

'Mutual Consent' Teacher Placement Gains Ground

By Stephen Sawchuk

A handful of districts and two states are doing away with the forced placement of teachers in schools in favor of a system requiring both the teacher and principal to agree to a transfer.

The movement is generally supported by school leaders, who say that they must be able to have a choice in the selection of talent in their building if they are to be held accountable for achievement results.

"Schools are incredibly mission-driven organizations, and each has its own unique culture," said Tom Boasberg, the superintendent of the Denver school district. "It's really important that all of the members of the team at the school buys into that vision."

Like other Colorado districts, Denver must update its teacher contract to bar forced placements as a result of a new state law.

The shift in policy has many implications for teachers, not the least of which is that a process known as "mutual consent" effectively shifts onto displaced teachers the responsibility for seeking out and applying for new positions within the district.

While some local affiliates have agreed to mutual-consent provisions, the American Federation of Teachers does not endorse mutual consent as a matter of general policy, said Rob Weil, the director of field programs for the 1.4 million-member union.

Unless carefully negotiated, the policy opens the door to the favoritism and nepotism that characterized hiring before the advent of collective bargaining for teachers in the 1960s and '70s, he asserted.

"At a minimum, it's a return to the old industrial model, top-down management of schools that didn't work then and isn't going to work now," Mr. Weil said. "It's definitely going back to yesterday."

State of Play

In addition to Colorado, Rhode Island, the District of Columbia, and Baltimore have recently employed a variety of mechanisms to end the practice of forced placements. New York City, Chicago, and Austin, Texas, have already done away with involuntary transfers. The bill in Colorado, signed into law in May, received much attention for its overhaul of the state's process for granting tenure and for its focus on student achievement. It would also require principals and transferred teachers to agree to a placement.

Rhode Island's education commissioner, Deborah A. Gist, took a different tack when taking on the issue last fall. She argued that transfers based solely on seniority were not compatible with new state education regulations, and directed all local superintendents to revise the policies when their local bargaining contracts come up for renewal. Officials in the District of Columbia used collective bargaining to prohibit forced teacher placements and to move toward a mutual-consent process.

Baltimore's chief executive officer, Andres A. Alonso, ended forced transfers in 2008 to give principals more autonomy in selecting staff members, as the school system phased in a weighted student funding formula. He made use of a state law that prohibits local bargaining agreements from restricting a superintendent's say in teacher assignments.

Forced placements are usually the result of the "excessing" process. An excessed teacher is one who is displaced from his or her school because of an enrollment decline or a program closure but still on the system's payroll.

Although details vary by district, such teachers generally must be assigned to schools before any outside hires are considered.

Principals often have some degree of say in selecting teachers who elect to transfer, but less frequently have an explicit ability to bar teachers who are forcibly assigned to their building.

Out of the 100 largest school districts, only 19 explicitly give principals the right to refuse an excessed teacher, according to a database maintained by the National Council on Teacher Quality, a Washington-based advocacy group. Eleven districts explicitly deny principals the ability to refuse the assignment of such a teacher.

And a majority of the 100 districts' policies are unclear, with central-assignment procedures in place, but no policy stating whether a principal can refuse to accept force-placed teachers.

Shared Responsibility

With teacher-assignment policies lying at the nexus of seniority, performance, and budgeting, few districts or unions have taken on the issue, and those that have found it to be a matter of delicate policymaking.

But new factors are making the policy hard to ignore, including a creeping civil rights subtext: High teacher turnover in challenging schools tends to mean more vacancies, later hiring timelines, fewer applicants, and more force-placements in those schools.

"We know now more than ever before the importance of the quality of our classroom teachers and the importance of the match between each teacher's qualification and special skills and students in that classroom," said Commissioner Gist. "We have better data now than we've had in the past in order to make these placement decisions."

Unions are often cast as the defenders of seniority-based placement policies, but the president of the New Teacher Project, Timothy Daly, says districts have also played an important role in preserving such policies.

"Imagine you're running a [human-resources] office and you have a set of papers with names of excessed teachers. In a system with forced placement, you have a way of getting them placed extraordinarily quickly," said Mr. Daly, whose organization has conducted analyses of several major cities' hiring and transfer policies. "I think HR offices value forced placement as a way of tidying up staff with very little work."

But teacher performance is caught up in the equation, too. Principals have used the excessing process to rid their buildings of teachers they feel are ineffective, a process sometimes called "the dance of the lemons."

Unions have sought to counteract the impression that teachers who are excessed are less effective than their peers. They stress that excessing occurs often through no fault of the teachers, and see in the dance of the lemons the failure of administrators to abide by procedures for removing poorly performing teachers.

"If you have a principal who knows there's a poor-performing teacher and chooses not to evaluate him or her effectively, who's really the incompetent person?" Mr. Weil said.

The AFT acknowledges problems in districts' current evaluation systems, he added, and is working to align them better to due process, he added.

High Costs

Finally, districts have also been discouraged by the potential cost of mutual-consent policies, said Emily Cohen, the director of district policies for the National Council on Teacher Quality. Excessed teachers remain on a school system's payroll and continue to draw salaries, even if they cannot immediately find positions.

In Baltimore, the district now assigns such teachers to co-teaching positions in high-need schools. About 80 teachers are now assigned to such jobs.

Mr. Alonso said he has also encouraged principals to do a better job of documenting teacher performance and remediating poorly performing teachers, rather than excessing them. Overall, he feels that the shift has helped principals take more ownership of their schools and benefited teachers.

"It set teachers up for failure, to put them in places where they perceived they weren't wanted," he said.

But, he added, "To the extent we can't make [mutual consent] work, I get the cost of the bill."

That cost can be significant. A mutual-consent placement policy was instituted in New York City's 2005 teacher contract by an arbitrator, but the pact did not contain a mechanism for dealing with excessed teachers who could not find new placements.

Now, district officials estimate that there are 1,050 unassigned teachers out of a corps of 80,000 in what is known as the Absent Teacher Reserve pool. Some work in clerical positions or as substitutes, but the district estimates that the pool costs upwards of \$100 million a year. ("**N.Y.C. Bans Teacher Hires From Outside,**" May 20, 2009.)

"My conclusion is that it's still better not to force people on a school," said Chancellor of Schools Joel I. Klein. "But the cost of mutual consent is very significant. ... Think about it, a

hundred million, I could hire at least another 1,000, 1,200 teachers and keep class sizes lower. But I can't let people hire outside the system because I can't afford to build up the ATR pool."

The United Federation of Teachers did not respond to several requests for comment on the reserve pool.

The specter of such a situation is one of the reasons that several newer efforts to revise the excessing process have explicitly built mechanisms for removing such teachers from the rolls.

Colorado's new bill, for instance, specifies that an excessed teacher will have two hiring cycles to secure a new position before being placed on unpaid leave. ("**Colorado Teacher-Evaluation Bill Enacted,**" May 19, 2010.)

The District of Columbia's newly signed pact offers three options to excessed teachers who have an "effective" rating and don't participate in a voluntary merit-pay plan. Such teachers can accept a one-time buyout or take early retirement. Or they can continue on the payroll for a year, but will be dropped if they fail to find a placement after that period. ("**Foundations Would Help Fund D.C. Teacher Contract,**" April 7, 2010.)

"From my vantage point, you do not have a right to a job, whether you're effective or minimally effective," D.C. Chancellor Michelle A. Rhee said. "I don't know why this has become the mentality of this profession, that as long as you are not some sort of a criminal, you are basically due a job."

Teachers' Reaction

National unions remain skeptical that procedures that rely mostly—and often only—on the shoulders of the principal can be fair and equitable.

"What I'm seeing a lot around the country is what I'll call for lack of a better word a power grab," Mr. Weil of the AFT said. "It's not mutual consent, it's principal whim."

At the very least, he said, mutual-consent policies should require teachers in the receiving schools to be part of the process for selecting a new colleague.

Colorado's newly signed bill, for instance, requires two teachers in the school building, in addition to the principal, to take part in the hiring of a teacher transfer. That bill won the support of the state AFT chapter, though the much larger National Education Association state affiliate did not support it.

Several surveys suggest, in the meantime, that rank-and-file teachers may be more open to mutual consent. In New York City, a New Teacher Project survey of nearly 600 excessed teachers, in 2007, found that 83 percent of those teachers "somewhat agreed," "agreed," or "strongly agreed" that, while interviewing for positions, it was important that principals wanted them in their jobs. In Milwaukee, where the district and union agreed to end some forced placements, those teachers placed through mutual consent were twice as likely as those assigned by the central office to say the job was a good fit.

In Rhode Island, Ms. Gist said that her directive will still allow districts and unions to consider seniority as part of their placement policies, but it must be coupled with other factors. ("**R.I. Chief Launches Effort to Soften Seniority's Grip,**" November 4, 2009.)

She has heard from some teachers who support such a change and others whose concerns remain. And those concerns are valid, she said.

"There have been times in the past where the way someone was placed was based on who they could get to call the right school board member," she said. "If we're going to move away from a system as structured as seniority, we have to make sure we're replacing it with one that ensures decisions are being made for the right reasons."

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