towards mutual consent**

DISTRICT	WHAT IS THE ROLE OF PRINCIPALS IN HIRING TEACHERS WHO ARE TRANSFERRING VOLUNTARILY?	WHAT IS THE ROLE OF PRINCIPALS IN HIRING EXCESSED TEACHERS?	CAN HR ASSIGN A TEACHER TO A SCHOOL WITHOUT THE PRINCIPAL'S CONSENT?
CLARK, NV	Principals have the opportunity to "approve" transfers before June 30, though whether teachers are interviewed is not discussed. After June 30, HR assigns teachers to vacancies.	Principals have no role in determining the placement of excessed teachers. Excessed teachers select new positions based on their qualifications and seniority.	Yes. HR can force place any teacher.
FORT BEND, TX	Principals may select transfer candidates.	Principals have no role in determining the placement of excessed teachers. HR determines assignments of excess teachers.	Yes. HR can force place any teacher.
JEFFERSON, CO	Principals interview and select transfer candidates.	Principals interview and select excessed teachers.	No. All hiring decisions are made according to the mutual consent of teachers and principals. Teachers who do not find a position by mutual consent may accept a temporary assignment for one year.
JORDAN, UT	Principals interview and select transfer candidates.	Principals have a limited role in determining the placement of excessed teachers. Before June 1, principals may interview and select candidates. After that date, HR assigns excessed teachers.	Yes. HR can force place any teacher.
LOS ANGELES, CA	Principals interview and select transfer candidates.	Principals have a limited role in determining the placement of excessed teachers. Although principals may choose a teacher who ranks the school as a preference, principals may also receive a teacher assigned by HR to fill a vacancy.	Yes. HR can force place, but state law permits principals in low-performing schools to refuse candidates.
MEMPHIS, TN	Principals have until May 15 to hire candidates. They must interview the five most senior candidates who apply. After May 15 HR assigns teachers to available positions.	Principals have no role in determining the placement of excessed teachers. HR gives teachers a choice of three vacancies. If teachers refuse assignments then HR places teachers.	Yes. HR can force place any teacher.
MOBILE, AL	Principals interview and select transfer candidates.	Principals have no role in determining the placement of excessed teachers. HR offers excessed teachers new positions based on their qualifications and available openings.	Yes. HR can force place excessed teachers.
PINELLAS, FL	Principals have no role in hiring voluntary transfers. HR makes assignments based on teacher qualifications, seniority and teacher preference.	Principals have no role in determining the placement of excessed teachers. HR offers excessed teachers new positions based on their qualifications and available openings.	Yes. HR can force place any teacher.
TUCSON, AZ	Until July 1, principals interview and select transfer candidates. After that date, teachers rank preferences and are assigned by HR according to their seniority.	Until July 1, principals interview and select transfer candidates. After that date, teachers rank preferences and are assigned by HR according to their seniority.	Yes. Between July 1 and the beginning of school, HR may force place unassigned teachers in vacancies according to their preferences and seniority.
WASHINGTON, DC	Principals interview and select transfer candidates.	Principals interview and select excessed teachers.	No. All hiring decisions are made according to the mutual consent of teachers and principals. Teachers who do not find a position by mutual consent may accept a buyout, early retirement or a temporary assignment for one year.

Source: <http://www.nctq.org/tr3/reports/custom.jsp?id=29205>

The districts included in this table represent only a sample of the districts in NCTQ's 101-district TR<sup>3</sup> database.

## 2. The failure of school districts to properly evaluate their teachers

Without a good evaluation system to document teacher performance, there is a legitimate question as to the fairness of using performance as a factor when cutting positions.

Detailed evaluations should play a key role in staffing decisions. When positions are cut, evaluations can help principals decide whom to lay off. And when a teacher applies for a position, accurate evaluations outline candidate strengths and weaknesses, helping the principal determine if the applicant is a good fit for the school.

Certainly principals can also call around to find out the reputations of applicants, but such an approach may be unreliable on its own. It is not unheard of for principals to use the excess process to pass off their ineffective teachers (a practice known as the “dance of the lemons”). Consequently a teacher’s former principal may not be as forthcoming on the actual performance of a teacher as the hiring principal may seek.

While states and districts are improving their evaluation policies, largely in light of Race to the Top, teachers in too many districts still are not regularly, or sufficiently, evaluated. Half of the 101 districts in TR<sup>3</sup> require annual evaluations of all teachers (up from one third a year ago). But even in districts and states that require annual evaluations, districts often lack the systems to hold principals accountable for evaluating teachers, including the ability to record evaluations electronically, so that the central office can stay up-to-date on individual teacher progress.

Furthermore, most current evaluation systems do not accurately assess a teacher’s strengths and weaknesses, nor do they assess a teacher’s impact on student learning. Only 21 states require that student learning be considered in a teacher’s evaluation rating, but this is an increase of five states from one year ago. Too often evaluation instruments simply state whether a teacher’s performance is “satisfactory” or “unsatisfactory,” failing to distinguish excellent teachers from average teachers or, even worse, average teachers from poor teachers. But this, too, is changing.

## 3. The role seniority plays in teacher excessing

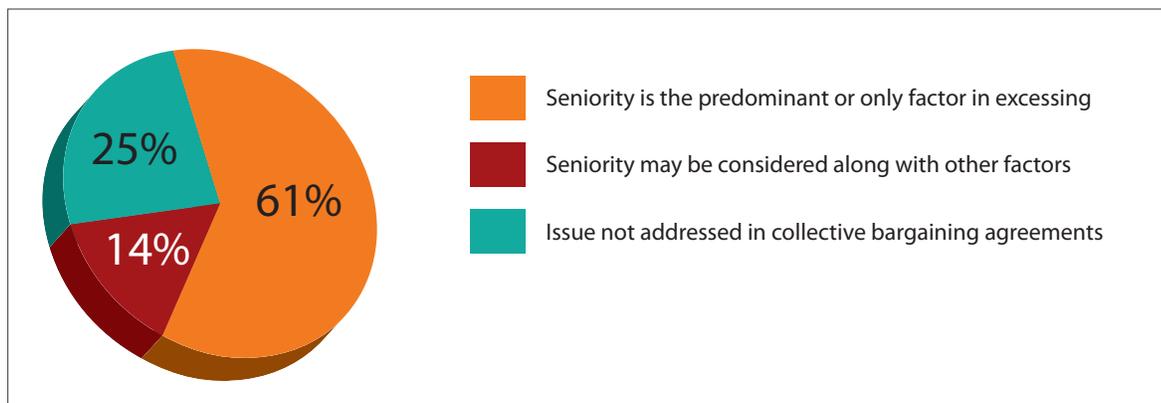
More than three quarters of the districts (78) in the TR<sup>3</sup> database list seniority as a factor in excessing decisions (see Figure 2). While seniority may be the determining factor, 46 of those districts list other factors that may be considered as well.

At one end of the spectrum are districts that make excessing decisions based entirely on seniority (after targeting the area of certification), the assumption being that more experienced teachers offer greater value than inexperienced teachers. At the other end of the spectrum are a growing number of districts that consider, in addition to seniority, a teacher’s performance in the classroom, a school’s needs, or both.

Seniority rights are generally set forth in the teacher contract or, in the case of right-to-work states, by local school board policy. On the issue of teacher assignment, states basically take a hands-off approach. While states often weigh in on other areas of a teacher’s work life (for example, evaluation and tenure), they’re mostly silent on teacher hiring, transfer and assignment, leaving those policies for districts (often in negotiation with the union) to decide.

States, of course, could issue a directive to change the role of seniority in teacher assignment decisions, but most have not weighed in on such matters. A notable exception is Rhode Island's state superintendent, Deborah Gist. In October 2009, Gist directed district superintendents to stop transferring teachers into new jobs on the basis of seniority, mandating instead that vacancies be filled using teacher performance and student need as the criteria. This directive trumps locally bargained contracts and inserts the state into an area long viewed as one that districts and their local unions must work out at the negotiating table.

**Figure 2. How districts determine which teachers will be excessed**



*Only six districts explicitly allow performance to be a factor in excessing decisions (in addition to seniority): Duval, Florida; Washington, DC; Los Angeles, CA; Denver, CO; Fargo, ND, and Aldine, TX.*

*Source: <http://www.nctq.org/tr3/reports/custom.jsp?id=30048>*

Actually, most school districts in the 101-district TR<sup>3</sup> database find a pure seniority-based system to be impractical or even untenable: 47 of the 76 districts that use seniority to determine excessing also allow for other factors when deciding which positions to cut. Los Angeles, for example, has a seniority-based excessing policy, but the union contract states that exceptions can be made if a teacher has a unique skill or if the transfer would disrupt the racial balance in the school.

In some districts, certain positions are protected from excessing. For example, many district contracts state that teachers who sponsor extracurricular activities or who coach sports teams cannot be excessed.

**Figure 3. The many exceptions to districts' seniority rules**

	Moves that would upset the racial balance at a school	Department heads	Teachers with extracurricular positions	Union reps	Bilingual/ESL teachers	Special education teachers	Teachers over 59 years old	Gifted and Talented, International Baccalaureate, Advanced Placement teachers	K-3 teachers	Resource teachers, counselors, librarians, reading teachers	Teachers with "special training" or "unique skills"
DISTRICT											
BROWARD, FL			X	X						X	
CHARLOTTE-MECKLENBERG, NC											X
CLARK, NV					X						
CLEVELAND, OH	X	X	X								
DADE, FL				X	X		X				X
DALLAS, TX	X	X	X								
DAVIS, UT											X
DETROIT, MI					X						
DUVAL, FL			X	X	X						X
FAIRFAX, VA		X			X		X				
FRESNO, CA	X		X		X		X				
GWINNETT, NC			X								
HAWAII										X	
JEFFERSON, KY			X								
JORDAN, UT			X								
LONG BEACH, CA	X						X				
LOS ANGELES, CA	X				X						
NEW YORK, NY					X	X		X			
PALM BEACH, FL			X								
PHILADELPHIA, PA	X										
SAN DIEGO, CA					X	X		X			
ST. LOUIS, MO			X								

It is not uncommon for districts to make exceptions to seniority-based excessing policies to minimize the impact of staffing disruptions on key school programs. Source: <http://www.nctq.org/tr3/reports/custom.jsp?id=29208>

**Figure 4. Performance versus Seniority: The challenge of deciding which teachers get excessed or laid off**

APPROACH	PROS	CONS	WHAT NEEDS TO BE IN PLACE FOR THIS TO WORK EFFECTIVELY?
SENIORITY	<p>There is no question that a seniority-based system is transparent and objective. Accordingly, it has strong support from unions.</p> <p>This system, when it functions as it is supposed to, makes it easier to place teachers who get thrown into the excess pool. Principals understand that teachers who are in the pool aren't necessarily bad teachers but just unlucky.</p>	<p>Newer teachers are always the first to go, no matter how effective they are.</p> <p>Because this system leaves principals with little discretion, principals "work it," finding all sorts of ways to get around letting go of teachers they want to keep. It is rarely as fairly applied as it might appear to be. Principals believe that most of the teachers in the pool are sub-par.</p> <p>When applied to layoffs, this system has a disproportionate impact on poor/minority schools, which often have higher numbers of newer teachers, creating very unstable staffs.</p>	<p>The district would have to disallow most exceptions and target which teachers would need to go.</p> <p>The system would also have to provide a more efficient process for principals to dismiss low performers, so that excessing is not considered the only viable way to remove a weak teacher.</p>
PERFORMANCE	<p>Principals are able to keep their most effective teachers on staff, presumably benefitting students.</p> <p>A more equitable system of teacher layoffs, as schools with already high turnover rates are not adversely affected.</p>	<p>Principals know for certain that any teacher in the "excess" pool is sub-par and may be less willing to take them on without being forced to by the HR department. sAbsent forced placements, the district is forced to pay full salaries to teachers who can't find a classroom.</p>	<p>Districts have to stop force placing teachers and need to identify a legal avenue to nullify the contract of a teacher who does not secure a new placement after a specified period of time.</p>

#### 4. The role seniority plays in teacher placement

Not only does seniority shape which teacher must go when there is excessing, but it also affects which teacher a principal has to hire when filling a vacancy.

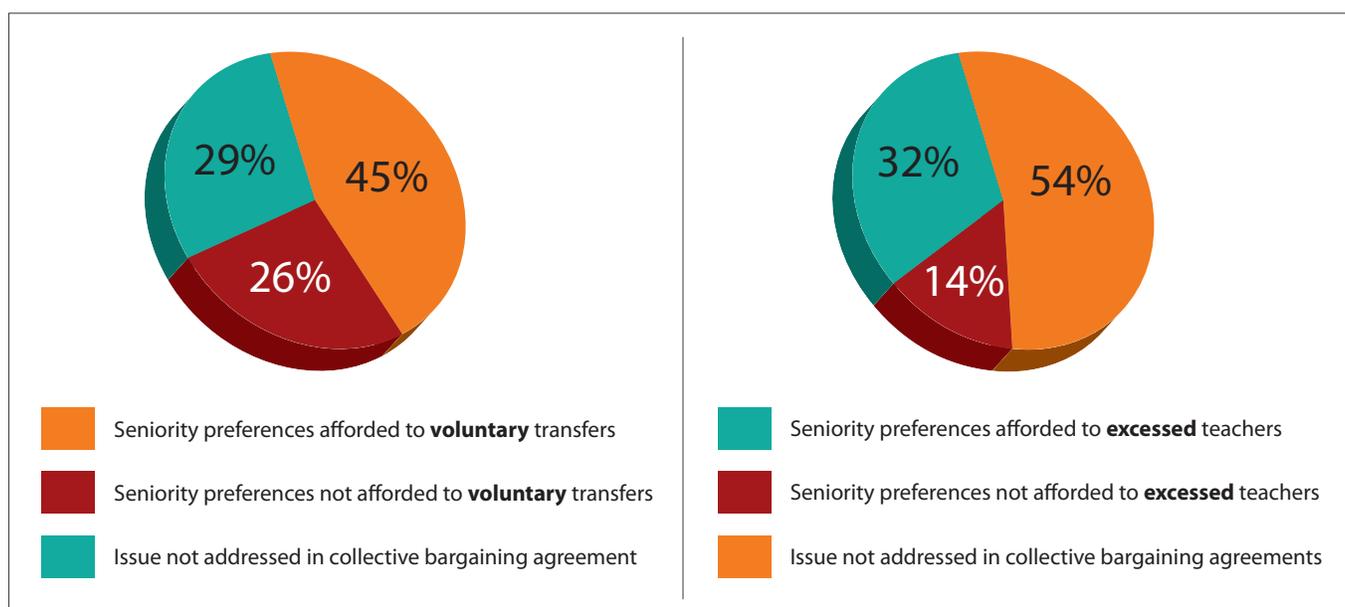
As an example of the strictest interpretation of this rule, imagine that Ms. Roberts, a high school biology teacher with five years of experience, is excessed from Appleton district's Thomas Jefferson High School after a drop in enrollment at her school. In trying to find Ms. Roberts a new placement, Appleton's HR office identifies all of the district's biology vacancies and allows Ms. Roberts to rank, in order of preference, those schools in which she would like to work. But because Appleton needs to place other biology teachers with more years of experience, Ms. Roberts can't be placed in any of her top schools. In fact, the principals at these schools never interview her, as they are required to consider, and eventually hire, teachers with greater seniority.

This process is executed purely on a mathematical basis, with the most senior teachers getting the choicest assignments. Such decisions do not factor in a teacher’s skills or suitability for a particular school, nor, in this case, do they allow principals to select the biology teachers they truly want.

Of course, among the districts in the TR<sup>3</sup> sample, there are many twists and turns in the role that seniority plays in excessing. For example, some districts may guarantee the most senior teachers who apply for a position an interview. Other districts allow teachers to outright pick their positions, with the most senior teachers choosing first.

The teacher contract in **Hartford, Connecticut**, for example, stipulates that the three most senior teachers who apply for a position are guaranteed an interview, and principals *must* hire from among those applicants. In **Hillsborough County, Florida**, teachers with the most seniority pick their positions based on a list of vacancies that the district provides. Other districts factor in seniority as a tie-breaker if there are two teachers equally qualified for a position.

**Figure 5. Illustration of the role of seniority in teacher placement**



Source: <http://www.nctq.org/tr3/reports/custom.jsp?id=30403>

Source: <http://www.nctq.org/tr3/reports/custom.jsp?id=30400>

## 5. The limitations imposed by states on districts seeking to nullify contractual obligations

The most significant hurdle to greater principal autonomy is money. While it’s true that most districts give principals and teachers opportunities to arrive at mutually agreeable placements, each year there are teachers who have lost assignments and can’t find positions elsewhere in the district. The central office often assigns these teachers to remaining vacancies, forcing principals to accept them regardless of whether they are wanted or are good fits for the schools. Districts feel they have no choice but to make forced placements, as they are obligated not only by the union contract, but also by state law to pay a teacher a full salary, even if no principal freely elects to offer that teacher an assignment.

New York City illustrates this problem perfectly. In 2005, the new teachers' contract gave principals the right to refuse a teacher who was not a good fit, but it did not address the problem of teachers unable to find placements elsewhere in the district. Inevitably, thousands of teachers found themselves without new assignments, costing the city \$74 million in 2008 alone to pay for teachers who were not teaching. Years later, after two contract negotiations, the city is still seeking ways to remedy this problem. The language of states' dismissal laws is largely to blame for this problem. State law usually limits the reasons for teacher dismissal to incompetence, immorality or willful neglect of duty. Not having a teaching assignment is generally not an acceptable reason.

In right-to-work states there appears to be some opportunity to dismiss teachers in the excess pool at the end of their contract term. For example, in Texas most veteran teachers (generally considered tenured) are on term contracts, rather than on continuing contracts. Term contracts are renewed every three to five years. After they expire there is little obligation for a district to keep an employee on staff. Districts will find it easier to reevaluate an employee's status at the end of each contract period, rather than having to go through a formal evaluation and dismissal process to prove incompetence.

## SOLUTIONS

What NCTQ recommends below may seem like straightforward policy changes, but enacting them would constitute two major cultural shifts in school districts. One shift values performance over experience, the other values principal autonomy over district efficiency.

### 1. End forced placements

Principals should have the final say over all teacher assignments in their buildings. Hiring authority is essential to well-run businesses, and, in the case of schools, giving principals the authority to accept, turn down or look for alternative candidates is key to building cohesive school faculties that will, ultimately, be effective teams.

#### Where it's been done.

There are a growing number of districts that have ended forced placements made by the central office, giving principals and schools full control over hiring. New York City was the first of the large urban districts to implement a "mutual consent" approach to staffing in 2005. Since then, a handful of other districts have moved in this direction, including Chicago, Washington, D.C., and Baltimore.

#### Alternative and modifications.

*Right of refusal.* Although transfer and hiring policies are almost always the domain of local districts, the California legislature passed a state law in 2006 that gives principals at low-performing schools the right to refuse the assignments of teachers to their schools. The law is designed to end the "dance of the lemons" and its particularly detrimental effect on already struggling schools.

*Excess teacher trading.* Some districts have forced principals to take responsibility for the harm they've caused by passing off poor-performing teachers to their colleagues' schools. For example, the Fairfax County, Virginia, and Montgomery County, Maryland, school districts hold meetings during which principals

select from among excessed teachers and openly discuss with principals' supervisors which arrangements would benefit the most schools. Teacher evaluation records and personnel files are made available to help inform the conversation. Although imperfect, this practice ensures that excessed teachers are shared equally among schools, thereby minimizing the burden usually placed on high-needs schools (those serving mostly disadvantaged populations), which have more turnover and vacancies.

## 2. Remedy contractual obligations that hurt the quality of school staffing

The bottom line is that districts cannot guarantee any teacher a job for life if students' interests are paramount. Excessed teachers who remain unassigned at the start of a school year should be given no more than one year to find a new position. After that year is up, a teacher should be placed on unpaid leave, if not terminated entirely. While the onus should be on the teacher to find a new position, this should not be used as a back door means to dismiss teachers. The district should provide structured opportunities for teachers to find new positions, e.g., hiring fairs, online rosters of openings and counseling opportunities.

Nearly all states define the reasons a teacher's contract can be terminated, usually limiting the reasons to incompetence, neglect of duty and immorality. Failure to find a new position is not an admissible reason to dismiss a teacher in those states. Every state, with the exception of Washington, D.C., would need to amend their dismissal laws to make failure to secure an assignment after one year an acceptable reason to void a contract.

### Where it's been done.

Excessed teachers in Chicago are given 10 months at full salary to secure a new position. Afterwards, those who have not been hired by a principal are dismissed. A similar policy is included in the new teacher contract in Washington, D.C., Excessed teachers who have been given, at the very least, a "minimally effective" evaluation rating have up to a year to find a new position. Those evaluated as "ineffective," however, are given just two months to find a new position in the district.

### Alternative and modifications.

*Unpaid leave.* Colorado's new education reform legislation gives excessed teachers two years to secure a new assignment. Those who do not find a new assignment are not dismissed, but placed on unpaid leave. This compromise means that excessed teachers who are without an assignment cannot remain on the payroll indefinitely. While these teachers are not formally dismissed, this compromise solution may be more tenable for states to undertake.

*Temporary assignments.* Placing unassigned teachers in temporary positions or as co-teachers is one solution used by the Baltimore City school district. But the feasibility of this option largely depends on a district's budget. If the budget is tight, the option is not affordable.

In a district with school-based budgeting, a principal should not have to dip into her school's budget to pay for teachers assigned temporarily to her school. Because they are made by the district, temporary placements should be covered by the district budget. The district, in turn, should ensure that it has sufficient funds to carry these teacher salaries for up to one year. Districts also need to agree to support principals in evaluating these teachers and not force principals to hire these teachers the following school year.



office making excessing decisions, a team of teachers at each affected school decides which positions will be cut, based on the following criteria:

- Previous year's final evaluation (50%)
- Unique skills and qualifications (20%)
- Other contributions to the local education program (20%)
- Length of service (10%)

#### **Alternative and modifications.**

*Require principals to guarantee the quality of the teachers they rate.* The Palm Beach County, Florida district challenges principals who try to move poor-performing teachers from their schools. Although seniority is used to identify teachers for excessing, those with an unsatisfactory evaluation are prohibited from transferring to a new school. In addition, the teachers' contract states that if an excessed teacher exhibits performance problems during the first year of a new assignment, he or she can be returned to the principal who previously rated the teacher as "satisfactory." This provision discourages principals not only from passing off their least desirable teachers, but also from giving them artificially high evaluations.

## THE NEXT CHAPTER: ESEA AND THE COMPARABILITY FACTOR

Giving principals the authority to decide who works in their buildings is a critical step toward improving public schools. Principal autonomy has been a central tenet of the school reform movement. So it is with some irony that a significant faction of that movement is pushing hard for a federal statute that would reduce the amount of autonomy principals have—that is, the "comparability" provision in the proposed ESEA reauthorization.

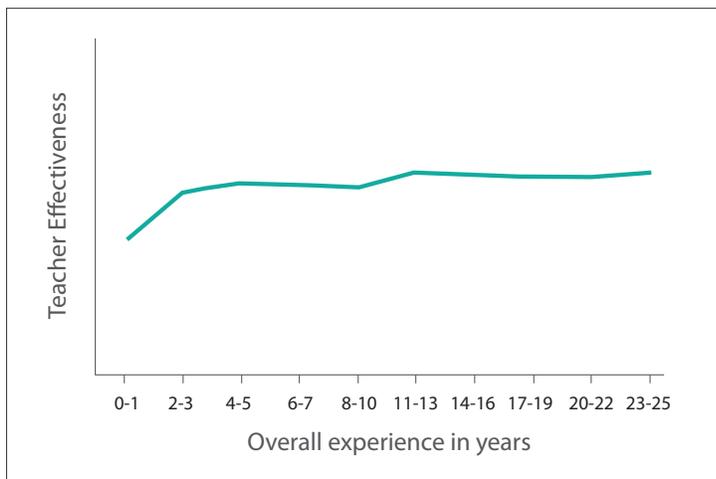
Forty-five years ago, the federal government began contributing significant amounts of money to local schools known as Title I funding. Since that time, there has been an effort to ensure that districts do not supplant that funding by giving less of their own money to the neediest Title I recipients. Most districts have respected this rule, but some work around it by taking advantage of a teacher-salary loophole that many federal officials have sought to close.

Here's how it works: A district calculates teacher salaries in terms of average cost, failing to document that it may be spending more money on its wealthier schools, where teachers who qualify for higher salaries (those with more seniority) tend to gravitate. Meanwhile, schools serving poorer children tend to have more inexperienced teachers, and, therefore, less money is being sent to those schools.

The goal of comparability is to ensure that all schools within a district get the same amount of state and local funding, including the calculation of actual, not average, salaries. It is certainly a noble goal—that all students have access to high-quality teachers. But in the push for comparability, the way in which "high quality" is defined creates problems.

For the most part, the basis for evaluating the equitable distribution of teachers is based on how much teachers cost. Because of the way teacher salaries are structured, the most expensive teachers are those with the most experience. The problem is that more experienced teachers are not necessarily more effective. In other words, some schools may be getting more money for teachers earning higher salaries, but that does not mean that those schools are getting more value.

**Figure 8. Impact of teacher experience on student achievement**



Source: Dan Goldhaber and Michael Hansen, “Assessing the Potential of Using Value-Added Estimates of Teacher Job Performance for Making Tenure,” 2009.

Under the new federal comparability rule, districts would be obligated to adjust the flow of money to ensure that all schools receive the same amount of funds. Because districts have almost no discretionary funding, and almost all funding is tied up in salaries and benefits, they will have little choice but to make hiring and transfer decisions that are not necessarily in a school’s best interest—in order to achieve what appears to be equitable funding.

Almost certainly, the proposed comparability provision will remove some staffing decisions from principals, with no obvious rationale except to satisfy a federal requirement.

Comparability proponents respond that they will make such staffing decisions illegal, but such a provision would be unenforceable. It would be impossible to prove that a district was moving staff to meet the federal requirement because of the normal ebb and flow of staffing changes that occur within the course of every school year.

Mandating comparability will simply treat the symptoms and not the disease. The disease, in this case, are policies and practices that make it difficult for principals to hire the person who is the best fit in their buildings, e.g., seniority privileges that result in teachers with the most experience transferring to schools with the least need.

Giving principals the authority to interview and hire teachers is the best way to ensure an equitable distribution of staff, hold schools accountable for results and, most importantly, create a working environment that fosters student achievement.



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