

KEEPING OUR BEST TEACHERS: AN ALTERNATIVE TO SENIORITY-BASED LAYOFFS

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Preface

We joined Educators 4 Excellence because we believe teachers have an essential role to play in education policy, and we wanted to make our voices heard. Over the last several months, as members of E4E's Layoff Policy Team, we have examined policies, state laws, relevant research, and the New York City teacher bargaining contract, searching for practical solutions to the looming problem of teacher layoffs. After long days of teaching, we gathered to discuss policies that directly affect us, and, more importantly, threaten our students, our schools, and our communities.

We are a diverse group: veterans drawing on memories of many Septembers, novices who are eager to learn, and mid-career teachers who want to build on their expertise. We live and teach all over New York City's five boroughs. The walls of our classrooms boast finger paintings, multiplication problems, and Advanced Placement statistics. Across our differences, what unites us is a passion for our students: above all else, we are dedicated to student achievement, and we will do whatever it takes to help our students reach their goals.

This process was transformative for many of us: we are taking an active role in changing the education system, beyond our classrooms, and this document was written by teachers, for teachers. For too many years, education policymakers have ignored the voices from the classroom who know best how policy translates into practice. Now, as state budget cuts mean that layoffs may be a reality for some of New York City's 80,000 teachers, it is time for our

teacher voices to be heard. Seniority-based layoffs will have a damaging effect on our schools and on our students, and we need a better way.

Introduction

As a team of teachers who have researched and debated New York's teacher layoff system for the last four months, we believe the “last in, first out” policy will wreak havoc on our schools and our students. As teachers, the last thing we want is to see any of our colleagues laid off. But our state is in financial crisis, and if layoffs do happen, New York needs a system that protects our students.

If teacher layoffs happened tomorrow, teachers would be laid off in order of reverse seniority – the most recently hired would be the first to go. This current system is quality-blind, ignoring the fact that teacher effectiveness is the single most important factor in impacting student achievement. Given the dramatic variations in teacher quality, when making these tough decisions, we need to do so in a way that keeps the best teachers in the classroom.

Furthermore, schools with large percentages of newly hired teachers, often in the lowest-income communities, would be the most severely impacted. The culture of schools that lose teachers would be torn apart, as replacements with more seniority were randomly assigned to the building, and the mutually agreed-upon hiring system would fall apart.

Our students deserve better.

The Educators 4 Excellence Policy Team recommends the following changes to the “last in, first out” policy:

Teachers who fit into any of these three categories should be laid off first:

- **Chronic absentees:** Teachers who have been absent more than eight percent of a given school year, without a documented medical reason.
- **Principal evaluations:** Teachers who have received an unsatisfactory rating in the past year.
- **Absent Teacher Reserve Pool:** Teachers who have not been able to find a permanent position in the past six months.

If further layoffs are necessary, principals should make the decision, providing documentation and rationale, based on factors that impact teacher effectiveness, such as classroom management, instructional performance, years of experience, license areas, contribution to school community, and student performance data, if available.

These categories are clear indicators of teacher performance and student achievement:

- Teachers absent more than 10 days significantly reduce student achievement.¹
- Less than 3 percent of New York teachers receive an unsatisfactory rating.

1 Miller, Raegen, et al. “Do teacher absences impact student achievement? Longitudinal evidence from one urban school district,” National Bureau of Economic Research, 2007, available at <http://www.nctq.org/nctq/research/1190910822841.pdf>.

- Excessed teachers who have not successfully found a permanent position within six months are unlikely to find one thereafter.²

In the absence of a more comprehensive evaluation system, our framework is a better way to conduct layoffs because it protects great teachers. Layoffs will hurt New York City schools regardless of how they are determined, but using seniority as the only criteria, without any consideration of teacher effectiveness, will cause much more damage to our schools and to student achievement.

Imminent Layoffs

Across the country, state governments are feeling the burden of the recession. With less money coming in from tax revenue, states must cut budgets, and schools are directly affected. Nationally, in 2009, almost 60,000 teachers were laid off.³ Many governors have already announced budget proposals for 2011; most include massive cuts to education to address cash-strapped state coffers.

New York is no exception. Our state faces a nearly \$11 billion deficit, and Governor Cuomo is planning a reduction in spending⁴ for the first time in seventeen years.⁵ The budget woes at the state level impact New York City more than anywhere else in the state, and although the governor's budget has not yet been finalized, the City will certainly receive significantly less state funding. This year's city budget gap could be as much as \$4.5 billion, according to projections from the mayor's office.⁶

This year, teacher layoffs loom on the horizon again. In 2009 and 2010, the federal stimulus package helped mitigate education budget shortfalls, but that money has dried up, and our state budget will have to be drastically reduced. Teacher layoffs are on the table once again, and the time is now to put in place a policy that protects the interests of New York's students.

The Current System

New York state law currently dictates that all teacher layoffs must be made in the order of reverse seniority.⁷ For example, if a principal needed to lay off five elementary school teachers, she would have no choice about which teachers she would lose: her five least-senior teachers would go. Seniority would protect the rest of her teachers, regardless of whether they were effective in the classroom. New York City's bargaining contract defers to state law on the subject of layoffs. As a

2 Daly, Timothy, et al., "Mutual Benefits: New York City's Shift to Mutual Consent in Teacher Hiring," The New Teacher Project, 2008, available at <http://www.ntnp.org/files/MutualBenefits.pdf>.

3 National Council on Teacher Quality, "Teacher Layoffs: Rethinking Last-Hired, First-Fired Policies," February 2010, available at http://www.nctq.org/p/docs/nctq_dc_layoffs.pdf.

4 Note that this reads a 'reduction in spending', not simply a reduction in the growth of spending.

5 Quint, Michael. "Cuomo Tells Lawmakers to Prepare for First Budget Cut Since 1995," January 26, 2011, available at <http://www.bloomberg.com/news/2011-01-26/cuomo-tells-new-york-lawmakers-to-prepare-for-first-budget-cut-since-1995.html>.

6 Goldman, Henry. "New York City Budget Deficit Next Year May Widen by \$2 Billion, Page Says," December 6, 2010, available at <http://www.bloomberg.com/news/2010-12-06/new-york-city-budget-gap-may-widen-by-2-billion-next-year-official-says.html>.

7 New York State Education law Section 2588

result, if the state reduces New York City's budget and layoffs are necessary, state law will force New York to fire its most recently hired teachers en masse.⁸

Seniority-based layoffs hurt schools and students for multiple reasons. First, without considering performance in layoffs, many highly effective teachers will be lost, while less effective teachers remain in the classroom. We can tell whether teachers are likely to be great within four years of their entering the classroom: a teacher's learning curve grows steeply during the first four years of teaching, then plateaus. Some new teachers quickly emerge as superstars, already surpassing many senior teachers in effectiveness. In fact, in a 2010 simulation of New York City layoffs, the Calder Urban Institute compared teachers who would be laid off based on seniority alone and teachers who would be laid off based on the value they add to their students' learning, and found there was only 13 percent overlap.⁹ In other words, seniority-based layoffs and value-added layoffs would result in completely different groups of teachers losing their jobs, because seniority-based layoffs would not take teacher effectiveness into account.

The current system would terminate a high number of effective teachers, but a system that included some measure of teacher effectiveness would mean that only the lowest performers would go. According to the 2010 Calder simulation of New York layoffs, most of the teachers who would be laid off in a seniority-based system would be substantially more effective than even the best teacher laid off using a value-added system, or a system that includes teacher effectiveness.¹⁰

Secondly, seniority-based layoffs will lead to more jobs lost overall. Because newer teachers make less money than veteran teachers, the city will have to lay off a higher number of newer teachers to close the budget gap. According to a study by the *Center for Reinventing Public Education*, it was found that a layoff system based on teacher effectiveness, rather than seniority, would result in dramatically fewer layoffs.¹¹ Obviously, the greater the number of layoffs, the greater the impact on schools and students.

In addition, seniority-based layoffs will likely undercut efforts to make the teacher pool more diverse. Over the last decade, New York has hired many more African-American and Latino teachers to better reflect the population of city students. Because many of these teachers were hired recently, they would be most vulnerable to "last in, first out" layoffs. As a result, many newer African-American and Latino teachers would be laid off, as happened in California teacher layoffs in 2010.¹²

Furthermore, lower-income students are hurt the most when seniority-based layoffs happen. Because newer teachers are often concentrated in hardest-to-staff schools with lower-income students, those schools lose higher percentages of their teachers.¹³ In January 2011, a Los Angeles Superior Court judge ruled in favor of low-income families suing the Los Angeles Unified School District, agreeing that seniority-based layoffs disproportionately affected low-income students. The ruling comes after massive seniority-based layoffs in the district meant that some

8 New York State Education law Section 2588

9 Boyd et al., "Teacher Layoffs: An Empirical Illustration of Seniority vs. Measures of Effectiveness," Calder Urban Institute, July 2010, available at <http://www.urban.org/uploadedpdf/1001421-teacher-layoffs.pdf>.

10 Boyd 2010.

11 Marguerite Rosa, (2009). "Seniority-Based Layoffs will Exacerbate Job Losses in Public Education," *Center For Reinventing Public Education*.

12 New American Media, "Diversity will be a casualty of teacher layoffs," March 3, 2009.

13 National Council on Teacher Quality, (2010). "Teacher Layoffs: Rethinking "Last-Hired, First-Fired" Policies."

schools lost as much as 50 percent of their teaching staffs, throwing already-struggling schools into chaos. The lawsuit cites ESL classrooms that were taught by nine substitutes in two months, history classes with 10 substitutes in four months, and dire academic circumstances for students without a permanent teacher because of the layoffs.¹⁴

For all the above reasons, the best solution would be a layoff policy based on a comprehensive, multi-faceted evaluation system that uses student achievement. New York does not yet have this kind of evaluation system, but pilot programs developed through The New Teacher Project and the Department of Education have already started up in a few schools. A bill passed in 2010 requires that an improved system, which includes student achievement data, be in place by 2013.¹⁵ In the meantime, New York must rely on other measures of effectiveness.

To address possible layoffs in New York City, we have proposed a set of criteria that uses three objective factors to determine how teachers should be laid off. Our primary concern in choosing these factors was the best interest of students, but they are also non-discretionary, based on readily available information, and easy to implement.

Our Recommendations

	Attendance		U-Ratings		ATR Pool
Tier I	Any teacher that maintains an average absentee rate of 15% or higher over the previous and current school year.	OR	Any teacher who has received two consecutive U-ratings in the past two years.	OR	Any teacher who has been in the ATR pool for 12 or more months.
Tier II	Any teacher that maintains an average absentee rate of 10% or higher over the previous and current school year.	OR	Any teacher who has received two U-ratings in the past five years.	OR	Any teacher who has been in the ATR pool for 9 or more months.
Tier III	Any teacher that maintains an average absentee rate of 8% or higher over the previous and current school year.	OR	Any teacher who received a U-rating in the prior school year AND any probationary teacher who has ever received a U-rating.	OR	Any teacher who has been in the ATR pool for 6 or more months.
Tier IV	If further layoffs are necessary, they must be evenly distributed by % across schools. Decisions should be made by the principal, who must provide documentation and rationale, based upon the following criteria: <ul style="list-style-type: none"> • Classroom management • Instructional performance • Years of experience • Licensure areas • Contribution to school community • Student performance data • Teacher data reports, if available 				

14 The full statement of Mark Rosenbaum, ACLU chief counsel, is available at <http://www.aclu-sc.org/documents/view/228>.

15 New York State education law Section 3012.

Absenteeism

RECOMMENDATION: Teacher attendance rates should be included in citywide layoff decisions.

Rationale

The most important factor in student achievement is teacher effectiveness. Teacher attendance – whether a teacher is in front of his students every day – plays a critical role. Teachers and administrators also recognize this fact. According to survey data from The New Teacher Project, teachers overwhelmingly support attendance as a factor in layoff decisions.¹⁶ Furthermore, longitudinal evidence from the National Bureau of Economic Research (NBER) shows that teacher absenteeism negatively affects student achievement.¹⁷

Consistent instruction is fundamental to student achievement so that teachers can meet students' needs. Each teacher receives ten allotted personal and sick days per school year. Some teachers take nearly double this amount – essentially taking one day off every two weeks. When a teacher is absent it leads to inconsistent instruction and impacts the whole school community. Teacher absenteeism can also affect the school financially, because principals must pay substitute teachers, and places a burden on all staff members whose routine and collaborative planning are disrupted.

Absenteeism should be considered in the layoff decision because it is a consistent and objective measure. This recommendation incorporates data from a year and a half, which provides a fair metric for identifying trends in teacher absenteeism over time. The absence rates in the three tiers were selected because there is a large variation in adjusted teacher absentee rates among schools. Furthermore, the NBER study suggests that for each ten days a teacher is absent, student performance in math declines by 3.3 percent of a standard deviation.¹⁸ Significant portions of teacher absences are discretionary and policy changes could increase teacher attendance rates and raise student performance.

We recognize that extenuating health and personal circumstances may prevent teachers from a reasonable rate of attendance. If a teacher wishes to appeal their status they must show the appropriate documentation for all days absent.

What it looks like:

TIER 1: Any teacher that maintains an average absentee rate of **15 percent or higher** over the previous and current school year would be in the first round of layoffs. This would amount to at least 41 days absent from September 2009 to February 1st, 2011.

TIER 2: Any teacher that maintains an average absentee rate of **10 percent or higher** over the previous and current school year would be in the second round of layoffs. This would amount to at least 27 days absent from September 2009 to February 1st, 2011.

16 The New Teacher Project, "A Smarter Teacher Layoff System," March 2010, available at http://www.tntp.org/files/TNTP_Smarter_Teacher_Layoffs_Mar10.pdf.

17 Miller 2007.

18 Miller 2007.

TIER 3: Any teacher that maintains an average absentee rate of **8 percent or higher** over the previous and current school year would be in the third round of layoffs. This would amount to at least 22 days absent from September 2009 to February 1st, 2011.

Current Rating System

Recommendation: Unsatisfactory teacher ratings should be included in citywide layoff decisions.

Rationale:

The current teacher evaluation system, though imperfect, does provide valuable insight into teacher quality. The current system allows principals to give teachers one of two ratings, an “S” for satisfactory or a “U” for unsatisfactory. Right now, New York principals give almost every teacher – 98 percent – a satisfactory rating.¹⁹ That means that only two percent of teachers receive an unsatisfactory rating each year. This system needs an overhaul: because principals do not differentiate between great teachers, average teachers, and low-performing teachers, the best teachers cannot be recognized, struggling teachers do not receive needed supports, and the worst teachers are still in the classroom. In a study of teacher evaluations in four major states, The New Teacher Project found that 73 percent of teachers surveyed received no information about areas for further professional development from their most recent evaluation.²⁰ As a result, except for the small percent of teachers who receive U ratings, it is impossible to tell from evaluations which New York teachers need to improve and in what areas.

At the same time, what these evaluations do tell us is useful in determining which layoffs should happen first. Given that principals so rarely rate teachers unsatisfactory, the few occasions when they do give a U rating are even more meaningful. When Calder researchers examined the role of U ratings in their simulation of seniority-based and value-added layoffs, they found that U ratings were “much more closely aligned with value-added layoffs than seniority-based layoffs.”²¹ In fact, seniority-based layoffs, in their simulation, would not have led to *any* teachers with a U rating losing their jobs, while value-added layoffs would have laid off many more teachers who had received a U. What this tells us is that a seniority-based layoff system would not remove the lowest-performing teachers.

A system that puts the needs of kids first should work in exactly the opposite way. If layoffs are necessary, using the current S/U rating system would more accurately identify low-performing teachers than the “last in, first out” policy.

What it looks like:

TIER 1: Any teacher who has received two unsatisfactory ratings in the past two years.

TIER 2: Any teacher who has received two unsatisfactory ratings in the past five years.

19 Green, Elizabeth. “More than 500 teachers rated ‘unsatisfactory’ for this year,” July 20, 2009, available at <http://gothamschools.org/2009/07/20/more-teachers-rated-unsatisfactory-last-year-tenured-and-not/>.

20 Daniel Weisberg, et al., “The Widget Effect,” The New Teacher Project, 2009, available at <http://widgeteffect.org/downloads/TheWidgetEffect.pdf>.

21 Boyd 2010.

TIER 3: Any teacher who received an unsatisfactory rating last year and any probationary teacher who has ever received an unsatisfactory rating.

Absent Teacher Reserve Pool

Recommendation: The Absent Teacher Reserve Pool should be included in citywide layoff decisions.

Rationale:

The Absent Teacher Reserve (ATR) Pool is the result of the 2005 contract negotiations, which allowed principals to hire any teacher who applied instead of the most senior teacher who wanted the position. In an attempt to protect teachers who were excessed, the ATR was created to utilize teachers as temporary substitutes and to perform clerical work while they looked for a new job. There is no limit to the amount of time a teacher may remain in the ATR pool. By allowing teachers to remain in the ATR pool and collect their full pay and benefits indefinitely, teachers are not incentivized to pursue a full time teaching position.

The ATR pool contains teachers who have been unsuccessful in securing a permanent position in their license. These teachers, who are not actively contributing to student achievement, cost the city annually over \$110 million. More than 1200 teachers are currently in the ATR pool, some of which have been unsuccessful in finding a job for over five years.²²

Many of the teachers in the ATR pool have been unsuccessful in finding a new position because they have a license in a subject area that is now obsolete, such as jewelry-making, stenography, and cosmetology. Other teachers remain in the pool because they have not attempted to find a new position. In fact, a recent study by The New Teacher Project found that 18% of the teachers in the ATR had not even applied for open positions and 15% had turned down one or more job offers.²³ Furthermore, the study found that if a teacher in the ATR pool had not found a position within 6 months, they were unlikely to find a position thereafter.

Although teachers who have been excessed or taught in a school that was closed should be allowed a period of time to find new positions, we believe that this period of time needs to be limited. Based on the above research, teachers who have spent longer than 6 months in the ATR pool should be considered for layoffs.

What it looks like:

TIER 1: Teachers who have been in the ATR pool for greater than 12 months.

TIER 2: Teachers who have been in the ATR pool for greater than 9 months.

TIER 3: Teachers who have been in the ATR pool for greater than 6 months.

Principal Choice

22 The New Teacher Project. (2008.) "Mutual Benefits: New York City's Shift to Mutual Consent in Teacher Hiring."

23 TNTP, 2008.

If the criteria of excessive absences, U-ratings, and ATR teachers does not cover the number required to reconcile the budget deficit and more teachers need to be laid off, principals should be empowered to make final layoff decisions as a last resort. Although New York's comprehensive evaluation system is still three years away, principals currently have at their disposal a vast number of evaluative systems already in place.

If further layoffs are necessary, principals should make the decision, providing documentation and rationale, based on factors that impact teacher effectiveness, such as classroom management, instructional performance, years of experience, license areas, contribution to school community, and student performance data, if available.

Additionally, in order to avoid disproportionately impacting any school or community, the balance of the layoffs not covered by the above recommendations should be evenly distributed as a citywide percent of the school teaching staffs.

Conclusion

No one wants to see teachers laid off. We know what it will mean for our students: larger class sizes, fewer extracurricular activities, less individualized attention. Yet layoffs may be unavoidable, and we should have a system in place that minimizes the damage that layoffs will cause to our students, our schools, and our communities.

When seniority rules, great teachers are lost and schools suffer. Instead, we should use existing criteria that are far better predictors of teacher quality. Excessive absences, U-ratings, and extended time in the Absent Teacher Reserve pool are objective indicators that are easy to implement and correlate with teacher effectiveness. Our proposed system is fair to teachers and better for kids.

New York City cannot afford to lay off great teachers, whether rookies or veterans. A system that prioritizes seniority ignores the effectiveness of the teacher. A classroom that loses a highly effective teacher is a loss to students, schools and our communities. The economic future of New York City depends on the education of our students, and our investments must prioritize the potential of our children.

As teachers, we call upon our state elected officials to change the current quality-blind, seniority-based layoff system to one that puts the needs of our students first!

Process

On November 9, 2010, eleven educators who teach a wide range of subjects and grade levels across New York City's boroughs, representing various levels of experience, met to form Educators 4 Excellence's Layoff Policy Team. The process began with a thorough review of the teacher contract, New York State education laws, relevant research, recent legislative funding changes, and alternative layoff policies across the country.

After reviewing this material, developing questions, and collecting more data on the current system, the policy team began to analyze the strengths and weaknesses of many of the leading alternatives to LIFO. Over the course of the process, the policy team surveyed E4E's broader membership for ideas and suggestions, which were incorporated into the final set of recommendations as outlined in this paper.

What is E4E?

Educators 4 Excellence is an organization of current and former education professionals who seek to provide an independent voice in the education policy debate – a voice that puts the needs of our students first. Launched in March 2010 by two NYC teachers, Evan Stone and Sydney Morris, E4E represents over 1,400 educators who are united around the [E4E Declaration of Teachers' Principles and Beliefs](#).

The Teachers

Christine Casher teaches 9th and 10th grade literature in Manhattan.

Esther Chu teaches middle school science in Brooklyn.

Michelle Costa teaches high school mathematics in Brooklyn.

Margie Crousillat teaches kindergarten in the Bronx.

Elizabeth Doctor teaches 3rd grade in Harlem.

Jamie Ferrel teaches 6th and 7th grade special education English in the Bronx.

Laura Frazier teaches high school mathematics in the Bronx.

Jarell Lee teaches 3rd grade in Brooklyn.

Evan Piekara teaches middle school ELA and Social Studies in the Bronx.

Jane Viau teaches AP Statistics and Economics in Harlem.

Val Lorie Wilson teaches middle school special education in the Bronx.