

NEGOTIATING FOR CHANGE

Modifying collective bargaining agreements for school turnaround

Acknowledgments

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Publications at the School Turnaround Group

Our 2007 report *The Turnaround Challenge*, which was supported by the Bill and Melinda Gates Foundation, made a significant contribution to the national debate on high-poverty schools. That report helped to shape the current emphasis on transformational change through significant investments of human capital and organizational capacity in persistently low-achieving schools. The School Turnaround Group (STG) at Mass Insight continues to lead the field by developing a set of integrated tools to help states, districts and partner organizations “operationalize” *The Turnaround Challenge* and create proof-points for the “Partnership Zone” framework.

The STG collects and analyzes data from emerging practices across the country. We develop tools to help states and districts build systems, structures, and policies that will lead to dramatic improvement in their lowest-performing schools. Our research is based on an understanding of how policy drives practice and how practice is strengthened by building capacity and knowledge within local and state systems. Our free publications are available on our website: www.massinsight.org/stg/research

In addition to our collection of public tools and reports, we provide exclusive, customized reports to states that participate in our State Development Network (SDN). The SDN is a multi-state network of state education agency leaders who are committed to turning around low-performing schools by increasing state-level capacity and transforming the policy framework. Please contact us at turnaround@massinsight.org if your state is interested in joining this network.

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Introduction

“This is a pivotal time in public education and we’re in an era of tight resources. We must have systems in place to ensure high standards for accountability—that means those working in the system must be held accountable to high standards of excellence.”

—Mary Bell, Wisconsin
Education Association
Council President¹

Dramatically improving student achievement in a school that has been failing for many years requires dramatically different conditions. Only the most effective teachers and leaders should be in the building, and the leadership must have the flexibility to respond strategically to the needs of the students, with regular input from teachers. Although state and district policy influence what occurs in school buildings in states with collective bargaining, the collective bargaining agreement (CBA) is the key lever that exerts significant control over day-to-day conditions. Traditional CBAs limit the implementation of turnaround and must be modified to create the conditions necessary for the effort to be successful. With unprecedented resources flowing from USDOE in the form of Race to the Top and School Improvement Grants, states and districts have more incentive than ever to intervene with bold turnaround strategies in chronically underperforming schools. There has never been a time with more targeted funding or political cover for states and districts to challenge the status quo and do what’s best for student achievement.

To shed light on how states, districts, unions and advocates can help modify their local CBA to support school turnaround, this guide:

- identifies the contract elements that must be bargained to create the conditions for successful turnaround;
- suggests strategies for districts and unions to pursue collaborative negotiation, and;
- provides examples of states, districts and unions that have begun this challenging but necessary work to make all schools, for all children, highly effective learning environments.

Turnaround is

a dramatic and comprehensive intervention in a low-performing school that:

a) produces significant gains in achievement within two years;

and

b) readies the school for the longer process of transformation into a high-performance organization

Note: The STG’s definition of turnaround is distinct from the USED’s intervention model sharing the same name.

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Modifying collective bargaining agreements for school turnaround

5	CBAAs 101
6	Part I: Why traditional CBAs are inadequate for turnaround
7	Part II: Why the time is now
8	Part III: What CBA modifications are necessary for turnaround
15	Part IV: Making it happen
19	Conclusion: Points of hope
21	References
22	End notes

CBAs 101

Collective bargaining agreements (CBAs) are a set of labor conditions negotiated between district management and union leadership that were originally intended to protect the working rights of teachers. Since the 1960s, the contents of CBAs in education have evolved “beyond the standard working condition issues that concern all unions to professional issues of practice and policy.”ⁱⁱ Federal law does not directly influence collective bargaining in public education, but state law does regulate the scope of what can be bargained at the local level. Thirty-five states require that districts collectively bargain, while another eleven states allow collective bargaining but do not mandate it.ⁱⁱⁱ

Traditional CBAs are dense documents written in legal language and average 100 pages long.^{iv} They include a high level of detail such as the permitted length of daily instructional time, number and schedule of professional development hours, grievance procedures, and a salary schedule based on advanced degrees and longevity.^v In practice, negotiating CBA provisions is a balancing act between securing necessary teacher protections and avoiding burdensome restrictions to the school environment.



“Many doubted such overwhelming support from teachers was possible given the innovative nature of the contract. However, what teachers showed us is that they’re ready for change. They sent a clear message that they’re willing to be held accountable as long as they are treated like professionals.”

– Former DCPS Chancellor Michelle Rhee^{vi}

Part I: Why traditional CBAs are inadequate for turnaround

Chronically low-performing schools, by definition, have failed for years. Many of these schools have attempted light-touch school improvement strategies in the past, such as layering numerous partner organizations, requiring multiple improvement plans, hiring external improvement teams or bringing in retired teachers to serve as coaches. These programmatic approaches to change are less politically challenging to implement but are not bold enough to produce dramatic gains in student achievement. Turnaround must be a systems approach that increases **school-level autonomy in exchange for accountability**. These critical elements for turnaround, autonomy over key school-based decisions and accountability for measurable student outcomes, are routinely crippled by traditional CBAs, which:

- **Restrict school-based human capital decisions:** Staffing decisions and forced placements are made based on a centralized HR system and seniority provisions. This process prohibits principals and instructional leadership teams from determining which candidate is the best fit for their school according to qualifications, demonstrated effectiveness, student needs, and school culture. Likewise, due process protections often restrict the ability of principals to remove tenured staff that either are ineffective or that limit the advancement of the turnaround plan. The process and content of teacher and principal evaluations are often dictated by CBA provisions. Evaluations rarely factor in student achievement, nor are they tied to staffing decisions, such as placement or removal. Most school leaders are also prohibited from offering incentives to teachers that commit to working in hard-to-staff locations or subject areas. Typically, they are also unable to reward teachers that show outstanding growth in student test scores.
- **Restrict school-based autonomy:** Overly detailed work rule provisions dictate teachers' duties during the school day and restrict a school leadership team's ability to make decisions according to student needs. School leaders usually do not have the flexibility to implement school-level, research-based strategies to im-

prove student achievement, such as extended learning time. Rules also limit a school leader's ability to adjust the schedule to increase time for activities such as core instruction and teacher collaboration, or the schedule, and sometimes content, of professional development.

- **Reward seniority over performance:** An outdated compensation structure rewards years of experience and advanced degrees over measures of demonstrated effectiveness. Staffing decisions are typically based on the same principles of seniority and evaluation systems traditionally leave out measures of student growth, providing little accountability for poor teacher performance. Conversely, outstanding performance is neither recognized nor rewarded.
- **Waste time and resources:** Administrators' and teachers' time, as well as limited district resources, are often consumed by expensive and time-consuming arbitrations, which lead to costly legal fees and settlements. At the extreme end of the spectrum, in 2010, the LA Weekly reported that a ten year battle to fire seven teachers for "poor classroom performance" cost the district \$3.5 million in legal fees and settlements. On average, the cost of attempting to fire one teacher was \$500,000 and lasted five years.^{vii}

"As a union, we had to recognize that if things are going to improve, we need to do some things differently. We don't have to throw everything out, but we certainly need to make changes. And we have to be willing to look at everything, including things we were not willing to look at in the past."

- David Cicarella, New Haven Federation of Teachers^{viii}

Part II: Why the time is now

Never before has the federal and state policy landscape presented such an opportunity for unions and districts to collaborate on turnaround. The Race to the Top (RTTT) and School Improvement Grant (SIG) competitions are unprecedented funding streams that incentivize bold strategies for turning around low-performing schools. Race to the Top rewarded states that demonstrated union and management commitments to support intervention plans, providing political cover for legislative changes in favor of reform. These reforms not only have changed district practice according to statute but also have set a precedent to confront district-level policy and conditions. In 2009, the American Recovery and Reinvestment Act (ARRA) allocated \$3.58 billion in funding to statewide Title I SIG competitions, incentivizing districts to implement one of the four federal intervention models (turnaround, transformation, restart, and closure). The federal turnaround and transformation intervention models require a teacher evaluation system that factors student growth data, and operational flexibility for staffing, calendar and budgeting. The turnaround and transformation models also require procedures for staff removal, expanded learning time and financial incentives. In most districts that collectively bargain, negotiation is necessary to meet these requirements and evidence of union commitment is therefore critical for strong SIG applications. For cash-strapped districts, the potential to win sizable grant funds can be a powerful mechanism to embark on tricky negotiations.

Even without the pressure of RTTT and SIG, a growing number of districts and unions across the country are writing contracts with innovative approaches to issues such as human capital development, compensation, teacher evaluation and turnaround zones. However, the bargaining approaches vary. For example, during her tenure as Chancellor of DC Public Schools, Michelle Rhee and district management unilaterally pursued their reform agenda. In contrast, New Haven, CT and Pittsburgh, PA, serve as examples of collaboration between district management and union leadership. These cases demonstrate that there are a growing number of stakeholders willing to challenge the status quo.

Policy change from RTTT

States that revised legislation supporting turnaround strategies for Race to the Top:

- **Colorado:** Senate Bill 191 passed in May 2010 mandating that 50% of teachers' annual evaluation is based on "the academic growth of the teacher's students." Three consecutive years of positive evaluations are required for a teacher to earn tenure and those rated "ineffective" for two consecutive years no longer have tenure status.^x
- **Tennessee:** First to the Top Act of 2010 created an Achievement School District (ASD) of persistently-lowest achieving (PLA) schools under state oversight. The bill mandates that teachers and principals are evaluated annually and that 50% of evaluations are based on value-added student achievement data.^x
- **Delaware:** Prior to winning Round 1 of RTTT, DE passed amendments to its Title 14 education regulation, including the option for the State Secretary of Education to designate a persistently low-achieving school as a "Partnership Zone School." Districts with Partnership Zone schools must enter an MOU with the Department that includes specific provisions for turnaround.^{xi}
- **Washington:** Senate Bill 6696, passed in 2010, allows the state to intervene in PLA schools, developed a state accountability index, and extended the probationary period for teachers from 2 to 3 years. The bill also developed new evaluation criteria for teachers and principals and allows the use of student achievement data.^{xii}
- **Massachusetts:** In January 2010, Governor Deval Patrick signed a bill establishing Innovation Schools, allowing for in-district and charter-like schools that are locally managed but maintain flexible conditions at the school-level. The bill also granted more authority to the state commissioner and local superintendents to intervene in chronically low-performing schools.^{xiii}

"Regardless of the outcome of any competition, this is the right thing to do for our schools."

– Tennessee Governor Phil Bredesen, after the state legislature voted in favor of the First to the Top Act of 2010^{xiv}

Part III: What CBA modifications are necessary for turnaround

School turnaround is a dramatic and comprehensive intervention in a low-performing school that (a) produces significant gains in achievement within two to three years; and (b) prepares the school for the longer process of transformation into a high-performance organization. Turnaround depends on changing the rules and incentives governing key condition areas of **people, time, money, and program** in exchange for heightened accountability. Many school-level details of these conditions are subject to collective bargaining, and traditional agreements require significant modification to ensure the flexibility necessary at the school. This section summarizes each condition critical to turnaround, discusses ways that their implementation is restricted by common CBA provisions, and offers suggestions for targeted modifications. Examples of contract language for each component below is available in the CBA Toolkit on our website: massinsight/stg/research/.

“Empowered schools will be granted autonomy to decide issues relating to the operation of the school, including schedule, governance, employee incentives, staffing, budgeting, and instruction. In return they are accountable for student achievement.”

– Clark County School District’s
“Empowerment Schools”^{xv}

Overview of necessary CBA modifications for turnaround

People

- **Staffing:** Base staffing decisions (hiring, firing, transferring, reduction in force layoffs) on effectiveness over seniority
- **Teacher evaluation:** Evaluate all teachers annually; use a differentiated rating scale; use student growth data as a significant factor; create detailed improvement plans for struggling teachers and an exit strategy for teachers who do not improve within a reasonable timeframe

Money

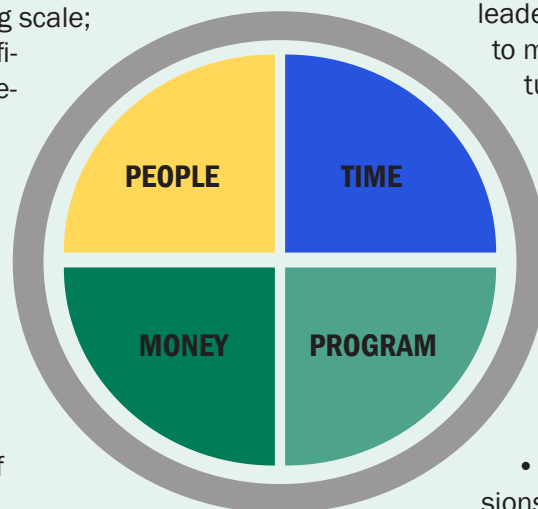
- **Incentives:** Allow schools to offer monetary incentives to attract, recruit and retain highly effective teachers, especially in hard-to-staff locations and subject areas
- **Flexible funding at the school level:** Allow budgetary decisions to be made by school leaders to quickly respond to needs
- **Performance-based compensation:** Allow schools to change the traditional salary schedule to one that rewards performance rather than seniority and advanced degrees

Other

- **Grievance process:** Switch to an internal dispute resolution process, minimizing time/resource burdens on all parties
- **Third-party management:** Specify in contract that turnaround schools may be designated for third party operation

Time

- **Learning time:** Lengthen the school day, week or year, as necessary to meet students’ academic needs
- **Use of time:** Allow the turnaround school leader to modify the schedule and calendar to make the best use of time to meet the turnaround goals



Program

- **Work rules:** Define work rules at the school level to respond to student needs
- **Instruction:** Make instructional decisions at the school level and modify curriculum as necessary
- **Professional development:** Schedule and plan PD at the school level based on student data and with teacher input, and compensate teachers by stipend

People



Overview

Abundant research supports teacher quality as the most important in-school factor determining student achievement.^{xvi} Evidence also shows that an effective school leader has a significant impact on student learning.^{xvii} Schools seeking to dramatically raise student achievement must have the flexibility to put the right people in the right positions to do their most effective work, with the proper conditions in place to support the effort. A reliable system to measure and track teacher performance is a critical piece of making informed personnel decisions in the interests of the students. Just as teachers should be held accountable to student-level outcomes, so too should school leaders be held accountable for school-level outcomes.

Current restrictions

Seniority-based staffing

Seniority is measured by a teacher's length of employment in a district. Tenured teachers are granted certain rights according to their seniority ranking, as outlined in the local CBA. In most cases, seniority is the primary factor in district-wide staffing decisions made by the human resource department, including forced placements and reduction in force (RIF) layoffs. In this case, not only does school leadership have limited influence over filling their school's vacancies and making layoff decisions, but these decisions are also "quality-blind." Without mutual consent provisions or an exit mechanism for excessed teachers, the least effective teachers are more likely to be transferred between schools within a district and across districts, maintaining a cycle of poor performers, particularly in schools with high turnover and vacancies.^{xviii} In traditional CBAs, seniority also governs school-based staffing decisions, such as who is selected for promotion to department head or AP teacher. Despite the major role seniority plays in staffing decisions, there is little evidence that a significant relationship exists between longevity and a teacher's ability to improve student test scores after four or five years in the classroom.^{xix}

Tenure process

Teacher tenure was originally designed to protect teachers from arbitrary dismissal. In most states, tenure is granted to teachers after a probationary period of 3-5 years. Although the timing and schedule of tenure, as well as due process for dismissal of tenured teachers, is usually set by state law, details of the process and criteria to be granted tenure are left up to districts to collectively bargain. Student achievement is rarely a factor in tenure decisions. In most states, removal of tenured teachers is only permitted with just cause for extreme misconduct or incompetence. Therefore, making the process of gaining and maintaining tenure as meaningful as possible is critical to developing and retaining only highly-effective teachers.^{xx}

Taking job performance into consideration when making layoff decisions is illegal in 14 states, in which 40% of the nation's teachers work.^{xxii} Other states may define some criteria for making RIF layoff decisions, such as certification, seniority ranking, and academic degrees. Districts then have the flexibility to rank the factors and add additional ones, such as job performance. CBAs rarely reflect this flexibility and instead maintain a system that defaults to seniority over teacher quality in layoff decisions. Students in chronically failing schools, which often have a higher proportion of probationary teachers, suffer from this practice of "last hired, first-fired" by losing out on teachers that may be of higher quality but are less senior.^{xxiii}

In 2004-05 in San Diego, 47% of principals tried to hide vacancies from the Central Office to avoid receiving undesirable teacher transfers based on district policy.^{xxi}

"We wanted some kind of policy that weighted performance and experience. If a RIF (reduction in force) policy has to be activated, we want to maintain our best employees.... We also want to do it in the fairest way possible."

– Tripp Jeffers, President of Forsyth County Association of Educators^{xxiv}

Teacher evaluation systems

Collective bargaining agreements often detail the procedures and processes related to the local teacher evaluation system. Many CBAs outline systems that fail to evaluate tenured teachers annually and use binary rating systems of either satisfactory or unsatisfactory. Most evaluations are based on scheduled observations and principal conferences. Some also consider student work and peer or parental feedback.^{xxv} But rarely do they include multiple measures of performance, including growth in student achievement for applicable subjects. Often tenured teachers that do not improve their practice face no consequences. The information tied to these types of evaluation systems lacks depth to make sophisticated determination on the effectiveness of a teacher.^{xxvi}

Suggested modifications

Allow site-based personnel decisions: CBAs should allow site-based personnel decisions by “mutual consent,” whereby hiring decisions are based on agreement of the principal or school leadership team and the job candidate. Provisions on district staffing decisions, such as RIF layoffs, voluntary transfer and excessing, should also minimize the effects of seniority by basing the sequence of dismissal and placement primarily on teacher performance, considering seniority only when other measures are equal. Site-based personnel decisions would also allow school leadership to consider strategic incentives to attract and retain highly effective staff, including hiring uncertified teachers who have demonstrated positive student outcomes or designing a performance-based promotion system.

Add meaning to the tenure process: Although the tenure schedule is set by state law, districts and unions have the flexibility to add more meaning to the process in the CBA, which could alleviate concerns that tenure protects the jobs of ineffective teachers.^{xxviii} Considering modifications, as permitted by the state’s law, such as lengthening the probationary period, requiring annual evaluations for probationary teachers and consecutive years of effective performance before receiving tenure, would ensure teachers are well prepared before being granted job protection. District and union leadership should also consider steps to dismiss ineffective, tenured teachers, linked to the teacher evaluation system (see below).

Create a robust teacher evaluation system: Although an increasing number of states are piloting teacher evaluation systems that account for student growth over time, districts and unions should collaborate to develop robust interim or pilot systems. These systems should assess teachers according to multiple measures and along a differentiated rating scale of at least four categories (e.g. highly effective, effective, basic, ineffective).^{xxix} Teachers should be evaluated annually and, if struggling, should be provided with meaningful improvement plans to get the support and mentorship necessary. However, given an appropriate amount of time and resources, failure to improve should result in termination. Clear roles and responsibilities of all involved staff members should be delineated for every stage of the evaluation process. Accumulated results of the evaluation system should be used to determine content of professional development and be linked to other human capital practices, such as the process of granting and maintaining tenure. The CBA should specify that only compliance with the evaluation process, but not the results of the evaluation, may be subject to the grievance process.

“When all teachers, good and bad, are treated equally, the mediocre stand to gain the most and those are precisely the individuals enticed by tenure promises. Good teachers don’t need tenure to protect their jobs—students and parents will do that.”

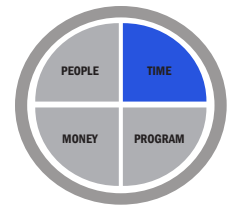
—Alexander Schwab, Center for Individual Freedom^{xxvii}



“But the fact that there’s been an inability to have the right structures to deal with people who shouldn’t be teaching doesn’t mean we shouldn’t correct that.”

—Randi Weingarten, AFT President^{xxx}

Time



Overview

Students at schools that have failed for years are usually significantly behind grade level. Extending the school day and/or school year is a research-based strategy to make up time in core instruction and offer extracurricular activities to students who may not otherwise have such opportunities.^{xxxii} In addition to offering more learning time, high-performing, high-poverty schools typically use school time in substantially different ways from the norm. At the elementary level, time is often increased for core academic instruction. At the high school level, school leaders plan instructional and non-instructional time deliberately to meet the needs of the students through block scheduling. Effective schools also rework teachers' schedules to allow for common planning time and job-embedded professional development.^{xxxiii}

With the appropriate degree of flexibility, an effective turnaround school leader will create a professional work environment that balances the needs of students and adults. As a professional community, the leadership and staff should foster a culture of mutual problem solving to meet student needs, without abusing the staff's time. Maintaining a positive working and learning environment is in the best interest of the entire school community.

Current restrictions

Traditional CBAs extensively detail teachers' time requirements. Historically, CBAs are derived from a factory labor model whereby the details of the work day were explicitly bargained to keep managers from abusing workers' time. Strict limits therefore are placed on elements of the work day, such as the length of class periods, the number of consecutive class periods a teacher is permitted to teach, and the amount of time allocated to collaborative planning. Restrictions are also placed on extended learning time, parent conferences, tutoring, and evening events outside of the school day. The daily schedule is explicitly laid out in traditional CBAs, restricting a school leadership team's ability to make school-level changes according to teacher and student needs. Teachers working in a turnaround school must expect to devote more time to improving student performance.

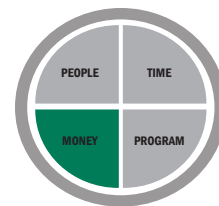
Suggested modifications

Allow for schools to extend the school day and/or year: More time, used well, is necessary to dramatically improve student performance in a turnaround environment. The flexibility to lengthen the school day, with instructional time, and the year, with instructional and pupil-free days, should be permitted in the agreement, at least for a carve-out zone of turnaround schools. Turnaround schools must also have flexibility over work schedules to create afternoon or evening programs as necessary. In the contract, it must be acknowledged that teachers committing to work in a turnaround school formally agree to meet any additional conditions.

Allow for schools to modify the use of time during the school day: In addition to more time, principals must be afforded flexibility over the use of time during the school day to respond to student and teacher needs. The contract must be modified to allow block scheduling or other approaches to increase intensive instruction in core academic subjects. There must also be flexibility around teachers' schedules for collaboration around data analysis, common planning time, offering extra assistance to students, and engaging with families. Decisions around the effective use of time should be made at the school-level to be best suited to the needs of the students and teachers.



Money



Overview

Although budget policy is not collectively bargained, turnaround leaders must have the authority to reallocate the budget to support a coherent turnaround plan, as well as have sufficient resources to support the plan and the expanded conditions. Certain contract elements in traditional CBAs are costly without evidence of a suitable return on investment, such as class size limits, seniority-based RIF policy and traditional salary schedules.^{xxxiii} In times of severe state and district budget constraints, school leadership must have spending flexibility so that the needs of students can be at the forefront of every decision. Lastly, turnaround schools, which are often difficult to staff due to location and the challenging nature of the work, may benefit from added financial incentives and career ladder opportunities to attract and retain effective faculty and staff.

Current restrictions

Traditional salary schedules are based on a step system that rewards teachers for years of experience and education. The pay scale presupposes that seniority positively affects student outcomes, despite the fact that, on average, beyond the first four to five years, little evidence supports a significant relationship between the two.^{xxxiv} Other provisions have less obvious financial implications. For example, when districts base RIF layoff decisions on seniority, the probationary teachers, who are less expensive, are the first to be fired. More teachers must therefore be laid off in order to balance budgets, which not only increases job loss, but also has implications for meeting requirements of the CBA, such as class size and the number of consecutive periods per day a teacher can teach.^{xxxv} This certainly does not mean that the more expensive, tenured teachers should be fired first, but teacher performance and student needs should be factored into such difficult decisions that affect both finances and the school community.^{xxxvi} Finally, most contracts mandate that extra professional development (PD) or expanded learning time (ELT) is paid at a per diem rate versus a stipend. The per diem rate is extremely costly to the district and could prohibit the implementation of extra PD or ELT, to the detriment of the students. A stipend can make the activities affordable to the district and can still offer fair compensation to teachers for the extra time. Traditional CBAs also do not afford schools the flexibility to allocate their budget to financial incentive programs that attract or reward highly effective teachers.^{xxxvii}

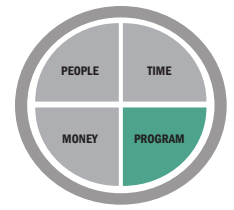
Suggested modifications

Minimize school-level budget restrictions: Unless district policy sets lump sum budgeting using a weighted student formula, school leadership teams are restricted by a lack of control over their budgets. In a turnaround school, this inhibits the ability to implement important elements of an intervention plan.^{xxxviii} Although budget policy is not a matter that is collectively bargained, some contracts with a turnaround carve-out zone, such as New Haven's or Clark County's, do specify maximum flexibility over budget decisions at the turnaround school level. When budgets are managed at the district-level, cumbersome procurement policies make it difficult for school leaders to respond quickly to the needs of the students and staff. In addition to overall budget allocation, leadership teams should be free from other school-level restrictions that indirectly affect the budget. With a professional and trusting school culture and with flexibility over certain work rules, a school community can engage in challenging conversations regarding financial decisions to ensure that they are made with transparency and rationality.

Allow for performance-based compensation systems: Districts should revamp the traditional salary schedule and funnel the money saved from rewarding advanced degrees and experience into a district-wide salary increase, career ladder system, and other incentives. At the very least, the CBA should allow turnaround schools the flexibility to offer a differentiated compensation strategy that rewards teachers for performance. With a strong teacher evaluation system, teacher effectiveness can be based on multiple measures, including demonstrated leadership skills, commitment to the school community and performance as related to student achievement, thereby tying the compensation system to the best possible outcomes for children.

Allow for incentives to attract and retain highly effective teachers: Turnaround schools should have the budgetary flexibility to offer incentives to help attract and retain effective teachers, especially in hard to staff locations. Sign-on bonuses, school-wide bonuses and individual performance bonuses can motivate high attendance, a collaborative culture focused on performance, and a relentless drive toward student achievement gains. Career ladder opportunities that offer more responsibility with additional compensation should be offered to engage teachers in their professional growth, as well as incentivize retention and performance. Reduction in force policy can also be modified to serve as an incentive teachers to accept assignments in turnaround schools. For example, teachers in turnaround schools that maintain a high bar of performance over a defined period can be granted exemption from RIF layoffs, or can be granted higher position on the RIF list.

Program



Overview

Highly effective turnaround leaders need sufficient authority over the school's program including curriculum, instruction, assessment, intervention programs, supplies, and professional development to meet students' needs and the school's turnaround priorities.^{xxxix} However, while leaders need authority, teachers need real and meaningful input into the core components of their work. High-performing schools engage teachers in school decision-making and provide opportunities for teacher leadership in multiple areas. Turnaround schools must develop a professional culture built on trust and collaboration between the leadership and staff, with the flexibility to determine details of the school's program as a team, rather than being bound strictly to district-level procedures.

Current restrictions

A coherent, whole school plan is a necessary element of a turnaround school's program and must integrate strategies to address the impact of poverty on students. Overly detailed work rules that take up a significant portion of traditional CBAs can restrict a turnaround leader's ability to implement the desired plan. Unless the district requires signed commitment from teachers to the school's conditions and turnaround plan, staff may not be fully committed to the plan. Contracts vary considerably, however restrictions are often placed on issues of the school program. For example, limitations may be placed on the process to revise or develop curriculum or the timeline for ordering and receiving supplies. Often there are also a limited number of parent-teacher conferences and professional development hours that teachers are expected to attend. Timelines for receiving supplies, such as text books, are sometimes permitted to be after the start of school.^{xl} There may not be formal methods outlined for teacher involvement in decision-making. Setting these school-level details at the district-level restricts the ability of a school leader to make decisions based on the needs of the students, with input from local stakeholders, including leadership, teachers, staff, parents and partner organizations. With unique student needs, strategic plans and intervention programs, turnaround leaders must have the flexibility to make determinations about elements of the school program with meaningful input from teachers.

“Critical decisions impacting instruction should be made at the school site level in order to: Foster creativity and innovation; Address specific school community needs; Increase student achievement; Promote greater student, parent, and staff engagement in the learning process; Create more knowledgeable, expert, and professional staffs that operate in a more strategic manner; and advance incentive programs tied to increased student achievement and increased accountability for school outcomes.”

– Clark County School District
“Empowerment Schools”^{xlii}

Suggested modifications

Allow for site-based program and work rule decisions: Site-based management (SBM) is an education reform concept that has existed in various forms for decades. The model is centered on the premise that those closest to the students, namely school administrators, teachers and parents, are best equipped to make local decisions that affect them. Teachers have supported SBM as a formal mechanism for collaborative decision-making and empowerment.^{xliii} This is especially important for the turnaround context in which teachers and administrators must constantly respond to a range of immediate student needs. Collaboration between teachers and leaders is critical to matching programmatic issues, including curriculum and work rules, to the school's turnaround goals. The CBA should allow site-based management at turnaround schools so the school community has the flexibility to do whatever it takes for effective teaching and learning with input from all stakeholders.^{xliiii}

Allow for professional development schedule and planning at the school level: Decisions surrounding the scheduling and planning of professional development (PD) should be made at the school level. With this flexibility, school leadership and teachers can collaboratively design, implement and evaluate meaningful PD that responds to teacher evaluations and is aligned to the school's curriculum, standards and assessments, mission and strategic plan. At most, the CBA should establish a minimum and/or maximum number of required PD hours, but must not limit parameters such as the scheduling or content.

Other

“Such schools may be designated for operation by third party managers and may be or have the characteristics of in-district charter schools. To that end, the Parties agree that the Board/Superintendent, through contracts with third party school operators, may delegate its authority to manage and direct teachers in the operation of the school, consistent with this Appendix and the Agreement of which it is part.”

– Excerpt from contract between New Haven Board of Education and New Haven Federation of Teachers, Appendix A

Internal dispute resolution process

Districts spend a significant amount of time and resources resolving grievances. The grievance process for turnaround schools should be modified to create an internal dispute resolution process that is handled entirely at the school-level, unless agreement cannot be reached in a reasonable amount of time. The contract language should specify the timeline, stages, and expectations of all involved parties, as well as the topics and issues that are subject to grievance. In schools that operate under an election-to-work agreement (EWA), grievances should be limited to issues of salary and benefits, and not extended to work rules. For these schools, districts should end the system of binding arbitration. Instead, for grievances that cannot be resolved at the school level, parties should engage in a mediation process whereby the superintendent has final say over the dispute.

Third-party management

Schools with high needs populations may operate more efficiently and serve their students more effectively under management by a third-party operator. Language should be included in a modified CBA that allows school management by a third party (Lead Partner) if the school leadership and/or governance committee deem it necessary. A separate agreement must be negotiated between the district superintendent and the third party operator to ensure maximum flexibility at the school level. In these schools, teachers remain members of the bargaining unit and voluntarily opt into any conditions distinct from the CBA by signing an election-to-work agreement.



Part IV: Making it happen

Negotiating a district-wide agreement that fundamentally and dramatically changes the traditional staffing process, work day, school-level autonomies, compensation structure, and grievance procedure is extremely difficult and rarely is done successfully in a traditional public school district. However, the aggressive push from the federal government and states for districts to focus on turnaround presents an opportunity to target negotiations on a subset of low-performing schools. Modifying conditions for a targeted cluster of schools directly affects only a voluntary group of teachers rather than the entire bargaining unit, and is therefore a more politically viable strategy for most districts.

Ways to modify CBAs for turnaround

There are several ways to incorporate the contract elements described here into a district's CBA. The following methods for modifying contracts are not mutually exclusive, and may occur in a district simultaneously.

1. Start from scratch: Negotiate a thin contract

In theory, a "thin contract" is a short agreement in which fewer items are negotiated, because more work rule discretion is left up to the school leaders and staff. The objective is to minimize any restrictions on work rules, staffing, budgets and time, while focusing the negotiations on salary and benefits to clear the way for whatever it takes at the school level to increase student achievement. Due to the politically challenging nature of negotiating a thin contract, there are no examples that have been negotiated in place of a traditional collective bargaining agreement between district management and union leadership. Existing examples of true thin contracts apply to individual unionized charter schools or unionized charter school networks.

2. Add an article: Establish a carve-out zone

Adding an article or appendix within the local CBA can create a carve-out zone of schools that operate under alternative conditions. The goal of establishing a carve-out zone is to target a group of low-performing schools and offer them more autonomy in exchange for accountability. Generally, carve-out zones establish broad flexibilities around work rules, staffing, budgets and time, and the school leaders or a school-based team are afforded the autonomy to create a school-specific election-to-work agreement (EWA, see below). Teachers at a carve-out zone school remain members of the local union but voluntarily commit to the terms of the EWA. The provisions of the carve-out zone and the school's EWA override any conflicting provisions of the district-wide CBA. In addition to an article or appendix within the district-wide CBA, a Memorandum of Understanding (MOU) can also be negotiated to create a carve-out zone (see "contract waivers" below). Negotiating a carve-out zone is more politically feasible because the modified conditions only apply to a voluntary subset of teachers.

Site examples:

District-wide 10-40 page thin contracts from unionized charters or charter school networks:

- Green Dot Public Schools in Los Angeles, CA
- Conservatory Lab Charter School in Boston, MA
- Springfield Ball Charter School in Springfield, IL

District-wide contracts with an article or appendix establishing a carve-out zone of turnaround schools in large urban districts:

- New Haven Public Schools' "Turnaround Schools"
- Clark County School District's "Empowerment Schools"
- District of Columbia Public Schools' "Improvement Schools"

Flexible conditions for pilot schools are established in a contract waiver or MOU and the individual schools have site-based EWAs:

- Commonwealth Pilot Schools in Massachusetts
- Los Angeles Pilot Schools in California

3. Add a school-level contract to the carve-out zone: The election-to-work agreement

An election-to-work agreement (EWA) is a school-level contract that typically applies to a school within a carve-out zone. Teachers voluntarily opt into a EWA, committing to work in a school with modified conditions. They remain members of the local bargaining unit; however, the provisions of the carve-out zone and EWA override any conflicting provisions of the district-wide CBA. By signing an EWA, teachers commit to the school's unique work rules and conditions, thereby waiving their right to grieve these issues. In this case, grievances are limited to issues of salary and benefits.

4. Override the existing CBA: Contract waivers

Districts can permit contract waivers or overrides, usually in the form of an MOU, for groups of schools with modified conditions. This may occur if a district and union decide to create a carve-out zone of turnaround schools outside of the negotiation cycle, such as the Los Angeles Pilot Schools, or if the district is required to negotiate waivers for state initiatives targeting low-performing schools, such as Delaware's Partnership Zone schools. Teachers must be made aware of differences in school conditions outlined in the MOU that override the CBA before committing to work at the school or must consent to changes by signing a EWA.



A closer look: Excerpt from New Haven Public Schools “Turnaround School” carve-out zone, with site-based EWAs

“Turnaround schools that are identified for reconstitution and that require both additional supports and flexibility. These schools need to be free to choose their staffs, develop new cultures of successful performance and learning, redesign work rules, modify the length of the instructional day and year, scheduling, instruction programs and pedagogy. It is expressly agreed that Turnaround Schools shall remain public schools within the District and that employees shall maintain their representation by the New Haven Federation of Teachers. In order to achieve flexibility, the Parties agree that Turnaround Schools must be free from many Board regulations and policies and from many sections of the Parties’ collective bargaining agreement.”

“Prior to electing to work at a Turnaround School, teachers shall be informed of plans for the school, including relevant information about working conditions and compensation. Teachers shall sign an Election to Work Agreement, which sets forth the working conditions at the school. The Election to Work Agreement shall include the following information:

- The vision and expected instructional program of the school.
- The hours of instruction and school day with expected degrees of flexibility.
- The length of the school year and the school calendar.
- The expected length of time teachers may be required to be present in the school outside the normal instructional day.
- The commitment to remain in the school for at least two years.
- Any compensation programs that apply to the particular school different from the standard compensation schedule.”

Excerpt from contract between the New Haven Board of Education and New Haven Federation of Teachers, Appendix A.

Strategy

The contract types described above are mechanisms for modifying CBAs to achieve conditions for turnaround. The strategy for bargaining to achieve these goals, however, is more difficult to define. For one thing, state and district policy directly influence conditions for turnaround, but are not collectively bargained. Furthermore, every district and union has a unique, often complicated and political relationship affected by decades of history. There is little research that has determined universally successful bargaining practices or uncovered the key to collaboration. This section offers some suggestions for approaching a bargaining process with the end goal of achieving one of the modified CBA contract types to allow for successful turnaround implementation.

Interpretation of CBA and State Law

An initial, strategic step before starting negotiations is to examine the language in the original collective bargaining agreement and relevant state law. Oftentimes the existing agreements can be interpreted with greater flexibility than is currently practiced, which may help the district and avoid unnecessary bargaining.^{xliiv}

EXAMPLE: In New Haven, CT, although the state tenure law did not change, the district took the opportunity to make the process more meaningful and to directly address the possibility for dismissal of ineffective teachers. As David Cicarella describes it, “Connecticut’s tenure law is simply a fair dismissal policy.” Under the old interpretation, tenure provided virtually untouchable job protection, however the union is taking a new stance. “We want to make certain that tenured teachers have been afforded every opportunity to improve. But we are committed to make sure that the best people are in our classrooms.”^{xliiv}

Bargain often through a “living contract”

Instead of adhering to traditional negotiation timelines which only allow for negotiation at the end of a contract cycle, living contracts generally allow for negotiation on an ongoing basis, at the request of either party. This approach not only allows for quick response, but also shifts the mentality of negotiation to one of continual problem-solving that prioritizes effectiveness over formalities.^{xlivi}

EXAMPLE: In Pinellas County, FL, as early as 1991, the district and union agreed to a living contract model to ensure “continuous quality improvement” and to use the contract as the core of “a joint strategic planning process.”^{xliivii}

Third-party facilitation

Third-party facilitation has also served as a method for collaborative negotiation, but only in rare circumstances. Involving an objective third party arbitrator in negotiations requires the consent of management and union leadership.

EXAMPLE: The Center for Collaborative Education served as facilitator for the Pilot School negotiations in Fitchburg and Springfield, MA, Los Angeles, CA and Aurora, Colorado. In Los Angeles, not only was CCE directly involved as an external party, but they also brought a teacher, principal and representation from the community to the table.^{xliiii}

“...the traditional model of negotiations isn’t conducive to solving problems.”

– Superintendent of Dobbs Ferry, NY, Deborah Kaplan, attributing frequent impasse to an outdated system of bargaining, “in which lawyers representing the parties debate two separate proposals in the absence of other agreed-upon principles.”^{xlix}

Early collaboration and shared goals

Engaging key partners and stakeholders early in the process can build a foundation for successful negotiations. With a pre-formulated and agreed-upon plan, the negotiation process could continually refer back to the document and match any issue in conflict to the agreed upon goals.

EXAMPLE: Pittsburgh Public Schools received a grant from the Gates Foundation to collaborate with the Pittsburgh Federation of Teachers on a comprehensive plan for attracting, evaluating and retaining highly effective teachers. This process culminated in the development of a shared vision and complimentary plan, “Empowering Effective Teachers,” that deliberately set the stage for a negotiation process. With a pre-formulated and agreed-upon plan, the negotiation process could continually refer back to the document and match the issue in conflict to the agreed upon goals. The contract is also expected to be a living document that is open for renegotiation at the request of either stakeholder. The partnership was characterized by open communication and transparency between the district and union.ⁱ

Interest-based bargaining

A new type of contract calls for a different approach to bargaining. The traditional process involves analyzing the CBA line-by-line and negotiating changes between district management’s lawyers and union leadership’s lawyers. The most commonly practiced alternative is interest-based bargaining (IBB). Despite its over 30 year history, IBB has not been adopted as common practice. The IBB process is less oppositional and aims to meet both sides’ interests through problem-solving. Negotiation is approached as a compromise “that maximizes benefit for both parties’ interests” and “unites over common goals.”ⁱⁱ The front-end investment is high because both sides must be trained in IBB and usually a third-party facilitator must be agreed upon. Although the process does not avoid conflict, it is a method that puts bargaining directly in the hands of the district and union leadership rather than labor lawyers. It offers the opportunity to start fresh around new ideals and ideas, rather than making minor changes to an antiquated contract.ⁱⁱⁱ

EXAMPLE: The Illinois Education Association teachers’ union and district management have many staff members trained in IBB. They consider it to be a best practice in bargaining strategies and have invested time and resources into imbedding the process into their professional communities since 1986.ⁱⁱⁱ

Montgomery County Public Schools and the teachers’, administrators’ and service employees’ unions all engaged in interest-based bargaining to negotiate contracts and “developed a joint union-district program charged with supporting and evaluating employees.”^{iv} In 2005 they entered a compact for Organizational Culture and Respect, outlining a shared approach for positive learning and working communities and future collaboration for negotiations.

Applying pressure through partner organizations

Engaging influential community groups early in the process can also be a strategic move to get the negotiation process started and sustained. Community groups have also played an important role in passing state legislation that affects school-level conditions and has implications for CBAs.

EXAMPLE: Without pressure from the Belmont Education Collaborative, a coalition of community organizations, including Alliance for a Better Community, Central American Resource Center, and Families in Schools, the negotiations between LAUSD and UTLA to grant autonomies to a network of Pilot Schools in the Belmont neighborhood would likely have stalled. Once initial conversations began around the issue, it still took a year and a half to get all parties formally to the negotiation table, however both stakeholders ultimately agreed upon facilitation by the Center for Collaborative Education and participation from community groups.^{vi}

In Colorado, Colorado Children’s Campaign and Stand for Children worked together to build support and maintain pressure on legislators and education leaders to pass Senate Bill 191 which changed the face of tenure and set the stage for new evaluation provisions in CBAs.^{vii}

Conclusion: Points of hope

As this guide has illustrated, CBAs can be modified in strategic and targeted ways to achieve the conditions necessary for successful school turnaround. The examples below reveal that a diverse range of stakeholders are addressing the issue in various ways across the country. Hopefully, in the coming years, the encouraging work going on now will serve as a guide to a new collective bargaining approach.

Federal government involvement

Although most districts and unions have not yet negotiated agreements that sufficiently challenge the status quo, there are a growing number of districts and unions united around raising student achievement and preparing to approach the process differently from the norm. The US Department of Education recently harnessed this momentum at a February 2011 conference in Denver, CO, titled, “Advancing Student Achievement through Labor-Management Collaboration.” One hundred fifty teams gathered for a two-day conference to discuss how to structure labor-management collaboration for student success, hear directly from labor-management teams about their experiences, network with one another and start planning as teams for bargaining in their home districts.^{lviii}

“I really want to push you hard on the importance of collaboration. Unions and administrators have been battling each other for decades and we have far too little to show for it. It hasn’t been good for the adults and it certainly hasn’t been good for children.”

– US Secretary of Education Arne Duncan, calling for a new era in labor-management relations^{lix}

State involvement

Although collective bargaining has traditionally been a local issue, states increasingly are becoming involved, particularly in the area of collective bargaining rights, as well as tenure, hiring, and evaluation policies that impact local policies, procedures and CBAs. Recently, several states, including Indiana, Ohio, and Wisconsin, have made efforts to limit the scope of collective bargaining statewide. Some, including Idaho, went even further, attempting to phase out teacher tenure and mandate teacher evaluations linked to student performance data.^{lx}

States can also indirectly influence collective bargaining by communicating high expectations for their SIG competition. In states that allow collective bargaining, dramatic turnaround will require significant conditions change and in most cases, modifications to CBAs for SIG-eligible schools. Some states have leveraged this power, like Louisiana, whose School Turnaround Office drove a rigorous communications campaign focused on the need for bold turnaround strategies and received a higher quality of applications as a result.

Private foundation investment

In addition to states and the federal government, private foundations have played a role in the collective bargaining space. In Pittsburgh, the Gates Foundation funded the process of developing the “Empowering Effective Teachers” plan that became a central feature of their collaborative negotiations.^{lxi} Foundations are also getting involved in the work of contracts and flexible conditions with unionized charter schools. The Eli and Edythe Broad Foundation and the Joyce Foundation helped to develop a model charter thin contract.^{lxii}

District-union partnerships

As referenced throughout this guide, many districts and unions have approached negotiations collaboratively and united over shared goals.

In April 2011, the Illinois Federation of Teachers (IFT), Illinois Education Association (IEA), and Chicago Teachers Union (CTU) came together with legislators, the State Board of Education, and education reform groups to support Senate Bill 7. Passed by the House in May, this bipartisan legislation has reformed teacher tenure and collective bargaining rights statewide. Major features include:

- Making performance a primary factor in layoff, recall and teaching assignment decisions
- Tying performance to tenure and certification
- Increasing transparency in the collective bargaining process
- Streamlining the dismissal process of tenured teachers

Although the CTU and IFT pulled support after the bill passed in the Senate due to some late changes, its passage still marks progressive changes at the state level and builds momentum around a new phase of good-faith negotiations.

"Folks must understand the rules going in, so we're not making them up as we go along. In Montgomery County, it's crucial that our unions are involved every step of the way, not just when we're negotiating contracts but when we're creating the goals of the system. It's got to be a culture that is inclusive of everyone."

– Chris Barclay, President of Montgomery County Board of Education^{lxiii}

Old-fashioned bargaining

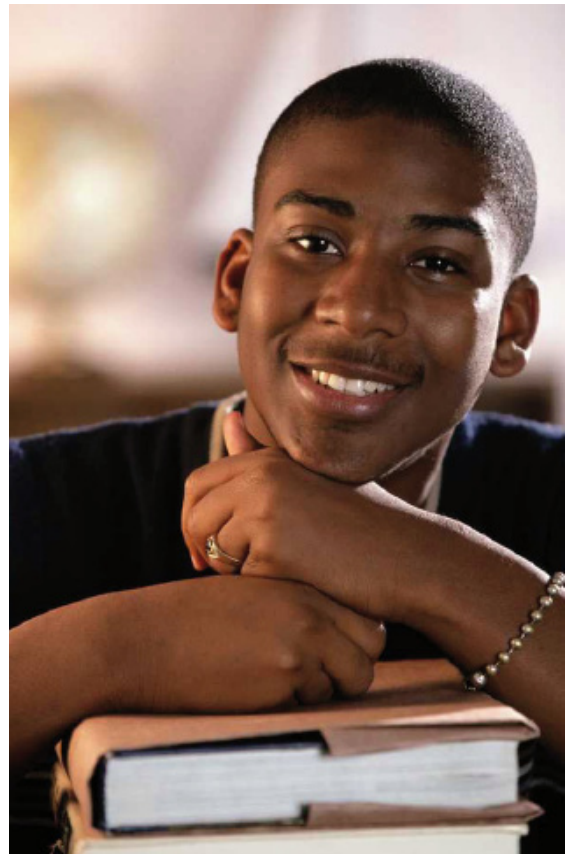
Many of the newer contracts have one or two flexible conditions secured, but DC Public Schools' latest agreement may be the only example where a whole range of them are implemented district-wide. Despite the major reforms, the process was not marked by partnership or collaboration and instead was traditionally bargained through a long, controversial process. The contract includes some of the more difficult elements to secure, such as site-based discretion over hiring, exiting poor performers and excesses, a compensation-system based on performance, a new teacher evaluation system with consequences for poor performers. The DCPS example goes to show that depending on local conditions, some school districts must continue to negotiate the old-fashioned way to achieve reforms that support turnaround.

Teacher- and union-led initiatives

Affiliates of teacher organizations are also actively challenging oppositional, business-as-usual negotiations. In 2006, the Tom Mooney Institute for Teacher and Union Leadership (MITUL) was founded as an outgrowth from the Teachers Union Reform Network (TURN). Consulting services offered by MITUL include promoting and training for progressive teacher unionism, which develops union capacity to play an active role in education reform. They focus primarily on union-district partnerships for low-performing schools, alternative compensation structures, and peer review systems for teacher evaluation to develop effective teachers and dismiss ineffective ones.^{lxiv} In 2010, the NEA Foundation created the Institute for Innovation in Teaching and Learning, with support from the Gates and GE Foundations and in partnership with AFT and NEA Locals from TURN. An explicit objective of the Institute is to make, "changes to contracts and memoranda of understanding, including but not limited to collective bargaining agreements, that provide the flexibility needed for teachers and district staff to work together to implement reforms that improve the quality of instruction, learning and achievement."^{lxv}

New educator groups, frustrated by their unions' priorities, are emerging to confront their traditional

unions with a progressive set of goals. NewTLA and Educators 4 Excellence are two groups which have outlined student-centered reform principles with a focus on human capital policies based on performance over seniority and evaluations that more heavily weight measures of student achievement.^{lxvi} NewTLA, a faction of United Teachers of Los Angeles (UTLA) that formed in January 2011 in Los Angeles, seeks to transform UTLA from within and has successfully elected representation in the UTLA leadership team.^{lxvii} Educators 4 Excellence (E4E) is a non-profit group in New York City that grew in less than a year from a handful of educators to approximately 1300, many of whom are UFT members.^{lxviii}



"I think there is a silent majority of teachers who are very frustrated with the status quo."^{lxix}

"By having this silent majority of teachers become more active, we hope there can be substantial change... We want to bring UTLA out of this oppositional model of unionism, which is about just saying no to everything and into an era of collaboration."

– Mike Stryer, NewTLA^{lxx}

Resources

Resources are available for you to get started on this work now. Mass Insight offers a CBA Toolkit and additional resources, available at massinsight/stg/research/, to help you evaluate your current CBA, find examples of contract language to consider in your bargaining process, and STG contacts to offer guidance and assistance.

Although it's a large component of getting the right conditions in place for successful school improvement efforts, modifying the CBA alone won't turn around our lowest-performing schools. The state and local policy context must also support turnaround by developing pipelines of effective teachers and leaders with turnaround competencies, external school operators with turnaround success, technology and systems to support data-driven decision-making, and strong academic standards. The potential for dramatic turnaround of low-performing schools requires new and visionary thinking about schools and school districts.

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About the School Turnaround Group

The School Turnaround Group is a division of Mass Insight Education, an independent non-profit that organizes public and private entities to significantly improve student achievement, with a focus on closing achievement gaps.

Our work is guided by two convictions: that change at scale depends on the integration of research, policy, and practice; and that only dramatic and comprehensive change in high-poverty schools will produce significant gains. We seek to dramatically improve, at scale, student achievement in our country's lowest-performing schools by fundamentally transforming the state and local systems that manage and serve these schools.

We focus on several core activities, including developing cutting-edge research and toolkits, advancing policies and practices that support our mission, and most critically, working directly with states and districts in designing and implementing bold reform strategies. Our national "Partnership Zone Initiative" seeks to establish turnaround zones in districts across the country to serve as proof-points for these school turnaround and district redesign strategies.