

School Law for Administrators

Headlines on School Law

Teacher shortage: A growing dilemma for districts

By Rob Taylor, PhD

A recent *Education Week* article announced that there is a "heated debate" nationally over whether K-12 teachers really are in short supply. Yet a separate *EdWeek* report puts an end to the debate pretty quickly: the number of public school teachers peaked in 2008 at 3.22 million and now, eight years later, there are 150,000 fewer teachers nationally.

Some would say the real problem is not the number of teachers but that the "supply," as one report puts it, is "uneven," meaning that teacher shortages impact districts and subject areas disparately, with rural and some low-income urban areas struggling to fill openings, and STEM subjects and special ed. crying for interested, well-trained teachers.

The rupture in the so-called "new teacher pipeline" can be demonstrated by federal data related to Indiana showing that the number of students enrolled in teacher-prep programs dropped from 15,115 in the state in 2009-2010 to 7,222 in 2013-2014. Moreover, in that same period program completions dropped from 4,339 to 3,510. Indiana experienced as well a drop of more than 30% in new-teacher licensures over the past six years.

The problems are pretty obvious: absurdly low levels of pay—a worsening situation since the recession that hit in 2008—combined with stingy health benefits and demoralization resulting from public criticism and a diminution of teacher autonomy coincident with the testing regime.

In a recent *Headlines* article, I focused in on one solution districts across the county have begun using: affordable housing for teachers. Major projects have been unveiled in San Francisco, Los Angeles, and Newark, with many others opened up in suburban and rural districts from Alaska to Colorado to North Carolina.

Aside from housing, educators and other public officials are becoming inventive on how to deal with teacher shortage. Back in Indiana, for example, on April 7 Republican Governor Mike Pence signed into law a measure costing \$10 million to create the Next Generation Hoosier Scholarship fund, hoping to motivate high-performing students to join the ranks of teachers.

"This bipartisan initiative encourages our best and brightest students to consider teaching in Indiana classrooms as a lifelong career," said Governor Pence. Starting in the fall of 2017 up to 200 college students can receive scholarships of \$7,500 a year for tuition (not to exceed \$30,000 total) if they agree to teach in Indiana for a minimum of five consecutive years after graduation.

Eligible students have to have graduated from high school in the top 20% of their class and score in the top 20th percentile on their ACT or SAT tests. They will also have to maintain at least a 3.0 college grade point average to keep the scholarship.

This Indiana initiative has resulted from a special commission—called the Blue Ribbon Teacher Commission—setup by the state Superintendent for Public Instruction Glenda Ritz last fall, an attempt to counter growing teacher shortages. The Blue Ribbon report, issued in January, called for more "professionally competitive salary scales for educators" along with a decoupling of standardized tests from teacher evaluations and a program to "offset the costs of teacher preparation" for students.

Not everywhere are there good feelings between educators, on the one hand, and legislators and other elected officials, on the other, even when the latter are trying to address teacher shortage. Take Oklahoma where in the 2015 school year at least 850 classes were cut because no one could be found to teach them. In that year the state board of education issued 840 emergency certifications to teach in subjects the teachers were not certified to teach.

This approach did not sit well with Oklahoma state superintendent, Joy Hofmeister, who pointed out that the starting pay of \$31,000 for teachers was the lowest in the region. El Reno schools superintendent Craig McVay said, "The single thing that will solve this crisis is for young people to know that when they have \$20,000 of student loan debt, they could make enough money to pay it off."

The dubious strategy of reducing certification requirements apparently did not win the approval of Oklahoma's 2016 Teacher of the Year, Shawn Sheehen, either, who has traveled extensively to districts in the state collecting teacher input to help guide the legislature. "Politicians all want to give teachers face time and shake our hands and tell us they think we're heroes . . .," she was quoted in an *EdWeek* piece. "Alright, that's cool. But what are you doing for teachers today?"

Conventional wisdom has it that bottom line solutions to teacher shortage most favored by Republicans include cutting back certification requirements and bringing in untrained young people from Teach for America. Democratic elected officials and teachers' unions lean toward increasing teacher pay, even if that means raising taxes, as well as revamping mistaken teacher evaluation approaches linked to increased testing. There are clearly no hard and fast rules, however. Oklahoma Governor

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Around the Nation ~ New Jersey

Parents sue claiming their children were exposed to high levels of lead in the school's drinking water

Governor Chris Christie, the city of New Jersey, the superintendent of the Newark school system, and the school district itself have been named as defendants in a lawsuit brought by Brown and Gwendolyn Booker and a number of other families. The couple claims that their children were exposed to dangerous levels of lead in the school's drinking water, and furthermore, that the school district was aware of this problem and instead of trying to fix it, they covered it up.

Ayemen Aboushi, the attorney for the plaintiffs' claims that the only place the children could have been exposed to the lead, was at school. He explains, "We've had the homes tested of the families that have joined this lawsuit and they've come back negative for lead so the only source of lead, as we understand it at this point, is directly from the schools." According to the lawsuit, the school district has been aware of this problem since 2011 but, "rather than do something meaningful, the defendants sought to cover it up, put ineffective filters in, didn't change them when they were required to, and then gave themselves and other administration officials access to bottled water leaving our children and our teachers to drink the tainted water in Newark schools."

Definitive proof that there was lead in the drinking water came in March. An investigative report showed that 30 schools in the

district tested positive for lead. At this time, the district and the city took some measures to correct the problem. They provided bottled water, state officials stepped in to retest facilities, and the city offered clinics to test the kids' blood lead levels.

To many though, this was too little, too late. The lawsuit asserts that district officials downplayed the long-term consequences of ingesting lead, and they did not make adequate plans to correct the problem. Aboushi explained, "People are thinking after listening to media reports of defendants that this is OK, so our kids drank some lead. There's no long-term effects. And that's just not true. And that's one of the reasons we're filing this class action. We want people to come forward and we want to hold the defendants accountable."

The prosecution is asking for class action status in this suit. Additionally, they are asking the court to order the defendants to remediate the harm caused by the lead exposure. As of yet, the school district said it has not seen the lawsuit, the city refused to comment on pending litigation, and the governor's office has not responded to questions about the lawsuit.

Source: *NJTV News*

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Mary Fallin, a Republican, has proposed raising cigarette sales taxes and eliminating some corporate tax breaks to raise \$178 million, which would then amount to a \$3,000 pay raise for each teacher. Another proposal, from the president of the University of Oklahoma, would ask voters to add a penny to the sales tax to provide teachers a \$5,000 a year raise.

STATES PUTTING ON THEIR THINKING CAPS

How to better recruit and retain teachers is the question. And across the states many possible answers are being explored, as outlined in an *EdWeek* series:

- In Hawaii, where 16% of schools are very rural, Island recruiters are traveling to the Mainland and offering \$6,000 in relocation bonuses to special education teachers to work in "hard-to-staff" schools;
- Alaska, too, has a difficult problem getting teachers into isolated, rural areas and so has spent as much as \$85,000 in a single year flying recruiters to the Lower 48. Signing bonuses are offered and now more than half of Alaskan teachers have been recruited from other states;
- Nevada lawmakers passed a bill to support \$5 million in scholarships to help students enroll in teacher prep programs;

- Illinois and Virginia provide tuition assistance to students who agree to teach in areas defined as "shortage areas";
- The South Carolina legislature opted for a student-loan-forgiveness strategy for students wanting to teach so long as they agreed to teach in "high-needs" districts;
- Colorado, addressing a Latino influx, is one of the many states that have begun recruiting bilingual teachers from international locales such as Mexico and South America;
- A common approach, though not popular with teachers' unions, is to offer salary bonuses to teachers in hard-to-staff fields such as special education, bilingual, science, and math.

Teachers themselves, responding to articles on teacher shortage, are not shy on the topics. One writes, "Shortages are due to teachers being the whipping post for all things wrong, and no one listens to them for ways to make things right . . . The other reason for shortages are decreasing pay, and regularly reduced health benefits under the guise of budget woes."

Another writes, "If anyone wants to close the floodgates, it begins with treating teachers with the dignity of a living wage."

—*School Law Bulletin*,
Vol. 43, No. 11, June 10, 2016, pp. 1-3.

Contract Dispute

Contractor sued by school district over new school building brings third-party complaint to court

Citation: *Unity School District v. Vaughn Associates, Inc.*, 2016 DNH 62, 2016 WL 1171012 (D.N.H. 2016)

A federal district court in New Hampshire has granted a town and school administrative unit's request to dismiss all claims against them brought by an architecture firm that claimed that they were responsible for delays and cost overages that caused the firm to back out of its contracts with a school district for the design and construction of a new school. The court found that the third-party complaint did not succeed in alleging conduct by the school administrative unit or town that improperly interfered with the contractual relations between the firm and the school district.

Scott Vaughn and his company Vaughn Associates (Vaughn, collectively), agreed to volunteer to design a new elementary school to help get the voters to approve a bond for the project. The voters approved the bond in August 2010, and the school district signed an architectural services contract with Vaughn to design the new school. Additionally, the district contracted with Vaughn to manage the project's construction.

The project encountered numerous problems and delays, however, and in January 2014, Vaughn resigned as construction manager and sent a notice terminating the contract for architectural services two months later. Vaughn cited "impracticability, frustration of good faith and fair dealing, and nonpayment" as reasons for ending the contract.

The school district filed suit in state court against Vaughn Associates, Inc. and Scott Vaughn, claiming negligence, breach of contract, negligent misrepresentation, and violations of the state's Consumer Protection Act. Vaughn removed the claims and filed a third-party complaint against School Administrative Union #6 (SAU #6), the Town of Unity, Excel Mechanical, Inc., and Superior Walls of the Hudson Valley.

SAU #6 and the Town of Unity asked the court to dismiss all Vaughn's claims against them for failure to assert a viable action, and the court agreed to dismiss the claims against them.

CLAIMS AGAINST SAU #6

Vaughn alleged two claims against SAU #6: one for statutory contribution, and one for common law indemnity. The two differ because "[I]ndemnity is distinguished from contribution because whereas indemnity shifts the entire burden of loss from one tortfeasor [wrongdoer] who has been compelled to pay it, to another whose act of negligence is the primary cause of the injured party's harm, contribution is partial payment made by each or any of jointly or severally liable tortfeasors who share a common liability to an injured party" (*Gray v. Leisure Life Indus.*).

Vaughn claimed that SAU #6 negligently prepared financial

and other design data that Vaughn relied on in preparing its budget; negligently failed to provide Vaughn with a geotechnical report in a timely manner, forcing Vaughn to revise its estimates; and employed a "poor and untimely payment process." These were what caused delays or obstacles to the building project, according to Vaughn. Vaughn claimed that if it is liable to the school district for recovery, then SAU #6 is responsible to Vaughn for the amount of its proportionate liability for causing these obstacles.

The court found that Vaughn failed to allege any "cognizable common law duties that proximately caused the injuries" for which the school district was seeking compensation. The court found that, "even charitable construed, the third-party complaint fails to state a viable basis for finding SAU #6 was a tortfeasor (i.e., breached a recognized common law duty) that proximately caused the damages for which Unity School District seeks compensation from Vaughn."

The court noted that, even if Vaughn had alleged a viable contribution claim, because the school district did not agree to this effort to make a claim against SAU #6, the claim could not be advanced.

Regarding common law indemnity, the court noted that under New Hampshire law, the right to indemnification was rarely implied (*Johnson v. Capital Offset Co.*). SAU #6 did not have a contract with Vaughn. However, Vaughn argued that SAU #6:

- should have known Vaughn would rely on its budget data to construct the new school;
- should have known or knew its data flawed;
- took no steps to ensure correct data or to fix the data; and
- should have known or knew that failure to process payments in a timely manner would cause delays.

The complaint failed to link any of the alleged wrongs by SAU #6 to the school district. The court noted, "While the Third-Party Complaint is confusing, this much is plain: it fails to allege facts sufficient to support the rarely recognized common law claim for implied indemnification against SAU #6."

CLAIMS AGAINST TOWN OF UNITY

Regarding a claim of intentional interference with contract against the town, the third-party complaint had to allege that: "1) Vaughn had an economic relationship with Unity School District; 2) the Town of Unity was aware of that relationship; 3) the Town of Unity intentionally and improperly interfered with that relationship; and 4) Vaughn was damaged by such interference" (*Hughes v. N.H. Div. of Aeronautics*).

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Around the Nation ~ New Jersey

Settlement reached over New Jersey's high school graduation requirements

Students in New Jersey are seeking protection from some of the graduation requirements announced by the state department of education in 2014 that have been making it extremely difficult for some students to graduate. Recently, the state of New Jersey reached a settlement agreement with the Education Law Center (ELC) and the American Civil Liberties Union of New Jersey (ACLU-NJ). This settlement agreement will not change current graduation requirements, but high school students graduating this spring will have more protections.

One of the stipulations of the settlement is that the state will allow districts to review last-resort portfolio appeals from seniors until September 1, and students still appealing can walk in their graduation ceremonies if they have met all graduation requirements except the one for standardized testing. Ed Barocas, ACLU-NJ's legal director said, "Through this settlement, we hope to remove some of the hurdles the department placed in front of students, as the window of time before graduation rapidly closes."

A number of students are struggling to meet the requirement set by the state department of education in 2014 requiring students to show proficiency using scores from one of a series of tests including the SAT, ACT, PSAT, and the controversial new state exams, the Partnership for Assessment of Readiness for College and Careers (PARCC) exams. The settlement agreement calls for some flexibility about which tests will be allowed in fulfilling this requirement.

An administrative law judge said that it is clear that the state did not follow the proper process in setting this requirement, but stated that the situation is difficult to remedy at this point. While this case is being discussed in court, some high school seniors across the state were still trying to meet the graduation requirement. Seniors who did not score high enough on PARCC, the SAT, or the ACT have been participating in extra testing, including a seldom used military competency test.

These students will get some protection from the settlement which obligates districts to notify any students who have not yet met the testing requirement within five days. Those students must be offered a chance to file a portfolio appeal, which involves answering open-ended questions to prove proficiency. The state will be required to track how many students are graduating through the appeals process or are still attempting to and the department of education must report that data to the ELC and ACLU, according to the terms of the settlement.

A spokesman from the Department of Education said, "We believe that the deliberative process set forth by the NJDOE and informed by stakeholders adequately ensures that all those students who have demonstrated successful completion of graduation requirements will be certified to graduate."

Source: *NJ.com*

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Contract Dispute ... (Continued from page 3)

Vaughn alleged that the town allowed its employees to use their positions to fight the new school building project's advancement. Vaughn claimed the town should have known the school project was vital to the success of the town, and yet through its agents and employees, it worked to delay or defeat it. The contractual relationship between the school district and Vaughn became frayed, as a result, and because of the conduct of the town, Vaughn claimed it had to terminate its contract. Vaughn also claimed it lost reputation and suffered damages and costs.

Some of the hindrances Vaughn cited were issues regarding fire safety or other "unjust" demands to modify the design of the school. However, the court noted Vaughn did not provide a causal connection between these acts and the school district. Vaughn had a contract with the school district, and yet when asked to modify design plans, Vaughn simply complied without going to the school district or refusing to do so. This approach

added to the delays.

The court found, "[T]o claim that the Town somehow unlawfully 'forced' Vaughn to unilaterally make design and construction changes is not plausible." Having agreed to make requested changes which caused delays and impediments to the project, "Vaughn cannot now seek to recover its losses from the Town on a theory of intentional interference with contractual relations." Therefore, the court found that the third-party complaint did not succeed in alleging conduct on the part of the Town which improperly interfered with the contractual relations.

The court therefore granted the requests by SAU #6 and the Town of Unity to dismiss the claims against them in the third-party complaint.

—*School Law Bulletin*,
Vol. 43, No. 14, July 25, 2016, pp. 5-6.