

## Teacher Layoffs: Rethinking “Last-Hired, First-Fired” Policies

In September of 2009, Washington, DC, schools Chancellor Michelle Rhee laid off nearly 400 teachers, citing a serious shortfall in funds for the DC school system. The move, coming as it did after Washington hired more than 900 new teachers in the summer of 2009, made jaws drop — some in outrage, some in awe. But the controversy was due only partly to the fact that Rhee axed jobs so close on the heels of a hiring spree; she also took full advantage of a clause in DC regulation that made “school needs,” not seniority, the determining factor in who would be laid off.

Approve of Rhee’s move or not, the highly scrutinized and controversial layoffs spotlight an important question: *what factors should be considered when school districts must decide who will stay and who will go?*

In the past year, cash-strapped districts have been handing out pink slips by the hundreds, and some, by the thousands. The Bureau of Labor Statistics estimates that nearly 60,000 teachers were laid off in 2009. State budget gaps and deficit projections, with federal stimulus funding already spent, suggest more of the same for 2010. Some observers expect current cuts to come faster even than those of the 1970s, when the baby boom generation waned, emptying out schools across the country.

In this paper, the National Council on Teacher Quality (NCTQ) taps into its TR<sup>3</sup> (Teacher Rules, Roles and Rights; [www.nctq.org/tr3](http://www.nctq.org/tr3)) database to examine district policies, some mandated by state law, for making layoff decisions. TR<sup>3</sup> posts data from 100 school districts across all 50 states, including the 75 largest districts in the nation as well as the 25 largest districts in the states that would not be otherwise represented. These 100 districts represent 20 percent of all public school students in the United States.

### Seniority’s pros and cons

Today, the overwhelming majority of school districts use seniority as the most important determinant of layoff decisions. The factory model approach of last-hired, first-fired is unusual among white collar professions. For example, struggling newspapers have usually chosen to buy out fewer senior, higher paid employees rather than layoff larger numbers of younger, less-expensive colleagues.

Proponents of basing teacher layoffs on seniority alone say the process is more objective and thus fairer. No judgment or discretion is needed. Seniority-based layoffs also protect



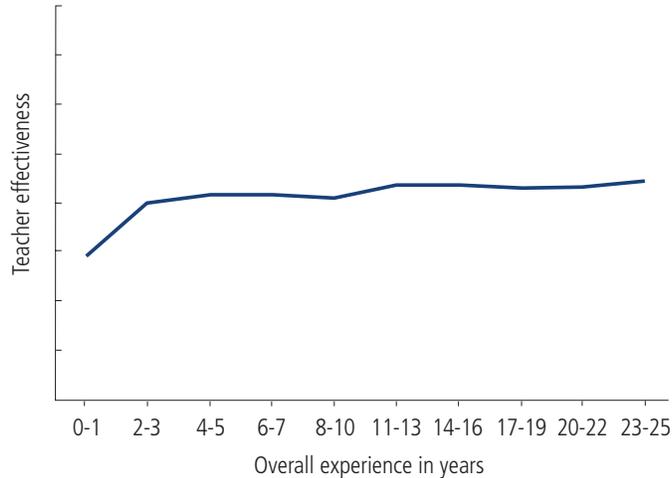
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those who have invested the most time in a school district, rewarding teachers for their loyalty, and are sensitive to employees who may find it difficult to find a new job late in their careers. It has also been long assumed that a seniority system produces the best results for children, under the assertion that the most experienced teachers are better teachers.

However, this last assumption has proven not to be, on average, true. A conclusive body of research finds that teachers in their third year of teaching are generally about as effective as long-tenured teachers (see Figure 1).

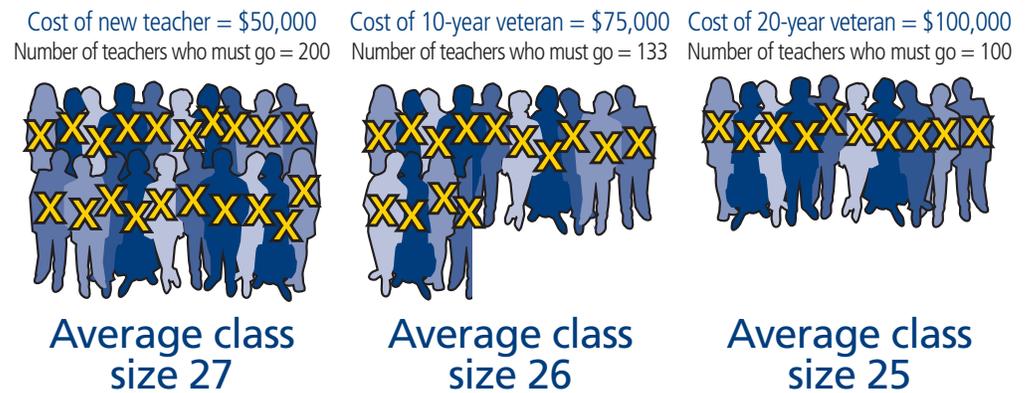
**Figure 1. Teacher effectiveness over time**



Source: Dan Goldhuber and Michael Hansen, "Assessing the Potential of Using Value-Added Estimates of Teacher Job Performance for Making Tenure," 2009. Many other studies have produced similar patterns. Researcher William Sanders, however, asserts that the trajectory is somewhat different, with teachers improving through year 10 and actually diminishing in performance toward the end of their careers.

Furthermore, seniority-based layoffs lead to more jobs lost. Newer teachers cost less than more senior ones, which means that districts have to lay off a larger number of newer teachers to fill budget holes. Accordingly, classroom sizes must increase.

**Figure 2. Closing a \$10 million deficit in district serving 34,500 children, with current average class size of 23 students**



Note: Each figure in the graphic represents 10 teachers or a portion of some.

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University of Washington researcher Marguerite Roza models a “seniority-neutral” policy. Instead of laying off 875,000 teachers to accommodate a 10 percent reduction in school budgets nationwide, districts would only have to lay off roughly 612,000 teachers — saving more than 250,000 jobs — by allowing criteria other than seniority to be factored into decisions about reductions in force.<sup>1</sup>

In addition, seniority-based layoffs may cut into hard-won diversity in the teacher corps. For example, in California, school districts have managed to increase the number of minority teachers by 14,000 across the state since 2001, but layoffs of these more junior teachers under a last-hired, first-fired policy could erase much of this progress.<sup>2</sup>

### Enter performance

Given what is at stake — that student progress depends most on the quality of the teachers to whom they are assigned — we argue that teacher performance should be a factor in any layoff. Student needs should be paramount when considering how best to handle employment decisions. The academic costs of laying off teachers without attention to classroom performance are too onerous.

### What is a layoff?

A layoff should not be confused with the routine ebb and flow of positions among a district’s individual schools that occur every school year. Teaching positions routinely are cut because of a school closing or program changes, leaving some teachers without assignments. In these cases, the elimination of positions usually does not mean that a teacher becomes unemployed. As is generally spelled out in the teacher contract or board policy, teachers are guaranteed new assignments as long as they are credentialed for available jobs. For instance, a teacher whose elementary school closes because of declining enrollment generally will be moved to another school to fill an available slot in the district, even if it means changing from teaching 1st grade to 4th. A position may be eliminated and a transfer may take place, but a person is not unemployed.

District-wide layoffs are another story. In these cases — also known as “reductions-in-force” (RIFs) — districts are no longer contractually obligated to find new assignments for teachers. Teachers lose not just their current assignments but their jobs.

The process for determining who stays or goes is relatively straightforward. The district first targets the subject area and/or grade level where reductions should be made. So, for example, all teachers certified to teach German are put into the layoff pool when a district eliminates its German language program. In a broader example, a district may decide that financial cuts force it to raise class size in every grade. In such cases, any teacher in the system is likely eligible for a layoff. Once the layoff pool has been determined, whether it be narrowly confined to just German teachers or more broadly applied to all teachers, seniority determines who will go first.

To summarize the seniority part of the equation: Last hired, first fired.

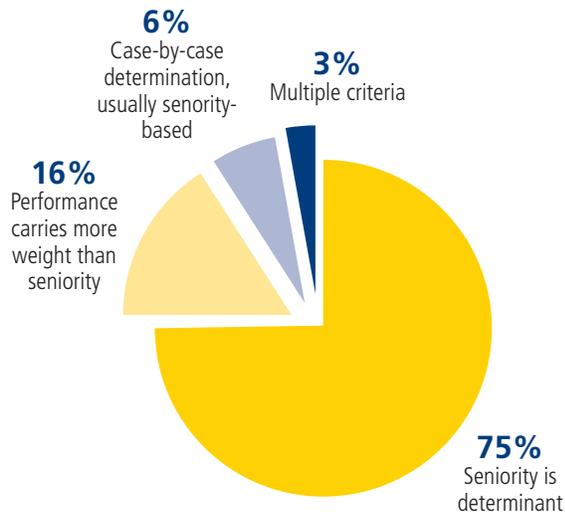
1 Marguerite Roza, Center on Reinventing Public Education at the University of Washington, Bothell.

2 New American Media, “Diversity will be a casualty of teacher layoffs,” March 3, 2009. Furthermore, a Council of Youth Research report, *Sharing the Burden? The Impact of Proposed Teacher Layoffs Across LAUSD* [Los Angeles Unified School District] concluded that, because LAUSD has to use teacher seniority as the primary criterion for teacher dismissal, and because more than 20 percent of LAUSD’s first- and second-year teachers are assigned to high-poverty, high-minority schools, teacher layoffs would be unevenly distributed, with low-income, high-minority schools hit the hardest.

### Current district policies

In the overwhelming majority of the 100 large districts in NCTQ’s TR<sup>3</sup> database, seniority is the primary determinant of which teachers a district must lay off (see Figure 3). **In all but 25 of the 100 districts, seniority determines whether a teacher stays or goes.**

**Figure 3. Seniority as primary determinant for layoffs in the 100 TR<sup>3</sup> districts**



*Note: While the vast majority of the districts in our sample use seniority as the primary determinant of layoff decisions, in 16 districts teacher performance carries more weight than seniority (Austin, Cypress-Fairbanks, Dallas, El Paso, Ft. Bend, Ft. Worth, Houston, North East and Northside, all in Texas; Mesa and Tucson, Arizona; Duval County, Florida; Jackson, Mississippi; Charlotte-Mecklenburg and Wake Counties, North Carolina; and Davis, Utah). Three districts use multiple criteria (Polk County, Florida; Washington DC; Montgomery County, Maryland). For the remaining six districts (Pinellas, Florida; Fulton and Gwinnet, Georgia; Fargo, North Dakota; Tulsa, Oklahoma; and Newark, New Jersey), NCTQ either has no policy information or the district deals with each layoff on a case-by-case basis, with no standard/mandated criteria for making layoff determinations.*

Interestingly, most districts use seniority as the basis for layoffs even among teachers who have not yet earned tenure (typically, teachers earn tenure after their third year). This rule tends to be enforced even when teacher contracts are silent on nontenured teachers. In Chicago, for example, where the contract spells out the policy for tenured teachers, in practice the district uses seniority to determine which nontenured teachers will be laid off as well.

To the extent that school districts in the TR<sup>3</sup> database use any criteria in addition to seniority as a factor in layoff determinations, the most common is a teacher’s ability to meet the “special needs” of a school. For instance, in Memphis, a high school football coach may be spared from a layoff, even if his seniority would otherwise qualify him. In Idaho’s Meridian school district a teacher with special technical knowledge that would be hard to replace, such as computer programming, might similarly keep her job. Generally these “school needs” criteria do not apply systematically: the contract does not spell out who gets this consideration, but it does grant the principal or superintendent more flexibility.

Even in districts with these special needs provisions, there is no evidence that a teacher’s superior performance can be classified as a school’s “special need.”

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The lack of attention to teacher quality inherent in this process is one of the reasons why Washington, DC’s layoffs raised so much controversy. To carry out those layoffs, DC principals were tasked with rating teachers who were in the layoff pool, with performance a major consideration and length of service a minor one. Not only did the new approach undermine the pre-eminence of seniority, it linked school needs with performance.

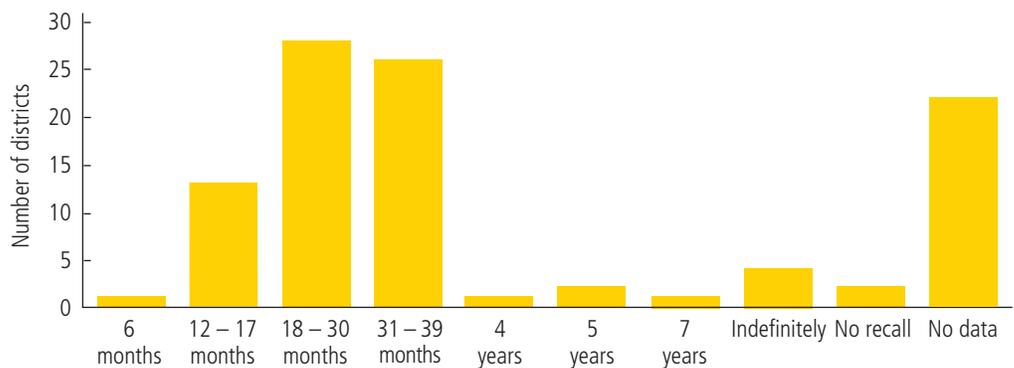
### Recall rights

A poorly understood feature of teacher layoffs is the fact that, in most big districts, teachers who lose their jobs in a layoff retain the right to be called back to work, known as a “recall.” Typically, a right of recall is conferred by locally negotiated contracts or, in some cases, by state law.<sup>3</sup> Weeks, months or even years after teachers have been laid off, they have the right to be reinstated when circumstances in the district change and teaching positions expand.

According to the TR<sup>3</sup> database, 79 of the 100 districts provide some form of recall right. And when teachers return to the classroom by recall, they typically do so in reverse order of seniority within fields, reversing the last-hired, first-fired rule. Of the 79 TR<sup>3</sup> districts known to provide recall rights, 62 mandate that recalls be done by seniority.

The length varies of these recall periods vary, but in almost two-thirds of the districts NCTQ examined, recall rights are in place for laid-off teachers for at least 18 months after layoffs. Seven of the 100 TR<sup>3</sup> districts (Little Rock, Arkansas; El Paso, Texas; Anoka-Hennepin, Minnesota; Cleveland, Ohio; Boston, Massachusetts, New York City and Philadelphia, Pennsylvania) provide recall opportunities for four years or more, leaving laid-off teachers with an open invitation to return to work years after being laid off, regardless of previous performance.

**Figure 4. Amount of time a teacher retains recall rights**



*Note: Typically, districts give teachers who have been laid off first priority on any new teaching jobs that open up, in some cases years after the layoff occurred. For example, laid-off teachers in New York have first “dibs” on teaching jobs for seven years, provided the new jobs match teachers’ certifications. Cleveland, Ohio, and Anoka-Hennepin, Minnesota, provide teachers with that right for up to five years; Boston, four years. Philadelphia, Pennsylvania; El Paso, Texas; and Little Rock, Arkansas have indefinite right of recall for laid-off teachers. Not all districts confer this right: Houston and Dallas school districts, for example, do not provide for recall.*

<sup>3</sup> Alaska, Arizona, California, Illinois (in some cases), Michigan, Minnesota, Missouri, Nebraska, New York, North Carolina, Oregon, Pennsylvania, South Carolina and Tennessee specify recall rights in state law.

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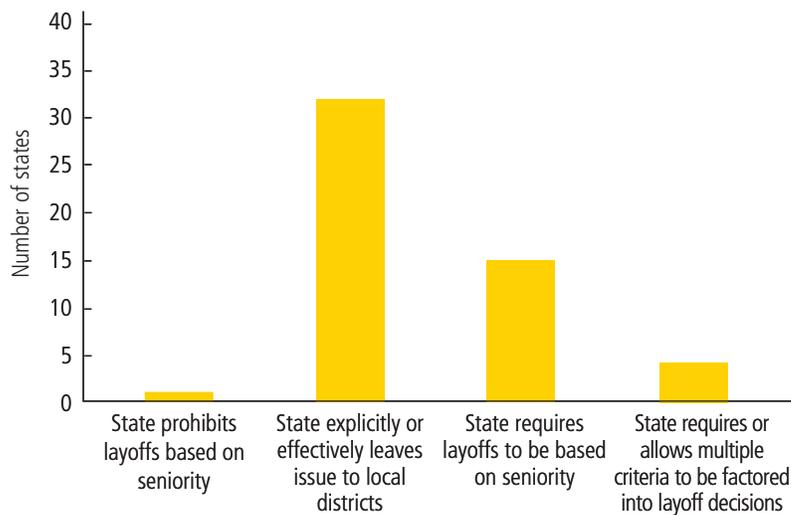
**State latitude**

Despite the predominance of seniority as the decisive factor in local layoff policies, NCTQ’s examination of state policies suggests many states allow more latitude for teacher performance to be considered in layoff decisions than what districts assume:

- Most states do not mandate that seniority be the deciding or even predominant factor in layoff decisions. States either explicitly leave layoff determination criteria to local school districts or do not address layoff determinations at all, effectively leaving those decisions to the discretion of districts. For example, of the 12 Texas districts in the TR<sup>3</sup> database, nine specify that performance shall be the primary determining factor in the layoffs of most teachers.<sup>4</sup> In some fashion, the three North Carolina districts in the TR<sup>3</sup> database consider performance in deciding which teachers to layoff.
- However, 14 states do have seniority layoff policies: Alaska, California, Hawaii, Illinois,<sup>5</sup> Kentucky, Minnesota, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, West Virginia and Wisconsin.
- Notably, in 2009 Arizona passed a law prohibiting seniority from being used in deciding layoffs. The legislation, part of a package giving more leeway in personnel matters to local leaders, may indicate a trend to come in other states. While Missouri mandates that districts base the layoffs of nontenured teachers on seniority, those of tenured teachers must be based on both seniority and performance. Maine, Louisiana, as well as the District of Columbia allow multiple criteria be considered in layoffs with no priority mandated as to which criterion is determinant.

Because state law trumps local policy, even that of collectively bargained contracts, any state could pass a law that requires performance to be a factor in layoffs.

**Figure 5. State laws on how layoffs decisions**



4 Those teachers holding a “term” contract may be laid off for performance. A relatively small proportion of teachers in these districts hold “continuing” contracts and are not subject to layoffs based on their performance.

5 Illinois law states that seniority must prevail unless a district decides it shouldn’t, making seniority-based layoffs the default unless a district actively resists it. Wisconsin law stipulates that seniority must be the overriding criterion only in “populous districts,” presumably the result of a compromise between big city teachers’ unions and smaller districts. Oregon allows districts to make exceptions to seniority rules if it can prove a less senior teacher has greater competency. Pennsylvania allows collective bargaining agreements to supersede this provision.

### Working around dysfunctional evaluation systems

A weak spot in any plan to base employment decisions on performance is the poor quality of teacher evaluations.<sup>6</sup> A recent study by The New Teacher Project found that in 10 of the 12 districts it examined, 99 percent of teachers were rated as satisfactory or above. Across the country, teachers are justifiably wary of the ways they are observed, evaluated and rated.

Improvement in performance-based teacher evaluations needs to come — and quickly. We will likely see some important changes soon as fixing teacher evaluation is supposed to be a central component in states' Race to the Top applications.

In spite of the dysfunction of most evaluation systems, schools still possess important information about the performance of teachers that can and should inform employment decisions. Even lax teacher evaluations help identify at least a few teachers who are not performing up to par. We also know, for example, that principals appear to be quite good at identifying the very best and the very worst teachers in their buildings, with ratings that can correlate reliably with standardized measures of performance. Economists Brian Jacob and Lars Lefgren find that principals do quite well in predicting which teachers will generate the best and worst test-score gains among their students and which teachers will be the most requested by parents.<sup>7</sup>

The capacity to describe a teacher's effectiveness in the classroom has recently been sharpened and standardized. Take, for instance, the work of Robert Pianta and the *Classroom Assessment Scoring System*. Pianta pioneered models for evaluating teaching that rate teachers' performance against prescribed levels of proficiency.<sup>8</sup> Additional noteworthy teacher evaluation instruments are available from Teach For America, North Star Academy, the National Board for Professional Teaching Standards and YES Preparatory.

This is all to say that current weakness in teacher evaluation is no excuse for the status quo, a fact that a number of districts recognize. Here are some promising trends:

#### *Using performance to determine layoff decisions*

Sixteen districts in the TR<sup>3</sup> database (Charlotte-Mecklenberg and Wake County, North Carolina; Duval County, Georgia; Jackson, Mississippi; Davis, Utah; Mesa and Tuscon, Arizona and nine large districts in Texas) apply performance criteria to all or almost all teachers when making layoff decisions. Jackson, for example, has a weighted system that assigns teachers a score based 60 percent on performance and 20 percent each on seniority and certification. In Davis, teachers who did not perform satisfactorily on their most recent performance evaluations go to the top of any layoff list.

In nine Texas districts (Austin, Cypress-Fairbanks, Dallas, El Paso, Ft. Bend, Ft. Worth, Houston, North East and Northside), probationary teachers and those on "term" contracts (most

6 See "The Widget Effect: Our National Failure to Acknowledge and Act on Differences in Teacher Effectiveness" by Daniel Weisberg, Susan Sexton, Jennifer Mulhern and David Keeling, The New Teacher Project, 2009 and "Rush to Judgment: Teacher Evaluation and Public Education" by Thomas Toch and Robert Rothman, Education Sector, Jan. 29, 2008.

7 See *Principals as Agents: Subjective Performance Measurement in Education*, July 2005, National Bureau of Economic Research Working Paper No. W11463.

8 The models have been extensively piloted and promote inter-rater reliability by training evaluators to common standards and ratings, a step beyond the checklists and narrative summaries that have mostly characterized teacher evaluations to date.

teachers who are not in the probationary period) are laid off first, by performance. In layoffs in the fall of 2008, Dallas cut any nontenured teacher who had at least two unsatisfactory ratings in any two categories of their most recent evaluation.<sup>9</sup>

### *Giving administrators the ability to appeal for less-senior teachers based on performance and school needs*

In Portland, Maine, a principal may go to bat for an outstanding teacher threatened with a layoff by bringing the case to a district committee that determines whether an exception should be made. In California, where state law mandates seniority-based layoffs, a superintendent can appeal individual pink slips to an administrative law judge. That step was taken in the past school year by the superintendent of the 51,000-student Capistrano Unified district, which did not want to lose 13 tenured teachers from two schools striving to exit improvement status as defined under the No Child Left Behind Act.

The trouble with relying on an appeals process is that it can take significant time and enormous energy to follow through with case-by-case exceptions. Researchers Frederick Hess and Colby Loup report that administrators are often discouraged by these demands from using the flexibility they have.<sup>10</sup> If the flexibility comes in the form of an exception that has to be argued for, frequently overwhelming the disincentive to act.

### *Using performance to help decide which nontenured teachers to layoff*

A compromise that takes performance into account for nontenured teachers may be more politically palatable. The Charlotte-Mecklenburg district in North Carolina, for example, developed such a policy in the past school year when faced with the need for hundreds of layoffs. The policy allows tenured teachers to generally have greater protection than nontenured ones except where subject-matter needs are concerned. Nontenured teachers were first to go, although finer grain distinctions were also made with greater likelihood of layoff given to:

1. Teachers with noted deficits in their evaluations;
2. Teachers with expired licenses;
3. Teachers who had special employment status, such as working post-retirement or part-time;
4. Nontenured first-year teachers, then second-year and so on. If not all first-year teachers in a field had to be laid off, they would be dismissed or retained based on their ratings on their end-of-the-year evaluations.

### *Factoring performance and licensure status into layoff decisions*

Montgomery County, Maryland, offers protection to tenured teachers who have more than six years of experience — but less, experienced teachers, even though they earn tenure after two years, are to be laid off first in order of licensure category (starting with those who do not have full-fledged provisional licenses and continuing through fully licensed and tenured teachers). Within each type, however, performance is given equal weight with years of experience up until the six-year mark. For teachers at that point in their careers, experience is weighed more heavily, and absent a serious performance problem, a six-year, tenured teacher would not likely face a layoff.

9 Unlike other states, Texas has three contract categories. Most post-probationary teachers in the state hold “term” contracts, usually for two years. A smaller number hold “continuing” contracts. State law mandates that continuing — contract teachers be laid off on the basis of seniority but allows districts to determine the process for term and probationary contract teachers.

10 Teacher Labor Agreements: Formula for Flexibility or Failure? AEI Outlook Series, June 2008. See <http://www.aei.org/outlook/28212>.

### *Using performance to help decide which tenured teachers to lay off*

Wichita, Kansas, makes no effort to save its least experienced teachers on the basis of performance, but it does have some performance requirements for its tenured teachers: those who have been judged to be weak enough to be on a plan of assistance are the first to get pink slips after nontenured teachers are laid off.

#### **NCTQ RECOMMENDATIONS**

Most everyone agrees that teacher layoffs are bad news for teachers, schools and students. In addition to the stress that goes with losing a job, layoffs are highly disruptive and are rarely carried out “neatly,” respecting the school calendar. Teacher layoffs that do not attend to the needs of the schools or the capabilities of teachers are even more likely to disrupt schools and impede student progress. With these issues in mind, we have the following recommendations to help school districts navigate difficult layoff decisions while keeping student needs front and center in the process:

#### **1. Eliminate the use of seniority as the primary or exclusive determinant in layoffs and rely far more on teacher evaluations.**

The quality of a school’s staff is most likely to be strengthened when performance is an important factor in layoffs. Performance needs to be determined by a reliable teacher evaluation system, meaning that: 1) all teachers are routinely evaluated; 2) teacher performance is the preponderant criteria of the evaluation instrument; 3) principals are held accountable by the superintendent for the quality of their evaluations; 4) third party verifiers validate principal ratings; and 5) the evaluation system is capable of distinguishing multiple levels (not just two) of performance. Further, evaluations need to be transparent and systematic, two features that cannot be achieved in an ad hoc process, when principals are asked to rank teachers only immediately before a layoff.

Within the areas targeted for a layoff, teachers with overall unsatisfactory evaluations should be laid off first, regardless of experience. Teachers whose performance in some areas is less than satisfactory should follow.

#### **2. Remove at least some of the seniority preferences.**

For districts that are unable to make performance a determining factor in layoffs across the board, we offer several compromises that remove at least some of the preference for seniority:

- **Lay off first-year teachers first.** Research shows that teachers who have been teaching only for a year are not likely to be a match for other teachers in terms of effectiveness. Targeting first-year teachers is preferable to treating all nontenured teachers as the same, as policy dictates in many districts. Second- and third-year teachers (who would still be nontenured in most states) are likely more effective.
- **Lay off nontenured teachers on the basis of performance, so that at least some of the lowest performers go first.** This policy can be coupled with one that preserves seniority as the final determinant of layoffs for tenured teachers or one that makes some modifications to that seniority system. The point is that tenured and nontenured teachers can be treated differently and that latitude to do so may be in the contract.
- **Lay off teachers on the basis of a weighted system that gives points to performance and a fewer to seniority.**

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**3. Allow a teacher's exceptional performance to exempt him or her from layoffs. This special needs clause can be in contract, policy or law.**

District and school officials need to be able to argue that star teachers and those who fill important roles should not be laid off. Schools should be able to protect teachers, for example, who have a uniquely strong understanding of student data or who serve as strong mentors to others or who serve as strong incentives to others. At the very least, school systems should give principals the power to argue to a higher authority (a panel, the superintendent) for keeping an individual excellent or pivotal teacher during a layoff.

**4. Don't use layoffs as an easy way to get rid of a teacher who should be fired.**