



President PHILIP RUMORE

October 30, 2015

*Sent Via Email (legal@nysed.gov) and US Mail*

MaryEllen Elia, Commissioner, New York State Education Department  
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State Education Building, Room 148  
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Dear Commissioner Elia;

The Buffalo Teachers Federation (BTF) submits these declarations, along with an accompanying memorandum of law and affidavit as its responding papers, responding to the District's "Request for Resolution" dated October 28, 2015. As is more fully set forth in the accompanying memorandum of law and affidavit, the District's request for resolution should be denied because it is incomplete and does not comply with the applicable regulations. Accordingly, the Commissioner should deny the request for resolution. Should, however, the Commissioner consider the request for resolution, the resolution should be to direct the District to accept the BTF's proposals.

Please consider the following declarations in support of the BTF's response:

- A. The Superintendent's October 28, 2015 Request for Resolution (**Appendix A**) is misleading.
  1. In the Request for Resolution, the Superintendent states; "an extension of time has not been agreed to by the parties" and "the parties were unable to reach agreement on these issues within the timelines established by law."  
*Response:* It is the Superintendent/District that has not agreed to an extension of time, not the BTF. The BTF requested an extension to allow the parties to complete negotiations and reach agreement (**Appendix B**).
  2. The Commissioner's regulations explicitly allow for an extension beyond the thirty (30) days (100.19 (5) iii (b)).
  3. Negotiations were proceeding and making progress.
    - a. The changes from the Superintendent/District initial proposal (**Appendix C**) and their most recent proposal (**Appendix D**) reflect some of the progress made.

- b. On October 14, 2015, in order to clarify District proposals and facilitate negotiations, the BTF submitted written requests for information (**Appendix E**)
  - c. On October 22, 2015, the BTF sought further clarification to Darren Brown's response to our October 14, 2015 request for clarification of District proposals (**Appendix F, G**)
  - d. On October 19, 2015, the BTF submitted proposals relating to District proposals 4, 6 & 8 (**Appendix H**).
  - e. On October 22, 2015, the BTF submitted a proposal relating to District proposal 10 (**Appendix I**).
  - f. On October 22, 2015, the BTF addressed all of the District's proposals (**Appendix J**)
  - g. On October 23, 2015, the BTF provided the Superintendent/District with its proposals for inclusion in a Receivership agreement. Said proposals would increase student success and achievement (**Appendix K**). The BTF received no response.
- B. The Superintendent/District has not complied with (100.19 (5) d (2) ii). The Superintendent/District has not provided an explanation of the rationale for the proposed contract language. Instead, the following is stated (**Appendix A**):
- Bullet 1 - "In order to ensure that each after school, recreational or part time vacancy at the persistently struggling schools are filled with the most qualified teacher,"
  - Bullet 2 - "In order to ensure that each teaching vacancy at the persistently struggling schools is filled with the most qualified teacher,"
  - Bullet 3 - "In order to ensure that effective and highly effective teachers at the persistently struggling schools continue to teach at those schools,"
  - Bullet 4 - "In order to ensure that that the administration at the persistently struggling schools have ample opportunity to communicate with the faculty as a whole,"
  - Bullet 5 - "In an effort to ensure that the persistently struggling schools are staffed with the most qualified teachers to meet the needs of the students in those buildings,"
  - Bullet 6 - "In an effort to increase student exposure to enriched curriculum, provide additional opportunities to increase student achievement, and to increase targeted professional development opportunities for each teacher,"
  - Bullet 7 - "In an effort to ensure that the starting and ending times of the school day are at times that contribute to increased student achievement,"
  - Bullet 8 - "In an effort to ensure that the teachers at the persistently struggling schools are using all of the technological tools available that will contribute to student achievement,"
  - Bullet 9 - "In order to ensure that teachers and administrators have maximum flexibility for common planning time,"
  - Bullet 10 - "In an effort to ensure that teachers attend and receive appropriate professional development,"
- C. The Superintendent/District has not described "how adoption of the proposed language would be consistent with collective bargaining principals, such as any applicable factors set forth in Civil Service Law section 209 (4) (c) (v)". (100.19 5 iii (d) 2 ii)
- D. The Superintendent/District has not provided all the information requested in the BTF correspondence dated September 1, 2015 (**Appendix L**). For example, the District has not provided the BTF with the full and complete copy of the plans submitted to the State. It is these plans that the law requires to drive the request to modify the contract. This information is critical to understand what the Receiver intends to do. It is difficult to have open and complete negotiations without full information. (Thus, the reason the Taylor Law requires the sharing of information.)

- E. The District proposals are unmanageable and will not improve student learning and achievement but may well undermine them (**Appendix D**). Numbers below refer to the District's numbers.
1.
    - a. Currently, the CBA gives preference to the teachers at the school for whose students the programs are designed to ensure continuity of instruction, familiarity with the school programs, and knowledge of the needs of the students at that school. If there are insufficient applicants, the positions are available district wide.
    - b. This matter addresses the staffing of after school, summer and extracurricular assignments. This instruction would not be scheduled and assigned until after the school is staffed through the approved hiring process. There is no reason to go through this arduous process for those teachers who are assigned to the school to then "re-qualify" them for additional assignments. As it stands, through contract and practice, this type of work is assigned to teachers with experience in the tenure area, based upon their years of experience.
    - c. There is no maximum number, or specific qualifications for the committee members, e.g. you could have fifteen (15) Receiver members but only one (1) teacher member.
    - d. Principals already have the right to interview candidates. What teacher would go to a school where the principal has indicated they are not wanted.
    - e. There is no recourse for teachers who believe they have been treated unfairly or denied a position based upon favoritism rather than objective criteria.
    - f. The district has a history of providing applicants (internal and external) with very short notice for holding interviews and often fails to clearly articulate the criteria that will result in being selected. Additionally, inconsistent or changing committee members add additional subjectivity to the process.
  2. See 1, c, d, e and f above.
  3. Why would the District want to force a teacher to stay at a school from which they seek a transfer? Keeping an employee in a situation against their wishes undermines teacher morale and the sense of being treated fairly - factors that are critical to a positive teaching and learning environment. In addition, it ignores that a teacher's family commitments or obligations may cause hardship if forced to remain in their current assignment, e.g. early start school vs. late start school.
  4.
    - a. There are already ten (10) one hour faculty meetings per year with five (5) available for teacher professional development.
    - b. If the school day is increased by a significant amount, after an additional hour, some teachers may not arrive at home until after 6 p.m.
    - c. The District hourly rate of pay is not the proportionate increase in salary that is required.
  5. The BTF has made a proposal on this to address concerns (**Appendix H**).
    - a. Transferring a teacher "for any reason" is a violation of the intent of the laws and regulations. There are no restrictions, delineation of academic concerns, prevention from abuse and vindictiveness nor infringement upon academic freedom. In addition, such unilateral changes could affect a teachers income, e.g. they were coaching a sport in one school or club but would no longer be permitted to do so.
    - b. Having the ability to transfer a building union delegate for "any reason" undermines the spirit and intent of all labor laws.
  6. This proposal provides for the unacceptable unlimited extension of the school day or school year without a rationale for what the time will be used.  
The BTF has made a proposal to address the concerns relating to this proposal (**Appendix H**).

7. Just changing the starting and ending times does nothing to improve the education of students.
8. The BTF has a proposal to address the concerns raised in this proposal. (**Appendix H**).
9. There is no delineation of how this would be accomplished nor how exactly the CBA would be modified.
10. The BTF, assuming there is proportional compensation, submitted a proposal addressing our concerns (**Appendix I**).
11. Agree
12. Agree
13. Agree

The BTF requests that the Commissioner accept the BTF proposals as they clearly improve teaching and learning (**Appendix K**), i.e. Class size<sup>12</sup> modifies CBA Article IX. Assessments modifies CBA by being added to Article X, A.

Respectfully,



Philip Rumore  
President, Buffalo Teachers Federation, Inc.

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<sup>1</sup> Student/Teacher Achievement Ratio (Star) Tennessee's K-3 Class size study, 1990 - Tennessee Department of Education. (**Footnote 1**).

<sup>2</sup> Using Class Size to Reduce the Equity Gap, Educational Leadership, December 1997/January 1998 Volume 55 Number 4, Charles M. Achilles, Jeremy D. Finn and Helen P. Bain. (**Footnote 2**).