



United Federation of Teachers  
*A Union of Professionals*

# **Case Study in Partisanship**

## **A Critique of The New Teacher Project Report “Mutual Benefits: New York City’s Shift to Mutual Consent in Teacher Hiring”**

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A report by the United Federation of Teachers

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# **Case Study in Partisanship: A Critique of The New Teacher Project Report “Mutual Benefits: New York City’s Shift to Mutual Consent in Teacher Hiring”**

## **Getting Good Teachers in Every School**

Staffing all schools with talented educators is best accomplished by helping those who are in classrooms now be the best they can be, supporting them as they master the craft and become lifelong professionals. While that is obvious to most educators it is not obvious to a management organization like The New Teacher Project, which focuses almost exclusively on getting rid of teachers they deem to be weak and trying to recruit new ones.

Since 2001, The New Teacher Project (TNTP), a national non-profit that works in New York and other urban districts, has had contracts with the New York City Department of Education (DOE) to recruit and train its teachers. It has advocated greater management rights and fewer union protections, winning it a reputation as a partisan of the New York City schools chancellor.

So far, TNTP’s signature recruitment effort—that of alternatively-certified Teaching Fellows—has had mixed results. While it has brought an influx of promising new teachers, their attrition rates are higher even than traditionally certified new teachers, reaching 55 percent after four years, compared with 45 percent for traditional route teachers.<sup>1</sup> And they come at a higher price, as the city covers the cost of half of their Master’s degrees.

In addition, TNTP’s role in helping to place existing teachers has largely failed. More than 13,000 new teachers have been hired in the past two years while hundreds of experienced teachers remain without assignments.

## **TNTP Stakes a Position**

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<sup>1</sup> Boyd, Donald and Pamela Grossman, Hamilton Lankford, Susanna Loeb, James Wycoff, “How Changes in Entry Requirements Alter the Teacher Workforce and Affect Student Achievement,” American Education Finance Association, 2006, p. 207.

The New Teacher Project's newest report, "Mutual Benefits: New York City's Shift to Mutual Consent in Teacher Hiring," attempts to shift responsibility for that failure to the unassigned teachers themselves and to their union. It is a highly-biased position paper, not a research report. It devotes pages of praise to changes in teacher transfer and hiring practices negotiated by the New York City, the NYC DOE and the United Federation of Teachers (UFT) in their 2005 contract. But on page 14 the gloves come off.

"The current contract does not provide a realistic and financially sustainable solution for addressing the existing group of unplaced teachers or those who will be identified in future years," it asserts. Those unassigned teachers in the contractually-negotiated "Absent Teacher Reserve" (ATR) pool are a "financial burden," the report continues, and the costs will "continue to grow."

The excessed teachers the report is referring to are mostly teachers whose schools closed or downsized, leaving them without assignments, through no fault of their own. The 2005 contract provided that they be placed in a school in their district, and while awaiting placement serve at full salary, in an "Absent Teacher Reserve" (ATR) pool, as day-to-day replacements for absent teachers.

After describing teachers in the ATR pool as unmotivated, unable to adapt to new hiring systems, and "weaker job candidates," the report gets down to its position: "In summary, the present contractual rules are unsustainable..." and the city and the UFT should modify the terms to say that "unselected teachers with tenure should be able to remain in a reserve pool for up to one school year; for probationary teachers, we recommend three school months."

This recommendation is notably similar to a proposal that the DOE made in the last contract round. DOE wanted "those individuals [excessed from their positions] ...[to] apply for vacancies in their license area across the City; ... [and] be entitled to full salary and benefits until selected for a vacancy for up to eighteen months."<sup>2</sup>

To support its proposal, DOE called Michelle Rhee, founder and then chief executive of TNTP, as a witness in the 2005 fact-finding inquiry on the contract negotiations. Citing research her organization conducted that did not include a single teacher interview, Rhee testified that school districts were unable to hire highly qualified teachers largely because of "the collective bargaining provisions that govern the transfer and excess[ing] requirements." TNTP recommended, she said, an end to "the forcing of transfers and excess teachers onto schools who do not believe they will be a good fit for their educational programs"<sup>3</sup>

Ultimately, the arbitrators rejected this recommendation. "(T)he City/DOE has recommended that an excessed teacher who does not find a new position within 18 months of being excessed be terminated from the system. We specifically reject this proposal," the fact-finders wrote.<sup>4</sup>

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<sup>2</sup> UFT and City arbitration, City Exhibit 8

<sup>3</sup> UFT and City arbitration 6/24/05 vol. 3 p. 736. Rhee had accumulated about \$16 million in contracts with DOE by that time, mostly to run recruitment programs and the Teaching Fellows program. TNTP still has those contracts, though Rhee moved on to run the Washington D.C. school system this year, where she has made her mark pushing for "at will" hiring and firing of staff and an end to union protections.

<sup>4</sup> State of New York Public Employment Relations Board, in the matter of the impasse between UFT and City/DOE, "Findings of Fact and Report and Recommendations of the Fact Finding Panel." Sept. 12, 2005. p. 45.

This latest report is another bite at the apple. Though TNTP says funding for the latest report was “provided independently,” the organization is still a major vendor to the DOE, with millions of dollars in contracts<sup>5</sup>. TNTP stands to benefit if excessed teachers are fired because it has contracts to recruit and train new teachers. Meanwhile, the DOE is clearly trying to use the report, by an organization beholden to it, to reopen demands that it failed to win either at the bargaining table or from state-appointed arbitrators.

## **2005 Contractual Changes in Staffing Rules**

The 2005 UFT/DOE contract created an Open Market Transfer System, which was the culmination of several years of negotiated modifications to reduce restrictions on school transfers. The goal was to eliminate forced transfers. The school system didn't like the seniority transfer system, even with all its restrictions. And the union didn't like the lack of teacher mobility. No one liked the fact that new teachers could be bumped. A free-market system would give teachers increased transfer opportunities and principals greater choice about who teaches in their schools.

That goal was achieved. In the first two years of the program there were some 7,000 open-market transfers as opposed to 431 seniority transfers the previous year.

The UFT supported the change to a more open system. But it was with the proviso, agreed to by DOE in the contract, that excessed teachers who lost positions through school phase-outs and closings, reductions in enrollments or program changes would have job security.

Excessing and redeploying staff is never easy, in any industry. And it is especially delicate in an urban school system where struggling schools, which too often serve disadvantaged students, are the most likely to be closed. Excellent teachers will not come to those schools if there is a substantial risk they will lose their jobs entirely. That is one reason why the union, wanting to encourage experienced teachers to work in more challenging schools, believed it was necessary to provide them with job security in the event the school closed.

The contract terms were very specific: the DOE was to place into a new position in the same district any excessed teachers who were not reabsorbed into their schools or hired into the replacement school, providing both the teacher and the receiving principal agreed. This latter proviso maintained the choice aspect of the new transfer system. In the meantime, teachers would be assigned to the Absent Teacher Reserve pool in their schools, or in their districts if their home school closed, at their current salary, while they looked for new positions. This would give those schools a reliable source of experienced teachers to serve as substitutes or in other institutional capacities who were already familiar with the school and its students.

As became evident, the DOE did not uphold its end of this agreement, and TNTP used the DOE's mismanagement as an opportunity to try to get what the city sought from the start.

## **Closing Schools and “Excessing”**

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<sup>5</sup> Despite repeated requests, DOE has not supplied the exact current value of TNTP's DOE contracts.

The TNTP report, published April 29, 2008, came out after two years of aggressive school closings under DOE Chancellor Klein. Twelve schools closed in June 2007, and 35 more are phasing out and are slated to close in the next two years. All together, nearly 900 additional teachers plus hundreds of additional staff may be displaced.

The DOE, as employer, took no responsibility and has made no serious effort to place ATRs. In fact, the department hired and placed more than 13,000 new teachers without ever encouraging principals to interview ATRs or even sending one ATR on an interview at a school that was hiring.

The UFT negotiating team warned the DOE before the 2005 contract was signed that the new Open Market Transfer System would result in a growing pool of unassigned teachers, but the DOE said it was prepared to pay that price for the changes it wanted. The UFT raised concerns about the waste of money and talent, but the DOE did not seem worried at the time. However, growing pressure on the DOE to cut spending has made the presence of these teachers increasingly controversial.

### **The Hidden Injustices of “Fair” Student Funding**

Meanwhile, the UFT was growing more concerned about the potential effects on ATRs, and on all senior teachers, of the DOE’s new budget approach. On April 7, 2008, shortly before the TNTP report was released, the UFT filed a lawsuit against the DOE, claiming that its new school allocation formula, “Fair Student Funding,” (FSF) discriminated against older teachers.

The suit alleges that the FSF formula disadvantages older teachers who, because of greater seniority, earn higher salaries than newer, usually younger teachers. It alleges that older teachers have been unable to find new positions, at least in part because they are being denied the opportunity to obtain interviews through the Open Market system. As a result, the suit alleges, older teachers represent a disproportionate number of teachers assigned to the ATR pool.

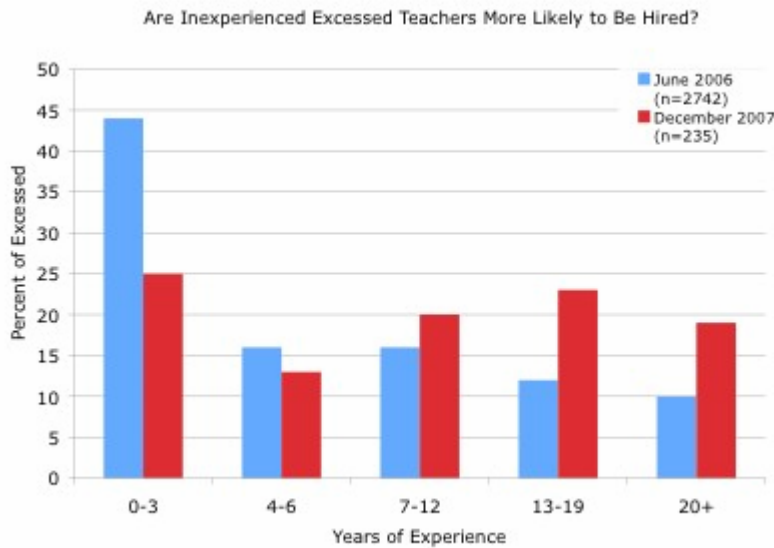
FSF has the effect of discouraging the hiring of senior teachers because the new system only temporarily immunizes school budgets against differences in teacher salaries. Before FSF, the school system provided the funds for actual teacher salaries in a school. Now the school system provides only average teacher salaries. “Principals must now consider a teacher’s salary when making hiring decisions, not simply, as in the past, the teacher’s qualifications for the position,” the lawsuit maintains.

So it is now to a principal’s financial advantage to hire younger and less experienced teachers who earn less than the systemwide average because he can use the leftover salary money for other purposes. As a result, the suit found 81 percent of the ATRs in the spring of 2008 were 40 years old or older, compared with 57 percent of all UFT-represented educators.

The TNTP report actually confirms this imbalance, though it fails to draw the evident conclusion. Table 1 (page 15) of the report shows 2,742 newly excessed teachers as of June 2006. Of that number, 44 percent had 0-3 years’ seniority while 22 percent had 13 or more years. The next year, 235 of those teachers still remained in

excess (Table 2), but the percents were quite different. Just 25 percent had 0-3 years experience while 42 percent had 13 or more years (Figure 8, page 21) – a reversal of the previous proportions. Thus, the less experienced teachers were hired at a much higher rate than the more senior teachers.

The chart below is reproduced from the Education Week blog “Eduwonkette” for May 2008, “Why You Should Read the Fine Print in the New Teacher Project Report.”<sup>6</sup> It puts data on excessed teachers’ experience and hiring together to show that teachers with fewer years experience were more likely to be excessed but also much more likely to be placed.



“Wisely,” the blogger writes below this graph, TNTP “never put these two sets of numbers in a figure together.”

### Understanding the costs

The TNTP report claimed -- without any supporting calculations--that the ATR pool cost the city \$81 million over the last two years while educators were being paid to sit idle. The implication was that UFT was protecting incompetent teachers.

But this was a manufactured crisis on the DOE’s part, and the \$81-million figure quickly declines to less than \$19 million a year when the effect on the DOE budget, their replacement cost, is correctly calculated.

First, when the UFT conducted a comprehensive field survey of ATRs in their schools, it found that nearly 200 of them were actually in full-time positions, filling in for teachers on leave or filling vacancies—in other words, teaching regularly scheduled classes and providing regular services to students, just as they had done before they became ATRs.

Second, the marginal added cost to DOE is actually the cost of the new teachers who are hired to fill vacancies that should have been filled by ATRs, not the cost of the higher-paid ATRs. That is about \$30.5 million.

<sup>6</sup> <http://blogs.edweek.org/edweek/eduwonkette/2008/05/>

Finally, the remaining ATRs significantly reduce the amount DOE must spend for substitute teachers, a factor TNTP ignored in its analysis. The savings to the DOE is some \$11.8 million, resulting in a final cost to DOE of just \$18.7 million.

The additional budget cost for the ATRs is as follows:

<b>Number of ATRs</b>		<b>665</b>
Less ATRs Serving in Long-Term Absence Positions or Vacancies		194
ATRs Subbing		471
Positions filled by Newly Hired Teachers		471
Cost for Entry Level Teacher With Benefits		\$64,690
<b>Cost for Unnecessary New Hires</b>		<b>\$30,468,990</b>
Occasional Sub Savings From ATR:		
ATRs Subbing		471
Estimated Sub Days Per ATR		150
Daily Sub Cost With Benefits		\$167
<b>Total Savings in Occasional subs</b>		<b>\$11,769,778</b>
<b>Payroll for Unnecessary New Hires</b>		<b>\$30,468,990</b>
<b>Total Savings in Occasional subs</b>		<b>\$11,769,778</b>
<b>Annual Cost to DOE</b>		<b>\$18,699,212</b>

Source: UFT analysis

Thus a careful look at the costs of the ATR pool, even swollen with the large number of school closings and the negative impact of Fair Student Funding on the hire-ability of senior teachers, is an annual \$18.7 million (one-tenth of one percent of the DOE’s total budget), not the two-year \$81 million TNTP claims.

If the DOE made a more aggressive effort to place ATRs, the cost would be far less. Even presuming some teachers will be difficult to place—for example, those 50 remaining ATRs that TNTP identified (page 24) as having received an unsatisfactory “U” ratings at some point in their careers—the worst-case cost to DOE of the ATR pool would come to \$3.2 million a year (50 X \$64,690), and probably less once the causes of the “U”s were reviewed. These are costs of churning the teacher workforce that the DOE was once happy to accept.

In fact, since by TNTP’s own admission there are many more vacancies in the system than there are ATRs, any cost to DOE is really the cost of its own failure to place these certified, experienced and fully qualified teachers. DOE allowed vacancies in shortage areas like math, science and special education to continue all year when appropriately licensed teachers were not even being interviewed.

## The Reliability of TNTP Research

TNTP charged that remaining ATRs looked less hard for new positions than their colleagues. But the evidence it presents is that excessed teachers who were not hired did not use the online Open Market Transfer System or did not attend job fairs to apply for vacancies. This is not evidence. Many teachers sent their resumes directly to principals—there is no contractual mandate to use this computer system. And ATRs report they were not invited to job fairs, were turned away when they did show up, or were segregated from new teacher candidates like the Teaching Fellows program graduates.

In follow-up interviews with ATRs, UFT leadership learned many of these teachers sent out dozens of resumes and applied for multiple openings. TNTP charges that unplaced ATRs were “weaker candidates” and describes its evidence as “intuitive.” Intuition is not evidence either, and in fact there is no evidence in the report, no commentary from principals, nothing to say why certain ATRs remained unselected.

TNTP charged that of the ATRs remaining in the pool from 2006, six percent had received a “U” rating, “double the rate of the entire New York City teacher population” (page 19). Further, they find that of the unselected as of September 2007, 19 percent had received a “U,” “*over six times the rate of the entire NYC teacher population*” (italics in original).

There is no indication of why the rating was given, how long ago it was given, or if it was a one-time occurrence. For example, it is not unusual for a teacher receiving chemotherapy or caring for an ill family member to receive a U rating one year for excessive absence, but her absences stop when the situation is resolved.

But let’s step back. If 19 percent received “U” ratings at some time, then 81 percent of teachers in the 2006 ATR pool never received such a rating. What’s more, though it’s hard to follow their exact calculations, the 19 percent of the unselected group of ATRs comes to 50 teachers, if that. Percentages of small numbers are small numbers, but numbers are not provided in this section of the report. TNTP’s deliberate maligning of the ATRs becomes more and more unsettling as its report proceeds.

In counting ATRs, TNTP’s report was inexplicably inconsistent. It included some teachers in alternative high schools (District 79) while excluding others, and failed to determine how many of the 665 ATRs it followed were teaching full programs or serving as regular teachers.

In subsequent blogs, for example, TNTP claimed it excluded all District 79 teachers, but in reviewing DOE databases of ATRs, and TNTP’s explanations of its methodology, it appears that TNTP excluded some District 79 ATRs, those from closing District 79 schools assigned to other District 79 schools. It did not exclude District 79 ATRs assigned outside the district. Generalizations on such a haphazardly constructed database are suspect.

## Who are the ATRs?

There are 194 educators in the ATR pool who are currently filling full-time positions, thus disproving the claim that the ATRs are undesirable employees. They include:

\* John Murray, a 30-year veteran who until this past September worked with the neediest students in New York City public schools, those in the Alternative High Schools. In an ill-considered move late last June, the Department of Education closed most of these schools and programs, which serve pregnant teens, students involved with the legal system, students in drug and alcohol rehabilitation programs and students in GED programs. Murray was assigned in September to Stuyvesant High School as an ATR. With a Ph.D. in English and a background in Art History, Murray is now teaching a full program in Art History at Stuyvesant.

\* Tom Nixon, who teaches Regents classes, serves as a dean and tutors on Saturdays at Tilden High School in Brooklyn, a school the DOE first slated for closure last year;

\* Milena Sherry, excelled from a Staten Island middle school when the school cut some of its social studies classes. She is a six-year veteran in excellent standing, was a winning academic contest coach and headed the Africare fundraiser at her school. Her principal described her as "...driven by devotion and a sense of caring...and the desire to provide our children with an education which is more than simply 'academics'." Sherry applied to vacancies in the open market transfer system and sent out a dozen resumes but was not placed. In one phone interview, a principal told her that despite her "impressive" resume, she cost too much. As an ATR, she taught full-time social studies for most of the year, covering a temporary vacancy.

\* Len Berman, an appointed teacher since 1978, excelled in the District 79 reorganization. He had taught in the Offsite Educational Services program which served at risk students, a job that requires teaching math and reading across content areas to prepare students who have dropped out to take the GED exam. Although he is particularly skilled at this, he was passed over for a full time position in the new GED Plus program. Berman started a GED program two years ago, where his students have progressed remarkably and attendance is high. He was returned to that program as a substitute when District 79 didn't fill all the vacancies created by the reorganization. He just learned that one of his students, as the top-scorer on the GED exam, will be the valedictorian at the first GED Plus graduation ceremony.

He typifies the dedication of the other 42 ATRs who were placed into this program as substitutes after years of service. "I love what I do and I love my kids," he writes. "For too many of them, I'm all they have and I take that responsibility seriously. I'm still very angry about how I was treated, but I close the door and I do what I do best: I teach."

Many other ATRs work as substitute teachers in their schools, where they are more valuable than the usual revolving per-diem subs because they know the school and can carry on the work of the absent teacher almost seamlessly. They also allow regular teachers time to meet, administer individual student assessments, or perform other required duties that take them away from the classroom. They cover for long-term leaves such as teachers out on maternity leave; they oversee "SAVE" rooms for disruptive children who must be removed from their classrooms but who by law must be placed with a licensed teacher; and they provide needed flexibility to administrators and staff. In fact, ATRs are often so useful in schools that one Bronx principal actually posted a vacancy for a permanent ATR!

ATRs then are hardly idle and very often working full time. The question is why they are still in the ATR pool. The answer to that question reveals the unintended consequences and perverse incentives that surround the ATR pool.

## **Unintended consequences/perverse incentives**

Because much of the ATR pool is the direct result of closing schools, and because closing schools are almost always schools that serve mainly poor, minority and/or low-performing students, the most serious unintended consequences of threatening ATRs with the loss of their jobs is to discourage teachers from taking jobs teaching in those schools in the first place. Why go to struggling school if it might close and you would be out of work and unpaid?

As previously discussed, the very real consequence of the DOE's FSF budget process, whether unintended or not, is discrimination against senior teachers. Under FSF, for the first time principals have a strong financial incentive to hire inexperienced and younger teachers. "I can't afford to hire a senior teacher;" they say. "Why hire one senior teacher when I could get two novices for that price?"

So if a teacher in the ATR pool is more senior—a quality that before this year would have made her a more attractive prospect—she is less likely to be hired now, especially as the schools are facing large budget cuts. Remove that FSF "incentive" and the system would more readily re-absorb ATRs.

Finally, the salaries of most teachers in the ATR pool are covered centrally. That means if the principal does not hire an excessed teacher on a permanent basis, s/he can use that teacher to fill a vacancy without paying the salary from the school's budget. Were the principal to place the ATR in a permanent position that teacher's salary would be charged to the school. In other words, principals again have a financial incentive not to hire ATRs for regular, full-time positions.

## **Excessed Teachers and the "Big Picture"**

How do we ensure an excellent teaching force for our students? Research shows the most effective strategy is to train, support and retain the talent you have.

Starting in 2000, the Chattanooga, Tennessee school district, its teachers union and community leaders, in an effort to improve the district's lowest-performing schools, rejected a plan to replace many of the teachers in those schools, and instead offered a capacity-building program for the existing teachers. By 2007 those nine schools, with mostly their original teachers, had made greater progress than 90 percent of schools in the state, and now serve as models for the more affluent schools.<sup>7</sup>

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<sup>7</sup> Silva, Elena, "The Benwood Plan: A Lesson in Comprehensive Teacher Reform," Education Sector, April 2008

At the same time, threats to fire teachers in excess can engender extreme ill-will. In response to a call from the New York City Teaching Fellows Program, run by The New Teacher Project, for schools to participate as field training sites for Fellows this summer, one principal responded:

“I will have no further dealings with this program... Your organization [TNTP] has a vested interest in running veteran, certified teachers EVEN THOSE WITH SATISFACTORY RATINGS, out of a job. Many of these people cannot find new jobs because of the new school funding scheme. The New Teacher Project gets paid to recruit and train their replacements... I cannot and will not be involved with this. We have low turnover anyway and do not wish your assistance in staffing our school.”

Good teaching requires management’s support and commitment to its staff. That is utterly lacking in the TNTP’s attitude toward the ATRs and is one more reason that the union rejects its report and recommendations.

## **UFT Recommendations**

To strengthen schools, to enable students to benefit from the skills of experienced teachers, to reverse these negative incentives, and to keep our commitment to educators, the UFT recommends:

1. The DOE should take a more pro-active role in placing ATRs, as the contract requires, by sending ATRs for the first interviews for open positions, before other candidates—new hires or transfers—are considered. Successfully placing more ATRs would avoid the unnecessary costs of hiring and mentoring more new teachers and maintaining a large ATR pool when the talent already exists in the system to staff vacancies.
2. Make teacher hiring selections financially neutral. The FSF budget replaced a longstanding system in which schools were fully funded for their teachers. Schools considered only an educator’s qualifications and “fit” for a position at the school, with no incentive to hire the cheapest candidate. Such a neutral system is fairer all around.
3. As an incentive, DOE could, for a specified period of time, cover the cost of ATRs who are permanently hired in a school.
4. Implement the contract provision that permits the union and DOE to negotiate a buyout to any remaining excess teachers. Any additional cost would be offset by savings for the school administration.
5. Let the experience and expertise of ATRs be known to principals rather than maligning them, thus encouraging their hiring.
6. Offer a coaching and skills training program to ATRs who wish to enhance their marketability.