

Teacher Layoffs in the Worst of Times: A Non-ideal Theory of Least-Unjust Teacher Firings in L.A. Unified School District

Victoria Theisen-Homer and Meira Levinson

Harvard Graduate School of Education

As the final bell chimed on the last day of school in June of 2012, students flooded out the front gates of Skyline High School.¹ But while the students celebrated the beginning of summer, the mood among the staff was bittersweet. For many of the teachers, this was their last day working at Skyline, a place they had cultivated and loved since it opened in 2007. Thanks to district-wide Reduction in Force (RIF) layoffs, prompted by recession-driven budget cuts rather than student or school needs, this large comprehensive high school in Los Angeles Unified School District (LAUSD) would become a very different place next year. Twenty teachers — 18 percent of the total faculty — were being laid off. Because this was the fourth year of RIF layoffs in the school’s five years of existence, these cuts reached deep. Skyline’s “RIF’d” teachers had an average of four years of teaching experience in the district. Half had helped to found the school; others served as Department Chairs and members of School Site Council.

These particular teachers were being “RIF’d” because they were now the least senior teachers in the district. In many districts across the nation, contracts with teachers unions make seniority the sole criterion for job retention in times of layoffs. In LAUSD, however, these policies weren’t due solely to union contracts. Rather, the California State Education Code mandates RIFs be conducted by seniority. Districts may only “skip” junior teachers if they have specific qualifications that senior teachers lack or if the dismissal of junior teachers would in some way violate federal law.² According to a policy brief from the Center for Education Organizing, such rules for layoffs were “established during a time when teachers could be fired for almost any reason (like getting pregnant) or for no reason whatsoever (like getting on the wrong side of their principal).”³ They were also intended to prevent patronage and nepotism in a semi-profession that has historically been subject to both. In this respect, seniority has been embraced as a transparent and uniformly attainable criterion. Every teacher (provided they aren’t RIF’d) has the potential to accumulate enough seniority to acquire protection from layoffs. Finally, seniority protections signal respect for teachers’ commitments to a demanding and essential, but often disrespected, career. Senior teachers in LAUSD have spent years working long hours under trying conditions on behalf of many of the nation’s most vulnerable residents. For these and other reasons, most union members agree on the fairness of seniority.

Nonetheless, firing the twenty Skyline teachers simply because they were less senior than others in the system seems patently unjust. They, too, had committed years of their lives to educating high-needs kids under very challenging circumstances. Together, these teachers had created a school that served 2500 low-income students of color, inspired a 93 percent daily attendance rate (far above neighboring schools),

increased their state Academic Performance Index (API) score by an impressive 110 points, graduated students at a rate 20 percent above the district average, and tripled their acceptances to four-year colleges. Not that the injustices were limited to a few outstanding teachers from one particular school. The 2012 RIFs affected many accomplished veteran teachers from across LAUSD. Furthermore, RIFs unjustly harm students as well as teachers. In a just world, school districts would not lay off teachers because of budget cuts that take no account of student need. In a just world, average high school class sizes in LAUSD would not have risen to 42.5 students in 2012⁴ — especially given that LAUSD serves a historically marginalized student population already challenged by poverty, family dislocation and/or disruption, English language learner status, racism, and other forms of discrimination. In a just world, three middle schools would not have lost 45 to 60 percent of their faculty to RIFs two years in a row — a decimating blow from which virtually no institution could recover.

Even though RIFs are intrinsically unjust to both students and teachers, however, there still must be less and more just — or at least, more and less *unjust* — approaches to firing teachers under these circumstances. Our purpose is to tease out what a just approach to RIFs would be, given the patently unjust circumstances in which they are necessarily being conducted. Note that we say *given* — not “notwithstanding” — the patently unjust context in which RIFs are being carried out, because we believe this is the right way to do philosophy under such conditions. We root our analysis within the injustice, and try to determine what would count as just action within this unjust context. This enacts our philosophical commitment to non-ideal theory, which we take to be theory that accounts for existing injustices and has the capacity to be action-guiding.⁵

In considering what RIF procedure would be most just, we face four questions: To whom is justice owed? What does justice demand for each set of claimants? To what extent are these demands compatible, and to what extent do they conflict with one another? If and when they do conflict, what principles or procedures should guide their resolution, and why? In line with our commitment to non-ideal theory, we build our analyses of these questions up from the ground-level dilemma about RIFs at Skyline, rather than applying solely pre-established principles that were formulated to address ideal contexts and circumstances. We do assert *a priori* that schools should serve children’s interests. Beyond this, however, we try to reason from the facts on the ground to construct a normatively justifiable, least-unjust approach to teacher firings. We start by analyzing what is least unjust toward students, then consider the implications of least-unjust policies toward teachers. In the end, we argue that justice toward students and justice toward teachers are substantially coextensive when determining budget-driven teacher layoffs. Teachers and students turn out not to be antagonistic claimants, but instead are mutual allies. Furthermore, to the extent that teachers’ and students’ justice claims are not aligned, this lack of alignment likely reveals not an intrinsic conflict, but a policy failure that is itself borne of prior injustice.

JUSTICE FOR STUDENTS

We begin with students, since no matter what purposes schools are expected to serve, they must operate with *children's* interests in mind. A school system that was organized to serve the interests of adults in preference to students' needs would rightly be condemned as fundamentally illegitimate. What, then, might students rightly claim as a matter of justice in the face of mandated budget-driven teacher layoffs?

Most significantly, students have a claim to being taught by the most effective teachers. If teachers must be fired, then we should attempt to let the least effective teachers go while retaining those who are best able to foster students' learning and well-being. In the first year of RIFs, seniority-based layoffs (SBLs) may have met this criterion, since there is evidence that first- and second-year teachers are less effective than their more senior colleagues.⁶ By 2012, however, SBLs were likely not aligned with teacher effectiveness, since the evidence suggests that "there are few gains to experience after their third year of teaching."⁷ These RIFs were laying off fifth- and sixth-year teachers — far beyond the early-stage novice teachers who may not have yet developed their teaching chops.

Moreover, SBLs seem to harm some students more than others. California State Law grants every student the right to "educational equality" in free public schools.⁸ However, from 2009–2012, LAUSD issued more RIFs than any other district in the nation. Even within LAUSD, the lower-income "hard to staff" schools, like Skyline, suffered far more RIFs than relatively affluent schools.⁹ As we mentioned previously, at three of the lowest performing middle schools in LAUSD, RIFs were issued to 45 to 60 percent of the staff two years in a row. Because more senior teachers weren't apt to transfer there, the schools had trouble filling their vacant positions. This could not possibly be fair for those students.

The case, *Vergara v. California*,¹⁰ filed in May of 2012, makes just this argument that the most vulnerable children are most harmed by current teacher hiring and firing policy, and hence seeks to overturn the California State Education Code. This lawsuit builds in some ways on a prior case, *Reed v. State of California*,¹¹ which also alleged that low-income minority students were unfairly impacted by SBLs.¹² *Reed* resulted in a landmark settlement that prohibited layoffs at nearly fifty LAUSD campuses with a history of high turnover or low test scores. Because this decision threatened more senior teachers at other District campuses, the union appealed and won. In 2012, the appellate court reinstated seniority as the primary criterion for layoffs, which is one reason that *Vergara* is now poised for litigation.

INJUSTICE FOR ALL AT SKYLINE

Teachers' experiences at Skyline illuminate many of these problems with SBLs. Frequent RIFs have devastated Skyline's young staff — half of whom had only started teaching when the school opened. In 2011, the school's leaders reached an unusual agreement with the District in order to retain their staff: RIF'd teachers could remain at the school, but only as long-term substitutes in their former positions, with reduced salary and no benefits. Two-thirds of the RIF'd teachers decided to stay, and by all

accounts worked tirelessly, but then were re-RIF'd in 2012 when the District could no longer afford to offer Skyline any special provisions.

Interviews with thirty-four Skyline teachers and school leaders indicated that the stress of the RIFs and subsequent turnover impacted students, who lost teachers who “really care[d]” and helped them achieve better outcomes. A permanent Skyline teacher observed, “Teachers don’t stay and of course the kids can’t build those relationships and they already have that kind of come-and-go relationship in their lives.”¹³ Most of the staff felt that the turnover caused students to suffer at both the loss of “incredible” teachers and the addition of “horrible” teachers who replaced their former colleagues. Because Skyline had already lost a quarter of its staff in 2011, the school had endured a year of “must place” teachers, who many described as “really bad.” One teacher explained, “The displaced teachers don’t have good rapport with the students.” Another teacher added, “I think that the majority of the staff agrees that these teachers shouldn’t be here.” In these respects even the non-RIF’d “must place teachers” were not well served by the process, as they found themselves working in a school that was hostile to their very presence and suspicious of their capabilities.

The teachers who remained at Skyline also felt hurt by the RIFs. Idealistic newer teachers had established much of the initial culture at the school by taking up leadership positions and spearheading efforts to bolster curricular innovation and school spirit. “I am happy that I am not in their position,” a non-RIF’d teacher explained, “but it makes me angry. We have these awful teachers who continue to get paid while some awesome teachers who the kids love who don’t get their paychecks. It is really discouraging.” The most senior teacher at Skyline agreed that if he could change one thing about the school, “I would do something to make these new young teachers feel happy coming to work.... [I would] change layoff notices.”

Finally, of course, seniority-based layoffs did not serve the interests of the RIF’d teachers themselves. They had been teaching for four or five years, had supposedly been granted “tenure,” and had proven themselves at the school; however, they were still being laid off — repeatedly. Most teachers felt the process was “demeaning” and “scary.” One teacher explained, “I had to go on unemployment [over the summer], which was a huge blessing because it was the only way I could pay my rent, but I had to accept the fact that I couldn’t support myself.” Others expressed feelings of anxiety as a result of their precarious employment, stressing feelings of “uncertainty” and “instability,” which understandably could have had an impact on their teaching.

THE CHALLENGES OF PERFORMANCE-BASED RIF LAYOFFS

Given all of these ills stemming from SBLs, it seems as if any just approach to RIFs in LAUSD would include campaigning against the California State Education Code’s requirement that RIF layoffs be done by seniority alone, so that performance-based layoffs (PBLs) could be made instead. If nothing else, conducting layoffs by performance instead of seniority would result in fewer teacher dismissals, because laying off more senior teachers would save money and hence reduce the total number of needed layoffs.¹⁴ In Los Angeles, “an estimated 25% more teachers would have kept their jobs if L.A. Unified had based its cuts on teachers’ records in improving test scores.”¹⁵ This would benefit students by stabilizing schools, protect-

ing their relationships with caring adults, and slowing the expansion of class sizes.¹⁶ Even more to the point, students deserve effective rather than “horrible” teachers. PBLs would recognize this claim.

Like most districts across the country, however, LAUSD has not established a reliable and accepted system to evaluate teacher “quality.” Furthermore, given the statistical and psychometric challenges of evaluating teachers in different school contexts, it is not obvious that a just system of PBLs could ever *be* created. Consider the most prominent current approach to measuring teacher performance: Value Added Measurement (VAM), used by thirty states in various forms. VAMs endeavor to account for the learning gains a student made over the course of a year with a particular teacher, while attempting to control for a student’s previous yearly growth as well as personal and school characteristics. These admirable aims, however, are subject to immense practical constraints. Many teachers do not teach tested subjects. Even among those who do, standardized tests measure limited content and are not vertically scaled to measure student growth over time. VAMs may incentivize teachers to “teach to the test” or help students cheat on exams. Even carefully-constructed VAMs fail to fully account for how students’ demographic characteristics may impact their test scores.¹⁷

Most importantly, all VAMs are subject to the same critical flaw, that students are not randomly distributed across or within schools, which invalidates any causal judgments made on the basis of VAM scores.¹⁸ VAMs likely disadvantage teachers at low-income urban schools in particular — schools like Skyline, where one-third of students are English Language Learners, 12 percent have special education needs, and all come from low-income homes. In addition, even if they serve identical student populations and use equally high-quality pedagogical techniques, teachers in low-functioning schools are likely to earn lower VAMs on average than teachers in high-functioning schools. This is because context matters for student learning. In saying this, we are not “excusing” teacher “failure.” Rather, we are acknowledging that a teacher doing high-quality work in a chaotic environment is likely to appear less effective — in fact, to *be* less effective — than a teacher doing similar (or even worse) work in a stable environment that advances students’ learning and well-being throughout the day. Insofar as LAUSD has to apply RIFs fairly across the entire district, performance-based assessments that rely on test scores seem like poor proxies for just evaluation of students or teachers. They penalize teachers who serve more challenging students or teach in struggling schools; and they don’t even include a large number of teachers who teach non-tested subjects.

An alternative approach is to assess teacher effectiveness via administrator observations. However, the failure of principals to reliably judge teacher quality via observational measures is in large part what led to seniority-based protections in the first place. Even though due process rights are more established today, teachers still feel as if they are battling capricious administrators. Many of the Skyline teachers, for example, told stories of “nit picky” and “overly punitive” classroom visits conducted “for ten minutes” by the school’s new leadership team, who “don’t understand the content.” Furthermore, the state’s present system, the Stull evaluation, is notoriously

unproductive. As one Skyline teacher explained, “I do think that the Stull process is a joke ... because neither the teacher nor the administrator really has the time to do it correctly. So as we see in the news, it does tend to be a rubber stamp.” Such problems are not confined to Skyline. Only 40 percent of tenured teachers in LAUSD are evaluated annually; they rarely receive feedback; and only 2.5 percent receive a “below standards” evaluation in any given year.¹⁹ Given such a flawed system, the District rarely identifies and retrains, let alone removes, ineffective teachers. The plaintiffs in *Vergara* offer a stark analysis, comparing the 1 percent dismissal rate for CA state employees overall to the 0.002 percent dismissal rate for LAUSD teachers.²⁰ Clearly, classroom-level Stull observations could not fairly determine thousands of performance-based RIFs.

Because teachers at Skyline had misgivings about both the use of student test scores and administrator observations, they conceived of a more “holistic” teacher evaluation system. One teacher explained, “They should have a system where they analyze every aspect of the teaching: test scores, student opinions, observations — real observations and many of them — student work samples, teaching portfolios, and teacher self analysis.” Interestingly, the performance measure most favored by Skyline teachers was “student course evaluations,” which seem to predict student achievement gains more consistently than either administrator observations or VAMs.²¹ Skyline teachers most wanted to be judged by “the ones who are in class everyday,” which might also seem a just measure for the students who get to evaluate them.

WHAT IS JUST, TOWARD WHOM, AND WHY?

In an ideal world, principals would be outstanding instructional and administrative leaders who could reliably evaluate teachers, get rid of those who are truly ineffective, and be confident that even if they have to lose additional teachers because of cuts in positions, they are not contributing to the district-wide “dance of the lemons.” Given that this ideal world does not exist — seemingly anywhere in the United States, and certainly not in LAUSD — what principles and insights should guide our construction of a non-ideal theory for least-unjust teacher firings under inherently unjust circumstances?

To begin with, it seems self-evident that LAUSD owes students effective teachers and stable schools. However, meeting these obligations of justice in an era of RIFs sets up a series of perverse incentives. First, under *Reed*, schools are stabilized (by reducing or eliminating RIFs) only if they are low-performing. Second, given the challenges with VAMs, it is in teachers’ interest to teach privileged students in stable school settings, rather than to teach more challenging students in more challenging school settings. This, too, reverses the incentives we would want to establish for teachers to go into high-needs schools serving high-needs student populations. A VAM performance-driven system might actually encourage Skyline’s most capable teachers to decamp immediately to a less challenging environment.

Similar concerns arise about the most basic way to ensure that schools could retain more teachers, and by extension, a larger number of effective teachers: namely, by engaging in *reverse* SBLs, laying off the most experienced teachers first since they are the most expensive. There is little data to suggest that a thirty-year veteran

is more effective than a teacher with ten or even six years of experience. So reverse seniority-based layoffs, beginning with the most senior teachers, may advance students' short-term interests by keeping class sizes smaller with no diminution in teaching quality. However, such layoffs would also potentially undercut students' interests in the long-term, as teaching in LAUSD would become even less attractive than it is already. No one devoted to pursuing a teaching *career* would choose to teach in LAUSD if they could help it.

One fascinating — and to us, initially quite surprising — consequence of this analysis is the realization that students' and teachers' interests are aligned in such a way that justice toward students is generally consistent with justice toward teachers. It's not that we were surprised by this conclusion because we had bought into the current rhetoric about solely self-interested, lazy, or even incompetent teachers who failed to "stand for children" or put "students first."²² We are both experienced urban educators who know better than to view public school teachers — or their unions — as the primary source of educational injustice and malfeasance in the world. Rather, we were surprised because there is little *a priori* reason to assume that what an educational system attempting to implement budget-driven layoffs (RIFs) owes teachers as a matter of justice is substantially coextensive with what it owes students.

In particular, our analysis reveals that both teachers and students deserve a system of non-arbitrary firings that would reduce school-level upheaval, target the least-effective teachers, and reward those teachers who teach the least privileged students and/or teach in the hardest schools in such a way that incentivizes success rather than failure. Such a system is not perfectly possible under current conditions. Teacher layoffs driven by budget cuts rather than by changes in students' needs or demonstrated ineffectiveness are bound to create some upheaval among, and/or seem arbitrary to, those fired. In a system with no reliable metrics to assess the effectiveness of a large percentage of teachers — thanks to poor observational protocols, indifferently prepared principals, and questionably designed and incontrovertibly misused high stakes tests — RIF layoffs will continue to target some more-effective teachers, and likely reinforce some continuing perverse incentives. Nonetheless, we conclude that students' and teachers' claims to the above principles do strongly support the development and implementation of a blended or holistic teacher evaluation system that should be considered in RIF layoffs, rather than solely SBLs being the norm. This is admittedly a second-best solution, given the challenges of developing and implementing a reliable or valid evaluation system. It is not intrinsically just; it is, however, more just given the unjust context of RIFs in LAUSD than are layoffs based on seniority alone.

A second intriguing conclusion of this analysis is that where teachers' and students' justice claims are not aligned, this lack of alignment likely reveals not an intrinsic conflict, but a policy failure. We are thinking in particular of the disjuncture between seniority and measured performance, and its implications for teacher firings. As we noted above, reverse SBLs — that is, firing the most senior teachers — would save tons of teaching positions, as the most senior teachers are also the most expensive. This would clearly be good for students, but patently unjust to teachers,

to fire veterans simply for having been the most dedicated to teaching. The reason that this disjuncture between teachers and students arises, however, is because of prior injustices that harm teachers and students alike. One of these is the failure of American public schools to create a differentiated career path for teachers.²³ Unlike in virtually any other profession, most teachers' jobs in their twentieth year are identical to their jobs in their second year. Hence, teachers have little opportunity to make use of their hard-won wisdom through taking on roles that they weren't prepared to assume when they were younger. In this respect, veteran teachers' lack of demonstrated effectiveness in comparison to newer teachers may reflect schools' and districts' failures to capitalize on veterans' knowledge, rather than teachers' failures to improve at their craft. Furthermore, to the extent that veteran teachers *haven't* learned how to improve over time, this would again suggest an institutional failure to provide teachers meaningful and effective professional development so they can actually improve in their chosen profession. This is a profound injustice, to subject teachers to a profession in which — despite dedicating themselves to it as a career — they cannot get better over time. It is also a profound injustice toward students, who deserve an education system that fosters systemic improvement and dissemination of wisdom, not stagnation.

What do we learn from this inquiry into the decidedly non-ideal world of budget-driven teacher layoffs in LA? As a matter of *policy* — which we address because of our belief that non-ideal theory can and should be action-guiding — we conclude that despite the lack of any consistently reliable or valid form of teacher evaluation, the *least unjust* way to RIF teachers is based on their score using a holistic evaluation combining student evaluations, administrative evaluations, value added measures, and seniority, modified by school stability considerations. This may still be only imperfectly achieved when 5000 teachers must be fired in a single year. But it is clearly preferable to — and more just than — SBLs or PBLs on their own. As a matter of *theory*, we conclude that justice toward students and teachers is more coextensive than would be assumed *a priori*. Children and educators have aligned interests, not competitive ones — and when they don't, that is a sign of system failure, not of intrinsic conflict. Further, with respect to *methodology*, we conclude that deep inquiry into a particular case study like LAUSD's RIF policies fruitfully advances non-ideal theory.

1. Skyline High School is a pseudonym.

2. Mary Dowell et al., "Reform of Seniority-Based Layoff Rules for Teachers: A Legal Analysis" (National School Boards Association, 2011).

3. Center for Education Organizing, "What Is Missing from the Debate on Seniority? A Policy Brief" (Providence, RI: Annenberg Institute for School Reform, 2011), 1.

4. School Fiscal Services Division, "Board Approved Staffing Ratios for 2012–2013 Senior High Schools — March 14, 2012." (Los Angeles, CA: Los Angeles Unified School District, 2012), http://notebook.lausd.net/pls/ptl/docs/PAGE/CA_LAUSD/LAUSDNET/OFFICES/CFO_HOME/SFSD_HOME/SENIOR%20COMPLETE%20MARCH%202014_REVISIED3.PDF.

5. Charles W. Mills, "'Ideal Theory' as Ideology," *Hypatia* 20, no. 3 (2005); Amartya Sen, *The Idea of Justice* (Cambridge, MA: Belknap Press of Harvard University Press, 2009); A. John Simmons, "Ideal and Nonideal Theory," *Philosophy & Public Affairs* 38, no. 1 (2010); and Zofia Stemplowska and Adam

- Swift, "Ideal and Nonideal Theory," in *The Oxford Handbook of Political Philosophy*, ed. David Estlund (Oxford: Oxford University Press, 2012).
6. Jonah E. Rockoff, "The Impact of Individual Teachers on Student Achievement: Evidence from Panel Data," *American Economic Review* 94, no. 2 (2004).
7. Donald Boyd et al., "How Changes in Entry Requirements Alter the Teacher Workforce and Affect Student Achievement," *Education Finance and Policy* 1, no. 2 (2006); and Donald Boyd et al., "Teacher Layoffs: An Empirical Illustration of Seniority Versus Measures of Effectiveness," *Education Finance and Policy* 6, no. 3 (2011).
8. Dowell et al., "Reform of Seniority-Based Layoff Rules for Teachers."
9. "Sharing the Burden? The Impact of Proposed Teacher Layoffs Across LAUSD" (UCLA Institute for Democracy, Education, and Access, 2009), <http://idea.gseis.ucla.edu/publications/documents/sharing-the-burden-the-impact-of-proposed-teacher-layoffs-across-laUSD>.
10. Vergara v. State of California, Superior Court of the State of California, case no. BC484642 (2014).
11. Reed v. State of California, Superior Court of the State of California, case no. BC432420 (2010).
12. Dowell et al., "Reform of Seniority-Based Layoff Rules for Teachers: A Legal Analysis."
13. Skyline teacher, personal communication with author. All subsequent quotations are from Skyline teachers.
14. Boyd et al., "Teacher Layoffs."
15. Jason Felch, Jason Song, and Doug Smith, "When Layoffs Come to L.A. Schools, Performance Doesn't Count," *LA Times*, December 4, 2010.
16. Ronald G Ehrenberg et al., "Class Size and Student Achievement," *Psychological Science in the Public Interest* 2, no. 1 (2001).
17. Daniel M. Koretz, *Measuring Up: What Educational Testing Really Tells Us* (Cambridge, MA: Harvard University Press, 2009).
18. Henry I. Bruan, *Using Student Progress to Evaluate Teachers: A Primer on Value-Added Models* (Princeton, NJ: Educational Testing Service, 2005).
19. Emily Cohen and Priya Varghese, "Teacher Quality Roadmap & Improving Policies and Practices in LAUSD" (National Council on Teacher Quality, 2011).
20. Adolfo Guzman-Lopez, "Lawsuit Against California Officials, LA Unified Would Undo Significant Teacher Job Protections," *Pass/Fail* (blog), June 5, 2012, <http://www.scpr.org/blogs/education/2012/06/05/6468/lawsuit-would-undo-significant-teacher-job-protect/>.
21. Measures of Effective Teaching Project, "Asking Students About Teaching: Student Perception Surveys and Their Implementation" (Bill and Melinda Gates Foundation, 2012).
22. Stand for Children is, of course, the Democrats for Education Reform—supported organization that helped break the back of the teachers unions in Wisconsin and other states. Michelle Rhee, the controversial former superintendent of Washington, DC, public schools, founded Students First in 2010.
23. Susan Moore Johnson and John P. Papay, *Redesigning Teacher Pay: A System for the Next Generation of Educators*, vol. 2 (Washington, DC: Economic Policy Institute, 2009).