

# Last Minute Memorandum

**To:** STATE BOARD MEMBERS **Date:** July 8, 2003

**From:** Karen Steentofte, Chief Counsel, State Board of Education

**Re:** ITEM 9

**Subject** NO CHILD LEFT BEHIND (NCLB) ACT: TEACHER REQUIREMENTS (“HIGHLY QUALIFIED TEACHER”), INCLUDING, BUT NO LIMITED TO, PROPOSED TITLE 5 REGULATIONS

Attached are proposed regulations for implementing the NCLB Teacher Requirements. The proposed regulations are based on the proposal adopted by the Board in concept at the June 2003 meeting with modifications based on CDE and Board staff’s consultation with staff at the United States Department of Education (USDE) as directed by the Board.

Consultation with USDE suggested that two changes to the “adopted-in-concept proposal” were appropriate. First, while they understood California’s need for a limited transition period, they did not see anything in the law that would allow for such a transition period and advised us not to include it. Therefore the transition period in the “adopted-in-concept proposal” has not been included in the proposed regulations.

Secondly, USDE informed us that further Guidance on “Highly Qualified Teacher” would be released in late July or early August and that there would be a question and answer on how one determines if a teacher is teaching at the elementary, middle or high school level. USDE informed us that each State, or even each LEA, could make their own determination based on the curriculum taught. For example, based on the curriculum taught, teachers instructing multiple subjects taught together in one class of sixth or seventh graders could be considered elementary in nature, while eighth grade--where Algebra, foreign languages and other subjects are taught separately-- could be considered middle school. Differentiating teachers by the nature of curriculum taught should help school districts struggling with the NCLB Teacher Requirements in grades 6-8, and perhaps some alternative school programs. The proposed regulations include a definition for "elementary, middle and high school" as a result of this information.

Once approved by the Board, the proposed regulations will be sent out for the 45-day public comment period and will come back to the Board in September. Given that further written Guidance on Title II is expected from USDE before September further revisions to the proposed regulations that will require another 15-day or 45-day public review may be necessary or advisable.

## **INITIAL STATEMENT OF REASONS**

### **SPECIFIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATIONS ARE INTENDED TO ADDRESS**

Federal law under No Child Left Behind Act (NCLB) requires that all teachers of core academic subjects meet the federal definition of “highly qualified teacher” no later than the end of the 2005-2006 school year. Schools that receive Title I funds are currently required to hire only teachers that meet the federal definition of “highly qualified teacher.” Core academic subjects include English, reading, language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography (NCLB Section 9101).

While federal law defines the requirements for “highly qualified teacher,” some details regarding how the definition is applied in each State must also be determined. Existing State law and these proposed regulations are intended to provide the detail necessary to meet the NCLB Teacher Requirements in California.

### **SPECIFIC PURPOSE OF THE REGULATIONS**

The proposed regulations identify the “rigorous state test” that federal law requires each new to the profession elementary teacher pass, and outlines the “high objective uniform state standard evaluation” that can be used to qualify not new to the profession teachers as “highly qualified.” The proposed regulations also define several key phrases to assist school district in complying with the federal law.

### **AUTHORITY AND REFERENCE**

Authority for these proposed regulations is found in Education Code sections 12001. Education Code section 12001 is the general authority for the State Board of Education to adopt rules and regulations for implementing federal law in the State. Reference for these proposed regulations is the federal No Child Left Behind Act (20 USC 6301 et seq.) and associated federal regulations.

### **NECESSITY**

The proposed regulations are necessary to implement the requirements of the federal No Child Left Behind Act. Specifically, the proposed regulations are necessary to identify the “rigorous state test” that federal law requires each new to the profession elementary teacher pass, and outline the “high objective uniform state standard evaluation” that federal law provides to qualify not new to the profession teachers as “highly qualified.” The proposed regulations also define several key phrases to assist school districts in complying with the federal law. These details are necessary to assist school districts meet the federal law and allow California to receive and retain federal funding under the federal Title I, Part A.

## **SUMMARY OF PROPOSED REGULATIONS**

### **Article 1. General**

Article 1 provides California specific definitions of key words and phrases in the federal law.

### **Article 2. Elementary Level Teachers**

Article 2 provides California specific details for meeting the federal requirements for "new" and "not new" to the profession elementary teachers.

### **Article 3. Middle and High School Level Teachers**

Article 3 provides California specific details for meeting the federal requirements for "new" and "not new" to the profession middle and high school teachers.

### **Article 4. Teachers Not Meeting NCLB Teacher Requirements**

Article 4 identifies the California permits and authorizations that would not meet the federal requirements.

### **Article 5. One Time Compliance Article**

Article 5 clarifies that compliance with the federal requirements must only be accomplished once per subject or grade span taught.

### **Article 6. Teachers from Out-of-State**

Article 6 clarifies that California will accept another State's determination that a teacher has met the NCLB Teacher Requirements for a particular subject or grade span taught.

## **DISCLOSURES**

The fiscal analysis of these proposed regulations is pending.

The State Board of Education has determined that no alternative considered by the State Board or that has otherwise been identified and brought to the attention of the State Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to the affected private persons than the proposed action.

The State Board of Education has made an assessment and determined that the adoption of the proposed regulations will neither create nor eliminate jobs in the State of California.

1 Title 5. EDUCATION  
2 Division 1. State Department of Education  
3 Chapter 6. Certificated Personnel  
4 Subchapter 7. No Child Left Behind Teacher Requirements  
5

6 Article 1. General  
7

8 *Add Section 6100 to read:*

9 **§6100. Definitions.**

10 For purposes of No Child Left Behind Teacher Requirements, the following definitions shall  
11 apply:

12 **(a) Advanced Credentialing:** A teacher who has achieved National Board Certification is  
13 considered to have Advanced Credentialing.

14 **(b) Credential:** A Preliminary, Professional Clear or Life Credential, or any teaching  
15 credential issued under prior statutes, that authorizes a person to teach in California K-12 schools

16 **(c) Elementary, Middle and High School:** The local educational agency shall determine,  
17 based on curriculum taught, by school site, or by each grade at the school site, if appropriate,  
18 whether a teacher is hired to teach elementary, middle or high school.

19 **(d) First Day of School:** The first day of school is the first day of school that students report  
20 to the school per the district school calendar.

21 **(e) Hired:** A teacher is hired when they accept employment at the school district. The date a  
22 teacher is hired is not affected by a change of assignments or schools within the district. The date  
23 a teacher is hired in a district does not affect a teacher's "new" or "not new" to the profession  
24 status.

25 **(f) Teacher New to the Profession:** A teacher is new to the profession if they have graduated  
26 from an accredited institution of higher education and received a credential, or began an  
27 approved intern program, on or after July 1, 2002.

28 **(g) Teacher Not New to the Profession:** A teacher is not new to the profession if they  
29 graduated from an accredited institution of higher education and received a credential, or were  
30 enrolled in, or had completed, an approved intern program before July 1, 2002.  
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1 Article 2. Elementary Level Teachers

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3 *Add Sections 6101 through 6104 to read:*

4 **§ 6101. Elementary Teachers.**

5 A teacher who meets NCLB requirements at the elementary level is one who:

6 (1) Holds at least a bachelor's degree, and

7 (2) Is currently enrolled in an approved intern program for less than three years or has a  
8 credential, and

9 (3) Meets the applicable requirements in section 6102 or 6103.

10 **§ 6102. Elementary Teachers New to the Profession.**

11 A teacher who meets the NCLB requirements and is new to the profession at the elementary  
12 level, in addition to having at least a bachelor's degree and either being currently enrolled in an  
13 approved intern program for less than three years or holding a credential, must have passed a  
14 validated statewide subject matter examination certified by the Commission on Teacher  
15 Credentialing.

16 **§ 6103. Elementary Teachers Not New to the Profession.**

17 A teacher who meets NCLB requirements and is not new to the profession at the elementary  
18 level, in addition to having at least a bachelor's degree and either being currently enrolled in an  
19 approved intern program for less than three years or holding a credential, must have completed  
20 one of the following:

21 (1) A validated statewide subject matter examination certified by the Commission on Teacher  
22 Credentialing

23 (2) In lieu of the high objective uniform state standard evaluation in subsection 3, National  
24 Board Certification

25 (3) A high objective uniform state standard evaluation conducted pursuant to section 6104  
26 and in conjunction with the teacher's evaluation and assessment pursuant to Education Code  
27 section 44662, to determine the teacher's subject matter competence in each of the academic  
28 subjects taught by the teacher.

29 **§ 6104. High Objective Uniform State Standard Evaluation.**

30 (a) The high objective uniform state standard evaluation shall be conducted at the time and by  
31 the means utilized to satisfy Education Code section 44662, except that (1) subject matter shall  
32 be defined as the State Academic Content Standards for the grades and subjects taught, and (2)  
33 competency shall be demonstrated by satisfactorily meeting standards 3 and 5.1 of the California  
34 Standards for the Teaching Profession. The demonstration of subject matter competence shall  
35 include some combination of the following:

(1) Classroom observation,

1 (2) Demonstration of knowledge of the appropriate grade-level and subject State Academic  
2 Content Standards, and

3 (3) Portfolio review of lesson plans and student work for one academic year.

4 (b) This one time demonstration of subject matter competence shall be evaluated by a person  
5 or persons knowledgeable in the State Academic Content Standards for the grade and subject for  
6 which the teacher is demonstrating competency.

7 (c) If the teacher does not satisfactorily meet standards 3 and 5.1 of the California Standards  
8 for the Teaching Profession as part of the NCLB evaluation, then subject matter competency  
9 shall be demonstrated through completion of the Peer Assistance and Review Program for  
10 Teachers or other individualized professional development plan, pursuant to Education Code  
11 section 44664, aimed at assisting the teacher to meet standards 3 and 5.1 of the California  
12 Standards for the Teaching Profession.

### 13 14 **Article 3. Middle and High School Level Teachers**

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16 *Add Sections 6110 through 6112 to read:*

#### 17 **§ 6110. Middle and High School Teachers.**

18 A teacher who meets NCLB requirements at the middle and high school levels is one who:

19 (1) Holds at least a bachelor's degree, and

20 (2) Is currently enrolled in an approved intern program for less than three years or has a full  
21 credential, and

22 (3) Meets at least one of the applicable requirements in section 6111 or 6112.

#### 23 **§ 6111. Middle and High School Teachers New to the Profession.**

24 A teacher who meets NCLB requirements and is new to the profession at the middle and high  
25 school levels, in addition to having at least a bachelor's degree and either being currently  
26 enrolled in an approved intern program for less than three years or holding a credential in the  
27 subject taught, must have passed or completed one of the following for every core subject  
28 currently assigned:

29 (1) validated statewide subject matter examination certified by the Commission on Teacher  
30 Credentialing,

31 (2) university subject matter program approved by the Commission on Teacher Credentialing,

32 (3) undergraduate major in the subject taught,

33 (4) graduate degree in the subject taught,

34 (5) coursework equivalent to undergrad major,

35 (6) advanced certification or credentialing (National Board Certification).

1 **§ 6112. Middle and High School Teachers Not New to the Profession.**

2 A teacher who meets NCLB requirements and is not new to the profession at the middle and  
3 high school levels, in addition to having at least a bachelor’s degree and either being currently  
4 enrolled in an approved intern program for less than three years or holding a credential, must  
5 have passed or completed one of the following for every core subject currently assigned:

- 6 (1) A validated statewide subject matter examination certified by the Commission on  
7 Teacher Credentialing,  
8 (2) University subject matter program approved by the Commission on Teacher  
9 Credentialing,  
10 (3) Undergraduate major in the subject taught,  
11 (4) Graduate degree in the subject taught,  
12 (5) Coursework equivalent to undergrad major,  
13 (6) Advanced certification or credentialing (National Board Certification),  
14 (7) The high objective uniform state standard evaluation pursuant to Article 2, section 6104.

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16 **Article 4. Teachers Not Meeting NCLB Teacher Requirements**

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18 *Add Section 6115 to read:*

19 **§ 6115. Teachers Not Meeting NCLB Teacher Requirements.**

20 A teacher does not meet the NCLB teacher requirements for the core academic subject taught  
21 if:

- 22 (1) Teaching with an Emergency Permits, or  
23 (2) Teaching with a supplemental authorization (except where the supplemental authorization  
24 is based on a major or its equivalent in the subject taught) or a local authorizations for the subject  
25 taught, or  
26 (3) Teaching with state or local waivers for the grade or subject taught, or  
27 (4) Teaching as a pre-intern.

28 **Article 5. One Time Compliance**

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30 *Add Section 6120 to read:*

31 **§ 6120. One Time Compliance.**

32 Once a school district has determined that a teacher meets the NCLB Teacher Requirements  
33 for the grade level and/or subject taught that teacher will not be required to demonstrate that they  
34 meet the requirements again for the same grade level and/or subject taught, even if they are later  
35 hired by another school district in California.

1 Article 6. Teachers from Out-of-State

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3 *Add Section 6125 to read:*

4 **§ 6125. Teachers from Out-of-State.**

5 Teachers who have been found to meet subject matter competency requirements of NCLB in  
6 another State shall also be considered to have met those requirements for that particular subject  
7 and/or grade span in California. California’s credentialing reciprocity with other States is not  
8 affected by the requirements of NCLB.

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