



## Appeals court rules teacher ‘interns’ not highly qualified

**BY: Tom Chorneau**

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A federal appeals panel shot down Monday a U.S. Department of Education rule that allows teachers in alternative certification programs to be classified as “highly qualified” under the No Child Left Behind Act.

The ruling comes almost three years after advocates for low-income families and community groups sued the department over the regulation established under the Bush administration and two years after a court ruling upholding the rule.

Monday’s ruling by a panel of the Ninth Circuit Court of Appeals by a 2-1 vote means that teachers in training, or interns, cannot be classified as “highly qualified” and therefore districts that employ them will have to comply with federal rules that require parent notice if their child is being taught by a teacher that is not highly qualified.

The department has allowed the highly qualified designation to be given to teachers who are still “participating in an alternative route to certification” and making “progress towards full certification.”

The plaintiffs in the case have argued that the rule has resulted in low-income area districts disproportionately hiring teacher interns and thus delaying the equitable distribution of fully credentialed teachers those areas.

“This is a tremendous victory for the millions of students across the country that are disproportionately taught every day by teachers with very little training whom the Department of Education has mislabeled as ‘highly qualified,’” said John Affeldt, managing attorney at Public Advocates Inc. representing the plaintiffs. “Alternate route programs can be a promising path for many new teachers but the Department needs to stop pretending those still learning to teach are as prepared as fully trained teachers.”

Catherine Kearney, president of the California Teacher Corps – which represents the state’s more than 70 alternative certification programs, said that teachers who come out of their programs remain a valuable asset to the state.

“Our teachers are ready and committed to serve in hard-to-staff, high-need public schools, and have the talent, expertise and life experience to truly raise student achievement,” she said in a statement. “We have more than 50,000 teachers who have gone through alternative certification programs over the past six years who are still teaching today where they are needed the most.”

At issue are federal regulations under the No Child Left Behind Act that the plaintiffs argue allow teachers still in training to be categorized as “highly qualified.” Public Advocates said that there are more than 10,000 such teachers in California and 100,000 nationwide – many of whom are assigned to lower-performing schools in urban centers.

The suit, originally filed in 2007, argued that former U.S. Education Secretary Margaret Spellings created an enormous loophole in NCLB “that defies the will of Congress and harms students nationwide by defining teachers still in training as ‘highly qualified.’”

They also argued that California law makes clear that authority to modify the full certification standards is a state right, vested with the Legislature and the California Commission on Teacher Credentialing.

But while a three-judge appellate panel agreed a year ago that interns are not fully certified teachers under California law and thus do not meet a fundamental requirement of ‘highly qualified’ under NCLB. Two of the judges also ruled that Public Advocates did not have legal standing to challenge the federal regulations.

The court reconsidered its ruling of last fall and on Monday issued a new ruling:

“The ‘precise question at issue’ is the difference between the meaning of ‘has obtained’ full State certification in the statute...and the meaning of ‘demonstrates satisfactory progress toward’ full State certification in the [U.S. Department of Education] regulation...The difference between having obtained something and merely making satisfactory progress toward that thing is patent. We conclude that the Secretary’s regulation impermissibly expands the definition of ‘highly qualified teacher’ ... by including in that definition an alternative-route teacher who merely ‘demonstrates satisfactory progress toward’ the requisite ‘full State certification.’” (16333-4)