

Combating the

When big-dollar attorney Dan Weisberg left his private-sector position in 2003 to join the New York City school system, the district was having a hard time getting principals to provide honest assessments of low-performing teachers. Each negative piece of feedback was subject to a three-step grievance and arbitration process and, as Weisberg explains, “The final two steps were a big deal, because [principals] had to leave their building and go downtown, which could take hours. Principals complained about it and used it as an excuse for why they couldn’t document poor performance when they saw it.”

When Weisberg’s team asked the principals why they couldn’t attend the hearings by phone, he notes, “The answer we first got was, ‘No, we can’t do it. We’ve never done it that way.’ And we said, ‘Where is that in the contract? Where is that in some policy?’ And the answer was nowhere. So we just did it. It was a small thing, but it showed principals that we cared, that we understood this was very burdensome and we were trying to make their lives easier.... It had a concrete impact in encouraging principals to take action to document poor performance.”

When it comes to reforming American education, today’s would-be-reformers get it half right. They correctly argue that statutes, rules, regulations, and contracts make it hard for school and school-system leaders to drive improvement and, well, lead. They are wrong, however, to ignore a second truth: school officials have far more freedom to transform, reimagine, and invigorate teaching, learning, and schooling than is widely believed.

It’s true that prescriptive union contracts and procurement processes, rules and regulations like the federal “supplement not supplant” provision, state laws, board policies, and the like hinder school officials in all kinds of ways, making it difficult to repair a fence, hire talented staff, or schedule grade-level team meetings. But it has become increasingly clear that much of what administrators say they can’t do, think they



can’t do, or just don’t do is in fact entirely possible. Contracts, rules, regulations, statutes, and policies present real problems, but smart leaders can frequently find ways to bust them—with enough persistence, knowledge, or ingenuity.

The problem is not just the very real statutory, regulatory, and contractual barriers, but the “culture of can’t,” in which even surmountable impediments or ankle-high obstacles are treated as absolute prohibitions. This mind-set threatens to undermine the success of hard-won reforms and can make policy impediments appear more severe than they truly are.

“Culture of Can’t”

*School leaders have more power
than they think*

By FREDERICK M. HESS and
WHITNEY DOWNS



ILLUSTRATION / DAVID CUTLER

The Bogeymen of Leadership

We often hear from principals about all the things they'd like to do but that are impossible due to circumstances beyond their control. Perhaps the most commonly cited sources of frustration are, first, teachers' contracts and, second, state and federal policies that tie the principals' hands when it comes to teacher assignment, compensation, hiring, professional development, instructional time, and much else.

Yet a closer look raises some questions about these common complaints. For example, in a 2008 analysis of the

collective bargaining agreements (CBAs) of the 50 largest U.S. school districts, Coby Loup and I found that although one-third were highly restrictive, the majority included much room to maneuver. Lehigh University professor of education and law Perry Zirkel notes that the perception that it's nearly impossible to let go of low-performing, tenured teachers arises from "the substitute of lore for law. The lore is that it is difficult, if not impossible, to win a performance-based termination of a tenured teacher. The reality is quite different." In his study of court decisions

on teacher terminations for competency, Zirkel found that “defendant districts prevailed over plaintiff teachers by better than a 3-to-1 ratio.”

What of complaints about state and federal regulation? Columbia Teachers College professor Hank Levin recounts that when the California legislature allowed districts to apply for waivers if they could demonstrate that laws or rules were hampering school improvement, “Fewer than 100 [waivers] were made in the first year” in a state with more than 1,000 districts. More telling, notes Levin, “The vast majority of all requests for waivers were *unnecessary*” [emphasis added]. Nearly all the proposed measures were permissible under existing law. Either superintendents and boards mistakenly thought their hands were tied or, Levin added, they were using laws and regulations “as a scapegoat...to justify maintaining existing practices.”

Collective bargaining agreements and intrusive policies can present real headaches. But these are made far worse by the self-defeating mentality adopted by so many superintendents, school boards, and principals.

When Myth Becomes Mind-Set

Learned helplessness has become embedded in the field of educational leadership. Ariela Rozman, CEO of The New Teacher Project (TNTP), says she’s seen this often. “We went into [one troubled midwestern district] and expected to find that they had a really tough contract.” Instead, Rozman recalls, “We found a very, very limited, small contract that didn’t touch anything. And the reason they were doing a ton of forced placement was because that’s just the way the district operated. But the superintendent believed it was better to be out there lambasting the union rather than cleaning up his house internally.” Mitch Price, a legal analyst with the Center on Reinventing Public Education, noted in a 2009 study of teacher contracts that “a lot of these contractual issues are ‘smoke screens’ for those people who don’t want to do something.”

Even when school officials are given greater latitude, they often operate as though they’re still hemmed in. Take Indiana, where the legislature acted to limit the scope of collective bargaining in 2011. Despite the new law, dozens of districts left intact language that restricted flexibility, even though it was now in violation of state statute. Former Indiana superintendent of public instruction Tony Bennett says, “There were systems that put their contracts into compliance. Then there are those who went on with business as usual, just leaving the silly stuff in the contract. I think many of those see this as the path of least resistance. They don’t want to create an uncomfortable life for themselves in the communities in which they live.” Tennessee commissioner of education Kevin Huffman says he observed similar behavior when his

state reduced the scope of collective bargaining. “Honestly, districts don’t know what to do differently,” Huffman notes.

The Experts Agree

The “culture of can’t” is unchallenged, if not encouraged, by the authorities on education leadership, who dismiss talk of levers, contracts, and legal strategy. A look at the relevant professional publications for the period from January 2009 to September 2012 illustrates the point. Over that span, *Educational Administration Quarterly* featured just one mention of *general counsel* or *legal counsel*, and just four mentions of the word *attorney*—and none of those involved using attorneys to address legal questions. *Educational Management Administration & Leadership*, in total, included just one mention of the terms *attorney*, *general counsel*, or *legal counsel*. Meanwhile, *Improving Schools, Management in Education*, and the *Journal of Research on Leadership Education* made no mention of any of those terms.

Hundreds of education leadership programs and widely read tomes on education leadership not only treat contracts, regulations, and policies as unworthy of attention, but go so far as to denounce efforts to address these things as distractions.

Thelbert Drake and William Roe argue in *The Principalship*, for example, that “running a tight ship” is a “distortion of the goal of educating children.” On the question of what to do about ineffective teachers, Michael Fullan and Andy Hargreaves explain in *What’s Worth Fighting For in Your School?* that principals should “find something to value in all the school’s teachers. Even poor or mediocre teachers have good points that can present opportunities to give praise and raise self-esteem.... The worst thing to do is to write off apparently poor or mediocre teachers as dead wood, and seek easy administrative solutions in transfers or retirements.... Try doing the hard thing, the right thing, the ethical thing, and explore ways of bringing these teachers back instead.”

This is a profession in which close to 100 percent of administrators have been trained in educational leadership programs at schools of education and have learned that it’s wrong-headed to focus on managing operations or removing mediocre employees. Moreover, even the bulk of the new leadership programs embrace a notion of “instructional leadership” that single-mindedly focuses on pedagogy, coaching, and curriculum while remaining largely uninterested in the policy and legal context within which schools operate.

Combat Strategies

The lesson is decidedly *not* that reformers should retreat from their present efforts. Rather, it’s to recognize that policy can make schools and systems do things, but it can’t make them do things well. Happily, there are a number of steps that can help combat the pervasive “culture of can’t.”

Get Crafty about Contracts

The best leaders heed the advice of Los Angeles Unified superintendent John Deasy: “Most people see the contract as a steel box. It’s not. It’s a steel floor with no boundaries around it. You’ve just got to push and push and push.”

Adrian Manuel, principal of Kingston High School in Kingston, New York, explains that his first order of business is always to familiarize himself and his team with the contracts. “The very first thing I did was have the secretary make photocopies of every contract—teacher, support staff, clerical—for all the administrators,” says Manuel. “We have four assistant principals and one vice principal. At the first couple of meetings I gave them copies and said, ‘How many of you have read through these things?’ Some people had been there for nine or ten years and hadn’t read through it.” Manuel’s previous school rose in three years from the bottom 5 percent of New York City middle schools to the upper one-fifth.

Newark, New Jersey, superintendent Cami Anderson (see “Newark’s Superintendent Rolls Up Her Sleeves and Gets to Work,” *features*, Winter 2013) recalls that when she served as area superintendent for New York City’s alternative schools and programs, the district had two “conventional wisdoms” when it came to evaluating guidance counselors and social workers: “The first was you’d be violating student confidentiality if you observed guidance counselors or social workers interacting with kids one-on-one, and the second was, if you weren’t licensed as a clinical supervisor, you didn’t have the authority to evaluate or document performance for these people.” Anderson says she had to “debunk the urban myth” before being able to focus on staff performance. “I finally pulled the contract, asked our labor lawyers to take a look, and found out that the contract is relatively silent on how guidance counselors and social workers are evaluated. We had more latitude, not less, when it came to these individuals.” Anderson instituted a performance-based evaluation system for these staff, and says, “This piece was key when you’re working with kids in jail and kids who’ve dropped out. Outcomes like attendance and retention started going up.”

Lawyer Up

Perhaps the single greatest impediment is the dearth of talented attorneys helping school administrators find their way. Chris Barbic, founder of the Houston-based YES Prep Charter School network, led YES when it was named the best place to work in Houston, the only time a school or school system has been so honored. Yet when this culture-first leader took the helm of Tennessee’s new Achievement School District in 2011, he concluded that anyone’s first move in that role ought to be, “Get a great lawyer, understand the legislation, and understand what you can and cannot do right out of the gate.”

District officials need someone aggressive, wily, and intrepid if they’re to figure out what’s possible and what’s not. General counsels who work for districts aren’t necessarily equipped or inclined to play this role. Lawyers who work for districts tend to play defense, unless you instruct them otherwise. Dan Weisberg, now at TNTIP, explains: “Converting the mission of the legal team is vital. In a school district, you’re in a compliance culture...where people are very nervous about making any decisions without getting approval from a lawyer. But while many district lawyers see their job as being about risk avoidance, good lawyers are skilled at finding creative ways to help their clients reach their goals. All it takes is a difference in viewpoint. The goal is not to make sure there is no legal risk, which is impossible in a district undertaking serious reform. The



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goal is to increase student achievement. If you change the mission of the general counsel’s office [that way]...then you’ve got a sea change.”

An alternate approach for districts is to draw on local law firms or attorneys to provide pro bono support. The American Bar Association reports that nearly three-quarters of attorneys provide an average of 41 hours of free legal counsel each year. This means that in Michigan, where there are more than 32,000 active lawyers, it’s a safe bet they

perform more than 1 million pro bono hours every year; in New York, the figure is 5 million. Given that many law firms expect attorneys to devote time to pro bono work, even a small firm may offer up dozens of hours of free counsel. Districts should put their expertise to work, especially if they have experience in employment, regulatory, administrative, or contract law.

Another source of legal talent may be new law school graduates, especially those who've previously taught via Teach For America or participated in Education Pioneers. Recent grads will be inexperienced and untested, but they'll also be free of the defensive mind-set and are frequently willing to work long hours for relatively low pay. It's hard for districts to compete with the salaries being offered by private-sector firms. But according to *U.S. News & World Report*, each year more than 10 percent of graduates from the top 20 law schools (or more than 700 new lawyers) take jobs in the public sector that offer a median salary of \$52,000. They go to work in district attorneys' offices and at nonprofits because they're eager to gain hands-on experience and do important, socially meaningful work.

Engage Outside Partners

Finding outside talent and support to drive improvement is a crucial part of the job. Few schools or systems have the tools or the muscle to succeed by themselves. They need to seek out and cultivate allies and partners. National networks, the local business community, and philanthropy can all play invaluable roles.

When Lillian Lowery (now Maryland state superintendent of schools) took the helm of the Delaware Department of Education, she sought talent from all over the country: "I was a Broad Academy affiliate, and one of the first calls I made was to the Broad Foundation. They helped me select people who could help with the work and challenges here. [Delaware's] Rodel Foundation also knew people from all over the country, in nonprofit and

entrepreneurial environments." Washington, D.C., has created a competitive summer internship program that brings dozens of graduate students to the district, giving leaders a chance to check them out and creating a deep bench of talent.

In Nashville, the business community helped secure the district's top candidate for associate superintendent. "We brought Jay Steele in for a speech on his work with [small learning communities]," says Ralph Schulz, president of the Nashville Chamber of Commerce. "[Superintendent] Jesse Register stands up and says, 'I'm convinced of the idea, and that's our guy. How are we going to get him?'" One of the local CEOs in attendance offered to lend the use of his private plane. Schulz recalls, "So a delegation got in the plane a couple of weeks later, flew down [to Florida], and met with Steele. And he saw the commitment of the business community, and thought Nashville was the place to be." Nashville mayor Karl Dean notes the value of that kind of support. "You know how complicated it is for government workers to get plane tickets," Mayor Dean says. "Business can say, 'Let's get in the plane and go down there.'" When they so desire, business and philanthropy can move with an alacrity that public systems cannot match.

Don McAdams, founder of the Center for Reform of School Systems, says that philanthropy typically involves modest dollars but can have an outsized influence because of its agility and public impact. Since most districts spend 80 percent or more of all funds on salaries and benefits, they've little ability to repurpose funds. This is where philanthropy can provide crucial fuel. McAdams and Lynn Jenkins have written, "Philanthropic dollars are especially valuable because they can be invested in activities that have no political constituency but are high priorities for reform leaders." Philanthropy can also build local enthusiasm, inspire other funders, and garner national interest, attracting additional talent and support, and getting that flywheel spinning.



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Conclusion

Reformers are right to fight for policy change, and to offer moral and political support to bold education leaders. At the same time, they're wrong to imagine that changing policies regarding teacher evaluation, school turnarounds, or school choice will deliver as hoped, absent efforts to help school officials to think differently and then provide the support they need to tackle rules, regulations, and contracts in new ways.

Thus, reformers struggle to narrow the scope of collective bargaining, only to see administrators fumble the hard-won opportunities. They enact teacher evaluation and turnaround policies whose efficacy and impact rest entirely on the ability of officials to execute them competently and aggressively in the face of contracts, embedded routines, and recalcitrant cultures.

More than a few reformers appear to be pinning their hopes on the dream that hundreds of thousands of great school and district leaders can be recruited or trained. That seems an unlikely bet. Far more manageable, and plenty promising in their own right, would be efforts to enable today's competent but hemmed-in administrators

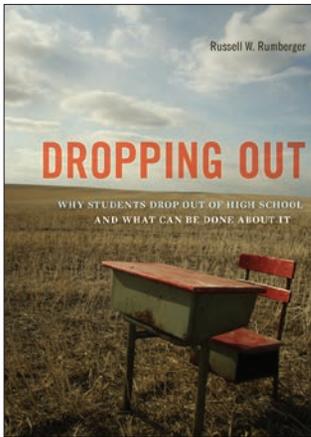
to start to see differently. To be sure, there are admirable organizations and programs, including New Leaders for New Schools, the Broad Academy, Education Pioneers, KIPP's Fisher Fellows, and Rice University's Education Entrepreneurship Program (REEP), that seek to develop in selected individuals the capabilities that are needed. But these organizations are the exception.

Of course, educational leadership is about instruction, and reformers need to overhaul problematic contracts and policies. But unless they also help district superintendents and principals change the "culture of can't," instructional leadership will continue to be compromised, and the reform agenda will inevitably be frustrated. Until and unless would-be reformers get serious on this count, they'll keep battling to change laws that don't need to be changed—or fighting for changes that will go unexploited.

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Harvard



Dropping Out

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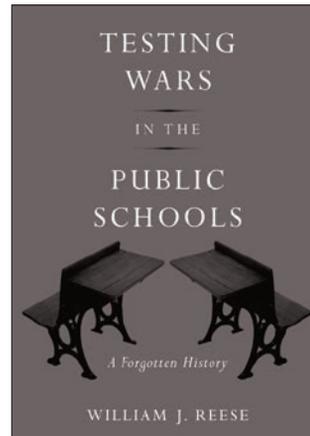
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