

New York State Education Department
Commissioner of Education

In the Matter of

The request for resolution filed pursuant to
section 100.19(g)(5)(iii)(d) of the
Commissioner's regulations.

BUFFALO PUBLIC SCHOOLS
-submitting party

AFFIDAVIT

-AND-

BUFFALO TEACHERS FEDERATION, INC.
-responding party

STATE OF NEW YORK)
)
COUNTY OF ALBANY)

ROBERT T. REILLY, being duly sworn, deposes and states:

1. I am of counsel to Richard E. Casagrande, Esq, the attorney for the Buffalo Teachers Federation in this matter.

2. I submit this affidavit in response to the request for resolution filed with the Commissioner of Education by the Buffalo Public Schools ("district") on October 28, 2015.

3. Accompanying this affidavit is a memorandum of law and declarations in the form of a letter from Phil Rumore, the President of the Buffalo Teachers Federation all dated October 30, 2015. Those declarations, the memorandum of law and this affidavit comprise the responding party's responding papers filed in opposition to the submitting party's request for resolution filed pursuant to section 100.19(g)(5)(iii)(d) of the commissioner's regulations.

4. The district's request for resolution should be denied. The district's request for resolution fails to comply with the applicable regulations.

5. Should the Commissioner, nonetheless, consider the request for resolution, the resolution should be to direct the district to accept the proposals made by the BTF.

THE DISTRICT'S REQUEST FOR RESOLUTION IS NOT IN
PROPER FORM/NOT IN COMPLIANCE WITH THE REGULATIONS

16. As is more fully set forth in the accompanying memorandum of law, the district's request for resolution should be rejected because it does not comply with the regulations.

17. For example, the district's submission does not provide sufficient rationales for the district's proposals.

18. In addition, the district has not bargained in good faith.

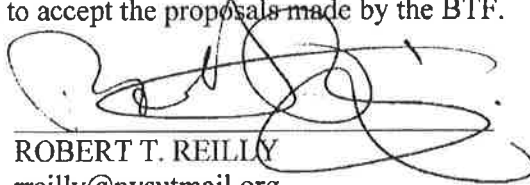
THE UNDERLYING COLLECTIVE BARGAINING AGREEMENT
REMAINS IN PLACE

19. The parties' collective bargaining agreement addresses many of the issues upon which the district seeks to negotiate. (For example, a copy of Article XIV of the parties' collective bargaining agreement governing transfers is attached to this affidavit as Exhibit "A").

20. The terms and conditions expressed in and associated with that collective bargaining agreement generally are protected by the Constitution as well as by New York law, remain in effect, and cannot be constitutionally impaired even by the Legislature.


CONCLUSION

21. Should the Commissioner consider the district's request for resolution, the resolution should be direction to the district to accept the proposals made by the BTF.



ROBERT T. REILLY
rreilly@nysutmail.org

Sworn to before me this
30th day of October, 2015


Notary Public

122486

LEANNE GREERAN
Notary Public, State of New York
No. 01GR6057121
Qualified in Saratoga County
Commission Expires April 9, 2019

EXHIBIT "A"

ARTICLE XIV
Teacher Transfers

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A. A teacher may request transfer to another school by submitting a written request directly to the Associate Superintendent for Instructional Services. In evaluating such request, it will be necessary to consider:

- (1) That a balanced staff be maintained at each school;
 - (2) That the probationary teachers be expected to complete the probationary period in the school originally assigned, except where conditions seem to indicate that a transfer is desirable;
 - (3) That the wishes of the individual teacher be honored whenever possible.
- B. A teacher may apply for transfer to become effective at the beginning of the next school year giving reasons therefor. Such application shall be made by March 23. If so desired, such request will be held in confidence and the principal of the teacher making such application will not be notified of the request.

C. In unusual circumstances, a teacher may apply for transfer to become effective during the school year in which the application is made, giving reasons therefor. If the teacher desires, such request and the reasons therefor shall be kept confidential.

D. Requests for transfer based on hardship will be evaluated and acted upon in accordance with the merits of each case, and shall be exempt from any restrictions contained in this Article.

E. If the request for transfer is approved, the teacher's name shall be placed on a transfer list, which shall be kept confidential, and the teacher shall be advised by direct mail. In such cases, every reasonable effort shall be made to transfer the teacher as soon as possible in accordance with the teacher's wishes. In selecting teachers to be transferred, the following shall be considered in implementing the provisions of Paragraph A above:

- (1) Length of teaching experience in the school system. This factor shall be controlling where all other factors are substantially equal.
 - (2) Date of request for transfer.
- F. If a teacher desires to know what vacancies exist or are known to be forthcoming, the teacher shall upon request be given such information by calling the appropriate Department Head.

G. It is desirable that transfers and changes in assignments be on a voluntary basis whenever possible. In making involuntary transfers and/or changes in assignments, the preference of the individual teachers shall be honored whenever feasible. When a transfer results from a school closing, teachers from the closed school will have: first, preference in order of their seniority to openings in their license area at the school being attended by students previously assigned to the closed school, and second, preference in order of their seniority for openings in their license area in other schools over teachers requesting voluntary transfers and teachers returning from leaves. When a transfer results from a reduction-in-force at a school which remains open, after canvassing for volunteers, teachers will be transferred involuntarily in order of least seniority and shall have preference in order of their seniority for openings in their license area in other schools over teachers requesting voluntary transfers and teachers returning from leaves. Except for transfers and/or changes in assignments to take effect in the first six weeks of school, notice of involuntary transfers and/or changes in assignments and the reasons therefor shall be given

1 to the affected teacher as far in advance as practicable which
2 shall be at least fifteen (15) days prior to the effective date of
3 the transfer and/or change in assignment. With respect to in-
4 voluntary transfers which take effect during the school year
5 after the first two weeks of school, the teacher shall be allowed
6 up to two days in which to make the move to the new building
7 and to become acquainted with the new position.

8 If a position in a school is reinstated within six weeks after it
9 was abolished the teacher involuntarily transferred from that
10 position shall have priority to fill it.

11 **Contract and Probationary teachers who are involuntarily**
12 **transferred as a result of a reduction-in-force which**
13 **occurs after the first day of school and who are not re-**
14 **turned to their school that year shall receive preference**
15 **for the following school year's assignment by including**
16 **them with those teachers who are being transferred as a**
17 **result of a reduction-in-force at the end of the school year**
18 **provided the teacher requests a transfer as per Article XIV**
19 **A. & B.**

20 Except in cases of school closings as set forth above, a
21 Federation delegate, alternate, building committee
22 member or executive committee member shall not be
23 involuntarily transferred unless there is a reduction-
24 in-force at such teacher's school. In case of a reduction-
25 in-force, the building committee members and up to two
26 additional delegates (the two with the most seniority in District
27 service) in office at the time the transfer is to take effect shall
28 be the last persons considered for an involuntary transfer
29 regardless of their seniority.

30 **H. Staffing New Schools** — New schools will be provided
31 with an experienced cadre drawn from the personnel within
32 the school system.

33 (1) Proper notice will be given to all professional staff
34 members listing all available openings and necessary
35 qualifications.

36 (2) Teachers previously indicating a desire for transfer from
37 their present assignment and who are on the transfer list
38 shall be given due consideration for assignment to the
39 new buildings.

40 (3) Teachers considered for transfer to new schools will be
41 contacted personally by a member of the Division of
42 Instructional Services and given an opportunity to dis-
43 cuss the grade level and subject area of the new
44 assignment.
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(4) No applications for transfer to such schools shall be
accepted until the principal has been named.
I. The Building Committee shall have the right, upon
the request of any teacher, to consult with the principal con-
cerning any aspect of teacher assignment to duty.

J. A teacher may withdraw an application for transfer or
change in assignment and may refuse an offer of transfer or
change in assignment within four (4) business days without
prejudice to consideration for future transfer or change.

K. If an assignment or transfer is given a teacher, the teacher
shall have the right, upon request, to discuss such transfer or
assignment before it becomes final directly with the immediate
Director or Supervisor. If requested, the Associate Superinten-
dent for Instructional Services shall attend such discussion.

L. If requested by the teacher, a representative of the
Federation may be present at all meetings between teachers
and members of the administration relative to transfers.

M. The BTF and the District strongly encourage, though
do not mandate, that teachers notify the Board of Educa-
tion in writing, on or before May 31, of their intention to
retire before September 1 of the same year.

ARTICLE XV Teacher Promotions

A. Whenever any vacancy shall occur in any promotional
position in the Buffalo Public Schools for which there is not a
promotional list, the Board shall publicize the same by giving
written notice of such vacancy to the Federation and by pro-
viding for appropriate posting in the Personnel Office and on
Teacher Bulletin Boards in each school. This notice shall clearly
set forth a description of the qualifications for the position,
including duties, salary, and the procedure for interview, and
otherwise assessing the merits of applicants. No vacancy shall
be filled except on a temporary basis until such vacancy shall
have been posted for at least ten (10) school days prior to the
last day on which applications will be accepted. A "promotional
position" is defined as any position providing a salary differ-
ential (except for teachers working pursuant to Article VIII B(2))
or any position on the administrative and supervisory level.
The provisions of this paragraph shall not apply to the posi-
tions of Superintendent, Associate Superintendent and
Assistant Superintendent and to those situations in which
positions are upgraded and the former position abolished.