American Enterprise Institute for Public Policy Research

AEI

No. 2 • February 2013

Education Outlook

Cage-Busting Leadership and the "Culture of Can't"

By Frederick M. Hess

When it comes to reforming American education, today's would-be reformers only get it half right. On the one hand, they correctly argue that statutes, rules, regulations, and contracts make it difficult for schools and school system leaders to drive improvement and lead. On the other hand, they wrongly overlook the fact that school officials have far more freedom to transform, reimagine, and invigorate teaching, learning, and schooling than is widely believed. This "culture of can't" in K–12 education threatens to undermine the success of hard-won reforms, and makes policy impediments appear more burdensome than they truly are. Reformers must help district superintendents and principals combat the culture of can't by encouraging these leaders to better understand teacher contracts, hire reform-minded lawyers, and partner with the advocacy, business, and philanthropic communities.

When big-dollar attorney Dan Weisberg left his private-sector position in 2003 to join the New York City school system to oversee labor policy and implementation, the district was having a hard time getting principals to provide honest assessments of low-performing teachers. Many blamed the arduous reporting process. As Weisberg explains, for principals to submit negative feedback, they had to "leave their building and go downtown, which could take hours. Principals complained about it and used it as an excuse of why they couldn't document poor performance when they saw it."[1]

Weisberg's team asked the principals why they could not attend the hearings by phone. He notes, "The answer we first got was, 'No, we can't do it. We've never done it that way.' And we said 'Where is that in the contract? Where is that in some policy?'" The answer? Nowhere. So the district went ahead with it. Weisberg explains, "It was a small thing, but it showed principals that we cared, that we understood this was very burdensome and we were trying to make their lives easier. . . . It had a concrete impact in

Key points in this *Outlook*:

- American school leaders have far more freedom to transform, reimagine, and invigorate teaching, learning, and schooling than is widely believed.
- The "culture of can't" in K–12 education threatens to undermine the success of hard-won reforms and can make policy impediments appear more severe than they truly are.
- Understanding teachers' contracts, hiring reform-minded lawyers, and engaging the advocacy, business, and philanthropic communities can help leaders combat the pervasive culture of can't.

Frederick M. Hess (RHess@aei.org) is a resident scholar and the director of education policy studies at AEI.

A version of this *Outlook* appeared on www.educationnext.org in January 2013, and will appear in the spring 2013 issue of *Education Next*.

encouraging principals to take action to document poor performance." Too often, simple solutions are dismissed as being prohibited or out of reach.

In my just-published book titled *Cage-Busting Leadership*, I argue that when it comes to reforming American education, today's would-be-reformers get it half right.[2] They correctly argue that statutes, rules, regulations, and contracts make it hard for school and school system leaders to drive improvement and, well, lead. They are wrong, however, to ignore a second truth: school officials have far more freedom to transform, reimagine, and invigorate teaching, learning, and schooling than is widely believed.

Much of what leaders say or think they cannot do—or simply do not do—are things that that they are already able to do.

Don't get me wrong. Prescriptive union contracts and procurement processes, rules, and regulations like the federal "supplement not supplant" provision, state laws, board policies, and the like hinder leaders in many ways, making it harder to repair a fence, hire talented staff, or schedule grade-level team meetings. I have spent a lot of time addressing these barriers in previous books such as *Common Sense School Reform* and *Education Unbound*.[3] But it has become clear to me that much of what leaders say or think they cannot do—or simply do not do—are things that that they are already able to do.

The problem is not *just* the very real statutory, regulatory, and contractual barriers, but also the "culture of can't," a culture in which even surmountable impediments or ankle-high obstacles are treated as absolute prohibitions. This mindset leads school leaders nationwide to wring their hands and lament "I can't do that" when it comes to firing underperforming teachers, using instructional time differently, and a host of other reforms. The culture of can't threatens to undermine the success of hard-won reforms and can make policy impediments appear more severe than they truly are.

The Bogeymen of Education Leadership

We often hear from principals about all the things that they would like to pursue, but that are impossible because of circumstances beyond their control. Perhaps the two most commonly cited sources of frustration are teachers' contracts and state and federal policies, which are seen to tie leaders' hands when it comes to teacher assignment, compensation, hiring, professional development, instructional time, and much else.

Yet, a closer look raises some questions about these common complaints. For example, in a 2008 analysis of the collective bargaining agreements (CBAs) of the 50 largest US school districts, policy analyst Coby Loup and I found that although one-third were highly restrictive, the majority included much room to maneuver.[4] Lehigh University professor of education and law Perry Zirkel notes that the perception that it is nearly impossible to let go of low-performing, tenured teachers arises from "the substitute of lore for law. The lore is that it is difficult, if not impossible, to win a performance-based termination of a tenured teacher. The reality is quite different." In his study of court decisions on teacher terminations for competency, Zirkel found that "defendant districts prevailed over plaintiff teachers by better than a 3-to-1 ratio."[5]

Teachers College, Columbia University Professor Hank Levin recounts that when the California legislature allowed districts to apply for waivers if they could demonstrate that laws or rules were hampering school improvement, "Fewer than 100 [waivers] were made in the first year" in a state with more than 1,000 districts. More telling, notes Levin: "The vast majority of all requests for waivers were *unnecessary*" (emphasis added). Nearly all the proposed measures were permissible under existing law. Either superintendents and board members mistakenly thought their hands were tied, or, Levin added, were using laws and regulations "as a scapegoat . . . to justify maintaining existing practices."[6]

CBAs and intrusive policies can present real headaches. But these are made far worse by the self-defeating mentality adopted by so many superintendents, school boards, and principals.

When Myth Becomes Mindset

This learned helplessness has become embedded in the field of educational leadership. Ariela Rozman, CEO of TNTP, an organization that works with districts, says she has seen this often: "We went into [one troubled Midwestern district] and expected to find that they had a really tough contract that kept them from allowing freedoms like mutual consent for all teachers and schools." Instead, Rozman recalls, "We found a very, very limited,

small contract that didn't touch anything. And the reason they were doing a ton of forced placement was because that's just the way the district operated. But the superintendent believed it was better to be out there lambasting the union rather than cleaning up his house internally." Mitch Price, a legal analyst with the Center on Reinventing Public Education, noted in a 2009 study of teacher contracts that "a lot of these contractual issues are 'smoke screens' for those people who don't want to do something."[7]

Charter leaders are trapped by more than contracts and rules—they are also trapped by the culture of can't.

Even when school officials are given greater latitude, they often operate as though they are still hemmed in. Take Indiana, where the legislature acted to limit the scope of collective bargaining in 2011. Despite the new law, dozens of districts left intact language that restricted flexibility, even though it was in violation of state statute. Former Indiana superintendent of public instruction Tony Bennett says, "There were systems that put their contracts into compliance. Then there are those who went on with business as usual, just leaving the silly stuff in the contract. I think many of those see this as the path of least resistance. They don't want to create an uncomfortable life for themselves in the communities in which they live." Tennessee Commissioner of Education Kevin Huffman says he observed similar behavior when his state reduced the scope of collective bargaining. "Honestly, districts don't know what to do differently," Huffman notes.

Charter schooling provides an opportunity to escape many of the policies, rules, regulations, and contract provisions that trap traditional districts. However, in a 2011 study of charter school CBAs, Price noted that charters are much less innovative than they could be when it comes to evaluation, staffing, and compensation, despite being given the chance "to craft agreements from scratch."[8] Public Impact researchers Dana Brinson and Jacob Rosch have noted that most charters hire and pay staff in similar ways as local school districts.[9] Charter leaders are trapped by more than contracts and rules—they are also ensnared by the culture of can't.

The Experts Agree

The culture of can't is unchallenged, if not encouraged, by authorities on education leadership, who dismiss talk of levers, contracts, and legal strategy. A look at the relevant professional publications for January 2009 to September 2012 illustrates this point. Over that span, *Educational Administration Quarterly* featured just one mention of "general counsel" or "legal counsel," and just four mentions of the word "attorney." Moreover, none of those mentions involved using attorneys to address legal questions. *Educational Management Administration & Leadership*, in total, included just one mention of the terms "attorney," "general counsel," or "legal counsel." Meanwhile, *Improving Schools*, *Management in Education*, and the *Journal of Research on Leadership Education* made no mention of any of these terms.

Hundreds of education leadership programs and widely read tomes on the subject not only treat contracts, regulations, and policies as unworthy of attention, but go so far as to denounce efforts to address these things as distractions. Thelbert Drake and William Roe argue in *The Principalship*, for example, that "running a tight ship" is a "distortion of the goal of educating children."[10] In *What's Worth Fighting For in Your School?*, Michael Fullan and Andy Hargreaves claim that to confront the issue of ineffective teachers, principals should:

> find something to value in all the school's teachers. Even poor or mediocre teachers have good points that can present opportunities to give praise and raise self-esteem. . . . The worst thing to do is to write off apparently poor or mediocre teachers as dead wood, and seek easy administrative solutions in transfers or retirements. . . . Try doing the hard thing, the right thing, the ethical thing, and explore ways of bringing these teachers back instead.[11]

This is a profession in which close to 100 percent of administrators have been trained in educational leadership programs at schools of education and have learned that it is wrongheaded to focus on managing operations or removing mediocre employees. Moreover, even the bulk of new leadership programs embrace a notion of "instructional leadership" that single-mindedly focuses on pedagogy, coaching, and curriculum while remaining largely uninterested in the policy and legal context within which schools operate.

When District Leaders Stick Their Hands in the Bear Trap. Districts nationwide have agreed to CBAs that side with unions on matters state legislatures have said are illegal to negotiate. For instance, Kansas law prohibits districts from bargaining over the school year, stating: "Matters which relate to the duration of the school term . . . are not subject to professional negotiation." Yet Wichita's CBA stipulates that "The Superintendent and the UTW President will review all requests submitted to extend the school year prior to April 1 of each year" and that "staff members who do not support the extended year concept shall have the right to transfer."[12]

District officials often agree to certain provisions in the spirit of cooperation. If leadership changes, they figure they can simply remove the provision. Unfortunately, it is seldom that easy. Such thinking becomes even more dangerous in districts operating under a contract or state statute that contains an "evergreen" clause. For example, Clark County, Nevada's contract stipulates that it "shall continue from year to year . . . unless either of the parties shall give written notice to the other . . . of a desire to change, amend, or modify the Agreement and until a successor agreement is reached."[13]

As Idaho state superintendent and former local school board member Tom Luna says, "When you have an evergreen clause, then one side never has the ability to remove things from the contract. . . . As the school board, we couldn't even set the calendar. Then the voters want to hold the school board accountable, even though their hands were tied 10 or 20 years ago when these things were negotiated away."

Combat Strategies

The lesson is decidedly *not* that reformers should retreat from their present efforts. Rather, it is to recognize that policy can make schools and systems do things, but it cannot make them do things well. Fortunately, there are a number of steps that can help combat the pervasive culture of can't.

Get Crafty about Contracts. The biggest frustration most school and district leaders wrestle with is teachers' contracts. The best leaders heed the advice of Los Angeles Unified Superintendent John Deasy: "Most people see the contract as a steel box. It's not. It's a steel floor with no boundaries around it. You've just got to push and push and push."

First, leaders need to understand what they are and are not obliged to bargain. Adrian Manuel, principal of Kingston High School in Kingston, New York, explains that his first order of business is always to familiarize himself and his team with the contracts. "The very first thing I did was have the secretary make photocopies of every contract—teacher, support staff, clerical—for all the administrators," says Manuel. "We have four assistant principals and one vice principal. At the first couple of meetings I gave them copies and said, 'How many of you have read through these things?' Some people had been there for nine or ten years and hadn't read through it." Manuel has had some success with these strategies: his previous school rose in three years from the bottom 5 percent of New York City middle schools to the top 20 percent.

Creative application of existing CBA provisions can help reduce cost, reward excellence, and get more kids in classrooms with great teachers.

Creative application of existing CBA provisions can help reduce cost, reward excellence, and get more kids in classrooms with great teachers. Newark, New Jersey, Superintendent Cami Anderson recalls that when she served as area superintendent for New York City's alternative schools and programs, the district had two "conventional wisdoms" when it came to evaluating guidance counselors and social workers: "The first was you'd be violating student confidentiality if you observed guidance counselors or social workers interacting with kids one-on-one, and the second was, if you weren't licensed as a clinical supervisor, you didn't have the authority to evaluate or document performance for these people."

Anderson says she had to "debunk the urban myth" before being able to focus on staff performance. "I finally pulled the contract, asked our labor lawyers to take a look, and found out that the contract is relatively silent on how guidance counselors and social workers are evaluated. We had more latitude, not less, when it came to these individuals," she said. Anderson instituted a performance-based evaluation system for these staff members, and says that "This piece was key when you're working with kids in jail and kids who've dropped out. Outcomes like attendance and retention started going up."

Lawyer Up. Perhaps the single greatest impediment to reform is the dearth of talented attorneys helping school administrators find their way. Chris Barbic, founder of Houston-based YES Prep Public Schools, led YES when it was named the best place to work in Houston, the only time a school or school system has been so honored. Yet, when this culture-first leader took the helm of Tennessee's new Achievement School District in 2011, he concluded that anyone's first move in that role ought to be, "Get a great lawyer, understand the legislation, and understand what you can and cannot do right out of the gate."

In Nashville, the business community helped secure the district's top candidate for associate superintendent.

District officials need someone aggressive, wily, and intrepid if they are to figure out what is and is not possible. General counsels who work for districts are not necessarily equipped or inclined to play this role. Lawyers who work for districts tend to play defense, unless they are otherwise instructed. Dan Weisberg, now at TNTP, explains:

> Converting the mission of the legal team is vital. In a school district, you're in a compliance culture . . . where people are very nervous about making any decisions without getting approval from a lawyer. But while many district lawyers see their job as being about risk avoidance, good lawyers are skilled at finding creative ways to help their clients reach their goals. All it takes is a difference in viewpoint. The goal is not to make sure there is no legal risk, which is impossible in a district undertaking serious reform. The goal is to increase student achievement. If you change the mission of the general counsel's office [that way] . . . then you've got a sea change.

An alternate approach for districts is to draw on local law firms or attorneys to provide pro bono support. The American Bar Association reports that nearly three-quarters of attorneys provide an average of 41 hours of free legal counsel each year. This means that in Michigan, where there are more than 32,000 active lawyers, it is a safe bet that they perform more than 1 million pro bono hours every year; in New York, the figure is 5 million. Given that many law firms expect attorneys to devote time to pro bono work, even a small firm may offer up dozens of hours of free counsel. Districts should put their expertise to work, especially if they have experience in employment, regulatory, administrative, or contract law.

Another source of legal talent may be new law school graduates, especially those who have previously taught for Teach For America or participated in Education Pioneers. Recent graduates will be inexperienced and untested, but they will also be free of the defensive mindset and are frequently willing to work long hours for relatively low pay. It is hard for districts to top the salaries offered by private-sector firms. But according to *U.S. News & World Report*, each year, more than 10 percent of graduates from the top 20 law schools (or more than 700 new lawyers) take jobs in the public sector that offer a median salary of $52,000.[14] They go to work in district attorneys' offices and at nonprofits because they are eager to gain hands-on experience and do important, socially meaningful work.

Engage Outside Partners. Finding outside talent and support to drive improvement is a crucial part of the job. Few schools or systems have the tools or muscle necessary to succeed by themselves. They need to seek out and cultivate allies and partners. National networks, the local business community, and philanthropy can all play invaluable roles.

When Lillian Lowery (now Maryland state superintendent of schools) took the helm of the Delaware Department of Education, she sought talent from all over the country: "I was a Broad Academy affiliate, and one of the first calls I made was to the Broad Foundation. They helped me select people who could help with the work and challenges here. [Delaware's] Rodel Foundation also knew people from all over the country, in nonprofit and entrepreneurial environments." Washington, DC, has created a competitive summer internship program that brings dozens of graduate students to the district, giving leaders a chance to check them out and creating a deep bench of talent.

In Nashville, the business community helped secure the district's top candidate for associate superintendent. "We brought Jay Steele in for a speech on his work with [small learning communities]," says Ralph Schulz, president of the Nashville Chamber of Commerce. He continues: "[Superintendent] Jesse Register stands up

and says, 'I'm convinced of the idea, and that's our guy. How are we going to get him?'"

One of the local CEOs in attendance offered to lend the use of his private plane. Schulz recalls: "So a delegation got in the plane a couple of weeks later, flew down [to Florida], and met with Steele. And he saw the commitment of the business community, and thought Nashville was the place to be." Nashville Mayor Karl Dean notes the value of that kind of support: "You know how complicated it is for government workers to get plane tickets. . . . Business can say, 'Let's get in the plane and go down there.'" When they so desire, business and philanthropy can move with an alacrity that public systems cannot match.

Don McAdams, founder of the Center for Reform of School Systems, says that philanthropy typically involves modest dollars, but can have an outsized influence because of its agility and public impact. Since most districts spend 80 percent or more of all funds on salaries and benefits, they have little ability to repurpose funds. This is where philanthropy can provide crucial fuel. McAdams and Lynn Jenkins have written, "Philanthropic dollars are especially valuable because they can be invested in activities that have no political constituency but are high priorities for reform leaders." Philanthropy can also build local enthusiasm, inspire other funders, a nd garner national interest, which would mean attracting additional talent and support, and getting that flywheel spinning.

Conclusion

Reformers are right to fight for policy change, and to offer moral and political support to bold education leaders. At the same time, they are wrong to imagine that changing policies regarding teacher evaluation, school turnarounds, or school choice will deliver as hoped absent efforts to help school officials think differently and then provide the support they need to tackle rules, regulations, and contracts in new ways.

Thus, reformers struggle to narrow the scope of collective bargaining, only to see administrators fumble the hard-won opportunities. Reformers enact teacher evaluation and turnaround policies whose efficacy and impact rest entirely on the ability of officials to execute them competently and aggressively in the face of contracts, embedded routines, and recalcitrant cultures.

More than a few reformers appear to be pinning their hopes on the dream that hundreds of thousands of great school and district leaders can be recruited or trained. This seems like an unlikely bet. Efforts to enable today's competent-but-hemmed-in administrators to start to see differently would be far more manageable and promising in their own right. To be sure, there are admirable organizations and programs—including New Leaders for New Schools, the Broad Academy, Education Pioneers, KIPP's Fisher Fellows, and Rice University's Education Entrepreneurship Program—that seek to develop necessary leadership capabilities in select individuals. But these organizations are the exception.

Of course, educational leadership is about instruction, and reformers need to overhaul problematic contracts and policies. But unless reformers also help district superintendents and principals change the culture of can't, instructional leadership will continue to be compromised, and the reform agenda will inevitably be frustrated. Until and unless would-be reformers get serious on this count, they will keep battling to change laws that do not need to be changed—or fighting for changes that will go unexploited.

Notes

1. Unless otherwise noted, all quotations throughout this *Outlook* derive from personal conversations with the author.

2. Frederick M. Hess, *Cage-Busting Leadership* (Cambridge, MA: Harvard Education Press, 2013).

3. Frederick M. Hess, *Common Sense School Reform* (New York, NY: Palgrave Macmillan, 2004); and Frederick M. Hess, *Education Unbound: The Promise and Practice of Greenfield Schooling* (Alexandria, VA: ASCD, 2010).

4. Frederick M. Hess and Coby Loup, *The Leadership Limbo: Teacher Labor Agreements in America's Fifty Largest School Districts* (Washington, DC: The Thomas B. Fordham Institute, 2008).

5. Perry Zirkel, "The Myth of Teacher Tenure," *The Answer Sheet, Washington Post*, July 13, 2010, http://voices.washingtonpost.com/answer-sheet/teachers/the-myth-of-teacher-tenure.html

6. Henry M. Levin, "Why Is This So Difficult?" in *Educational Entrepreneurship: Realities, Challenges, Possibilities*, ed. Frederick M. Hess (Cambridge, MA: Harvard Education Press, 2006).

7. Mitch Price, *Teacher Union Contracts and High School Reform* (Seattle, WA: University of Washington, Center for Reinventing Public Education, 2009), 7; 24.

8. Mitch Price, *Are Charter School Unions Worth the Bargain?* (Seattle, WA: University of Washington, Center on Reinventing Public Education, 2011), 3.

9. Dana Brinson and Jacob Rosch, *Charter School Autonomy: A Half-Broken Promise* (Washington, DC: The Thomas B. Fordham Institute, 2010), 5.

10. Thelbert L. Drake and William H. Roe, *The Principalship*, 6th Edition (Upper Saddle River, NJ: Merrill Prentice Hall, 2003), 185.

11. Michael Fullan and Andy Hargreaves, *What's Worth Fighting for in Your School?* (New York, NY: Teachers College Press, 1996), 87.

12. *Teachers Employment Agreement* (Wichita, KS: Wichita Public Schools, 2011–12), 4–5, www.nctq.org/docs/Wichita_CBA_TEA-Final_2011-2012.pdf.

13. *Negotiated Agreement between the Clark County School District and the Clark County Education Association, 2011–2012*, Article 40-1, www.nctq.org/docs/Clark_County_10_11_CCEA_Agreement_updated.pdf.

14. Data compiled from *U.S. News and World Report*, " Law School Rankings," 2009.