

# The Role of Teachers in School Improvement: Lessons From the Field

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*Randi Weingarten\**

Teacher engagement in the development and implementation of educational reform is . . . crucial and school reform will not work unless it is supported from the bottom up. This requires those responsible for change to both communicate their aims well and involve the stakeholders who are affected. But it also requires teachers to contribute as the architects of change, not just its implementers. Some of the most successful reforms are those supported by strong unions rather than those that keep the union role weak.<sup>1</sup>

## INTRODUCTION: THE POLICY CONTEXT

Talk of education reform inevitably turns to teachers—as it should. The quality of the teacher workforce is a major issue in policy discussions about how to improve student achievement in the United States. While teacher performance has been a predominant theme in discussions of American education at least since the mid-1980s and the publication of *A Nation Prepared: Teachers for the 21st Century*,<sup>2</sup> attention over the last decade in particular has been focused on teachers as the most important *in-school* factor for influencing student learning. This focus has given rise to two competing views of how best to improve teaching and learning in schools: the “dictate and dismiss” reform method versus the “collaborate and develop” approach.

### *Dictate and Dismiss*

One camp (the “dictate and dismiss” perspective), acknowledging the important role teachers play in schools, views the problem of poor student performance as the result of poor teacher performance—a problem that such reformers believe derives from an education system that lacks teacher accountability and is beholden to unions that stand in the way of change. This “dictate and dismiss” policy approach posits that the major cause of low

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\* Randi Weingarten is president of the American Federation of Teachers.

<sup>1</sup> ORG. FOR ECON. CO-OPERATION & DEV. (OECD), BUILDING A HIGH-QUALITY TEACHING PROFESSION: LESSONS FROM AROUND THE WORLD 51 (2011), available at <http://www2.ed.gov/about/inits/ed/international/background.pdf>.

<sup>2</sup> CARNEGIE FORUM ON EDUC. & THE ECON., A NATION PREPARED: TEACHERS FOR THE 21ST CENTURY (1986).

student achievement is the presence of too many underperforming teachers in our schools—teachers who they assert cannot be removed because of teacher contractual provisions that are unreasonable and overly burdensome.<sup>3</sup> Thus, these “dictate and dismiss” reformers focus on sorting teachers and incentivizing performance by developing differential compensation systems—paying teachers according to their students’ performance on standardized tests.<sup>4</sup> Put simply, the assumption of “dictate and dismiss” is that too many teachers are either unable or unwilling to do the work necessary to help students achieve.

“Dictate and dismiss” reformers believe that teachers must be incentivized to do the right thing by rewards and/or punishments and, failing that, they must be dismissed from the profession. Consequently, such reformers often ask, “What can we do *to make* teachers do a better job?” instead of, “What can we do *to help* teachers do a better job?” They view school improvement as a “top-down” process where policy solutions for school and teacher improvement are imposed on teachers with little or no teacher input into their design or implementation.<sup>5</sup> Because teachers, and most especially their unions, are seen as the culprits, there is little interest in involving them in the school improvement process. In fact, some “dictate and dismiss” reformers aim to stifle the teacher voice in policy decisions, and to separate teachers from their unions.<sup>6</sup> Indeed, it often appears that their goals go beyond specific education policies to a systematic broadside against teachers’

<sup>3</sup> See Eric A. Hanushek, *Teacher Deselection*, in *CREATING A NEW TEACHING PROFESSION* 165 (Dan Goldhaber & Jane Hannaway eds., 2009); JESSICA LEVIN ET AL., *UNINTENDED CONSEQUENCES: THE CASE FOR REFORMING THE STAFFING RULES IN URBAN TEACHER CONTRACTS* (2005), available at <http://tnpt.org/assets/documents/UnintendedConsequences.pdf?files/UnintendedConsequences.pdf>.

<sup>4</sup> NAT’L COUNCIL ON TEACHER QUALITY, *STATE OF THE STATES: TRENDS AND EARLY LESSONS ON TEACHER EVALUATION AND EFFECTIVENESS POLICIES* (2011), available at [http://www.nctq.org/p/publications/docs/nctq\\_stateOfTheStates.pdf](http://www.nctq.org/p/publications/docs/nctq_stateOfTheStates.pdf).

<sup>5</sup> See, e.g., Marc Bousquet, *No Excuses, Mr. President*, *INSIDE HIGHER ED* (Oct. 29, 2010, 3:00 AM), <http://www.insidehighered.com/views/2010/10/29/bousquet> (on file with the Harvard Law School Library); David Kirp, *Is Michelle Rhee a 16th Century Throwback?*, *HUFFINGTON POST* (Mar. 31, 2011, 1:35 PM), [http://www.huffingtonpost.com/david-kirp/is-michelle-rhee-a-16th-c\\_b\\_842858.html](http://www.huffingtonpost.com/david-kirp/is-michelle-rhee-a-16th-c_b_842858.html) (on file with the Harvard Law School Library); Bill Turke, *D.C. Schools Insider - Rhee to Principals: ‘Go Hard or Go Home’*, *WASH. POST* (Aug. 19, 2010, 2:06 PM), [http://voices.washingtonpost.com/dcschools/2010/08/rhee\\_to\\_principals\\_go\\_hard\\_or.html](http://voices.washingtonpost.com/dcschools/2010/08/rhee_to_principals_go_hard_or.html) (on file with the Harvard Law School Library); *By Request: More Thoughts on Michelle Rhee’s Leadership*, *EDUC. INSIDE OUT* (Mar. 9, 2011), <http://educationescritora.wordpress.com/2011/03/09/by-request-more-thoughts-on-michelle-rhees-leadership/> (on file with the Harvard Law School Library).

<sup>6</sup> See Kevin Carey, *Teacher Evaluation and the Triumph of Empiricism*, *WASH. MONTHLY* (Jul. 15, 2011, 1:00 PM), [http://www.washingtonmonthly.com/ten-miles-square/2011/07/teacher\\_evaluation\\_and\\_the\\_tri030920.php](http://www.washingtonmonthly.com/ten-miles-square/2011/07/teacher_evaluation_and_the_tri030920.php) (on file with the Harvard Law School Library) (stating that teacher evaluation is legally excluded from collective bargaining in Washington, D.C.); Andrew J. Rotherham, *Quiet Riot: Insurgents Take On Teachers’ Unions*, *TIME MAG.* (Aug. 11, 2011), <http://www.time.com/time/nation/article/0,8599,2087980,00.html> (on file with the Harvard Law School Library).

unions and a desire to dismantle the entire spectrum of rights and protections that teachers have won through laws and collective bargaining.<sup>7</sup>

### *Collaborate and Develop*

The second approach to reform, the “collaborate and develop” perspective, is built on shared responsibility and accountability. These reformers also acknowledge that excellent teaching is a critical factor in student learning, but in addition they recognize that teachers cannot do it all, and cannot do it alone. Their policy perspective toward school improvement and enhanced teacher effectiveness focuses on 1) teacher involvement and development, 2) labor-management collaboration, and 3) 360-degree accountability.

#### 1) *Teacher Involvement and Development*

Because this reform alternative focuses on the key role teachers play in their students’ academic success, policy development is formulated on the understanding that teachers’ knowledge and expertise, along with improving the conditions for teaching and learning, must be the basis for how we improve education. Further, if reform is to work, the proposals must be credible to teachers—that is, teachers must believe that the proposed changes will actually help them be successful with students.

#### 2) *Labor-Management Cooperation*

Top-down, dictatorial mandates are a prescription for failure in public education, as in most other sectors.<sup>8</sup> As a theory of action, collaboration—teamwork or working together—has boundless potential. Collaboration based on shared responsibility means that parties are willing to solve problems, confront challenges and innovate in a system that promotes trust and values worker involvement in decision-making.

But collaboration is not an end in itself, and it cannot be done in isolation. It is used in service of a mission—in this case, improving student success. By itself, collaboration won’t automatically create success, but it can lead administrators, teachers, and parents to work together toward goals on which they all agree, using methods they generally accept. The collabora-

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<sup>7</sup> See Julie Carr Smyth, Associated Press, *Ohio Rejects Republican-Backed Union Limits*, TIME MAG. (Nov. 8, 2011), <http://www.time.com/time/nation/article/0,8599,2098978,00.html> (on file with the Harvard Law School Library); Editorial Staff, *Lawmakers Vote to Repeal 1970s-Era Collective Bargaining Law*, TN REP. (May 21, 2011), <http://www.tnreport.com/2011/05/lawmakers-vote-to-repeal-1970s-era-collective-bargaining-law/> (on file with the Harvard Law School Library); *The Wisconsin Way: Cracking Down on Collective Bargaining*, ECONOMIST, Feb. 17, 2011, at 12, available at <http://www.economist.com/node/18178517>.

<sup>8</sup> See generally SAUL A. RUBINSTEIN & JOHN E. MCCARTHY, COLLABORATING ON SCHOOL REFORM: CREATING UNION-MANAGEMENT PARTNERSHIPS TO IMPROVE PUBLIC SCHOOL SYSTEMS (2010); PETER SENGE ET AL., THE NECESSARY REVOLUTION: HOW INDIVIDUALS AND ORGANIZATIONS ARE WORKING TOGETHER TO CREATE A SUSTAINABLE WORLD (2008).

tive process can create trust, enable risk-taking, and foster shared responsibility. It is a way to ensure that all the players have a voice and it is a vehicle by which all parties indispensable to the education process try to solve problems, rather than win arguments.<sup>9</sup>

### 3) *360-Degree Accountability*

Public recognition of the centrality of quality teaching to children's learning is a two-edged sword for teachers. It leads to both credit and blame. Teachers are willing to accept that responsibility and be held accountable, in a fair and objective way, for their contributions to the results achieved. They are willing to police their ranks to make sure their colleagues are qualified and accountable. But elected officials and policy makers must also be accountable for doing their part. They must make sure that schools have a rich, demanding curriculum that prepares students for twenty-first century challenges. They must ensure that schools are adequately and equitably funded and that educators and students have the teaching and learning conditions that foster success.

### *Assessing the Various Policy Proposals*

The viability of any policy alternative—whether proposed by the “dictate and dismiss” camp or the “collaborate and develop” approach—is dependent on how well the proposal measures up to four standards: evidence, equity, scalability, and sustainability:

- Is there *evidence* to ensure the proposals are research-based and the educational strategies are proven to be effective and efficient?
- Can the proposals be implemented so as to assure *equity*? Does the proposal ensure that all children will receive a quality education?
- Is the proposal able to go to *scale*? That is, will it lead to systemic change—not isolated “boutique” change affecting only a few?
- Is the proposal *sustainable* despite likely changes in district leadership, budgets, or politics?

## I. ORGANIZATION OF THIS PAPER

Following this introduction, Part Two looks at some of the policy alternatives generated by the “dictate and dismiss” reformers. It examines the “miracles” and legends that allegedly demonstrate quick fixes for public education. Although they have superficial appeal, they are impractical at

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<sup>9</sup> See ABC Unified Sch. Dist., ABC Unified School District and the ABC Federation of Teachers Charter Statement (2009), available at <http://abcusd.k12.ca.us/ourpages/auto/2009/6/8/59652995/CharterStatement.pdf>; RUBINSTEIN & MCCARTHY, *supra* note 8, at 8–12 (describing how the ABC School District in Los Angeles has had a sustained partnership for over a decade and the union leaders, administrators, and teachers have worked together on a variety of successful joint learning opportunities).

best and fraudulent at worst. Put to the tests of evidence, equity, scalability, and sustainability defined above, they fall far short. Part Three presents examples of policy reform involving teacher voice and collaboration. It draws on the real-world experiences of high-performing school systems in North America, Europe, and Asia, whose success demonstrates the value of cooperation.

Part Four takes the argument for teacher voice one step further. It makes the case that working with teachers also means working with teachers' unions, which represent the voice and vision of teachers and can turn teachers' collective wisdom into effective action. This section cites examples of innovative, collaborative reforms led by local teachers' unions across the United States. They are among many that belie the canard that teacher unionism and education reform are mutually exclusive and bolster the argument that strong unions make possible the involvement of teacher expertise in reform efforts and provide a hospitable environment for transforming teaching and learning.

In keeping with the understanding that collaboration is only a means to an end, Part Five presents two proposals that can transform public education, but depend on collaboration to succeed. In one case the collaborators are teachers, school administrators, school district leaders, and lawmakers; in the other they are teachers, school officials, parents, and community leaders.

Finally, I conclude with a challenge: Are policymakers and school reform activists going to continue to exclude teachers from the policy discussion or are they going to actively engage teachers as partners in school reform?

## II. SOME CURRENT REFORM TRENDS

Unfortunately, words like "partnership" and "cooperation" seem to be anathema for many current "dictate and dismiss" reformers. It is ironic that such reformers seek to underscore the importance of teachers yet want to make education policy without listening to them. For example, a major goal of recent "dictate and dismiss" efforts is to place accountability for student achievement almost entirely on teachers' shoulders by basing their performance ratings largely on their students' standardized test scores.<sup>10</sup> Yet at the same time they want to strip teachers of their professional autonomy and discretion and even their basic right to choose their own best teaching strategies.

These same reformers disparage the idea of working with teachers. For example, Joel Klein, former chancellor of the New York City schools, writ-

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<sup>10</sup> FLA. STAT. § 1012.34(3)(a)(1) (2011) (stating that at least fifty percent of a teacher's performance evaluation must be based on data from annual statewide assessments, or from district assessments for teachers of untested grades or subject areas); TENN. CODE ANN. § 49-1-302(d)(2)(A) (2011) (stating that fifty percent of teacher evaluation criteria shall be based on student achievement data).

ing in *The Atlantic* recently said, “Collaboration is the elixir of the status-quo crowd.”<sup>11</sup> While effective leadership is important to any improvement effort, top-down reform is a fool’s errand. In the long run, the commitment of classroom teachers and the resources and support given to teachers and students are more likely to influence the success or failure of any education reform.

### *The John Wayne Myth*

Perhaps because so many “dictate and dismiss” reformers come from the worlds of finance and business, many of them believe that any person with intelligence, talent, and a strong work ethic can be a great teacher, principal, or educational guru. And that notion has caught hold because it makes a dramatic story.

We can all point to a few charismatic leaders who have done marvelous work. Think of David Levin, the cofounder of the Knowledge Is Power Program (KIPP) network of highly touted charter schools for disadvantaged youth, Wendy Kopp of Teach For America (TFA), Jaime Escalante, the teacher portrayed in the acclaimed movie *Stand and Deliver* who helped struggling students from inner-city Los Angeles pass the College Board’s Advanced Placement calculus exams, or Debbie Meier, founder of the modern small-schools movement.

The United States needs a model, however, for the continuous growth of three million teachers and nearly fifty million students.<sup>12</sup> We keep searching for the silver bullet when what we really need is evidence-driven sustainability and scalability. If we want real and lasting change in schooling across our vast and varied nation, we need to get beyond relying on the transformative effect of a lone hero and instead figure out how to build the capacity of many.

### *“Miracle” Schools*

Schools that work need to be identified, studied, and their exemplary practices put into place more broadly. Unfortunately, the fact is that many of the so-called miracles, where previously struggling schools suddenly make unprecedented gains, have turned out to be less than advertised—more a product of statistical misinterpretation, manipulation, or misrepresentation

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<sup>11</sup> Joel Klein, *The Failure of American Schools*, THE ATLANTIC, June 2011, at 66, 73, available at <http://www.theatlantic.com/magazine/archive/2011/06/the-failure-of-american-schools/8497/4/>; see also *Tough Talk From DC Schools Chief Michelle Rhee*, WALL ST. J. (Nov. 17, 2009, 12:30 PM), <http://blogs.wsj.com/ceo-council/2009/11/17/tough-talk-from-dc-schools-chief-michelle-rhee/> (on file with the Harvard Law School Library) (At the 2009 Wall Street Journal CEO Council meeting, then-DC Public Schools Chancellor Michelle Rhee stated that “[c]ollaboration and consensus building are frankly overrated.”).

<sup>12</sup> U.S. CENSUS BUREAU, SCHOOL ENROLLMENT IN THE UNITED STATES: 2008 1 (2011), available at <http://www.census.gov/prod/2011pubs/p20-564.pdf>.

than reality.<sup>13</sup> Take the “Texas Miracle,” in which Houston Independent School Superintendent Rod Paige (later U.S. Secretary of Education under President George W. Bush) reportedly presided over fantastic test score gains and dropout-rate reductions. Before these supposed successes were exposed as a fabrication, the entire federal role in education had been revamped by the No Child Left Behind Act of 2001 (NCLB), using Houston’s approach as a model. This law has destined thousands of American schools to “failure” based on a flawed paradigm.<sup>14</sup> The tie of Texas policies to the NCLB with little credible evidence of real improvement has had negative effects nationwide.<sup>15</sup> Secretary of Education Arne Duncan estimated that eighty-two percent of American schools will fail to meet their NCLB goals for proficiency in math and reading by 2011.<sup>16</sup> He has repeatedly described the NCLB as broken, and in September 2011 the Obama administration proposed granting states waivers from certain provisions of the law.<sup>17</sup>

We all want educational success, and no individual or group has a monopoly on good ideas. But evidence and research must drive policy, not evidence-free narratives and testimonials of miraculous school turnarounds. These compelling anecdotes hijack the public discourse about school reform and perpetuate the unfounded belief that—as important as the following two

<sup>13</sup> See Nancy Badertscher & Jaime Sarrío, *Five Atlanta Schools Placed Under State Direction*, ATLANTA J.-CONST., Nov. 3, 2011, available at <http://www.ajc.com/news/five-atlanta-schools-placed-1215406.html> (describing the recent cheating scandals in Atlanta where test scores indicated enormous gains in many schools that further investigation indicated were the result of cheating on the part of teachers and administrators, not the result of learning mastery); Jack Gillum & Marisol Bello, *When Standardized Test Scores Soared in D.C., Were the Gains Real?*, USA TODAY, Mar. 28, 2011, at A1, available at [http://www.usatoday.com/news/education/2011-03-28-1ASchooltesting28\\_CV\\_N.htm](http://www.usatoday.com/news/education/2011-03-28-1ASchooltesting28_CV_N.htm) (describing a similar cheating scandals in Washington, D.C., where test scores indicated enormous gains in many schools that further investigation indicated were the result of cheating on the part of teachers and administrators, not the result of learning mastery).

<sup>14</sup> Walt Haney, *The Myth of the Texas Miracle*, 8 EDUC. POL’Y ANALYSIS ARCHIVES (2000), <http://epaa.asu.edu/ojs/article/view/432/828> (on file with the Harvard Law School Library) (describing the many reasons why the “Texas miracle” was an illusion); Stephen P. Klein et al., *What Do Test Scores in Texas Tell Us?*, 8 EDUC. POL’Y ANALYSIS ARCHIVES (2000), <http://epaa.asu.edu/ojs/article/view/440/563> (on file with the Harvard Law School Library) (highlighting deep concerns with the validity of Texas standardized tests); Rebecca Leung, *The ‘Texas Miracle’*, CBS (Feb. 11, 2009, 8:18 PM), <http://www.cbsnews.com/stories/2004/01/06/60II/main591676.shtml> (on file with the Harvard Law School Library).

<sup>15</sup> Jack Jennings & Diane Stark Rentner, *Ten Big Effects of the No Child Left Behind Act on Public Schools*, 88 PHI DELTA KAPPAN 110 (2006), available at [http://www.pdkmembers.org/members\\_online/publications/Archive/pdf/k0610jen.pdf](http://www.pdkmembers.org/members_online/publications/Archive/pdf/k0610jen.pdf) (arguing that NCLB has resulted in negative school practices such as narrowing the curriculum to only tested subjects, has hurt students with disabilities and students learning English as the tests are inappropriate for such students, and has left states with tasks they are unable to complete because they lack funding).

<sup>16</sup> U.S. Dep’t of Educ., *Duncan Says 82 Percent of America’s Schools Could “Fail” Under NCLB This Year* (Mar. 9, 2011), <http://www.ed.gov/news/press-releases/duncan-says-82-percent-americas-schools-could-fail-under-nclb-year> (on file with the Harvard Law School Library).

<sup>17</sup> *Id.*; U.S. Dep’t of Educ., *States Intending to Request ESEA Flexibility as of November 10, 2011* (Nov. 10, 2011), [www.ed.gov/sites/default/files/states-intending-esea-flexibility.doc](http://www.ed.gov/sites/default/files/states-intending-esea-flexibility.doc) (on file with the Harvard Law School Library); Sam Dillon, *Obama Turns Some Powers of Education Back to States*, N.Y. TIMES, Sept. 24, 2011, at A1.

factors are—if teachers simply have “high expectations” and are willing to “work hard enough,” every school can achieve 100% proficiency.

Education analysts have pulled back the curtain on these “miracles” to reveal the more nuanced realities. In his book *Class and Schools*,<sup>18</sup> Richard Rothstein challenges the dictum that schools can entirely overcome the effects of poverty and environmental deprivation and obliterate the achievement gap between students of different races—if *only* the teachers are good enough. For example, he demonstrates that the success of KIPP, the network of charter schools that have produced impressive results with disadvantaged students, is as much about other factors as it is about teachers. He attributes KIPP’s results to more advantaged students, significantly greater resources, longer school hours and the extraordinary, if often short-lived, dedication of the staff.<sup>19</sup>

Other researchers echo his conclusion, with one adding that additional private funding and the high student attrition rate, especially of African-American boys, also contribute to the appearance of better outcomes for the KIPP schools.<sup>20</sup> These sources of KIPP’s success, the critics say, cannot be replicated on a larger scale or at the same cost as traditional schools, so building on the KIPP model is not a practical way to reform entire school systems, as some have advocated.<sup>21</sup> David Levin of the KIPP network has acknowledged that the KIPP model cannot be scaled up systematically across the United States.<sup>22</sup>

It is imperative that researchers and policymakers scrutinize these “miracle” stories of school reform that are touted as the answer to improving schools and increasing student achievement, especially since our most vulnerable students often are the unknowing victims of these uninformed and misguided reform efforts. Prior to adopting policies based on miracle school turnarounds and subjecting our most needy students to unsubstantiated reform initiatives, there must be credible evidence and rigorous research to support claims of dramatic improvement. Further, reformers who advocate these “silver bullet” solutions as anything other than limited reforms must be able to demonstrate how all students (not just some) will have access to a quality education—they must be shown to be scalable and sustainable and not the result of a single, tireless, charismatic leader often with substantial amounts of funds not available to other public schools.

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<sup>18</sup> RICHARD ROTHSTEIN, *CLASS AND SCHOOLS: USING SOCIAL, ECONOMIC, AND EDUCATIONAL REFORM TO CLOSE THE BLACK-WHITE ACHIEVEMENT GAP* (2004).

<sup>19</sup> *See id.* at 74–75.

<sup>20</sup> *See* GARY MIRON ET AL., *WHAT MAKES KIPP WORK? A STUDY OF STUDENT CHARACTERISTICS, ATTRITION, AND SCHOOL FINANCE*, W. Mich. Univ. (2011), available at <http://www.edweek.org/media/kipstudy.pdf>.

<sup>21</sup> *See id.* at 30.

<sup>22</sup> *See* STEVEN BRILL, *CLASS WARFARE: INSIDE THE FIGHT TO FIX AMERICA’S SCHOOLS* 423 (2011).

*Alternative-Route Teachers*

Similarly, while the accomplishments of a few bright, selfless, enthusiastic, but uncredentialed, new teachers are praiseworthy, one wonders if enough such extraordinary young people exist to staff even a fraction of our needy schools, especially when few stay beyond two or three years. Burnout and the desire to have the time and money to raise a family often diminish their initial fervor.<sup>23</sup>

Teach for America (TFA), for example, requires its participants to stay on the job for only two years, and while many remain for a third year, 72% to 100% of TFA teachers left teaching in Houston by their third year, compared to 31.6% to 54.8% of non-TFA teachers.<sup>24</sup> Furthermore, the evidence on effectiveness is mixed at best; several studies show that students of novice TFA teachers perform worse in reading and math than those of credentialed beginning teachers, although some studies show that the students of the TFA teachers who remain and become fully credentialed do about the same as other students.<sup>25</sup> It is expensive and helps neither students nor the teaching profession to have a constantly churning, inadequately trained workforce, large numbers of whom are always just learning the ropes.<sup>26</sup> This is not an ideological issue. Indeed, I and so many others came into teaching through alternative certification routes.

The bigger issue here is not simply how many alternatively certified teachers burn out but, in general, the staggering attrition of new teachers. Nearly half leave the profession within five years of being hired.<sup>27</sup> The National Commission on Teaching and America's Future found that teacher turnover costs the nation \$7.34 billion each year.<sup>28</sup> So ignoring such huge teacher turnover is not just bad education policy, it is bad economic policy.

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<sup>23</sup> *Id.* at 424–25 (providing a good example of this common phenomenon when a teacher profiled in the book quit teaching for these very reasons).

<sup>24</sup> See, e.g., Linda Darling-Hammond et al., *Does Teacher Preparation Matter? Evidence About Teacher Certification, Teach for America, and Teacher Effectiveness*, 13 EDUC. POL'Y ANALYSIS ARCHIVES (2005), <http://epaa.asu.edu/ojs/article/view/147/273> (on file with the Harvard Law School Library).

<sup>25</sup> See, e.g., JULIAN VASQUEZ HEILIG & SU JIN JEZ, *TEACH FOR AMERICA: A REVIEW OF THE EVIDENCE*, at 5–8 (2010), available at <http://nepc.colorado.edu/files/PB-TeachAmerica-Heilig.pdf>; but see generally Paul T. Decker et al., *The Effects of Teach for America on Students: Findings From a National Evaluation*, MATHEMATICA POL'Y RES. (2004); Zeyu Xu et al., *Making a Difference: The Effect of Teach for America in High School*, 30 J. OF POL'Y ANALYSIS & MGMT. 447 (2007).

<sup>26</sup> See NAT'L COMM'N ON TEACHING & AMERICA'S FUTURE, *POLICY BRIEF: THE HIGH COST OF TEACHER TURNOVER* 11 (2007), available at [http://www.nctaf.org/resources/demonstration\\_projects/turnover/documents/NCTAFCostofTeacherTurnoverpolicybrief.pdf](http://www.nctaf.org/resources/demonstration_projects/turnover/documents/NCTAFCostofTeacherTurnoverpolicybrief.pdf) (The urban district cost per teacher leaver is \$8,750, and for non-urban district leavers the cost is \$6,250.).

<sup>27</sup> See NAT'L COMM'N ON TEACHING & AMERICA'S FUTURE, *BEGINNING TEACHER ATTRITION IS A SERIOUS PROBLEM* fig.2, <http://www.nctaf.org/documents/charts.pdf> (on file with the Harvard Law School Library).

<sup>28</sup> NAT'L COMM'N ON TEACHING AND AMERICA'S FUTURE, *POLICY BRIEF*, *supra* note 26.

### III. COLLABORATIVE POLICY REFORM ABROAD AND AT HOME

We can learn a great deal about how to reform our current system from countries whose students outperform the United States in comparisons of student achievement.

#### *Top International Performers*

A report analyzing the results of the Program for International Student Assessment (PISA), shows the consequences of America's failure to build on "what works" in education. American students ranked in the middle of countries participating in PISA.<sup>29</sup> The most telling aspect of the results is the stark difference between school improvement and teacher development practices in the top-performing countries and prevailing approaches in the United States.<sup>30</sup>

The top-performing countries on PISA—Finland, Singapore and South Korea—all have educator development systems that are comprehensive and coherent and that focus on the continual development of educators—from selective recruitment practices through demanding teacher training, supportive induction with opportunities for collaboration, and continual professional development.<sup>31</sup> They eschew heavy reliance on standardized tests, and each has a well-rounded curriculum that teachers can tailor.<sup>32</sup> In Finland, for example, teachers are selected from the top third of their class and must go through a rigorous exam and interview process.<sup>33</sup> About one in five applicants are chosen to complete teacher education, which is completely paid for by the state.<sup>34</sup> Training involves attaining a master's degree and completing a research project (there are no alternative routes to the classroom).<sup>35</sup> Teachers have considerable autonomy over the curriculum and the assessment of students.<sup>36</sup> Finnish teachers are virtually 100% unionized, and few teachers leave the profession.<sup>37</sup> The United States, on the other hand, has weak to

<sup>29</sup> OECD, *STRONG PERFORMERS AND SUCCESSFUL REFORMERS: LESSONS FROM THE PISA FOR THE UNITED STATES* 26, 58-59 (2011), available at <http://www.oecd.org/dataoecd/32/50/46623978.pdf>; Randi Weingarten, *Scaling Up Success*, HUFFINGTON POST (Dec. 20, 2010, 2:23 PM), [http://www.huffingtonpost.com/randi-weingarten/scaling-up-success\\_b\\_799258.html](http://www.huffingtonpost.com/randi-weingarten/scaling-up-success_b_799258.html).

<sup>30</sup> See Weingarten, *supra* note 29.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> OECD, *STRONG PERFORMERS AND SUCCESSFUL REFORMERS*, *supra* note 29, at 124-26; Nicholas D. Kristof, *Pay Teachers More*, N.Y. TIMES, Mar. 13, 2001, at WK10.

<sup>34</sup> OECD, *STRONG PERFORMERS AND SUCCESSFUL REFORMERS*, *supra* note 29, at 123-25; Matthew Yglesias, *Teacher Education in Finland*, THINK PROGRESS (Dec. 12, 2008, 11:15 AM), [http://thinkprogress.org/yglesias/2008/12/12/190893/teacher\\_education\\_in\\_finland/](http://thinkprogress.org/yglesias/2008/12/12/190893/teacher_education_in_finland/) (on file with the Harvard Law School Library).

<sup>35</sup> OECD, *STRONG PERFORMERS AND SUCCESSFUL REFORMERS*, *supra* note 29, at 125.

<sup>36</sup> *Id.* at 126-27.

<sup>37</sup> Pasi Sahlberg, *Developing Effective Teachers and School Leaders: The Case of Finland*, in *TEACHER AND LEADER EFFECTIVENESS IN HIGH-PERFORMING EDUCATION SYSTEMS* 13 (Linda Darling-Hammond & Robert Rothman eds., 2011), available at <http://www.all4ed.org/files/TeacherLeaderEffectivenessReport.pdf>.

non-existent entry criteria into teacher education, and the preparation rigor varies enormously among the diverse institutions that prepare teachers.<sup>38</sup> Similarly, alternative programs vary widely in the quality of their teacher candidate selection processes and their preparation experiences.<sup>39</sup>

Shanghai, the top PISA performer (though not a country), emphasizes support for struggling teachers and schools.<sup>40</sup> When a school in Shanghai confronts difficulties, authorities pair it with a high-performing school for assistance and send whatever support is needed.<sup>41</sup> South Korea provides increased time for collaboration for teachers working in hard-to-staff schools.<sup>42</sup> The United States, in contrast, too often replaces this thoughtful approach with last-resort measures such as school closings and mass teacher firings.<sup>43</sup>

Furthermore, the top-performing countries provide a more equitable education for all students and offset the effects of poverty through health and social services that support students and their families.<sup>44</sup> In the United States, schools that provide even a few community services account for only about five percent of all public schools.<sup>45</sup>

In sum, high-achieving countries treat teachers as professionals and share responsibility for student outcomes.<sup>46</sup> Furthermore, the countries most often cited as high achieving are characterized by strong unions. School officials and policymakers in high-achieving countries work with teachers and their unions to develop and implement policies around curriculum, in-

<sup>38</sup> AM. FED'N OF TEACHERS, K-16 TEACHER EDUC. TASK FORCE, *BUILDING A PROFESSION: STRENGTHENING TEACHER PREPARATION AND INDUCTION 7-11* (2000); see also JULIE GREENBERG ET AL., NAT'L COUNCIL ON TEACHER QUALITY, *STUDENT TEACHING IN THE UNITED STATES 9-11* (2011).

<sup>39</sup> C. EMILY FEISTRITZER, *STATE POLICY TRENDS FOR ALTERNATIVE ROUTES TO TEACHER CERTIFICATION: A MOVING TARGET 1* (2005), available at <http://www.teach-now.org/CEFState%20Overview%20FINAL4.pdf>.

<sup>40</sup> Weingarten, *supra* note 29.

<sup>41</sup> *Id.*; OECD, *STRONG PERFORMERS AND SUCCESSFUL REFORMERS*, *supra* note 29, at 97; Diane Ravitch, *The Real Lessons of PISA*, EDUC. WEEK (Dec. 14, 2010, 9:13 AM), [http://blogs.edweek.org/edweek/Bridging-Differences/2010/12/the\\_real\\_lessons\\_of\\_pisa.html](http://blogs.edweek.org/edweek/Bridging-Differences/2010/12/the_real_lessons_of_pisa.html) (on file with the Harvard Law School Library).

<sup>42</sup> Weingarten, *supra* note 29.

<sup>43</sup> *Id.*; see also, e.g., Ben Chapman, *Twenty Bloomberg Schools May Be Shut Down for Poor Performance*, N.Y. DAILY NEWS, Nov. 4, 2011, available at [http://articles.nydailynews.com/2011-11-04/news/30361673\\_1\\_new-schools-zakiyah-ansari-high-schools](http://articles.nydailynews.com/2011-11-04/news/30361673_1_new-schools-zakiyah-ansari-high-schools); Rachel Monahan, *City Wins Fight to Shut Down 22 Schools, Can Move On With Plan to Open 15 Charter Schools*, N.Y. DAILY NEWS, July 22, 2011, available at [http://articles.nydailynews.com/2011-07-22/local/29818490\\_1\\_charter-schools-schools-chancellor-dennis-walcott-teachers-union](http://articles.nydailynews.com/2011-07-22/local/29818490_1_charter-schools-schools-chancellor-dennis-walcott-teachers-union); Bill Turque, *D.C. Schools Insider – More Than 200 D.C. Teachers Fired*, WASH. POST (July 15, 2011, 12:49 PM), [http://www.washingtonpost.com/blogs/dc-schools-insider/post/more-than-200-dc-teachers-fired/2011/07/15/gIQADnTLGI\\_blog.html](http://www.washingtonpost.com/blogs/dc-schools-insider/post/more-than-200-dc-teachers-fired/2011/07/15/gIQADnTLGI_blog.html) (on file with the Harvard Law School Library).

<sup>44</sup> OECD, *STRONG PERFORMERS AND SUCCESSFUL REFORMERS*, *supra* note 29, at 34-39, 69, 122, 167, 249.

<sup>45</sup> See *FAQs on Community Schools*, NAT'L CTR. FOR CMTY. SCHS. (2009), <http://nationalcenterforcommunityschools.childrengainsociety.org/faqs/on-community-schools> (on file with the Harvard Law School Library); *Fast Facts*, NAT'L CTR. FOR EDUC. STATISTICS, <http://nces.ed.gov/fastfacts/display.asp?id=84> (last visited Nov. 26, 2011) (on file with the Harvard Law School Library).

<sup>46</sup> Weingarten, *supra* note 29.

struction, and student assessment.<sup>47</sup> Compare this with what happens in the United States, where teachers are routinely asked to accept policies made without their input, and then blamed when the policies fail.<sup>48</sup> And often teachers are held solely accountable for student achievement, rather than the mutual responsibility approach that has proven so successful in many other countries.<sup>49</sup>

### *A Next-Door Case Study*

A recent summit of high-performing countries, convened by the U.S. Department of Education, Education International, and the Organization for Economic Co-operation and Development (OECD), highlighted what happened in Ontario Province, Canada.<sup>50</sup> There a conservative government had instituted some reforms in accountability, curriculum, and assessments, but it had also gone to war with teachers and their unions, publicly attacking them and cutting funding.<sup>51</sup> The result was a highly polarized environment, teacher strikes, and lockouts, and no improvement in student performance.<sup>52</sup>

In 2003, a new premier wanted to change this climate and spent a lot of time in schools talking about reform with teachers and their unions.<sup>53</sup> Both the government and the unions viewed teacher support for reform as critical for success. So they focused on building a collaborative relationship from the highest levels to the individual schools.

The role of the central ministry was to set clear expectations and targets, provide funding, create a collective-bargaining agreement that would support improved teaching and learning, and provide expertise and support for struggling schools.<sup>54</sup> The role of the district was to support the schools, which was where change needed to occur.<sup>55</sup> Political leaders met regularly with the teachers' unions and principals' organizations, while larger groups of stakeholders worked on specific issues.<sup>56</sup>

Central to gaining teacher support was the signing of two successive four-year collective bargaining agreements consistent with the agreed-upon educational strategy.<sup>57</sup> They reduced class size, increased preparation time,

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<sup>47</sup> OECD, STRONG PERFORMERS AND SUCCESSFUL REFORMERS, *supra* note 29, at 238–39.

<sup>48</sup> Weingarten, *supra* note 29.

<sup>49</sup> *Id.*

<sup>50</sup> OECD, BUILDING A HIGH-QUALITY TEACHING PROFESSION, *supra* note 1, at 57; Angel Gurría, *Building a High-Quality Teaching Profession*, OECD (Mar. 17, 2011), [http://www.oecd.org/document/53/0,3746,en\\_21571361\\_44315115\\_47386549\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/53/0,3746,en_21571361_44315115_47386549_1_1_1_1,00.html) (on file with the Harvard Law School Library).

<sup>51</sup> OECD, STRONG PERFORMERS AND SUCCESSFUL REFORMERS, *supra* note 29, at 72.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 72–73.

<sup>54</sup> *See id.* at 72–75.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 74.

and created a sustained period of labor peace that allowed for continued focus on educational improvement.<sup>58</sup>

The OECD concluded that teachers accepted the reforms “because the government consulted them on its implementation and ensured that it was implemented by professionals, not bureaucrats.”<sup>59</sup> Rather than putting centrally-based “experts” in charge, staff was added at each school to be responsible for student success.<sup>60</sup> Teams of teachers, principals, and subject-matter specialists led each school’s transformation, thus building strength and commitment from within rather than imposing the reforms from above.<sup>61</sup>

Since these changes were made, Ontario has gone from below-average in international comparisons to among the very top performers, significantly narrowing the achievement gap between groups of students at the same time.<sup>62</sup>

### *An American Example*

Closer to home, the ABC Unified School District in Los Angeles County, with about 21,000 mostly minority students in about 30 schools, half of them serving the most disadvantaged students, shows what can be done when the schools, the community, and elected officials work together.<sup>63</sup>

In the spring of 2010, in an atmosphere of huge deficits and projected massive layoffs, ABC district officials and union representatives sat down together to devise the next year’s budget. Both sides wanted to prevent the financial crisis from taking a toll on student achievement. The union’s opening offer included four unpaid furlough days in return for a no-layoff guarantee. Transparency and union participation in every step of the budget process fostered the union’s willingness to participate in solutions. In the end, the superintendent attributed the agreement to ongoing honesty and trust.<sup>64</sup>

This was not always the case. In 1993, an eight-day strike had left the relationship between union members and the district administration in tatters.<sup>65</sup> Schools were struggling, and students were lagging.<sup>66</sup> Trying to wipe

<sup>58</sup> *Id.*

<sup>59</sup> OECD, BUILDING A HIGH-QUALITY TEACHING PROFESSION, *supra* note 1, at 57.

<sup>60</sup> OECD, STRONG PERFORMERS AND SUCCESSFUL REFORMERS, *supra* note 29, at 74–75.

<sup>61</sup> *Id.*

<sup>62</sup> *See id.* at 65–78.

<sup>63</sup> LOCAL LABOR MANAGEMENT RELATIONSHIPS AS A VEHICLE TO ADVANCE REFORM: FINDINGS FROM THE U.S. DEPARTMENT OF EDUCATION’S LABOR MANAGEMENT CONFERENCE 8–11 (Jonathan Eckert et al., 2011); *The ABC Unified School District, California*, AM. FED’N OF TEACHERS, <http://www.aft.org/issues/schoolreform/csi/abcprofile.cfm> (last visited Nov. 27, 2011) (on file with the Harvard Law School Library); *ABC Unified School District*, AM. FED’N OF TEACHERS, [http://www.aft.org/pdfs/teachers/profile\\_abc0607.pdf](http://www.aft.org/pdfs/teachers/profile_abc0607.pdf) (last visited Nov. 27, 2011) (on file with the Harvard Law School Library).

<sup>64</sup> AM. FED’N OF TEACHERS, ABC FEDERATION OF TEACHERS (CALIFORNIA) 1–4 (2011).

<sup>65</sup> LOCAL LABOR MANAGEMENT RELATIONSHIPS AS A VEHICLE TO ADVANCE REFORM, *supra* note 63, at 8.

<sup>66</sup> *ABC Unified School District*, *supra* note 63.

the slate clean, the local union president began to reach out to district administrators, and members worked for the election of a more collaborative Board of Education. After five years the effort paid off.<sup>67</sup> With the help of the American Federation of Teachers (AFT) in 1999, the district and the union, intent on cooperation, invested in ongoing labor-management training from Harvard and Rutgers Universities.<sup>68</sup>

Out of those meetings came a hugely successful targeted reading collaborative for schools with many special education and limited-English students.<sup>69</sup> Spreading their partnership wider, the union and the administration collaborated on everything from curriculum and the use of data to improve student achievement, to an innovative program to mentor new teachers.<sup>70</sup> The results have been promising. Over the last seven years, the district's achievement scores on state tests rose an average of approximately eleven percent per year to exceed the state average, and today about eighty-five percent of its graduates go on to higher education.<sup>71</sup>

To date, more than six hundred ABC Unified School District teachers and administrators have received intensive professional development through the AFT. To ensure the productive partnership continues, district and union leaders meet weekly. Both say the work is hard but vital. "It's easier to be adversarial because then you don't have to be responsible. You spit and run and that's it," the union president said.<sup>72</sup> Now their work has been given a further boost by a grant from the AFT Innovation Fund to bring labor-management collaboration from the district/union level to the school level.<sup>73</sup>

<sup>67</sup> Jennifer Dubin, *From Picket Line to Partnership: A Union, a District, and Their Thriving Schools*, AM. EDUCATOR, Spring 2009, at 14, 14–15.

<sup>68</sup> LOCAL LABOR MANAGEMENT RELATIONSHIPS AS A VEHICLE TO ADVANCE REFORM, *supra* note 63, at 8, 10.

<sup>69</sup> ABC Unified School District, *supra* note 63.

<sup>70</sup> LOCAL LABOR MANAGEMENT RELATIONSHIPS AS A VEHICLE TO ADVANCE REFORM, *supra* note 63, at 9–10.

<sup>71</sup> *History/Info*, ABC UNIFIED SCH. DIST., [http://www.abcusd.k12.ca.us/about\\_abc.jsp](http://www.abcusd.k12.ca.us/about_abc.jsp) (last visited Nov. 27, 2011) (on file with the Harvard Law School Library); *Academic Performance Index (API) Report for ABC Unified School District*, CAL. DEP'T OF EDUC., <http://api.cde.ca.gov/reports/API/APISearchName.asp?TheYear=&cTopic=API&cLevel=District&cName=ABC^Unified&cCounty=&cTimeFrame=S> (last visited Nov.28, 2011) (on file with the Harvard Law School Library).

<sup>72</sup> American Federation of Teachers, *Case Studies in Collaboration: An AFT Series, ABC Federation of Teachers (California)* (July 2011), at 2.

<sup>73</sup> LOCAL LABOR MANAGEMENT RELATIONSHIPS AS A VEHICLE TO ADVANCE REFORM, *supra* note 63, at 10–11. In 2007, the AFT initiated its Innovation Fund to help local and state affiliates implement groundbreaking solutions for our most pressing education problems. The Fund has made more than fifteen grants to support innovative work across the nation. Grantees are opening teacher-designed charter schools, developing a national institute to spread best practices in labor-management cooperation, creating online professional networks to support teachers as their districts redesign their evaluation and pay systems, and much more. The thread running through all of the projects is collaboration with districts and community partners. See *Now Seeking Bright Ideas!*, AM. FED'N OF TEACHERS, <http://www.aft.org/about/innovate/> (last visited Nov. 27, 2011) (on file with the Harvard Law School Library).

## IV. THE TEACHER-TEACHERS' UNION LINK

Recognizing that they cannot afford to alienate the millions of teachers who must implement their ideas, some “dictate and dismiss” reformers try to make a distinction between teachers and their union leaders by pointing out that their criticisms are reserved for teachers’ unions, not teachers. Unions, they argue, are the ones who resist reform; they will be glad to listen to teachers—one by one.

But evidence for the alleged split between teachers’ unions and their members over reform is completely lacking. In fact, teacher support for teachers’ unions is growing, and it is growing fastest among newer members. In an extensive national survey in 2008, a majority of teachers (union and non-union) said unions were “absolutely essential,” eight percentage points more than had agreed with that statement five years earlier.<sup>74</sup> Among union members, about two out of three agreed.<sup>75</sup> And among all teachers, only eleven percent saw unions as something they “could do without.”<sup>76</sup>

And, contrary to the canard that unions are obstacles to reform, studies show that districts with strong unions and teachers are able to implement some of the most successful reforms.<sup>77</sup> Both domestically and abroad, many of the highest performing school systems are unionized.<sup>78</sup>

Indeed, Marc Tucker, president of the National Center on Education and the Economy, conducted an in-depth comparative study of teacher unionism in the United States, Northern Europe, and Canada and concluded that it is counterproductive for reformers to seek to weaken unions.<sup>79</sup> The result, he says, is that union members, feeling that they are under attack and their job security is threatened, are likely to be frightened away from reform.<sup>80</sup>

Contrast Tucker’s view with that of Joel Klein, who decried collaboration as an opiate for those opposed to change.<sup>81</sup> He listed unions and politicians as among the “status-quo crowd.”<sup>82</sup> He is wrong to generalize on both counts.

The AFT and many of our affiliates are participating in—and in many cases leading—efforts to strengthen teaching and learning. Further, we would not have all the federal and state attention to improving public education that we have had in recent years if politicians supported the status quo.

<sup>74</sup> ANN DUFFETT ET AL., WAITING TO BE WON OVER 8 (2008).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> OECD, BUILDING A HIGH-QUALITY TEACHING PROFESSION, *supra* note 1, at 51.

<sup>78</sup> OECD, STRONG PERFORMERS AND SUCCESSFUL REFORMERS, *supra* note 29, at 238–39.

<sup>79</sup> NAT’L CTR. ON EDUC. & THE ECON., TEACHERS, THEIR UNIONS, THE AMERICAN EDUCATION REFORM AGENDA 9–10 (2011), available at <http://www.ncee.org/wp-content/uploads/2011/03/Teachers-and-Their-Unions-NCEE-March-2011-FinalDRM.pdf>.

<sup>80</sup> *Id.*

<sup>81</sup> Klein, *supra* note 11, at 73.

<sup>82</sup> *Id.*

Unfortunately, name-calling instead of engaging in constructive discussion is often evident in reform discussions. Those who do not agree with the “dictate and dismiss” approach are often derided as “reform averse” or “embracing the status quo.”

### *Union-led Reform*

In many places, unions have been in the vanguard of education reform, particularly related to teacher quality, curriculum standards, and services beyond instruction that students need. In fact, the AFT distributes more than one million dollars each year through its Innovation Fund to foster union-led reforms aimed at improving student performance.<sup>83</sup> Among the projects the Fund is supporting are initiatives to design and implement new ways to evaluate and pay teachers, implement and provide training for the new national Common Core standards, establish in-district public charter schools, expand community schools that offer health and social services to students and their families, and many others.<sup>84</sup> Barbara Byrd-Bennett, former superintendent of the Cleveland Public Schools and an Innovation Fund board member, calls the Fund “an incubator for dramatic teacher-led reform,” adding that “[i]t will only happen, I believe, if it comes from within.”<sup>85</sup>

Here are two examples of local unions that have pioneered important education reforms.

#### *School Improvement in New York*

One of New York City Chancellor Rudy Crew’s first initiatives in 1996 was to create a “Chancellor’s District” of low-performing schools that were not being adequately served by their local community school districts.<sup>86</sup> Three years later the union and the district devised a pilot program for forty-seven elementary and middle schools in the Chancellor’s District.<sup>87</sup>

Designed to demonstrate many of the strategies that the union and the new Chancellor supported, the program included class size reductions, a longer school day for tutoring and small-group remediation, a common curriculum aligned with high standards, common teacher planning time, a longer year for teachers for professional development, and a school site labor-management collaborative governance structure.<sup>88</sup>

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<sup>83</sup> See, e.g., Memorandum from Ann Bradley, Dir., AFT Innovation Fund, to AFT Exec. Council (Oct. 18, 2011) (on file with author).

<sup>84</sup> AMERICAN FEDERATION OF TEACHERS, AFT INNOVATION FUND: INVESTING IN UNION-LED SOLUTIONS, available at <http://www.aft.org/pdfs/about/IFoverview.pdf>.

<sup>85</sup> *Id.*

<sup>86</sup> DEINYA PHENIX ET AL., VIRTUAL DISTRICT, REAL IMPROVEMENT: A RETROSPECTIVE EVALUATION OF THE CHANCELLOR’S DISTRICT, 1996-2003 1 (2004), available at <http://www.nyu.edu/steinhardt/iesp/ChanDistRpt.pdf>.

<sup>87</sup> *Id.* at 8.

<sup>88</sup> *Id.* at 8–10.

Most of these Extended Time Schools (ETS), located in the city's roughest neighborhoods, had been staffed primarily by inexperienced, uncertified teachers, and were plagued by high teacher turnover. A fifteen percent salary increase, based on the extra work time required, was offered to attract fully certified teachers. Hiring was done by a committee of teachers. Current teachers had the opportunity to apply or transfer to another school. At least half of the positions were reserved for current teachers, but they, like all the teachers, were to be selected based on qualifications, not seniority.<sup>89</sup> The higher salaries, combined with the schools' collegial atmosphere, resulted not only in highly qualified staffs but also very low attrition rates. In 2003, for example, five teachers transferred out of the forty schools, compared with an average of one per school for similar schools.<sup>90</sup>

Students in ETS schools made rapid gains. From 1999 to 2002, ETS schools gained 7.7 points in the percentage of students meeting reading standards, versus a 2.9 point gain citywide. In math, the ETS schools gained 9.8 points compared with 3.6 points for schools citywide.<sup>91</sup> Children in the lowest reading group, whose scores are often the most intractable, made the most dramatic gains. The schools continued to excel until Chancellor Klein dismantled the Chancellor's District in 2003.<sup>92</sup> Sadly, because new school superintendents are eager to put their imprimatur on their districts, it is not unusual for even successful programs like the Chancellor's District in New York City to be terminated when a new Superintendent arrives.<sup>93</sup>

### *Teacher Evaluation in Toledo*

The Toledo (Ohio) Federation of Teachers, taking its cue from former AFT president Al Shanker, pioneered the idea that teachers, as professionals, should assume responsibility for the quality of their colleagues' performance.<sup>94</sup> In the early 1980s, the Toledo union's new president, Dal Lawrence, became dissatisfied with the failure of most principals to adequately support and assess classroom teachers, leaving the union with the awkward role of defending weak teachers.<sup>95</sup> Growing tension between the union and the ad-

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<sup>89</sup> Memorandum from Howard S. Tames, Exec. Dir., Bd. of Educ. of the City of New York, to All Regularly Appointed or State Certified Teachers, Guidance Counselors, School Secretaries and UFT Paraprofessionals (June 23, 1999) (on file with author).

<sup>90</sup> Maisie McAdoo, *Reality Check*, N.Y. TEACHER, Apr. 27, 2006.

<sup>91</sup> AM. FED'N OF TEACHERS, ETS SCHOOLS SUMMARY OF ACCOMPLISHMENTS (2006).

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> See *Toledo Plan*, TOLEDO FED'N OF TEACHERS, [http://www.tft250.org/the\\_toledo\\_plan.htm](http://www.tft250.org/the_toledo_plan.htm) (last visited Nov. 27, 2011) (on file with the Harvard Law School Library); Stephen Sawchuk, *Peer Review Undergoing Revitalization*, EDUC. WEEK, Nov. 18, 2009, at 20, available at [http://www.sp2.upenn.edu/ostrc/docs/document\\_library/ppd/Professionalism/Peer%20Review%20Undergoing%20Revitalization.pdf](http://www.sp2.upenn.edu/ostrc/docs/document_library/ppd/Professionalism/Peer%20Review%20Undergoing%20Revitalization.pdf).

<sup>95</sup> *A User's Guide to Peer Assistance and Review*, HARVARD GRADUATE SCH. OF EDUC., <http://www.gse.harvard.edu/~ngt/par/practice/toledo.html> (last visited Nov. 27, 2011) (on file with the Harvard Law School Library); see also *Ten Questions: Toledo Plan*, TOLEDO FED'N OF TEACHERS, [http://tft250.org/ten\\_questions.htm](http://tft250.org/ten_questions.htm) (last visited Nov. 27, 2011) (on file with the Harvard Law School Library).

ministration over teacher terminations poisoned their entire working relationship.<sup>96</sup> Lawrence proposed a new system of teacher-to-teacher performance review that included support and mentoring for floundering teachers, instead of just an assessment.<sup>97</sup> Both union members and supervisors had to be convinced to sign on to the system, though for entirely different reasons, but the result was the adoption of a collaborative Peer Assistance and Review (PAR) plan.<sup>98</sup>

Under the plan, new teachers were mentored by specially trained experienced teachers before they were granted tenure.<sup>99</sup> If the mentor found a novice wanting, the new teacher was counseled out of the profession.<sup>100</sup> In addition, both management and the union could identify tenured teachers for assistance and evaluation.<sup>101</sup> If, after receiving extensive help, the tenured teacher did not improve sufficiently, the peer reviewer could recommend dismissal and denial of union representation at a dismissal hearing.<sup>102</sup>

In Toledo, the PAR program<sup>103</sup> was only the first innovation in years of fruitful collaboration on myriad issues at the district and building levels: the use of student data to improve achievement, performance pay, textbook selection, attendance improvement, and many others.<sup>104</sup>

Numerous teachers' union locals nationwide have adopted peer assistance and review programs.<sup>105</sup> In general, teacher-led systems are more rigorous in evaluating new and experienced teachers than the systems they replace.<sup>106</sup>

### *Reform Contracts*

Required by the NCLB to have accountability systems based on standardized test results, but wanting to mitigate the counterproductive elements and often punitive sanctions of the NCLB, more districts are opting for comprehensive contracts built on collaborative labor-management relationships

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> Today PAR is such an integral part of the Toledo evaluation system that in 2011, Toledo teachers opted for a pay cut in order to preserve the PAR program as well as specialized student services such as art, music, and physical education. *Toledo School Board, Teachers' Union Approve New Deal*, NORTHWESTOHIO.COM, <http://www.northwestohio.com/news/story.aspx?id=635019#.TzgjZV2Q2Rk> (last visited Feb. 12, 2012) (on file with the Harvard Law School Library).

<sup>104</sup> RUBINSTEIN & MCCARTHY, *supra* note 8, at 29–34; Janet Romaker, *Performance Shows Up in TPS Teachers' Paychecks*, TOLEDO BLADE (Sept. 9, 2009), <http://www.toledoblade.com/local/2009/09/22/Performance-shows-up-in-TPS-teachers-paychecks.html> (on file with the Harvard Law School Library).

<sup>105</sup> Sawchuk, *supra* note 94.

<sup>106</sup> See Julie Koppich, *Spotlighting Teacher Quality: A Review of Teacher Evaluation 27* (Paper prepared for the K–12 Program Policy Council of the American Federation of Teachers, 1998).

in which the district administration and the union share responsibility for improving student learning. They have not become the norm in large part because the national environment has not been conducive to enabling them. For example, a new Tennessee law suspends teacher negotiations indefinitely, and limits “conferences” to wages, benefits (excluding pensions), leave, grievance procedures, dues, insurance, and working conditions.<sup>107</sup> Nevertheless, in the past several years union locals and school districts across the country have moved, at varying speeds, toward collaborative reform, including AFT local affiliates in Norfolk, Virginia; Plattsburgh, New York; St. Francis, Minnesota; Baltimore, Maryland; and elsewhere.<sup>108</sup> Below are two outstanding examples of such collaborative bargaining.

### *New Haven*

At the same time that District of Columbia school superintendent Michelle Rhee was clashing very publicly with teachers in the District on issues of teacher quality, job security, and school closings, the New Haven (Connecticut) Federation of Teachers and the School District were working collaboratively on a contract that addressed many of the same issues and avoided the confrontational politics so prevalent in Washington, D.C.<sup>109</sup>

One of the most contentious issues nationwide is what to do about persistently failing schools and their teachers, especially as more schools have fallen short of the NCLB-required Annual Yearly Progress. But a few cities like New Haven have pursued constructive, collaborative approaches that enable relationships that are both trusting and mission-driven. In New Haven four struggling schools that are being reconstituted without layoffs are now operating as unionized, in-district charter schools with the ability to waive some district regulations and contractual provisions.<sup>110</sup> Because teachers applied and were selected to work in those schools, school leaders may only modify the original school plan with a vote of two-thirds of the staff.<sup>111</sup> Other schools also may waive contract provisions, but for them that

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<sup>107</sup> Professional Educators Collaborative Conferencing Act of 2011 § 6, TENN. CODE ANN. § 49-5-601, § 49-5-608 (2011).

<sup>108</sup> *Examples From the Field*, AM. FED’N OF TEACHERS, <http://www.aft.org/issues/standards/student-assess/assess-examples.cfm> (last visited Nov. 27, 2011) (on file with the Harvard Law School Library); *AFT Locals Shine at National Collaboration Conference*, AM. FED’N OF TEACHERS, <http://www.aft.org/newspubs/news/2011/02181collabconf.cfm> (last visited Nov. 27, 2011) (on file with the Harvard Law School Library).

<sup>109</sup> See NEW HAVEN BOARD OF EDUCATION AND THE NEW HAVEN FEDERATION OF TEACHERS, LOCAL 933, AFT, AFL-CIO, JULY 1, 2010–JUNE 30, 2014 (2010), available at <http://ct.aft.org/nhft/index.cfm?action=article&articleID=85bd221c-1581-4eac-8480-f980cbe-f9325> (the contract between the union and the school district in New Haven).

<sup>110</sup> *Id.* at 63–68; Melissa Bailey, *At “Turnaround,” Half the Teachers Will Stay*, NEW HAVEN INDEP. (May 31, 2011 8:37 AM), [http://www.newhavenindependent.org/index.php/archives/entry/wexler\\_grant\\_turnaround/](http://www.newhavenindependent.org/index.php/archives/entry/wexler_grant_turnaround/) (on file with the Harvard Law School Library).

<sup>111</sup> NEW HAVEN BOARD OF EDUCATION AND THE NEW HAVEN FEDERATION OF TEACHERS, *supra* note 105, at 65–66.

requires a seventy-five percent vote.<sup>112</sup> The agreement makes explicit the intended collaborative nature of these schools:

It is the intent of the Parties that teachers and administrators in these schools will work collaboratively to create effective learning environments for students. Teachers, other school staff and parents shall have a voice in designing programs and determining work rules that are likely to be successful in such schools.<sup>113</sup>

Teacher evaluation, too, has been overhauled. The new system measures three components of teacher effectiveness—student growth outcomes, teacher instructional practices, and teacher professional values—on a five point scale ranging from one (“needs improvement”) to five (“exemplary”).<sup>114</sup> Specially trained teachers from outside the school review and reassess any teacher receiving the lowest—or highest—rating.<sup>115</sup>

Teachers who receive an “exemplary” rating are eligible for leadership positions supporting other teachers.<sup>116</sup> Teachers receiving a two rating (“developing”) receive a written Plan of Improvement and immediate professional development.<sup>117</sup> Teachers who receive a “needs improvement” rating receive a Plan for Improvement and even more intense support, including coaching.<sup>118</sup> If they do not improve, they are subject to end of the year sanctions.<sup>119</sup>

An editorial in the *New York Times* lauded New Haven’s teacher development and evaluation plan, saying that it shows “that with genuine effort school systems can upgrade the teacher corps in a fairly short period of time.”<sup>120</sup> Further, the editorial noted, the “promising results show what can be done when the two sides commit to reform.”<sup>121</sup>

Overseeing all the reform efforts, grouped under the rubric School Change, and empowered to resolve any issues that arise, is a joint labor-

<sup>112</sup> *Id.* at 61.

<sup>113</sup> *Id.* at 63.

<sup>114</sup> Melissa Bailey, *The Evaluation: Episode Two*, NEW HAVEN INDEP. (Apr. 1, 2011, 11:07 AM), [http://www.newhavenindependent.org/index.php/archives/entry/turnaround\\_tvals/](http://www.newhavenindependent.org/index.php/archives/entry/turnaround_tvals/) (on file with the Harvard Law School Library); Melissa Bailey, *New Eval System Pushes Out 34 Teachers*, NEW HAVEN INDEP. (Sept. 13, 2011, 7:07 AM), [http://www.newhavenindependent.org/index.php/archives/entry/new\\_eval\\_system\\_pushes\\_34\\_teachers\\_out/id\\_40147#](http://www.newhavenindependent.org/index.php/archives/entry/new_eval_system_pushes_34_teachers_out/id_40147#) (on file with the Harvard Law School Library).

<sup>115</sup> Thomas MacMillan, *New Evals Link Teacher, Student Performance*, NEW HAVEN INDEP. (Apr. 27, 2010, 10:02 AM), [http://www.newhavenindependent.org/index.php/archives/entry/teacher\\_evaluation/](http://www.newhavenindependent.org/index.php/archives/entry/teacher_evaluation/) (on file with the Harvard Law School Library).

<sup>116</sup> *Id.*

<sup>117</sup> *See id.*

<sup>118</sup> *See id.*

<sup>119</sup> Bailey, *New Eval System Pushes Out 34 Teachers*, *supra* note 114. Data from the first year of the teacher evaluation system show that close to three-quarters of New Haven’s roughly 1,850 teachers scored in the top three categories. Seventy-five teachers had ratings that put them at risk of being dismissed. Thirty-four of those teachers resigned or retired; the others improved enough to keep their jobs. *Id.*

<sup>120</sup> Editorial, *New Haven’s Teacher Improvement Plan: Rigorous Evaluations Make It Possible to Identify, Retrain or Push Out Bad Teachers*, N.Y. TIMES, Sept. 26, 2011, at A28.

<sup>121</sup> *Id.*

management-parent committee, thus institutionalizing a strong teacher voice in school and district decision-making.<sup>122</sup> In what an Economic Development Corporation of New Haven press release called a “capstone” for the New Haven school reform initiative, Yale University promised college tuition and support to qualified public school graduates in the classes of 2011 through 2014.<sup>123</sup> The press release went on to say, “School Change has been heralded as a national model for education reform because of its progressive yet collaborative approach with unions.”<sup>124</sup>

### *Pittsburgh*

Before 2005, Pittsburgh Public Schools had all the earmarks of a declining urban school system, losing thousands of students every year to the suburbs and private schools, with dozens of half-empty schools kept open at great expense by politics and a fractured board.<sup>125</sup> Student achievement was lagging so badly that the state was talking takeover.<sup>126</sup> The workforce was becoming increasingly restive because of ever-smaller raises, and the adversarial relationship between labor and management was perpetuated by a lawyer-dominated collective bargaining tradition.<sup>127</sup>

But several factors fostered change: new union leadership, the first in decades; a new, nontraditional superintendent; a union strike-authorization vote; and an exciting promise from anonymous benefactors of college scholarships for Pittsburgh public school graduates.<sup>128</sup> Due to budget constraints, the system was streamlined by school closings and reorganizations; union and district leaders began to question the efficacy of traditional adversarial negotiations; and everybody united around the Pittsburgh Promise scholarship offer.<sup>129</sup>

When an outside consultant hired by the district produced a revised curriculum that teachers found completely inadequate, the superintendent cancelled the consultant contract and challenged teachers to write a better one.<sup>130</sup> The nearly two hundred teachers involved in that project became its emissaries in the schools and new advocates for a greater teacher voice in district policies.<sup>131</sup>

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<sup>122</sup> SETTLEMENT AGREEMENT, THE CITY OF NEW HAVEN AND THE NEW HAVEN BOARD OF EDUCATION AND THE NEW HAVEN FEDERATION OF TEACHERS, Appendix B, 5 (2009), available at [http://www.edweek.org/media/newhaven\\_teachers\\_contract.pdf](http://www.edweek.org/media/newhaven_teachers_contract.pdf).

<sup>123</sup> ECON. DEV. CORP. OF NEW HAVEN, NEW HAVEN PROMISE, available at <http://www.edcnewhaven.com/component/content/article/5/143.html>.

<sup>124</sup> *Id.*

<sup>125</sup> Sean D. Hamill, *Forging a New Partnership: The Story of Teacher Union and School District Collaboration in Pittsburgh*, ASPEN INST., June 2011, at 4.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 4, 7–8.

<sup>128</sup> *Id.* at 4, 6–8.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* at 8–9.

<sup>131</sup> *Id.* at 8.

By 2008, the superintendent and union president were finding common ground. Both were unhappy with inadequate teacher evaluations and wanted a more fine-grained system.<sup>132</sup> This time they knew to involve front-line school-based staff and enlisted the input of school leadership teams and a teacher survey.<sup>133</sup> When they asked for schools to volunteer for a pilot program in 2009, they saw their collaboration pay off with roughly half the schools asking to participate, despite the controversial nature of the plan, which included a career ladder/performance pay system for teachers.<sup>134</sup> For the union president, it was an affirmation that the members had developed trust in his reform leadership.

Attracted by their collaborative reform efforts, the Gates Foundation invited the union and district to compete for a \$40 million grant to improve student performance.<sup>135</sup> Three months of close, intensive work to write the proposal sealed the working relationship between the former adversaries.<sup>136</sup> They developed the plan, without the lawyers, as if it were a blueprint for a contract, which it would have to become if they got the grant.<sup>137</sup> They not only were awarded the Gates money, but also received a federal grant for another \$37.4 million for implementation.<sup>138</sup>

The contract, which also included a teaching academy, an alternative teacher certification route, an extension of the new-teacher probationary period, and a system to identify and place the most effective teachers where they were most needed, was approved by a greater than 2 to 1 margin.<sup>139</sup> Collaboration on contract implementation continues to this day, as the details of many items were left to be worked out by joint committees.<sup>140</sup> Moreover, Pittsburgh attained Adequate Yearly Progress under the NCLB for the first time in 2009 and again in 2011.<sup>141</sup>

It is clear from the brief case studies described above that teachers and their unions can achieve significant progress on school improvement, enhanced teacher effectiveness, and greater student achievement when they work together with their district management partners. Unions are not afraid of change; they recognize problems, and they want to help provide solutions.

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<sup>132</sup> *Id.* at 9–10.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* at 10, 13, 14.

<sup>135</sup> *Id.* at 10–12.

<sup>136</sup> *See id.* at 12–13.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* at 12, 15.

<sup>139</sup> *Id.* at 13, 15.

<sup>140</sup> *See id.* at 15.

<sup>141</sup> *Id.* at 4; Kaitlynn Riely, *Pittsburgh Schools Achieve Adequate Yearly Progress*, PITTSBURGH POST-GAZETTE (Sept. 1, 2011, 3:22 PM), <http://www.post-gazette.com/pg/11244/1171469-100.stm> (on file with the Harvard Law School Library).

## V. HOW TO IMPROVE TEACHING AND LEARNING—TWO PROPOSALS

I have spent the major part of this essay building the case for a teacher voice in school reform. If you've read this far, you may be wondering what you will hear if you listen to teachers in your home district. I cannot give you a simple answer to that question. The specifics may vary from state to state or town to town. That is why this article is not about one single teachers' *union* voice in reform; it is about the local *teacher* voice. Teachers know their students and their schools. The reform efforts in Toledo, New Haven, and Pittsburgh demonstrate that when teachers are given a voice in the process, solutions customized to the needs of individual districts can be developed, leading to improved student performance. With mutual respect and trust, communities can work together to figure out the best solution based on that community's needs.

Of course, there are basics like teacher preparation and ongoing support; high standards, bolstered by a strong, engaging curriculum; adequate resources to ensure appropriate conditions for teaching and learning; and equitable funding to ensure that kids who need the most get the required resources. In that vein, here are two specific reforms that the AFT has endorsed: community schools and a system of continuous teacher development and evaluation. We believe that they will lead to better teaching and learning if they are implemented collaboratively.

*Community Schools*

Good teaching is certainly critical to student learning, but there are myriad factors in every child's life that are beyond the teacher's control that may deeply affect a child's ability to perform well in school. Sadly, on average, there are more impediments to learning in the lives of poor children (limited exposure to books and other learning materials, health problems related to poor nutrition, and housing conditions that expose children to lead and other debilitating environmental hazards, to name a few) than there are in the lives of children from more privileged families. If we are ever to close the achievement gap, we must address those out of school, environmental factors that impede learning. This is especially important now when the struggling economy has increased the pressures on families, and issues ranging from health-related problems to joblessness, and traumas such as death or divorce are creating even greater instability in many children's lives.

The United States is the world's wealthiest nation, yet recent census figures show that roughly twenty million Americans are in "deep poverty," a category that includes families of four trying to survive on about \$200 or less a week.<sup>142</sup> Poverty affects 16.4 million children—more than one in

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<sup>142</sup> CARMEN DENAVAS-WALT ET AL., INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2010, U.S. CENSUS BUREAU 19 (2011), available at <http://www.census.gov/prod/2011pubs/p60-239.pdf>; *ThinkProgress Economy*, THINKPROGRESS,

five.<sup>143</sup> The poverty rates for African-American and Hispanic children are far higher—38.2% and 35%, respectively.<sup>144</sup> Suburban poverty has soared.<sup>145</sup>

When used in conjunction with highly effective classroom interventions, a direct and effective antidote to the effects of poverty on learning is to provide accessible and family-friendly services right in the school—services that “wrap around” the traditional school offerings.<sup>146</sup> This does not necessarily mean an expansion of the school district’s responsibilities. Instead, schools should coordinate with local providers—municipalities, hospitals and medical groups, universities, YMCA’s, Boys and Girls Clubs, Scouts, and small local nonprofits—to establish service delivery points in school buildings. At the same time, the use of these services makes the school more inviting to families who otherwise may not be involved with their children’s education. Funding comes largely from state and federal sources and private donors. Coordinating services is likely to be more effective and efficient, particularly in an economic climate where funds are becoming more constricted every day.

Community schools are open beyond regular school hours for tutoring and homework assistance and recreational activities as well as medical, dental, and mental health services. Depending on neighborhood needs, families and other community residents may also benefit from legal advice, immigration assistance, employment counseling, housing help and English-language or GED instruction. These services, while aimed at adults, also alleviate the family crises and stresses that interfere with children’s concentration on schoolwork.

Providers are not simply independent agencies using school facilities; rather, together they form a carefully constructed network of supports for children and their families that are coordinated to assure that services address the education needs of children. Teachers are a critical focal point for coordinating the services that each child needs and for ensuring that supplemental academic services are connected with what children are learning in school.

Community schools are not a new concept. Successful models exist worldwide. The Children’s Aid Society, which pioneered the concept in 1992, operates programs in twenty-plus New York City Schools,<sup>147</sup> and the

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thinkprogress.org/economy/2011/09/22/326598/deep-poverty-increase-40-states/ (last visited Nov. 27, 2011) (on file with the Harvard Law School Library).

<sup>143</sup> DeNAVAS-WALT, *supra* note 142, at 68.

<sup>144</sup> *Id.* at 70, 73.

<sup>145</sup> ELIZABETH KNEEBONE & EMILY GARR, BROOKINGS, THE SUBURBANIZATION OF POVERTY: TRENDS IN METROPOLITAN AMERICA, 2000 TO 2008 (2010), available at [http://www.brookings.edu/papers/2010/0120\\_poverty\\_kneebone.aspx](http://www.brookings.edu/papers/2010/0120_poverty_kneebone.aspx).

<sup>146</sup> THEODORA CHANG, CTR. FOR AM. PROGRESS, MAXIMIZING THE PROMISE OF COMMUNITY SCHOOLS: STREAMLINING WRAPAROUND SERVICES FOR ESEA 1 (2011), available at [http://www.americanprogress.org/issues/2011/04/pdf/wraparound\\_report.pdf](http://www.americanprogress.org/issues/2011/04/pdf/wraparound_report.pdf).

<sup>147</sup> *Community Schools*, CHILDREN’S AID SOC’Y, <http://www.childrensaidsociety.org/community-schools> (last visited Nov. 19, 2011) (on file with the Harvard Law School Library)

approach is integral to Geoffrey Canada's renowned Harlem Children's Zone.<sup>148</sup>

The Oyler School in Cincinnati became a K–12 Community Learning Center (CLC) in 2005 and is now a model for the entire school district.<sup>149</sup> Service providers throughout the community are involved in the school and have helped contribute to improved student achievement and increased graduation rates.<sup>150</sup> Based on the Oyler model, Community Learning Centers are opening and expanding throughout the Cincinnati school district.<sup>151</sup> Currently there are twenty-eight fully functioning CLCs.<sup>152</sup> Started as part of an effort to rebuild aging schools, the program provides funds to build school-based health centers for students and the community, including vision, dental, and social services.<sup>153</sup> These schools remain open for enrichment programs, tutoring, and adult education programs, including English as a second language and computer literacy.<sup>154</sup> Recreation programs, athletics, and music and art programs provide opportunities for students to participate in structured activities after the school day.<sup>155</sup> Higher student test scores, better

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(explaining their partnership with the Department of Education and provision of year-round, daily, high quality services to the surrounding community).

<sup>148</sup> See *The HCZ Project: 100 Blocks, One Bright Future*, HARLEM CHILDREN'S ZONE, <http://www.hcz.org/about-us/the-hcz-project> (last visited Nov. 27, 2011) (on file with the Harvard Law School Library); *History*, HARLEM CHILDREN'S ZONE, <http://www.hcz.org/about-us/history> (last visited Nov. 27, 2011) (on file with the Harvard Law School Library) (explaining their mission serving over 17,000 children and parents in Harlem from before birth through college to address the needs of the entire community and aimed at ending the cycle of poverty).

<sup>149</sup> Chris Kenning, *Cincinnati's Oyler Elementary Finds Winning Formula to Fight Poverty*, CINCINNATI COURIER-J., Apr. 23, 2011, available at <http://www.courier-journal.com/article/20110423/NEWS010503/304240059/Cincinnati-s-Oyler-Elementary-finds-winning-formula-fight-poverty>.

<sup>150</sup> *Id.*; see also *Oyler School: 2009-2010 School Report Card*, OHIO DEP'T OF EDUC. (2010), available at <http://www.ode.state.oh.us/reportcardfiles/2009-2010/BUILD/029009.PDF> (showing an increase in the School Performance Index for every year since 2007).

<sup>151</sup> Kenning, *supra* note 149.

<sup>152</sup> See *21st Century Community Learning Center: Aligning School and Afterschool Learning Opportunities*, AFTERSCHOOL ALLIANCE, <http://www.afterschoolalliance.org/21cclcalignment.pdf> (on file with the Harvard Law School Library).

<sup>153</sup> *CPS Community Learning Centers: Community Partnerships Transforming Schools and Neighborhoods*, CINCINNATI PUB. SCH., <http://www.cps-k12.org/community/CLC/CLC.htm> (last visited Nov. 27, 2011) (on file with the Harvard Law School Library); *The Resource Wire: School-Based Health Clinics: Improving Attendance and Academic Success*, CINCINNATI PUB. SCH., <http://www.cps-k12.org/Community/CLC/CLCNews/CLCNewsApr11.pdf> (last visited Nov. 27, 2011) (on file with the Harvard Law School Library).

<sup>154</sup> Jessica Brown, *Study Confirms Value of CPS' Learning Centers*, CINCINNATI.COM (Nov. 18, 2011, 8:02 PM), <http://news.cincinnati.com/article/20111118/NEWS0102/111190312/Study-confirms-value-CPS-learning-centers> (on file with the Harvard Law School Library); *Community Learning Centers Summary 2008*, CINCINNATI PUB. SCH., <http://www.cps-k12.org/Community/CLC/CLCSummary2008.pdf> (last visited Nov. 27, 2011) (on file with the Harvard Law School Library).

<sup>155</sup> See SARAH DESCHENES & HELEN JANC MALONE, HARVARD FAMILY RESEARCH PROJECT YEAR-ROUND LEARNING: LINKING SCHOOL, AFTERSCHOOL, AND SUMMER LEARNING TO SUPPORT STUDENT SUCCESS 4, 17 (2011), available at <http://www.hfrp.org/var/hfrp/storage/fckeditor/File/YearRoundLearning-FINAL-062311.pdf>.

attendance, and greater parent involvement rates are some of the positive outcomes of the CLC model in Cincinnati.<sup>156</sup>

Community schools are a wonderful expression of a community's intention to help its children thrive. And when done right, they provide the means to efficiently coordinate services that municipalities are already mandated to deliver.

### *Teacher Development and Evaluation*

No teacher wants an ineffective teacher in the classroom. Conversely, no teacher wants an effective teacher tossed out of the profession because teacher evaluations are nonexistent, broken, or mishandled, or because principals are playing politics or favorites.

Some believe that the fundamental problem with teacher quality is that it is too hard and takes too long to remove ineffective teachers. But the reason that due process for alleged incompetence can be so long and cumbersome is that in many instances there has been no credible evaluation system, no support when teachers fall short, and no accountability when administrators fail to fulfill their responsibilities.

Neither the occasional "drive-by" supervisory check-list observation system, nor a teacher evaluation system premised on standardized testing results alone is a reliable way of determining who is an effective teacher. They are cheap, "quick fixes" for the absence of a credible teacher evaluation system and, as is usual with quick fixes, they are inadequate and likely to lead to lengthy legal disputes. When the judicial system—the court system, the hearing before an arbitrator—becomes the place where the competence of an individual teacher gets litigated, and the arbitrator, who is concerned with procedural issues, not with teacher competence, decides on whether to retain or dismiss a teacher, the process can become long, costly, and cumbersome.

An evaluation system that focuses solely on the sorting function of teacher evaluation, that is, removing a tiny minority of teachers, without focusing on the developmental function of improving the vast majority of teachers, will not ensure that all students are taught by the excellent teachers they deserve. Nor will a system that merely sorts teachers into performance categories (e.g., inadequate, needs improvement, adequate, effective, exemplary) but fails to provide opportunities for improving practice along a performance continuum lead to an improved teacher workforce.

Some economists and statisticians, who know little about pedagogy, try to reduce teaching to a number—a regression analysis—with the implication being that you can fire your way to good teaching. That is a flawed approach. It defies the abundant research that shows that current standardized test results and the statistical models employed to determine the "value added" to student learning by a teacher are insufficient on their own to identify

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<sup>156</sup> Brown, *supra* note 154; see also Deschenes & Malone, *supra* note 155.

with reasonable certainty teacher expertise.<sup>157</sup> It also fails to recognize that teachers—not unlike other professionals—improve over time and with support.<sup>158</sup>

In addition, evaluations by the numbers, which rely heavily on student test scores tied to rewards and punishments for teachers, encourage teaching to the test—a practice that is particularly damaging when there are so many questions about the validity and reliability of today’s standardized tests and their relevance to the knowledge and skills that students need to be successful in the 21st century.<sup>159</sup>

Teachers embrace real evaluation systems that help inform their practice. In 2010–2011, the AFT and the American Institutes for Research conducted an in-depth study, using surveys, focus groups and case studies, of so-called Generation Y teachers, those in their 30s or younger, to find out what would keep them in the profession.<sup>160</sup> They told us they want to be evaluated in a fair way and to be provided feedback on their performance; they need time to collaborate with their colleagues; they support differentiated pay for high performance; and they want opportunities to use technology for instruction and for collaborating with colleagues.<sup>161</sup> Clearly, Generation Y teachers want to be evaluated, but they also want to learn—from their peers and their supervisors—to be the best teachers they can be. And they want to be recognized and rewarded.

The AFT, initially on our own and later in cooperation with the American Association of School Administrators (AASA), has developed a framework for creating a comprehensive, fair, transparent, and expedient evaluation process that can serve several functions—identifying teacher effectiveness, improving teacher performance, and, when necessary, providing the data to justify removing ineffective teachers. Comprehensive evaluation systems based on the framework have been initiated in AFT local affiliate districts in Cleveland, Ohio; Douglas County, Colorado; New Haven, Con-

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<sup>157</sup> Sarah Garland, *Should Value-Added Teacher Ratings Be Adjusted for Poverty?*, HECHINGER REP. (Nov. 22, 2011), [http://hechingerreport.org/content/should-value-added-teacher-ratings-be-adjusted-for-poverty\\_6899/](http://hechingerreport.org/content/should-value-added-teacher-ratings-be-adjusted-for-poverty_6899/) (on file with the Harvard Law School Library) (describing some of the studies and the potential problems they have found with value-added teacher ratings).

<sup>158</sup> Francis L. Huang & Tonya R. Moon, *Is Experience the Best Teacher? A Multilevel Analysis of Teacher Qualifications and Academic Achievement in Low Performing Schools*, 21 EDUC. ASSESSMENT EVALUATION ACCOUNTABILITY 209, 231 (2009) (concluding that teachers with five or more years of experience at a particular grade level show significantly higher student achievement); John Papay & Matthew Kraft, *Do Teachers Continue to Improve With Experience? Evidence of Long-Term Career Growth in the Teacher Labor Market* (Harv. U. Graduate Sch. of Educ., Feb. 2011).

<sup>159</sup> Jennings & Rentner, *supra* note 15; Press Release, Am. Fed’n of Teachers, AFT Resolution Recommends Fixes to Improve Testing Integrity, Protocols (Oct. 24, 2011), <http://www.aft.org/newspubs/press/2011/102411.cfm> (on file with the Harvard Law School Library); Badertscher & Sarrio, *supra* note 13; Gillum & Bello, *supra* note 13.

<sup>160</sup> JANE G. COGGSHALL ET AL., AM. FED’N OF TEACHERS & AM. INST. FOR RESEARCH, WORKPLACES THAT SUPPORT HIGH-PERFORMING TEACHING AND LEARNING: INSIGHTS FROM GENERATION Y TEACHERS 2 (2011).

<sup>161</sup> *Id.* at 31.

necticut; Pittsburgh, Pennsylvania; Cincinnati, Ohio; Hillsborough County, Florida; St. Paul, Minnesota, and elsewhere. To further that work, the AFT recently received a U.S. Department of Education Investing in Innovation (I3) Grant to expand the evaluation work under way in a dozen school districts in New York and Rhode Island. That work was originally supported by the AFT Innovation Fund.

We believe that the AFT/AASA framework, when collaboratively developed with district teachers, enables school districts to meet the needs of Generation Y teachers, as well as their more experienced colleagues. The framework proposes a three-step process: evaluation, support, and an expedited dismissal process, where, if necessary, an arbitrator is asked only to judge the fidelity of the evaluation process.

Developing a comprehensive teacher evaluation system begins with establishing performance standards. To be effective, the standards need to get at the key question: What skills and performance should be expected from a teacher? Teachers need to know the standards they are expected to meet and the measures being used to assess them (indeed, learning about those standards and how they play out in practice is a very effective professional development activity). School districts and unions must work together to develop these standards, as well as the guidelines, policies, and timelines for their implementation.

Evaluation based on those standards should take into account multiple measures: classroom observations, portfolio review, appraisal of lesson plans, and other tools to measure student learning—written work, performances, presentations, and projects. And yes, student test scores based on valid and reliable assessments that truly measure each student's growth in each teacher's classroom should be included in the mix—but not in a disproportionate way.

If a teacher is deemed to be unsatisfactory, a support process with adequate feedback must begin. Teachers deserve to know from the start where they are falling short and what they need to focus on to improve. "It just wasn't a good class" isn't clear enough.

An improvement plan should be developed to include clearly articulated measures of success, timelines, support needed, and periodic reviews. The AFT and the AASA believe the best system is one that includes principals and peers so everybody is on the same page to assemble an improvement plan that directly addresses the issues the evaluator identified. Roles for the teacher, peers, and administrators should be spelled out, and all parties should sign off on them. Both the district and the union should ensure that the teacher has the resources the plan requires.

At the conclusion of the agreed-upon time period for the teacher to show improvement, the administrator (perhaps with the advice of a peer evaluator where such positions exist) judges whether the teacher is now performing up to the standard. The school district decides whether to retain or remove the teacher, a decision that can be reviewed by a neutral third party. If there is a peer process and the judgments are the same, that is conclusive.

If not, an arbitrator could play a role in a hearing whose purpose is to review the entire evaluation process to ensure fairness and objectivity. Because the hearing would not be a re-litigation of what constitutes good teaching, no adjudication for teacher performance should take longer than 100 days.<sup>162</sup>

In June 2011, the AFT and the AASA, in an unprecedented partnership between groups traditionally seen as adversaries, agreed to conduct a collaborative project to implement this framework in school districts across the country, starting in Michigan, Ohio, and Colorado.

## VI. THE PRICE OF STIFLING TEACHERS' VOICES

The National Center on Education and the Economy (NCEE) explored the lessons of high-performing countries and their implications for the anti-teacher-union efforts in this country. It cited recent actions in some states to restrict collective bargaining by teachers, or even eviscerate unions, despite evidence that countries with the top student performance have some the strongest teachers' unions in the world.<sup>163</sup>

After tracing the history of the labor movement and the teachers' union movement in northern European countries and Canadian provinces with very successful school systems, the NCEE concludes that there is a fundamental difference between attitudes about labor-management relations there and in the U.S.<sup>164</sup> In Europe, labor and management see themselves as co-equal "social partners" with government, while in the U.S., labor, management, elected leaders, and government officials have a tradition of an "uneasy truce."<sup>165</sup> The report warns that this lack of trust among the stakeholders in the U.S. may win some battles for the "dictate and dismiss" reformers, but at the cost of losing the war, that is, achieving the aim of improved teaching and learning in American schools, particularly those that serve poor children and students of color.<sup>166</sup>

Current efforts to curtail the power of unions may have some partial successes,

[b]ut that victory is likely to come at the price of deeply alienating many teachers from the larger cause of reform. . . . Indeed, it is clear to teachers that, if they lose their unions in this hour of state and municipal fiscal crises, they will have no protection at all in the face of enormous pressure on state and local officials to make massive cuts in teachers [sic] jobs, compensation and benefits.

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<sup>162</sup> *The American Federation of Teachers' Quality Education Agenda*, AM. FED'N OF TEACHERS, <http://www.aft.org/newspubs/press/qualityagenda.cfm> (last visited Nov. 27, 2011) (on file with the Harvard Law School Library) (describing the AFT's proposal for a new framework of teacher evaluation).

<sup>163</sup> NAT'L CTR. ON EDUC. & THE ECON., *supra* note 79, at 1.

<sup>164</sup> *Id.* at 1–2.

<sup>165</sup> *Id.* at 2.

<sup>166</sup> *See id.* at 9.

Teachers know that now is when they need their unions more than ever. A determined, widespread effort to weaken or destroy the only institution most teachers are counting on to protect them economically will confirm that message and force them into retirement or into the bunker. . . .

This is precisely what happened . . . in Ontario, [until a new premier decided] to take whatever steps are necessary to convince the teachers that they have the trust of government and to enlist their unions in the search for solutions to the challenge of improving student performance. . . . It was the mutual trust that grew out of this relationship that persuaded the teachers and unions to . . . make concessions that they would never have willingly made when under savage attack.

. . . [G]etting to a place where [divisive] issues can be productively addressed requires first a relationship of trust between government and labor. Building that trust ought to be the first order of business.<sup>167</sup>

Policymakers would do well to consider the advice offered by a broad range of observers: that real reform is impossible without teachers' unions, and that reflexive antagonism to teachers' unions is misguided in light of union actions to find common ground and to share responsibility for student success.<sup>168</sup>

The country is at an important crossroads in public education. Will policymakers use it for one more flawed attempt—this time in the guise of budgetary relief and education reform—to limit even further teachers' voice in their work? Or will those policymakers finally listen to what teachers say they need to meet the ever-changing demands of educating our children for the future they face?

If the policymakers listen to the teachers, they would tell them, as Generation Y teachers did, to focus on teacher quality in a meaningful and fair way; create environments that enable us to work collaboratively with our peers, supervisors, and parents; and help us help all our kids equitably, based on what the children need, not who they are.

That is the route AFT has opted to take; it is the way that enables us to sustain and scale up effective practices, and it is the course we hope that all those who care about improving our schools and the outcomes for children will take as well.

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<sup>167</sup> *Id.* at 9–11.

<sup>168</sup> See Walt Gardner, *Walking in Teachers' Shoes*, EDUC. WEEK (Nov. 16, 2011, 7:25 AM), [http://blogs.edweek.org/edweek/walt\\_gardners\\_reality\\_check/2011/11/walking\\_in\\_teachers\\_shoes.html](http://blogs.edweek.org/edweek/walt_gardners_reality_check/2011/11/walking_in_teachers_shoes.html); Joe Nocera, Op-Ed., *Teaching With the Enemy*, N.Y. TIMES, Nov. 8, 2011, at A27.