



NO CHILD LEFT BEHIND

Policy Brief

January
2006

Highly Qualified Teachers and Paraprofessionals in Charter Schools: A Guide for Charter School Authorizers

Paul T. O'Neill

Introduction

The federal No Child Left Behind Act of 2001 (“NCLB” or “the Act”) defines an aggressive, ambitious and multi-faceted approach for increasing student achievement and closing the achievement gap.

Premised on the correlation between student academic achievement and teacher quality, NCLB demands that all students, regardless of race, ethnicity, disability or income, have quality instructors in their classrooms. To do so, NCLB establishes mandatory credentialing standards for teachers and paraprofessionals, in both traditional and charter schools alike.

This Policy Brief explains NCLB’s credentialing requirements and applicability to teachers and paraprofessionals working in charter schools (Part I) and examines authorizer responsibilities for ensuring compliance with these requirements in the charter schools they oversee (Part II).

NCLB demands that all students, regardless of race, ethnicity, disability or income, have quality instructors in their classrooms. To do so, NCLB establishes mandatory credentialing standards for teachers and paraprofessionals, in both traditional and charter schools alike.

PART I: The Nuts and Bolts of NCLB’s Teacher and Paraprofessional Credentialing Requirements in Charter Schools

NCLB requires that all public school teachers of core academic subjects¹ be “highly qualified.” Although charter schools are freed from many of the state and local restrictions normally applicable to public schools in exchange for increased accountability for results, they are **not** exempted from NCLB’s Highly Qualified Teacher (“HQT”) requirements.

To be considered a HQT, a charter school teacher of a core academic subject must:

1. Hold a bachelor’s degree (e.g., B.A., B.S.); **and**
2. Be fully state certified / licensed to teach if state charter school law requires certification (See *Certification Standard* for further explanation); **and**
3. Demonstrate sufficient subject matter competency.

Bachelor’s Degree

NCLB’s requirement that teachers obtain a bachelor’s degree is fairly straightforward and applies in charter schools in the same way that it applies in other public schools.

Certification Standard

NCLB looks to state charter laws to define licensing or certification requirements for charter school teachers.

Authorizer Fact Check: Does your state charter school law require teachers to be certified/licensed to teach in a charter school?

That is, if a state's charter law requires charter school teachers to be certified, then teachers must also hold the appropriate certification to be considered highly qualified. However, in states which do not require teachers in charter schools to be certified, these teachers *do not* need to hold certification to be considered highly qualified under NCLB.

Subject Matter Competence

Like other public school teachers, those in charter schools must demonstrate appropriate subject matter competence.

Determining "Subject Matter Competence"

How teachers "demonstrate subject matter competence" is a bit more complex, for charter and non-charter teachers alike, than the other two HQT requirements. In general, teachers "new to the profession" have less flexibility in demonstrating subject matter competency than do veteran teachers. NCLB does not define the term "new to the profession," nor has the Department. Individual state education departments, however, may adopt their own definitions (e.g., in New York this means first-year teachers; in

Tennessee it means teachers hired for the first time in a Tennessee public school after the beginning of the 2002-2003 school year; in California it means teachers who have graduated from a higher education program or began an internship program on or after July 1, 2002).

Authorizer Fact Check: Has your state defined the term "new to the profession" of teaching? How does it apply to charter school teachers?

However defined, elementary teachers considered "new to the profession" can demonstrate subject matter competency by passing a rigorous state test of knowledge and teaching skills in reading, writing, math and other areas of the basic elementary school curriculum. Middle school and high school teachers who are new to the profession must either: 1) pass a state test in each of the core subjects they teach; or 2) have a college major, graduate degree or advanced certificate in each of the core subjects they teach.

Veteran teachers, on the other hand, may demonstrate subject matter competency in any of the ways available to new teachers in their grade range as well as through another, alternative process which takes into account their experience and practical expertise. This process, referred to as "HOUSSE"—High, Objective, Uniform State Standard of Evaluation—allows states the option to give teachers credit for a wide variety of qualifications, so long as the standards they set meet certain basic criteria laid out in the Act, and in regulations and guidance issued by the Department.

The No Child Left Behind Policy Briefs are a publication of the National Association of Charter School Authorizers, a non-profit, non-partisan membership organization that promotes the establishment and operation of quality charter schools through responsible oversight in the public interest. They are supported by and are one product of a three-year grant from the U.S. Department of Education for *Building Excellence in Charter School Authorizing: Ensuring Accountability at Scale* (BECSA II). Policy Briefs are intended to support authorizers in aligning NCLB accountability oversight with NACSA's *Principles and Standards for Quality Charter School Authorizing*.

NACSA broadly disseminates each Policy Brief in print and electronic form. Additional print copies are available by request.

Authorizer Fact Check: Has your state developed a HOUSSE system? How can veteran charter school teachers use this system to demonstrate subject matter competency?

For example, a state could establish a HOUSSE system that awards veteran teachers for: each college course they have taken in a particular subject; each year of experience they have in teaching that subject; and/or evaluations that demonstrate a teacher's subject matter competency.

Demonstrating subject matter competency may be most challenging for middle and secondary teachers who teach multiple subjects and must show competence in each subject area. Over the

last year, however, the Department has eased this requirement somewhat by allowing states the flexibility to:

- Utilize a single HOUSSE procedure that covers multiple subjects;
- Allow science teachers to demonstrate competency in more than one scientific field (e.g., biology and chemistry) through a single credential;
- Allow rural teachers three years to become highly qualified in the additional core subjects they teach if they are already highly qualified in one subject; and
- Allow new special education teachers who meet the HQT requirements in language arts, math or science an additional two years in which to demonstrate competence in any other core subjects they teach.

Timeline for HQT Implementation

NCLB establishes various deadlines for compliance with HQT requirements. The Act requires that all teachers of core academic subjects hired after the first day of the 2002 -

2003 school year and teaching in a program supported by Title I, Part A funds be highly qualified as a prerequisite for employment.

Authorizer Fact Check: Of the charter schools you oversee, which schools receive Title I, Part A funds?

For teachers in public schools that do not receive Title I funds, and for veteran teachers in Title I schools, the statute requires that all teachers of core academic subjects be highly qualified by the end of the 2005-2006 school year. Recently, the Department indicated that it will consider requests from states, able to show "good faith efforts" towards compliance, for a waiver of this deadline for up to one year.² That said, given the various uncertainties about this new potential flexibility—including where it may apply—it would be prudent to treat this information with caution. Check with your respective state department of education to understand how the HQT timeline applies in a particular location.

Authorizer Fact Check: What is the deadline for full compliance with NCLB's HQT requirements in your state?

Each state that receives Title I funding must develop a plan for meeting HQT deadlines. The plan must include annual measurable objectives for each district and school, including charter schools, in the state that, at a minimum, include:

1. An annual increase in the percentage of highly qualified teachers for each district and school; **and**
2. An annual increase in the percentage of teachers who are receiving high quality professional development.

The measurable objectives may also include other indicators chosen by a given state such as the number of uncertified teachers enrolled in alternate route certification programs or the number of teachers transferring from provisional certifications to permanent certification.

Demonstrating subject matter competency may be most challenging for middle and secondary teachers who teach multiple subjects and must show competence in each subject area.

As of the 2002-2003 school year, states must provide an annual report to the Department indicating their progress on these performance objectives.

LEAs, which some state laws designate charter schools to be, that receive Title I funds must, in turn, develop a plan for ensuring that their teachers are “highly qualified” by the federal deadlines and submit to the state an annual report on their progress in meeting the state’s established HQT objectives.

Substitute Teachers

Short-term substitutes—individuals who fill in for a finite amount of time while the regular classroom teacher is absent—are not required to meet HQT standards. However, the Department “strongly recommends”³ that states require “long-term substitutes”⁴ to meet HQT standards. Furthermore, as noted under “Part II: Authorizers and NCLB’s Credentialing Requirements” below, parents must be notified if their child is taught by a teacher who is not highly qualified, as defined by the Act, for at least four consecutive weeks.

Temporary Certification, Out-of-Field Teaching, and Alternate Route Certification

As previously stated, some state charter school laws require all, or a proportion of, teachers in charter schools to hold the appropriate certification/license. In those states, schools may have teachers utilizing temporary certification, out-of-field teaching and/or alternative certification options. It is important to understand how NCLB affects these options, remembering that possible extensions of the HQT deadline by the Department may vary these requirements as well.

Temporary Certification

The practice of issuing temporary, provisional or emergency certification to teachers who

do not meet state certification or licensing standards is not acceptable under NCLB and the law is explicit on this point. States have some leeway up until HQT is fully phased in, although they must show annual progress towards their teacher quality goals. After that date though, the state must entirely dispense issuing temporary certifications.

Out-of-Field Teaching

Assigning a teacher to a subject outside his or her area of expertise has been common practice, particularly in times of staffing shortages. NCLB makes it clear, however, that in states that receive Title I funds out-of-field teaching is not permitted after HQT is fully phased-in.

Alternative Certification

Alternate route certification programs are given a carve-out from the standard NCLB rules regarding what it takes to be considered highly qualified.

Alternate route certification programs are designed to bring to the teaching profession individuals from other career paths. They allow individuals to obtain certification in non-traditional ways, often through on-the-job training. NCLB supports such initiatives by allowing teachers enrolled in alternate route programs to be considered highly qualified *before* obtaining state certification or licensing (in either a traditional or non-traditional way). The following restrictions apply:

1. The teacher must have a bachelor’s degree; **and**
2. The teacher must have demonstrated subject matter competence in each of the core academic subjects he or she teaches; **and**
3. The teacher must be part of an alternative route program under which he or she a) receives high quality professional development (as defined in the

Department's guidance); b) is closely supervised; c) functions as a teacher in the alternate route program for a specified period of time not to exceed three years, and d) demonstrates satisfactory progress towards full state certification.

For example, a professional chemist with a B.A. in music and a Ph.D. in chemistry, could enter an alternate route certification program in New Jersey that allowed him to gain full state certification within three years while he taught chemistry in a high school. He would be considered highly qualified for the entire three years.

Special Education Teachers

Whether or not a particular special education teacher must be highly qualified under NCLB depends on whether the teacher instructs in one or more core academic subjects. According to the Act, special education itself is not a core academic subject, so teachers who are fully credentialed in special education under state law are not automatically considered HQT.

IDEA says that if a state's charter law holds charter school teachers to a different certification or licensing standard, meeting that standard will be sufficient to comply.

NCLB requires that special education teachers who are the primary teachers of a core academic subject be highly qualified. These rules do not apply to those whose responsibilities fall outside of this description—such as special education teachers who teach life skills or speech, or who are not the primary teacher within a classroom.

In general, special education teachers must meet the HQT requirements appropriate to the age of the students they teach, regardless of the students' disabilities. Accordingly,

special education teachers who teach secondary-school age students must be highly qualified in every subject they teach. The recent reauthorization of the Individuals with Disabilities Education Act (IDEA) provides a narrow exception for special education teachers who *exclusively* teach students whose cognitive disabilities are so serious that they are held to alternate achievement standards. States may allow these teachers to meet the HQT requirements for elementary teachers instead.

Special education teachers who are new to the profession, and who can show subject matter competence in language arts, math or science, have an additional two years in which to demonstrate competence in any other core subjects they teach.

IDEA also establishes the category of HQ Special Education teacher. Not only must HQ Special Education teachers meet the applicable HQT requirements under NCLB, they must also be certified or licensed in special education. However, as with the NCLB certification and licensing requirements, IDEA says that if a state's charter law holds charter school teachers to a different certification or licensing standard, meeting that standard will be sufficient to comply.

Authorizer Fact Check: Does your state charter school law require special education teachers to be certified/licensed to teach in a charter school?

Professional Development

The Act requires that all LEAs, including charter schools that serve as LEAs, spend between 5 and 10 percent of their Title I funds on professional development to help their teachers meet the HQT and paraprofessional standards. If all teachers and paraprofessionals have met the requirements, these funds do not need to be reserved.

Paraprofessional Requirements

In addition to its HQT requirements, NCLB sets minimum credentialing standards for Title I paraprofessionals with instructional duties:

1. High School Diploma: All instructional paraprofessionals, regardless of hiring date, must have a high school diploma or its equivalent;
2. Post-secondary Education or Assessment: All instructional paraprofessionals must have:
 - a. Completed two years of study at an institution of higher education; or
 - b. Obtained an associate degree or higher; or
 - c. Met a rigorous standard of quality and be able to demonstrate, through a formal state or local assessment, knowledge of and the ability to assist in instructing reading, writing and mathematics.
3. Oversight: The work of all instructional paraprofessionals must be overseen by a HQT.

All paraprofessionals hired after January 8, 2002 must comply with these requirements as a prerequisite of employment. All paraprofessionals hired before that date must meet these standards by the same date on which all teachers must be highly qualified by the end of the 2005-2006 school year⁵, or by any extension of the HQT deadline.

Unlike the HQT requirements, the new standards for paraprofessionals apply only to instructional paraprofessionals who work in programs supported by Title I—that is, to those whose salaries are funded by Title I.

Unlike the HQT requirements, the new standards for paraprofessionals apply only to instructional paraprofessionals who work in programs supported by Title I—that is, to those whose salaries are funded by Title I. In schools operating “school-wide” Title I programs, that means every instructional paraprofessional in the school. Whereas in Title I “targeted assistance” schools, these requirements apply only to paraprofessionals working in the Title I program.

Authorizer Fact Check: Of the schools receiving Title I funds that you oversee, which operate a “school-wide” program and which operate a “targeted assistance” program?

The NCLB requirements for paraprofessionals apply to charter schools in the same manner as they apply to other public schools.

PART II: Authorizers and NCLB’S Credentialing Requirements

Prudent authorizers should take a proactive approach to monitoring compliance with NCLB’s credentialing requirements, for both teachers and paraprofessionals, in the schools they oversee. While the law states that NCLB compliance in charter schools shall be overseen in accordance with state charter law,⁶ the statute is silent on the specific role of charter authorizers in carrying out this mandate. Department-issued non-regulatory guidance, however, makes clear the Department’s expectation that charter authorizers are primarily responsible for overseeing and supporting NCLB compliance, including credentialing requirements, in charter schools:

[T]he charter authorizer bears primary responsibility for holding charter schools accountable for Title I, Part A provisions (including teacher quality requirements) unless State law specifically gives the SEA direct responsibility for charter school accountability.⁷

It is worth noting that Department-issued non-regulatory guidance does not have the authority of law. In the absence of any law or regulations specifically on point, however, such guidance is likely to be considered

mandatory by the Department—particularly in instances where it uses directives like “must.”

The Department’s “Highly Qualified Teachers: Improving Teacher Quality State Grants; Non-Regulatory Guidance” (most recently revised August 3, 2005, but likely

to be further updated), lays out the Department’s approach to oversight responsibilities in terms of NCLB’s credentialing requirements and authorizers should be well-versed with this guidance.

Drawing on applicable guidance, unless state law requires otherwise, charter authorizers should:

- Monitor and track the progress of each charter school in meeting the HQT and paraprofessional requirements;
- Require each Title I charter school to provide an annual written report of its compliance with NCLB’s credentialing requirements, for teachers and paraprofessionals alike;
- Ensure that each charter school has a plan in place for meeting the state HQT plan and submits an annual report to the state on the school’s progress towards the plan’s objectives;
- Ensure that professional development is being appropriately provided at each charter school; and
- Ensure that each charter school provides required notices to parents, including:
 - A notice at the start of each school year that parents are entitled to request specific information about the qualifications of their child’s teacher; and

- Notification that a particular child has been assigned to or taught by a teacher who has not met HQT standards, for four or more consecutive weeks.

Authorizers should develop tools such as rubrics and checklists for monitoring compliance with NCLB’s credentialing requirements. (See *Model Checklist for Monitoring Compliance with NCLB Credentialing Requirements*).

Enforcing NCLB Credentialing Requirements

Nothing within the federal law requires the inclusion of NCLB credentialing requirements in contracts between charter schools and authorizers. However, it is worth noting that not including such provisions in contracts in no way waives charter schools from these mandates. Simply put, charter schools must employ highly qualified teachers and paraprofessionals working in Title I programs whether their contract explicitly states it or not.

Authorizers can, of course, opt to explicitly incorporate NCLB credentialing requirements, and penalties for failure to meet them, into charter agreements. In fact, including such provisions in contracts may make it easier to enforce compliance in schools that are not meeting the requirements of the law.

NCLB Credentialing Requirements: The Challenges Ahead

Compliance is Difficult

There is no question that NCLB’s credentialing standards, for teachers and paraprofessionals alike, will be difficult to fully reach. Many rural and urban areas, for example, face serious challenges in finding enough teachers to fill their classrooms, let alone those with HQT credentials. Schools may find themselves forced to decide between staffing a classroom with non-HQT personnel or leaving it empty.

Simply put, charter schools must employ highly qualified teachers and paraprofessionals working in Title I programs whether their contract explicitly states it or not.

Another thorny issue relates to labor contracts, but obviously this only applies to charter schools that employ unionized teachers. Contracts currently in place may pre-date NCLB and thus complicate the ability of schools to meet HQT mandates. Schools may find themselves in the difficult position of having to choose between disobeying the law, and buying-out tenured teachers who do not meet NCLB standards. A better solution is to help under-qualified teachers obtain the credentials they need to become highly qualified. But this may not always be possible. Going forward, unionized charter schools ought to adapt teacher contracts to comply with NCLB HQT requirements.

The Deadline is Looming

The deadline for full compliance with NCLB credentialing requirements is nearing—the end of the 2005-2006 school year. It remains to be seen if and where the sort of extensions described by the Department will take effect, and whether the Department will be open to extensions that go beyond the one year limit they have currently set. Many states, districts and schools—charter schools among them—have made dramatic progress over the last several years towards meeting NCLB’s credentialing standards, but many remain far from full compliance.

Charter schools that continue to employ under-qualified instructional staff should redouble their efforts to improve the credentials of their staff members and authorizers should closely monitor, support and provide oversight for these efforts.

We May Not Make It—What Then?

Since 100% compliance with NCLB’s credentialing standards is a very high threshold, it seems likely that many schools—charter and otherwise—will come up short. Here again, neither NCLB nor the Department’s regulations or guidance provides much clarity

about the consequences for non-compliance: Will schools that fall slightly short of the mark be treated less harshly than those who miss it by a mile? Will the Department punish any schools at all? If they do actively enforce this aspect of the law, will they withhold federal funding, as they have done in other contexts? If so, how much? At this point we simply do not know. In the absence of more information, charter schools and charter authorizers should continue to strive for the ultimate goal of having all students taught by highly qualified teachers and paraprofessionals and develop policies and procedures for monitoring compliance and addressing non-compliance with these requirements.

Resources

The following resources may be useful to charter schools and authorizers seeking better understanding of NCLB’s credentialing requirements for teachers and paraprofessionals.

The No Child Left Behind Act of 2001

(20 U.S.C. 6301)

www.ed.gov/policy/elsec/leg/esea02/index.html

NCLB Regulations (34 C.F.R. 200)

www.ed.gov/policy/elsec/reg/list.jhtml

NCLB Non-regulatory Guidance, generally

www.ed.gov/policy/elsec/guid/list.jhtml

Highly Qualified Teacher & Paraprofessional Guidance

www.ed.gov/programs/teacherqual/guidance.doc

Charter Schools Guidance

www.ed.gov/policy/elsec/guid/charterguidance03.pdf

US Department of Education Charter Schools Program Guidance

www.ed.gov/policy/elsec/guid/cspguidance03.pdf

HQT Flexibility

www.ed.gov/nclb/methods/teachers/hqtflexibility.html

Special education teacher HQT chart

www.nasdse.org/documents/IDEA%20HQT%20Chart%20020305.pdf

HQT special education teacher requirements (new IDEA)

www.pacer.org/idea/1page/HQT.pdf

Model Checklist for Monitoring Compliance with NCLB Credentialing Requirements

*This sample checklist can be modified to reflect additional local elements
such as state requirements and authorizer practices*

TEACHERS

1. Has evidence been obtained from the school indicating that all teachers in core subjects meet HQT standards? Yes No

Elements:

- Bachelor's degree; **and**
 - State teacher certification / licensure (if required by state charter law); **and**
 - Subject matter competence (including HOUSSE where applicable)
2. Do any core subject teachers hold an emergency, temporary or provisional certification? Yes No
3. Has evidence been obtained from the school indicating that all special education teachers are highly qualified in special education (as well as in any core subjects)?
[Source: IDEA 2004] Yes No
4. Does the school have a sufficient plan in place for ensuring that it meets the requirements of the state's plan for HQT compliance? Yes No
5. If the school receives Title I funds, has the school submitted an annual report indicating whether or not the school is in compliance with NCLB credentialing requirements? Yes No
6. Has the school provided evidence that it is providing appropriate professional development? Yes No
7. Were all required parental notices timely sent?
- Notice at the start of the school year that parents are entitled to request specific information about the qualifications of their child's teacher(s) Yes No
 - Notification(s) that for four or more consecutive weeks a child has been assigned to or taught by a teacher who has not met HQT standards Yes No

PARAPROFESSIONALS

- Has evidence been obtained from the school indicating that all paraprofessionals paid with Title I funds meet NCLB paraprofessional credentialing standards? Yes No

Elements:

- High school diploma, General Equivalency Diploma (GED) or equivalent; **and**
- Directly supervised by a HQT; **and**
- Two years of college; **or** associate's degree or higher; **or** successful completion of state- approved paraprofessional exam

About the Author

Paul T. O'Neill is an attorney who focuses his practice and scholarship on education law. He is currently Senior Counsel & Senior Vice President of Edison Schools and formerly served as General Counsel of the Charter Schools Institute of the State University of New York. Mr. O'Neill was one of the founders of a charter school in

New York City's South Bronx. He is an adjunct professor at Teachers College, Columbia University, where he teaches education and special education law, and is the author of numerous scholarly and professional publications, including the recent *No Child Left Behind Compliance Manual* (Brownstone Publishers, 2004).

Endnotes

- 1 Section 1119 of NCLB defines "core academic subjects" as English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.
- 2 Letter from Secretary Margaret Spellings to Chief State School Officers, October 21, 2005. Available at www.ed.gov/policy/elsec/guid/secletter/051021.html.
- 3 *Improving Teacher Quality Guidance, C-24*.
- 4 The Department has not defined the term "long-term substitutes". Rather, it leaves it up to states to define.
- 5 As originally stated in the law, paraprofessionals hired after January 8, 2002 were required to meet the NCLB credential requirements by January 8, 2006. However, the Department recently extended the deadline to match the deadline for HQT compliance.
- 6 NCLB, §1111(b)(2)(k).
- 7 *The Impact of the New Title I Requirements on Charter Schools: Non-Regulatory Guidance*, U.S. Department of Education, July 2004, at E-7. Title I, referenced in the quoted language, is a major component of NCLB.

NON-PROFIT ORG.
US POSTAGE
PAID
ALEXANDRIA, VA
PERMIT NO. 6054



1125 Duke Street
Alexandria, VA 22314

(703) 683-9701 (tel.)

(703) 683-9703 (fax)

www.charterauthorizers.org