



Education Commission
of the **States**

CHARTER SCHOOLS AND THE TEACHING QUALITY PROVISIONS OF NO CHILD LEFT BEHIND

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INTRODUCTION

The charter school community has greeted the No Child Left Behind Act (NCLB) with a wary embrace – happy that the act extends elements of the charter school accountability model throughout all of public education, but holding its breath over the potential for greater paperwork and regulation. Nowhere is this ambivalence more pronounced than in the reaction to NCLB's provisions for upgrading the quality of teaching. It's hard to argue against having skilled and knowledgeable teachers in every classroom in America, but will a new set of federal mandates crimp the flexibility at the heart of the charter school model?

CHARTER SCHOOL TEACHERS: MODEL VS. REALITY

Charter schools operate outside many of the constraints typical of traditional public schools, including, in some states, the requirement to hire only certified teachers. Charter school classrooms may feature engineers and artists who never took a course in education methods, former private school teachers who never needed state credentials and college graduates who majored in history or philosophy and now teach reading to 3rd graders.

In its purest form, the charter school model maintains teaching quality strictly by market forces, unfettered by state oversight. Charter school operators look for skilled teachers not just as a matter of good pedagogy, but also because good teachers will attract families to the school. Operators may choose to hire certified teachers, not because the state requires it but because certified teachers bring additional *cachet* in the marketplace. Charter school authorizers help shape the market as well, by selecting petitioners whose proposed pay and benefits packages are sufficiently competitive to woo strong teachers from surrounding school systems.

In this scenario, parents and public officials need not look for state licenses hanging on classroom walls; they can tell that teachers are qualified because students are learning.

That, at least, is the model.

In reality, there is already a substantial degree of state regulation over charter school teachers, and a large majority of states with charter school laws require at least some level of certification. For many of the schools in these states, NCLB should not pose an insurmountable threat. It still will present challenges, however, especially to many charter schools that have operated "outside the box" in matters of academic staffing.

WHAT NCLB REQUIRES

Sec. 1119 of the NCLB Act says that beginning in the 2002-03 school year, all newly hired teachers in schools receiving Title I aid must be "highly qualified," and that by the 2005-06 school year, every public school teacher must meet that standard in states receiving Title I funds (which, at least for now, means all states).

According to the act, a "highly qualified" teacher is one who:

- Has obtained full state certification as a teacher or passed the state teacher licensing examination and holds a license to teach in the state, and does not have certification or licensure requirements waived on an emergency, temporary or provisional basis
- Holds a minimum of a bachelor's degree
- Has demonstrated subject-area competence in each of the academic subjects in which the teacher teaches, in a manner determined by the state and in compliance with Section 9101(23) of NCLB.

These provisions apply to all public schools, traditional and charter, and they cover all elementary or secondary school teachers who teach a core academic subject. The act defines "core academic subjects" as English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history and geography.

The act also posits new standards for paraprofessionals who help deliver the school's academic program. New hires must have an associate's degree or higher, complete two years in an institution of higher education or demonstrate through a "formal state or local academic assessment" their readiness to assist in reading, writing or math instruction. Local education agencies (LEAs) have until January 2006 to meet these standards for paraprofessionals hired before January 8, 2002. (Note: These rules do not apply to parents or other volunteers who play only a supplemental role in supporting the instructional program.)

While the act simply says that its accountability provisions are to be implemented according to state charter school law, the U.S. Department of Education, in its recent nonregulatory guidance on charter schools under NCLB, goes a step further, saying: "[T]he charter school authorizer bears primary responsibility for holding charter schools accountable for Title I, Part A provisions (including the part's teacher quality requirements) unless state law specifically gives the SEA [state education agency] direct responsibility for charter school accountability."¹

DEFINING “QUALITY”

In its aforementioned nonregulatory guidance on charter schools, the U.S. Department of Education attempts to balance two competing goals – that state charter school laws should be respected, but that NCLB should apply to all public schools.

In interpreting the act's three basic criteria for “highly qualified” listed above, the department finds no room to question one requirement: There is simply no getting around NCLB's rule that every teacher of core subjects must have a bachelor's degree.

With respect to the other two criteria, the department splits its decision, deferring to the states on the question of paper certification, but insisting that the act's mandate for content knowledge should apply to charter school teachers, as well as all others.²

Certification

The Department of Education's nod to state laws is not as large a concession as it might appear, since most states do require charter school teachers to possess some form of certification. In fact, among the seven jurisdictions whose charter school laws received an “A” rating by the pro-charter school Center for Education Reform, only two (Arizona and the District of Columbia) leave schools entirely free to hire uncertified teachers. Among all 39 states and jurisdictions with charter school laws:

- Five require no certification at all
- Four either provide explicit waivers or permit the applicant to state in its charter school application whether teachers will be certified
- Thirteen require that some portion be certified (ranging from 30% in New York to 90% in Mississippi)
- Seventeen require certification for all charter school teachers (with a few states such as Indiana and Wisconsin allowing something like an alternative route for charter school teachers).³

Where states require a portion of charter school teachers to be certified, the NCLB requirement will apply proportionately.

With most states requiring some level of certification, it's not surprising that most charter teachers carry state credentials. The exact proportion, however, is not clear. One recent study found just over half of charter school teachers fully certified,⁴ while another found that about three-quarters of current charter school teachers are certified for the subjects or grade levels they teach.⁵

Subject-area Competence

While substantial numbers of charter school teachers are certified, NCLB's requirement that all teachers in “core academic” subjects prove competency is a sweeping new mandate for charter and other public schools alike. This is due in part to the broad and somewhat peculiar list of “core” subjects enumerated in the act. Only 14 states currently require high school students to take economics courses⁶; many group history and civics under the umbrella of social studies; and conversely, many name specific scientific disciplines such as biology and chemistry rather than the act's single category of “science.” The U.S. Department of Education's guidance has not tried to bridge these differences, although it does say states can define “the arts” as they wish.

Some states simply come at the whole question through another door. California, for example, requires charter school teachers be certified *except* in “non-core” subjects. Since the state does not define what “core” means, the exemption can be applied liberally. California charter school

advocates are hoping to retain the additional wiggle room on certification, but the federal definition of “core academic subjects” likely will prevail when content knowledge must be proven.

In determining criteria for establishing subject-area competence, the federal government makes two broad distinctions:

- Acknowledging that younger children typically are taught by a single teacher, while older students move from class to class, the Department of Education permits elementary teachers to have a single certification or evaluation establishing competence in “reading, writing, mathematics and other areas of the basic elementary school curriculum.”⁷ In the upper grades, however, licensure and/or academic credentials must address specific subject matters.
- Teachers new to the profession must establish subject-area competence through a test, while states have a broader array of options for determining the content knowledge of veteran teachers. The Department of Education sets seven criteria for the “high, objective, uniform state standard of evaluation” through which established teachers can demonstrate subject-matter competence.⁸ Among other points, the evaluations must provide “objective, coherent information” on knowledge attainment; must be aligned with state standards; and must be available to the public upon request. In some states, existing certification tests might suffice, while other states will have to develop new assessments in consultation with teachers, principals and administrators (presumably including those in charter schools). Significantly, the evaluations “may involve multiple objective measures of teacher quality.”⁹

Can this “high, uniform, objective” evaluation use student learning as a direct measure of subject-area competence, rather than subjecting longtime teachers to a new state test? At least one state has approached the U.S. Department of Education with this intriguing idea, but certifying teacher competence on the basis of student results will require states to answer several threshold questions:

- *Do student performance data reflect teacher skill rather than other factors?* Most states currently lack longitudinal data in specific subjects at the classroom level, especially cohort data needed to show teacher impacts rather than previous levels of student achievement. NCLB now requires annual testing (at least in some grade spans) needed for a longitudinal database – but only rigorous “value-added” analysis can demonstrate that Mrs. Kelly’s skills, for example, rather than other factors, produced a 90% reading proficiency rate three years in a row.
- *Is there sufficient time?* Since states have only until June 2006 to prove that teachers are “highly qualified,” it may be difficult to put in place not only the tests but also the analytical capacity needed for accurate value-added measures. Allowing charter school authorizers to pilot the idea in smaller numbers of schools might be a way of getting the program started.
- *What about other “core” subjects?* If schools only administer standardized reading and mathematics tests, it will be harder to document skill in other subject areas. States that already administer annual, standards-based exams in all or most of the core academic subjects may have the advantage here.
- *What about other kinds of evidence?* Mr. Porter, for example, teaches high school civics, and his students take no standardized exam in his subject. But they run for student government, excel at community-service projects, stay out of trouble and write terrific essays that do well in state civics competitions. Has Mr. Porter demonstrated subject-area competence? Charter school accountability plans often include such kind of

unconventional goals and measures. Should they be allowed to document teaching quality as well?

While states are still pondering how to evaluate incumbent teachers, charter schools may want to press authorizers and state education agencies to explore using a variety of serious but innovative outcome indicators to establish subject-area knowledge.

OPEN QUESTIONS

Despite several volumes of NCLB guidance, envelope-stretching charter schools already have generated plenty of quandaries for those trying to interpret the law. For now, the federal government appears willing to let states work these out on their own:

What is “competence” in teaching nontraditional curricula? In a recent study, two-thirds of charter schools reported using multi-aged, ungraded classrooms.¹⁰ Many schools feature multidisciplinary, project-based learning. How can states determine subject-area competence when teaching crosses so many boundaries?

While DOE has yet to opine on this particular point, it has signaled flexibility elsewhere – for example, in regulations governing NCLB’s standards and assessment provisions, which permit cross-grade standards so long as “grade-level expectations” are spelled out.

Who is a teacher? A second set of questions is prompted by the growing number of virtual charter schools. Instruction in these schools often is delivered online, in the home, with parents monitoring progress. The charter school operator may employ a certificated teacher as an additional resource for technical assistance, assessment and counseling, but not necessarily as a “teacher” of subject matter in the usual sense. Who in this scenario must possess “subject-area competence”?

Special education poses an additional dilemma. Teachers who hold a special education credential often teach (or assist) students with disabilities in the regular classroom. U.S. Department of Education officials have indicated informally that a special education license may satisfy the certification requirement, but it is not yet clear whether special education teachers will need additional evidence of subject-area competence. The department plans to address such issues in separate guidance.

Who writes improvement plans? Title I requires each SEA and LEA receiving Title I, Part A, funds to develop a plan to ensure all teachers teaching in core academic subjects within the jurisdiction are highly qualified not later than the end of the 2005-06 school year. Local education agencies that fail to attain the state plan’s targets must develop “improvement plans” addressing their deficiencies, and the SEA must provide such school districts with technical assistance.

Throughout its current guidance documents, the Department of Education consistently says that charter schools with LEA status will be treated as local education agencies for the act’s purposes. This may mean such charter schools will be required to create their own full-fledged plans. Those that are part of school districts likely will be treated as schools under this clause and folded into the district’s improvement plan. Because charter school authorizers are charged with NCLB oversight, they may be responsible for providing LEA charters with technical assistance.

What will compliance cost? For charter schools that receive Title I funds and have under-qualified staff, NCLB may require some urgent financial planning. The act requires that LEAs (including charter school LEAs) use between 5% and 10% of their Title I funds for professional development activities to ensure teachers who are not currently “highly qualified” meet that standard by the end of the 2005-06 school year.¹¹ In addition, any *school* identified as in need of improvement for failing to make “adequate yearly progress” must spend 10% of its Title I, Part A, funds on professional development, including teacher mentoring.¹²

On the bright side, Title I funding has been dramatically expanded, and NCLB greatly increases state and LEA flexibility to merge various formula funds into schoolwide programs, so charter schools will be able to use a number of federal grant programs creatively to improve teaching.

(The U.S. Department of Education provides guidance on the flexibility features of NCLB at <http://www.ed.gov/offices/OESE/esea/index.html>.)

Also, charter school operators should bear in mind that they can benefit from other programs funded under NCLB designed to increase the supply of high-quality teaching staff. One example is Troops to Teachers, which provides pre-retirement certification and training to service personnel who intend to become teachers upon separation from the military.

Finally, the Western Governors University (WGU) has announced a new online competency-based Teachers College. Funded in part by a \$10 million federal grant, the new service will offer accredited certificate, undergraduate and graduate academic degrees for current and prospective teachers. Information about WGU's Teachers College can be found on the Web at www.wgu.edu/tc.

A NOTE ABOUT RESOURCES

The U.S. Department of Education operates a No Child Left Behind Web site that contains both the full text of the legislation and all the regulations and nonregulatory guidance documents issued so far. The main Web site is at <http://www.nclb.gov/>.

Both the overall NCLB guidance for charter schools (<http://www.ed.gov/offices/OII/choice/charterguidance03.doc>) and the guidance regarding teaching quality (<http://www.ed.gov/offices/OESE/SIP/TitleIguidance2002.doc>) can be found at this site. A close reading of both is recommended.

It should be underscored that both sets of guidance are in “draft” form and likely will remain that way. The department has indicated these should be considered “living documents,” to be informed by actual implementation of the NCLB Act. The charter school community no doubt will be eager to provide feedback.

ENDNOTES

¹ U.S. Department of Education, *The Impact of the New Title I Requirements on Charter Schools: Nonregulatory Guidance (Draft)*, (Washington, DC: U.S. Department of Education, March 24, 2003, p. 12).

² There is an interesting contradiction on this point in the text of the act itself. In the "Definitions" section (Title IX, Part A, Sec. 9101), NCLB repeats the criteria for "highly qualified" teachers, but then appears to carve out an exception for charter schools in which deference to state charter school law covers both certification and content knowledge. The U.S. Department of Education's guidance, however, clearly requires that charter schools establish subject-area competency.

³ Center for Education Reform (CER), *Charter School Laws Across the States*, (Washington, DC: CER, 2003).

⁴ Policy Analysis for California Education, *Charter Schools and Inequality: National Disparities in Funding, Teacher Quality and Student Support*, (University of California, Berkeley and Davis, and Stanford University, April 2003, p. 25).

⁵ SRI International, *A Decade of Public Charter Schools: Evaluation of the Public Charter Schools Program: 2000-2001 Evaluation Report* (Menlo Park, CA: SRI International, November 2002, p. 13).

⁶ National Council for Economic Education, *Survey of the States: Economics and Personal Finance Education in Our Nation's Schools*, (New York, NY: National Council for Economic Education, forthcoming).

⁷ U.S. Department of Education, *Improving Teacher Quality State Grants: Title II, Part A Nonregulatory Guidance (Draft)*, (Washington, DC: U.S. Department of Education, December 19, 2002, p. 85).

⁸ *Ibid.*, Sec. C-18.

⁹ *Ibid.*, p. 86.

¹⁰ SRI International, *op. cit.*, p. 12.

¹¹ NCLB, Section 1119(1).

¹² NCLB, Section 1116(c)(7)(A)(iii).