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U.S. Department of Education Waters Down Teacher Quality, NCLB Lawsuit Charges: Major loophole in defining “Highly Qualified Teacher” defies will of Congress, harms students

San Francisco, CA – A coalition of parents, students, community groups, and legal advocates today sued the United States Department of Education and Secretary of Education Margaret Spellings for violating the teacher quality provisions of the No Child Left Behind (NCLB) Act. In the first lawsuit of its kind, the coalition argues that a Department regulation has created a major loophole in NCLB that defies the will of Congress and harms students nationwide by defining teachers still in training as “highly qualified.”

“Students of color and students in low-performing schools are far more likely than other students to be taught by intern teachers or teachers who are still in training,” said Lorie Chinn, a California ACORN board member. “A primary purpose of NCLB was to address this problem. But the Department of Education’s regulations continue to allow too many inexperienced teachers in schools serving large numbers of poor and minority students. This is just wrong.”

Nationally, more than 100,000 teachers are estimated to participate in alternative certification programs enabling them to be labeled “highly qualified.” In California, there are more than 10,000 intern teachers. More than half of California’s interns are teaching in schools with 90-100% students of color compared to only 3% of interns in schools with the lowest population of students of color.

“We have a pervasive achievement gap among students of different ethnicities in this country, and teachers are the most important factor in student achievement,” said Solomon Rivera, Executive Director of Californians for Justice. “The Department’s regulations are perpetuating the glaring injustices in the education of our children that contribute to that gap.”

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Plaintiffs Californians for Justice, California ACORN, and several individual students and parents filed the suit (*Renee v. Spellings*) in federal district court in San Francisco, California. They are represented by Public Advocates Inc., a public interest law firm and advocacy group based in San Francisco, and Goodwin Procter LLP, a national law firm serving as *pro bono* counsel.

“Providing all students with highly qualified teachers is the only way to ensure that no child is left behind. Defining teachers in training as ‘highly qualified’ violates both the letter and spirit of the law, primarily to the detriment of low-income students of color,” said Public Advocates staff attorney Jenny Pearlman.

Sharon P. Robinson, President and CEO of the American Association of Colleges for Teacher Education, whose members train many of the affected teachers, spoke in support of the lawsuit. “Our nation does not find it acceptable to describe a medical student as a doctor. Likewise, we should not find it acceptable to describe an intern teacher as highly qualified.”

At issue are regulations guiding states in implementing NCLB. The text of the NCLB Act defines as “highly qualified” a teacher who has a full state credential. The Department’s regulation, however, also labels as “highly qualified” teachers who are still “participating in an alternative route to certification.” This means that on her first day in an alternative route teacher credentialing program, a teacher-in-training is considered “highly qualified.”

The plaintiffs are asking the court to declare the Department of Education’s regulation containing the illegal definition of “highly qualified teacher” void and instead use the clear definition that Congress provided in the NCLB statute itself. “If we prevail, the suit will have ripple effects throughout the implementation of NCLB nationally,” notes Tara Kini, staff attorney with Public Advocates. “States and school districts will no longer be permitted to concentrate teachers-in-training in schools serving high numbers of students of color, and they will be required to report accurately the numbers of “highly qualified” teachers so that real plans can be made to get better trained and qualified teachers to all students.”

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“We’re not saying that these intern teachers don’t play an important role in addressing the teacher shortage – currently, they do. Our point is that they’re not highly qualified, under the law or in reality,” commented Jeffrey Simes, a partner with Goodwin Procter. “As someone who went through a teacher internship program and was immediately placed in the classroom, I know I didn’t feel highly qualified.”

Oakland intern teacher Chelsea Byers agrees. “When I began teaching, the only prior training I had was a six week summer institute. Although it provided me with some basic tools for functioning in the classroom, I would not have called myself ‘highly qualified’ on my first day in the classroom. There is something wrong with the definition of a ‘highly qualified’ teacher if it allows districts to concentrate intern teachers like me at schools serving the students who are most in need.”

The lawsuit comes as Congress is considering NCLB reauthorization. “Congress has established a clear and sensible definition for a ‘highly qualified’ teacher, and the Department should respect it,” said Jamiene S. Studley, President of Public Advocates and former general counsel of the U.S. Department of Education. “We can go beyond it, but this is a baseline standard for ensuring equitable distribution of highly qualified teachers for all students.”

In addition to other effects, the current regulation denies parents and the public accurate information, to which they are entitled under NCLB, about the qualifications of teachers in their school and district.

“I joined this lawsuit because parents have a right to know the qualifications of their child’s teacher,” said Hayward, California parent Maribel Heredia. “My son’s first grade teacher is still taking classes necessary to obtain her full teaching credential. I think it’s wrong that she is called ‘highly qualified.’ I feel like I am being lied to.”

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