

**What Makes a Highly Qualified Teacher? The State of the Teacher Certification Debate
after the Federal No Child Left Behind Act of 2001**

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Abstract

This paper examines the various arguments in the debate surrounding Teacher Qualification Requirements following the passage of the No Child Left Behind Act in 2001. Considering the immediacy of the statute's requirement of a highly qualified teacher in every classroom by the end of the 2005-2006 school year, the paper specifically questions which approach to teacher qualification will produce better performance among students. Is the solution higher teacher standards, involving greater professionalization and increased barriers to entry? Or rather, should states de-regulate teacher qualification requirements and open the doors to more non-traditional teachers to address an increasingly diversifying student population?

What Makes a Highly Qualified Teacher? The State of the Teacher Certification Debate after the
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I. Introduction

In 2004, the U.S. Department of Education reported that on average, 3.5 percent of teachers in all school districts were not certified to teach; more importantly, the data revealed that the numbers of unqualified teachers were disproportionately high in “high-poverty” school districts compared to non-high-poverty districts.¹ These statistics illustrate a perennial problem in American public education: remedying the gross inequalities in access to qualified teachers for poor, minority, non-English speaking, and special education students, populations historically having the most trouble recruiting teachers with a deep and long-term commitment to the profession.² Yet the definition of what constitutes a “qualified” teacher itself proves problematic for policymakers trying to bridge educational gaps between low- and high-performing public schoolchildren. What qualifications are necessary for elementary and secondary school teachers to achieve the requisite level of competency to educate the diversifying student population? On one hand, is there a need for greater professionalization in teaching—that is, would higher certification standards and pedagogical training increase the ability of teachers to tailor learning to meet students’ individual needs? Or rather, does greater student diversity suggest a need for the profession to open its doors to a more market-based approach, admitting graduates of alternative certification programs, many of whom often possess greater subject area knowledge and experience, but little or no pedagogical training?

Attempts to balance the equally compelling needs of raising professional standards and reducing teacher shortages prompted federal action allowing states to explore new avenues for

¹ Office of Post Secondary Education, U.S. Department of Education, *The Secretary’s Fourth Annual Report on Teacher Quality: A Highly Qualified Teacher in Every Classroom* xi (2005), available at <http://www.ed.gov/about/reports/annual/teachprep/2004Title2-Report.pdf> (last accessed Nov. 24, 2005). More specifically, an average of 5.2 percent of teachers in high-poverty districts were unqualified, while 3.1 percent of teachers in non-high poverty districts were unqualified. *Id.*

² For a further discussion of these disadvantaged subgroups, see Linda Darling-Hammond, *Access to Quality Teaching*, 43 SANTA CLARA L. REV. 1045 (2003).

bolstering their teaching forces, while raising state accountability for educational progress. Accountability is the cornerstone of the recently enacted No Child Left Behind Act of 2001 (“NCLBA”),³ which requires states annually to report the educational progress of disadvantaged student groups to Congress.⁴ This suggests that, “[because] states must report results by race, gender, English fluency, and income, poor and minority kids are less likely to fall through the cracks or advance to the next grade without the necessary skills.”⁵ By way of this legislation, Congress conditionally grants state education authorities much-needed funding in exchange for local school boards’ compliance with new federal standards for equalizing educational access.⁶ Based on NCLBA performance data so far, states and districts report that student outcomes on state-administered tests and NCLBA performance measures are rising.⁷

The NCLBA contemplates a “highly qualified teacher” in every classroom by the end of the 2005-06 school year.⁸ While full certification is characteristic of a highly qualified teacher, the NCLBA does not specifically define the requirements for certification. Rather, the Act remains flexible enough to allow states to adopt low barriers to entry and experiment with alternative

³ No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2002).

⁴ 20 U.S.C.S. § 6311(b)(2)(A) (2005) (requiring each State to design an accountability plan to ensure that these groups demonstrate “adequate yearly progress”).

⁵ Erin Kucerik, *The No Child Left Behind Act of 2001: Will it Live Up to its Promise?*, 9 GEO. J. POVERTY LAW & POL’Y 479, 485 (2002) (quoting Mary Lord, *The New Education Bill Promises a Lot: Will it Deliver? Stay Tuned . . .*, U.S. NEWS & WORLD REPORT, Jan. 28, 2002, at 28).

⁶ 20 U.S.C. § 6301 (2002).

⁷ CENTER FOR EDUC. POLICY, FROM THE CAPITOL TO THE CLASSROOM: YEAR 3 OF NCLB v (Mar. 2005), available at http://www.cep-dc.org/pubs/nclby3/press/cep-nclby3_21Mar2005.pdf (last accessed Nov. 23, 2005).

⁸ 20 U.S.C. § 6312(b)(8)(C) (2002) (requiring State governments to “take steps to ensure that poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers”). The NCLBA defines “highly qualified teacher,” as one who: 1) has a Bachelor’s degree; 2) holds a State teaching certificate or has passed the State’s licensure examination; 3) holds a license to teach in the State; 4) does not hold any kind of provisional certificate or certification waiver; and 5) demonstrates subject matter competency. 20 U.S.C. § 7801(23) (2002); see also, 34 C.F.R. 200.56 (2002) (containing the Department of Education’s administrative definition of “highly qualified teacher”). The status of the states in meeting their obligation to provide a highly qualified teacher in every classroom by the end of the 2005-06 school year is pending evaluation at the time this paper is being submitted for publication.

routes to certification, without lowering the bar for teacher qualifications.⁹ The phrase “low barriers to entry” as used here does not mean lower standards. Rather, this phrase refers to a reconsideration by policymakers of the requirement that teachers undergo traditional training in four-year Education degree programs that might unduly deter some otherwise qualified individuals from entering the profession, because of excessive prerequisites. The variation in teacher quality statutes seems to reflect states’ widely differing interpretations of the NCLBA’s broad definition of “highly qualified.” In addition, such variability also seems to reflect differences in states’ priorities with regard to unique local problems.¹⁰ Notwithstanding this variation, in general, the Act appears to outline some basic elements. Professor Gordon Whitman observes that despite the nonspecific definition offered by Congress, the statute identifies at least three components of high teacher quality by disassociating “inexperienced, unqualified, and out-of-field” teachers from the class.¹¹ Some authors, however, raise concerns that states will have grave difficulties meeting even these basic requirements; indeed, the prospect of greater standardization may lead to serious fiscal problems at the local level.¹² Because federal law now demands certificated¹³ teachers in every classroom,¹⁴ this raises the question of how school boards and local education agencies will recover from the sudden removal of teachers on emergency permits and certification waivers that were put in place to remedy critical shortages. Thus, the essential policy question focuses on how to square this need for well-credentialed,

⁹ Office of Post Secondary Education, U.S. Department of Education, *The Secretary’s Third Annual Report on Teacher Quality: A Highly Qualified Teacher in Every Classroom* 4 (2004), available at <http://www.ed.gov/about/reports/annual/teachprep/2004Title2-Report.pdf> (last accessed Nov. 1, 2005).

¹⁰ NAT’L CONFERENCE OF STATE LEGISLATURES, TASK FORCE ON NO CHILD LEFT BEHIND: FINAL REPORT ix (2005) (highlighting the problem of compliance with the NCLBA’s generalized requirements for school districts needing to address unique local difficulties), available at http://www.ncsl.org/programs/press/2005/NCLB_exec_summary.htm.

¹¹ Gordon Whitman, *Response: Making Accountability Work*, 28 N.Y.U. REV. L. & SOC. CHANGE 361, 367 n.19 (2003) (arguing that the phrase “highly qualified,” at a minimum implies, “(1) years of experience [by excluding the inexperienced]; (2) certification [by excluding the unqualified]; and (3) alignment between a teacher’s education and the course [he or she] is teaching [by excluding out-of-field teachers]”).

¹² See source cited *supra* note 7, at 146.

¹³ The word “certificated” is a term of art referring to teachers that have been fully certified by a State.

pedagogically trained teachers with the pressure to enact lower barriers to entry into the profession.¹⁵

This paper examines how the new requirements for teachers under the NCLBA will affect teacher certification schemes in the states. Specifically, the paper addresses the various legal and policy considerations that arise from requiring higher standards for teachers, as well as the merits and weaknesses of alternative certification programs, as compared to traditional training at schools of education. Part I outlines the major premises of the teacher certification debate, considering the competing arguments about whether producing “high quality teachers” requires a more standards-based, professional development approach, or a more market-based, anti-regulatory approach. Parts II and III compare traditional and alternative training pathways to certification. With the proliferation of alternative certification programs that provide expedited teacher training, it is useful to consider whether certain features of traditional four-year training programs are really necessary if alternative route teachers are similarly qualified for entry into the classroom. Part IV considers the legal issues surrounding higher standards for teachers, particularly the potential for litigation that may arise if states employ such requirements as teacher competency testing, or if new state standards will affect home-school teachers. Part V examines the current state of certification statutes, comparing various features of state law and analyzing progress based on NCLBA reporting data thus far. The paper concludes that states must not draft certification schemes with an eye only toward fixing particular local problems; while it may be helpful in the short run, such an approach is not sustainable, because it encourages laxity of standards and dilution of certification to increase the teacher pool. Rather, states must draft requirements in a way that promotes long-term improvement, by ensuring alignment between legislative standards and teacher curriculum, and incorporating a more phased-in approach to increasing the new teacher pool.

¹⁴ 20 U.S.C. § 7801(23)(A)(i) (2002).

¹⁵ See *generally*, Paul F. Baldwin, *The Acquisition of Pedagogical Content Knowledge by Provisionally Trained Science Teachers* (2003) (unpublished Ph. D thesis, University of Georgia) (on file with the University of Georgia Library).

II. The Teacher Certification Debate

The current policy debate over certification hinges on the extent and level of specificity at which state regulations should define certification standards.¹⁶ Should states adopt regulations with a view toward raising professional standards, or should they deregulate to accommodate greater numbers of non-traditional individuals to fill critical shortages and diversify the profession? Another way to characterize this debate is to ask which factor is more important, a teacher's content area or pedagogical knowledge, to student learning.¹⁷ "Pedagogical knowledge" in this sense refers on one hand to training in discipline and classroom management, but also, the ability to convert content knowledge into concepts comprehensible to students.

A. Arguments for Greater Regulation

The main proponents of more extensive certification requirements and higher professional standards believe in "a single, broad-based effort to develop a consistent approach to teacher education nationwide based on high standards for initial preparation, licensing, and certification of teachers."¹⁸ Linda Darling-Hammond, a preeminent advocate of this approach, writes that, "[licensing] and certification requirements [represent] the minimum standard for responsible practice."¹⁹ Further, she argues that increasing other educational inputs, such as "course taking, curriculum content, testing, or textbooks" will "make little difference" if teachers are unable to apply these tools in a way appropriate to an individual student's needs.²⁰ Other scholars point to the need for higher and more uniform professional standards because of the tendency of lower standards to encourage inconsistency in the teacher recruitment process across districts.²¹ Todd DeMitchell and Richard Fossey argue that many school districts, if

¹⁶ *Id.* at 2.

¹⁷ *Id.*

¹⁸ Marilyn Cochran-Smith and Mary Kim Fries, *Sticks, Stones, and Ideology: Discourse of Reform in Teacher Education*, 30 EDUCATIONAL RESEARCHER 3 (Nov. 2001).

¹⁹ Linda Darling-Hammond, *supra* note 2, at 1065 (citing generally LINDA DARLING-HAMMOND ET AL., *A LICENSE TO TEACH: RAISING STANDARDS FOR TEACHING* (Jossey-Bass Publishing) (1999)).

²⁰ *Id.* at 1079.

²¹ TODD DEMITCHELL AND RICHARD FOSSEY, *LIMITS OF LAW BASED SCHOOL REFORM: VAIN HOPES AND FALSE PROMISES* 188 (Technomic Publishing) (1997).

unregulated, will hire teachers based on “patronage considerations, rather than [the] teacher’s skill level or dedication.”²²

B. Arguments for Deregulation

Proponents of deregulation believe that extensive regulation of the teaching profession presents “unnecessary hurdles” to many promising young people who do not pursue traditional teacher training, as well as mid-career professionals, both of whom generally lack teacher training.²³ Some scholars argue that pedagogical training is “a natural by-product of teaching,” implying that formal training in pedagogy is redundant and that these skills come automatically once a new teacher becomes acclimated to the classroom environment.²⁴ These scholars assert that teachers have different levels of pedagogical skills regardless of years of experience.²⁵ Academics who support deregulation also support the creation of alternative routes to certification in order to break the “professional monopoly” of traditional teacher education institutions.²⁶ States and policymakers, on the other hand, view alternative certification programs as a solution to the problem of shortages in areas that are in critical need of good teachers, but cannot afford to offer the salaries expected by traditional route teachers.²⁷

III. Traditional Pathways to Certification

A. Nature of Traditional Route Programs: Characteristics and Benefits

²² *Id.*

²³ See Cochran-Smith and Fries, *supra* note 18, at 3.

²⁴ See Baldwin, *supra* note 15, at 5 (citing A. N. Geddis, *Transforming Subject-matter Knowledge: the Role of Pedagogical Content Knowledge in Learning to Reflect on Teaching*, 15 SCIENCE EDUCATION 673 (1993)). This data is not conclusive, however; other studies on the subject of “learning by doing” report an opposite result. For example, in one study of alternatively trained math teachers, researchers found that while these teachers were adept at solving mathematical algorithms, “their articulation of mathematical concepts did not necessarily increase on the job,” leading the authors “to question whether or not one can expect new teachers to learn by teaching.” Sarah E. Birkeland and Heather G. Peske, *Literature Review on Alternative Certification*, National Center for Alternative Certification 30 (2004) (citing G.W. McDiarmid and S.M. Wilson, *An Exploration of the Subject Matter Knowledge of Alternate-route Teachers: Can We Assume They Know Their Subject?*, 42 JOURNAL OF TEACHER EDUCATION 93 (1991)), available at <http://www.teach-now.org/NEAFullText.pdf> (last accessed Oct. 29, 2005).

²⁵ Baldwin, *supra* note 15, at 5.

²⁶ Birkeland and Peske, *supra* note 24, at 3.

²⁷ *Id.*

Traditional teacher training remains the primary route for entry into the profession.²⁸ These programs generally target young teachers pursuing four-year undergraduate or five-year undergraduate and graduate degrees in Education. Research reveals that traditional teaching candidates are typically “young, White, middle-class females who [grow] up in small towns within 100 miles of their college and anticipate teaching in a small town or suburban school.”²⁹ Typically, traditional route teachers, in addition to Bachelor’s degrees in Education, pursue higher degrees or degree equivalents in the teaching subject.³⁰

Candidates also complete a student teaching component under the direction of a mentor teacher. The student teaching experience gradually integrates supervised fieldwork with class work, in contrast to alternative programs which involve intensive full-time fieldwork combined with short courses in teaching methods.³¹ Elementary school teachers completing traditional routes typically have the least teacher training; in general, they complete all of their studies at schools of

²⁸ See source cited *supra* note 1, at 27.

²⁹ Jennifer Ng, *Teacher Shortages in Urban Schools: The Role of Traditional and Alternative Certification Routes in Filling the Voids*, 40 EDUCATION AND URBAN SOCIETY, at 382-383 (Aug. 2003).

³⁰ NATIONAL CENTER FOR EDUCATION STATISTICS, *Teacher Quality: A Report on the Preparation and Qualifications of Public School Teachers* 3 (Jan. 1999), available at <http://nces.ed.gov/pubs99/1999080.pdf> (last accessed Nov. 11 2005). Some examples of courses in a typical traditional teacher training program include, *inter alia*: Introduction to Education; Early Childhood Development; Working with Socioculturally Diverse Families; Learning and Development in the Elementary Classroom; Education in American Society; Teaching Profession; The Arts as Integrative Teaching; Communication Disorders; School Psychology; and Student Counseling. In addition, there are subject-specific teaching courses such as, Teaching Mathematics in Middle Grades, or Teaching Science in Middle Grades, etc. See generally, University of North Carolina-Chapel Hill School of Education Courses, at http://soe.unc.edu/academics/courses/courses_new.php (last visited May 20, 2006). Interestingly, this list of courses seems heavily to emphasize the adaptation of learning to culture, as well as diverse methods of teaching. One course not mentioned above, called ‘Ways of Knowing,’ explores different ways of knowing the content of school material as it applies in the real world. Education students “explore how ways of knowing are impacted by factors related to cognitive, physical, social, and emotional development.” *Id.* In any case, traditional programs seem to give teaching students a very broad understanding of the learning process and the different ways learning manifests itself in the classroom long before they are confronted with their first field experience.

³¹ NATIONAL CENTER FOR EDUCATION STATISTICS, *id.*

education, while secondary school teachers more commonly possess a degree in the teaching subject in addition to pedagogical training.³²

Proponents of professional training hail traditional routes because of the thoroughness of preparation that they claim results from the foundational nature and length of these programs.³³ Surveys measuring differences in perceptions of teaching readiness between traditional and alternative route teachers reveal that, in general, traditional route teachers feel more prepared to enter the classroom upon certification than alternative route teachers,³⁴ suggesting that pedagogical training has an impact on teachers' confidence level to meet student needs from the first day of teaching. In sum, the salient features of traditional programs are the gradualism of entry into the field, length of programs, sustained emphasis on pedagogical training, and professional tendency to filter into suburban, non-high-poverty school districts.

IV. Alternative Pathways to Certification: a Sustainable Option?

A. The Emergence of Alternative Routes to Supplement Traditional Training

Alternative certification programs emerged in recent decades, apparently to fill critical shortages, and to allow non-traditional teaching candidates to pursue teaching without having to attend lengthy preparatory programs at schools of education.³⁵ Alternative certification programs refer to "creations of state [teacher] licensing agencies that are alternatives to the traditional campus-based (usually undergraduate) teacher education program routes culminating in a

³² See source cited *supra* note 1, at 7.

³³ See generally, Linda Darling-Hammond *supra* note 2.

³⁴ Linda Darling-Hammond, Ruth Chung, and Fred Fellow, *Variation in Teacher Preparation: How Well Do Different Pathways Prepare Teachers to Teach?*, 53 JOURNAL OF TEACHER EDUCATION 286 (2002). Unfortunately, there is a dearth of studies on actual student performance comparisons between alternative and traditional route teachers. The study by Darling-Hammond, Chung, and Fellow compared readiness to enter teaching among traditional and alternative route teachers, revealing that the "sharpest differences" between the two groups existed "on those [survey] items that rated teachers' knowledge about curriculum and teaching strategies." *Id.* at 290. The only area in which alternative route candidates rated their readiness higher than traditional teachers, was in "Preparedness in the Use of Technology"; however, the authors attributed this difference to the probability that alternative teachers had more experience with such technology prior to entering teaching than traditional route teachers. *Id.*

³⁵ OFFICE OF INNOVATION AND IMPROVEMENT, U.S. DEP'T OF EDUC., *Innovations in Education: Alternative Routes to Certification 1* (Nov. 2004), available at <http://www.ed.gov/admins/tchrqual/recruit/altroutes/report.pdf> (last accessed Oct. 28, 2005).

certificate to teach.”³⁶ Most alternative programs are collaborative efforts “among the state licensing authority, institutions of higher education, and local school districts.”³⁷ The U.S. Department of Education fully recognizes alternative certification as a legitimate path toward achieving a teaching certificate, so long as the program demonstrates a level of rigor sufficient to prepare the individual for certification.³⁸ In addition, alternative trainees typically find employment in a school immediately, and pursue teacher education classes contemporaneously with on-site work, in contrast to traditional candidates, who begin integrated fieldwork only after completing an initial academic component.³⁹

Title II of the Higher Education Act (“HEA”) of 1998 requires states⁴⁰ annually to report a “description of each [alternative route] to teacher certification, if any, and the percentage of teachers certificated through alternative routes who pass state teacher certification licensure assessments.”⁴¹ In 2005, forty-seven states reported implementing alternative certification programs with 485 program sites across the nation.⁴² Title II’s reporting requirements for states and institutions of higher education serve as the basis for evaluating yearly progress of teacher quality improvement.⁴³ The purpose of annually reporting alternative certification data is to

³⁶ See C. Emily Feistritzer, *State Policy Trends for Alternative Routes to Certification: A Moving Target*, Paper Prepared for the Conference on Alternative Certification 1 (Sept. 2005), available at <http://www.teach-now.org/CEFState%20Overview%20FINAL4.pdf> (last accessed Nov. 1, 2005).

³⁷ *Id.* at 4. It is important to note, however, that the definition of which programs fall into the category of “alternative” differ by state.

³⁸ 34 C.F.R. § 200.56 (a)(2)(ii) (2002).

³⁹ See source cited *supra* note 1, at 7.

⁴⁰ For purposes of Title II, “states” refers to “the [fifty] states, the District of Columbia, Puerto Rico, and the insular areas.” U.S. DEP’T OF EDUC., NAT’L CENTER FOR EDUC. STATISTICS, *Reference and Reporting Guide for Preparing State and Institutional Reports on the Quality of Teacher Preparation: Title II, Higher Education Act 4* (April 2000), available at <https://www.title2.org/images/title2guide.PDF> (last accessed Nov. 2, 2005).

⁴¹ See source cited *supra* note 36, at 4; see also, 20 U.S.C.S. § 1027(b)(7) (2005).

⁴² See source cited *supra* note 36, at 1.

⁴³ While schools of education must also report teacher quality data to Congress, such requirements are outside the scope of this paper, which focuses on the effectiveness of state regulation. Title II requires states to report:

“Licensing and certification requirements (including [minimum passing scores] on required examinations);

“Descriptions of alternative routes by which individuals may become teachers;

increase states' accountability for teacher quality by gathering information on performance of all teaching candidates on state certification exams. By comparing performance data of traditional and non-traditional candidates on these tests, states and Congress can weigh the effectiveness of alternative programs in preparing quality teachers.⁴⁴ Based on the 2004 reporting data, of the approximately 300,000 new teachers certificated nationally each year, about 35,000 of these individuals received their training through alternative certification programs.⁴⁵ In addition, these numbers appear to be cumulatively increasing: in 2002, 29, 671 new teachers completed alternative certification programs nationally; in 2003, there were 27,105; and in 2004, there were 35, 353.⁴⁶

B. The Merits of Alternative Certification: Addressing Teacher Shortages and Meeting Diverse Needs

The principal appeal of alternative certification programs to candidates is that they allow individuals to take on full-time teaching positions while simultaneously taking classes to complete certification requirements.⁴⁷ One of the initial justifications for instituting these alternative programs was the pressing need to address teacher shortages. While significant numbers of teachers receive certification annually, the distribution of certificated teachers is far from even across subject areas, grade levels, geographic areas, and types of school districts.⁴⁸ Chronic teacher shortages exist in math and science as opposed to social studies and language arts, in

“The percentage of teaching candidates who passed certification or licensure assessments—statewide, for each institution, and for each alternative route to certification;
“Information on the use of waivers of certification or licensure requirements, and the proportion of teachers with these waivers distributed across high- and low-poverty school districts and across subject areas;
“State criteria for assessing the performance of institutions' teacher preparation programs; and
“Other areas that bear on the overall quality of new teachers.”

Reference and Reporting Guide for State and Institutions in Preparing Teacher Quality Reports, *supra* note 40, at 4 (citing the Higher Education Act of 1998 § 207(b), 20 U.S.C.S. § 1027(b) (2005)).

⁴⁴ Notice of Proposed Information Collection Requests, 68 Fed. Reg. 8234 (proposed Feb. 13, 2003).

⁴⁵ See source cited *supra* note 1 at 25, 27.

⁴⁶ *Id.* at 30.

⁴⁷ See *generally*, Birkeland and Peske, *supra* note 24.

⁴⁸ See source cited *supra* note 1, at 31.

secondary schools as opposed to elementary schools, and in inner city and rural areas as opposed to wealthy suburbs. In addition, problems of teacher attrition and migration to white, suburban school districts are particularly acute, suggesting the need for policymakers not only to address qualification standards for teaching candidates, but to do so in a way that creates a more evenly distributed teaching force.⁴⁹

The attractiveness to states of alternative certification programs stems from the fact that alternatively trained candidates may be more willing to work in high-need geographic and subject areas. In terms of geographical shortages, two major problems include: (1) recruiting highly qualified teachers to inner-city schools heavily populated by minority students, and rural schools lacking resources; and (2) preparing teachers to address the needs of students from international backgrounds that enter the public schools from foreign education systems.⁵⁰ The disparities in the distribution of highly qualified teachers between these more challenging student populations on one hand, and students in primarily white suburbs, who generally present fewer cultural and behavioral hurdles, are primarily what the NCLBA seeks to correct. Professor Gordon Whitman articulated the problem eloquently when he said, “perhaps the greatest injustice in American public education is that low-income African-American and Latino students are disproportionately taught by teachers who have limited teaching experience, lack certification, and are not educated in the subject areas they are teaching.”⁵¹ Alternative programs arose largely to address these localized shortages, by providing incentives for more individuals to enter teaching to counteract traditional professional tendencies to filter into the “desirable” school districts. Studies show that alternative teaching candidates are more likely than traditional candidates to: 1) report living in an urban area; 2) be a minority; and 3) speak a second language.⁵² Professor Darling-Hammond

⁴⁹ *Id.*

⁵⁰ Birkeland and Peske *supra* note 24, at 2; *see also*, Linda Darling-Hammond *supra* note 2, at 1060.

⁵¹ Whitman *supra* note 12, at 366.

⁵² Birkeland and Peske *supra* note 24, at 19 (citing G. Natriello and K. Zumwalt, *New Teachers for Urban Schools: The Contribution of the Provisional Teacher Program in New Jersey*, 26 EDUCATION AND URBAN SOCIETY 49 (1993), who found that 16.7 percent of alternative candidates in a study reported living in an urban area compared to 6.7 percent of traditional candidates; that

observed the effects of a diversifying student population in California, where one-quarter of K-12 children in the public school system are non-English-speakers.⁵³ She notes that, “this group comes to California's classrooms from various socioeconomic and political circumstances, each with varying degrees of proficiencies in both their native language and English, and with differing amounts of academic content knowledge and prior schooling, all of which affect learning needs and readiness.”⁵⁴ While Professor Darling-Hammond views the problem of diversification as requiring more in-depth pedagogical training to enable teachers to tailor lessons to individual needs, proponents of deregulation seem to believe the solution lies in diversifying the *teaching* force from the recruitment stage to keep pace with changes in the student population.

Alternative program graduates are also supplementing critical shortages in high-need subject areas. U.S. Department of Education data reveal that currently there are a large percentage of teachers on emergency certification waivers in math and science, two subject areas with critical teacher shortages.⁵⁵ Studies show that a greater percentage of alternative candidates have bachelor's degrees in math, science, and engineering than do traditional candidates, and that alternative certification programs are “[channeling more math] and science teachers into the public teaching force.”⁵⁶ This makes some sense, considering that alternative certification candidates by definition do not follow the traditional path of majoring in education.

C. Drawbacks of Alternative Certification

1. Variability

Among the drawbacks to alternative certification, the variation in program types

31.0 percent of alternative candidates were minorities compared to 12.0 percent of traditional candidates; and that 35.5 percent of alternative candidates spoke a second language compared to 24.4 percent of traditional candidates).

⁵³ Darling-Hammond *supra* note 2, at 1060.

⁵⁴ *Id.*

⁵⁵ See source cited *supra* note 1, at 39.

⁵⁶ See Birkeland and Peske *supra* note 24, at 21 (citing J. Shen, *Alternative Certification, Minority Teachers, and Urban Education*, 31 EDUCATION AND URBAN SOCIETY 30 (1998) (finding that 19.2 percent of alternative candidates in the study had bachelor's degrees in math and science versus 13.5 percent of traditional candidates)).

makes systematization difficult, particularly for educators and policymakers trying to assess the effectiveness of teacher training methods on an aggregate level. This problem arose largely from the fact that most alternate route programs emerged for the purpose of addressing particular local needs.⁵⁷ Approximately seventy-one percent of alternative route programs report serving schools in local problem areas.⁵⁸

Another problem of variability appears to occur in the policy response of State Departments of Education to the proliferation of these alternative routes; in order to accommodate several programs serving particular local needs, the state sometimes must create new types of teaching certificates to denominate candidates with different qualifications.⁵⁹ From a practical standpoint, if compelled to create new certificates every time a new program emerges, states risk diluting the value of their teaching certificates. At the national level, while the NCLBA appropriately leaves room for states to experiment with new methods of training qualified teachers, how will state and school district accountability increase if programs are too localized to be comparable? It may still be too early to tell. To stem the problem of increasing variability, the National Center for Education Information in 1990 created a general classification system for states to follow when reporting on alternative route programs.⁶⁰ In 2004, all but seven states had this system in place, though not all states provided programs in each class.⁶¹

2. Attrition and Migration

⁵⁷ See Feistritzer *supra* note 36, at 12.

⁵⁸ *Id.* Feistritzer defines “high-need area” as involving a “low socioeconomic area, high poverty level, and high minority population.” *Id.*

⁵⁹ *Id.* at 9.

⁶⁰ *Id.* at 15. This classification system puts alternative candidates in eleven classes (“A” through “K”) of substantive qualifications. An examination of some of the classes helps to illustrate the diversity of the candidate pool. For example, “Class E” designates candidates enrolled in one or two-year post-baccalaureate programs at schools of education. “Class F” includes teachers issued some sort of emergency or provisional certificate, while completing the requirements for full certification. “Class G” accommodates transitional teachers, meaning teachers certified in one State awaiting certification in another. “Class H” enables candidates with “special qualifications,” such as Nobel Laureates, to teach certain subjects. “Class K” teachers serve special student populations; this class includes programs like Teach for America and Troops to Teachers. *Id.*

⁶¹ Center for Alternative Certification, *States Implementing Alternative Routes to Teacher Certification by Class: 2004*, at http://www.teach-now.org/Tables2004/frmTable1_StateClassification04.pdf (2005) (last accessed Nov. 9, 2005).

The high rate of attrition is another problem characterizing the teaching profession in general, and alternative route teachers in particular, since alternative teachers are usually professionally qualified in areas other than education.⁶² This attrition seems to occur on two levels: first, there is a problem of total attrition, whereby teachers leave the profession altogether. A recent article by Professors Richard Ingersoll and Thomas Smith reveals that forty to fifty percent of all new teachers leave the profession after the first five years of teaching.⁶³ Second, new teachers placed in inner-city and rural areas frequently leave those schools in favor of positions in middle-class suburban areas, a problem known as “migration,” which, though it does not reduce the total size of the teaching force, results in an inequitable distribution of highly qualified teachers.⁶⁴

Professors Ingersoll and Smith report that two major reasons for attrition given by teachers in exit interviews included job dissatisfaction and the pursuit of other opportunities.⁶⁵ Interestingly, 78.8 percent of teachers in this study responded that the reason for job dissatisfaction was poor salary.⁶⁶ Low teacher salaries are a common problem for alternative recruits that must start at the bottom of the salary scale.⁶⁷ To attract high quality teachers, some authors contend that states need to invest in providing teachers with competitive salaries and better working conditions to attract a more qualified pool of candidates to the more challenging

⁶² Birkeland and Peske *supra* note 24, at 6. “Attrition” as used here refers to teachers leaving the profession.

⁶³ Richard Ingersoll and Thomas Smith, *The Wrong Solution to the Teacher Shortage*, 60 EDUCATIONAL LEADERSHIP 30 (May 2003).

⁶⁴ *Id.*; see also, Birkeland and Peske *supra* note 24, at 6 (noting that, “about half of all teacher turnover is school-to-school migration”).

⁶⁵ Ingersoll and Smith *supra* note 63, at 31. This study revealed that the most frequently cited reason for leaving included family or personal reasons, which 42.2 percent of teachers claimed. Otherwise, 38.8 percent of teachers claimed they were leaving “to pursue another job,” and 28.9 percent of teachers claimed they were dissatisfied with their teaching jobs. Finally, 18.9 percent claimed they were leaving due to “school staffing action.” *Id.* A caveat to these findings of course, is the reality that teachers might not be completely honest when divulging their reasons for leaving in exit interviews, so readers should consider the results of this study with that qualification in mind.

⁶⁶ *Id.*

⁶⁷ DeMitchell and Fossey *supra* note 21, at 188.

areas.⁶⁸ With so many school districts plagued by financial crisis, however, uniformly raising teacher salaries may not be feasible in the short run. In addition, increasing the pool of alternatively and provisionally certificated teachers may entail greater aggregate social costs to the system.⁶⁹ One study maintains that, “teachers with the most preparation—a B.A. in the subject field and an M.A. in preparation—cost the system the least and are more likely to stay in teaching,” while “teachers who train in summer long alternative programs cost the system [over] thirty-five percent more than their better trained counterparts.”⁷⁰

V. Legal Issues of Teacher Certification: Litigation that may Ensur as a Result of Greater Regulation

A. Teacher Certification and the Home-schooling Debate

One possible area of consideration for state lawmakers in drafting teacher certification standards is how the new standards should apply to parents teaching their children at home.⁷¹ As of 2003, the National Center for Education Statistics reported that 1.1 million children in the U.S. were home-schooled.⁷² The reality is that some parents deliberately choose to educate their

⁶⁸ Jeannie Oakes, *Education Inadequacy, Inequality, and Failed State Policy: a Synthesis of Expert Reports Prepared for Williams v. State of California*, 43 SANTA CLARA L. REV. 1305, 1381 (2003).

⁶⁹ Birkeland and Peske *supra* note 24, at 25 (citing L. Darling-Hammond and B. Berry, *Recruiting Teachers for the 21st Century: The Foundation for Educational Equity*, 28 JOURNAL OF NEGRO EDUCATION 254 (1999)).

⁷⁰ *Id.*

⁷¹ See generally, William L. Campbell, *Moving Against the Tide: An Analysis of Home School Regulation in Alabama*, 52 ALA. L. REV. 649 (2001) (examining how state regulations of home-schooling should be analyzed).

⁷² U.S. DEP'T OF EDUC., NATIONAL CENTER FOR EDUCATION STATISTICS, *Issue Brief: 1.1 Million Homeschooled Students in the United States in 2003* (July 2004), available at <http://nces.ed.gov/pubs2004/2004115.pdf> (last accessed Nov. 11, 2005). While the NCLBA does not directly apply to Home-school students, since they do not attend public school, some authors posit that the new regulations may affect Home-schooling in the future, where school choice concerns for low-income students arise. See, e.g., Brian P. Marron, *Promoting Racial Equality through Equal Educational Opportunity: The Case for Progressive School Choice*, 2002 B.Y.U. EDU. & L. J. 53, 105-108 (2002) (arguing that “public education” is not synonymous with “public schools”; rather, so long as the government provides funds to educate the child, by way of vouchers, for example, this constitutes public education. Also, with regard to government funding of religiously-motivated education and Establishment Clause concerns arising there from, Marron notes that, the Supreme Court has “gradually softened its rigid separationist regulation of public educational aid to children attending religious schools,” distinguishing between direct and indirect funding in this area. *Id.* at 90 (citing *Mueller v. Allen*, 463 U.S. 388 (1983) (finding no

children at home rather than in the public school system, because of the advantages of one-on-one instruction and lessons tailored to student needs. Other common reasons for home-schooling include dissatisfaction with the quality of public school education, negative social pressure, and parental concern that teaching “secular humanism” in the schools may negatively affect the child’s religious beliefs.⁷³ With new federal emphasis on improving educational outcomes, as well as the potential for new opportunities for school choice presented by the NCLBA, the question arises whether the regulatory changes will affect home-school teachers as well.

Traditionally, state regulation of home-school teachers has been minimal, since religion is frequently the motivation underlying home-schooling, and parental prerogative with regard to controlling the child’s education in this sphere implicates certain constitutional rights. In seminal parental rights cases like *Wisconsin v. Yoder*⁷⁴ and *Meyer v. Nebraska*,⁷⁵ the U.S. Supreme Court viewed the states’ interest in universal education as outweighed by parents’ constitutional right to direct the upbringing of their children. With later cases like *San Antonio Independent School District v. Rodriguez*,⁷⁶ holding that there is no fundamental right to education under the federal Constitution, parental rights, at least in the sphere of religiously motivated instruction, generally enjoy substantial protection against state infringement.⁷⁷

This line of cases, in conjunction with the recent congressional emphasis on increasing the quality of teachers, begs examination of what action the state can legitimately take in regulating the qualifications of home-school teachers. Will new federal pressure on states to equalize educational opportunity to generate much-needed funding tip the balance in favor of the

Establishment Clause violation for textbook, tuition, and transportation fee waivers for all schoolchildren)).

⁷³ David Dorman, Note, *Michigan’s Teacher Certification Requirement as Applied to Religiously Motivated Home Schools*, 23 U. MICH. J. L. REFORM 733, 736 (1990).

⁷⁴ *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (holding that the State’s interest in universal education is not immune to balancing analysis when it impinges on fundamental rights implicating the First Amendment free exercise clause and the “traditional interest of parents with respect to the religious upbringing of their children.” *Id.* at 214).

⁷⁵ *Meyer v. Nebraska*, 262 U.S. 390 (1923) (recognizing power of parents to control the education of their children); see also, *Pierce v. Soc’y of Sisters*, 268 U.S. 510 (1925) (striking down an Oregon law that required all children of school age to attend public school).

⁷⁶ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

compelling state interest in higher standards, even when measured against parents' religious objections to governmental interference? While in *Yoder*, the interest articulated by the state of Wisconsin was compulsory attendance, here, the state interest seems more along the lines of ensuring the quality of education. In view of the dearth of cases on this subject, it is difficult to say how the Supreme Court may come down on this question, or whether the issue will even arise, but nevertheless, the legal questions raised by these cases suggest that perhaps states should be conscious when assimilating home-school statutes to teacher quality regulations.

1. Current Regulation of Home-school Teachers

All fifty states and the District of Columbia allow home-schooling, though state home-schooling laws vary significantly.⁷⁸ Generally, home-schooling is not heavily regulated by state legislatures. Professor Judith McMullen divides home-schooling statutes into three broad categories: "private school laws, equivalency laws, and home education laws."⁷⁹ States in the first category treat Home-schooling like private schooling; Professor McMullen notes that states like Texas and Michigan fall into this category, imposing very few regulations on home-school teachers, and imposing no teacher certification requirement.⁸⁰ States with equivalency laws allow children not to attend school so long as they receive "equivalent instruction" elsewhere; in order to ensure equivalency, these states may require "extra paperwork" from parents, including an annual review of student progress by local schools.⁸¹ Connecticut and Massachusetts are examples of states falling into this category.⁸² The third category includes states with specific home-schooling statutes; these statutes usually have more accountability requirements, including teacher certification and curriculum restrictions; Ohio, South Carolina, and Wisconsin follow this

⁷⁷ Dorman *supra* note 73, at 737-738.

⁷⁸ Judith G. McMullen, *Behind Closed Doors: Should States Regulate Home-Schooling?*, 54 S.C. L. REV. 75 (2002).

⁷⁹ *Id.* at 87 (quoting LINDA DOBSON, *THE HOMESCHOOLING BOOK OF ANSWERS* 7 (Prima Publishing) (1998)).

⁸⁰ McMullen, *supra* note 78, at 88.

⁸¹ *Id.* at 89.

⁸² *Id.*

format.⁸³ In view of the generally hands-off approach of states to home-schooling, it does not seem likely that regulation of home-school teachers will be problematic for policymakers trying to increase educational access for disadvantaged students. This result is particularly foreseeable, since home-schooled students reportedly perform in the seventy-fifth to ninety-fifth percentiles on standardized tests.⁸⁴

B. Competency Testing: Federal Constitutional and Statutory Issues

1. Constitutional Litigation: Due Process and Equal Protection

A principal requirement for teacher certification in more than forty states is that candidates pass a minimum competency test prior to becoming teachers.⁸⁵ Teacher testing is a concrete instrument by which education authorities may raise or lower the qualifications of the teaching force.⁸⁶ In addition, Title II of the HEA requires that states report to Congress the “percentage of teaching candidates who [pass] each of the assessments used by the state for teacher certification and licensure, and the passing score on each assessment that determines whether a candidate has passed that assessment.”⁸⁷ This latter requirement of reporting minimum passing scores became necessary according to the Department of Education, since current average national passing rates on teacher assessments is at ninety-five percent.⁸⁸ The Department attributes the high passing rate to the extremely low minimum score required for teaching candidates to pass; the only solution is to raise minimum passing scores to a number that is “commensurate with the skills needed to be a highly qualified teacher.”⁸⁹

While on one hand, policymakers need to find solutions to the low academic thresholds for entry into the profession, this interest must be balanced against the prospect of increasing

⁸³ *Id.*

⁸⁴ Dorman *supra* note 73, at 736.

⁸⁵ Michael Blotvogel, Note, *Testing Title VII's Patience? The Need For Better Remedies When State 'Teacher Testing' Requirements Have A Disparate Impact On Employment Opportunities For Minority Populations*, 81 WASH. U. L. Q. 561, 563 (2003).

⁸⁶ Diana Pullin, *Key Questions in Implementing Teacher Testing and Licensing*, 30 J.L. & EDUC. 383 (2001) (“Increasing interest in reforming the teaching profession has focused on the use of teacher tests and performance assessments to change the qualifications of the teaching force.”).

⁸⁷ 20 U.S.C.S. § 1027(b)(4) (2005).

⁸⁸ See source cited *supra* note 1, at 38.

litigation by individuals precluded from teaching because they do not meet the minimum requirements. First of all, test validity is necessary before states may lawfully exclude certain individuals based on their scores.⁹⁰ Validity requires that educational policymakers ensure that the definitions and standards for measuring teacher quality are clear and appropriate,⁹¹ so that the tests actually “measure what [they] purport to measure.”⁹² Otherwise, courts will probably strike down the use of teacher tests that hold only a vague connection to the skills they are supposed to reflect, while excluding an inordinate number of qualified individuals. The most common claims made against mandatory teacher testing include Due Process, Equal Protection, and Title VII Disparate Impact challenges.⁹³ Potential litigants include veteran teachers who stand to lose their certification if they do not pass annual tests,⁹⁴ new teaching candidates claiming unfair discrimination based on arbitrary test scores,⁹⁵ and candidates claiming that such tests have a disparate impact on certain statutorily protected groups.⁹⁶ Due process challenges generally fail because plaintiffs have difficulty proving deprivation of constitutionally protected

⁸⁹ *Id.*

⁹⁰ Jerry Parkinson, *The Use of Competency Testing in the Evaluation of Public School Teachers*, 39 U. KAN. L. REV. 845, 846 (1991).

⁹¹ Pullin *supra* note 86, at 395 (arguing that “[i]f the state requires certain competencies, skills, or knowledge in order to obtain a credential to teach, then it should ensure, as part of its mechanisms to evaluate programs of teacher education, that the programs are teaching and assessing [those skills] that the State will require in its [assessments].”). Professor Pullin’s argument makes sense not only because of the litigation that would likely ensue as a result of arbitrary testing measures, but also because the alignment of State requirements for certification with State prescriptions for curriculum is more likely to yield a greater number of qualified individuals. State-sponsored programs will train individuals in a manner specifically designed to prepare candidates for State competency exams.

⁹² Parkinson *supra* note 90, at 846.

⁹³ Linda J. Strassle, Note, *Minimum Competency Testing of Teachers for Certification: Due Process, Equal Protection, and Title VII Implications*, 70 CORNELL L. REV. 494, 496 (1985).

⁹⁴ See, e.g., *State v. Project Principle, Inc.*, 724 S.W.2d 387 (Tex. 1987) (holding that the revocation of teaching licenses for teachers who did not pass a competency test did not violate Due Process where Texas administrative regulations already provided adequate procedural safeguards).

⁹⁵ See Pullin *supra* note 86, at 429 n.84, (citing *U.S. v. LULAC*, 793 F.2d 636 (5th Cir. 1986) for the proposition that if a State competency testing requirement disproportionately excludes one ethnic group, then the State may have the burden of proving the validity of the test.)

⁹⁶ See, e.g., *Richardson v. Lamar Cty. Bd. of Educ.*, 729 F.Supp. 806 (M.D. Ala. 2002).

rights.⁹⁷ Equal Protection challenges are also not likely to prevail since such claims require a showing of discriminatory intent.⁹⁸

For example, in *Massachusetts Federation of Teachers v. Board of Education*,⁹⁹ the Massachusetts Supreme Court rejected a challenge to competency testing based on the Equal Protection doctrine. In that case, the state legislature promulgated new regulations designed to increase accountability and target low-performing public schools, the execution of which it delegated to the state Board of Education. The Board used this authority to mandate competency testing for math teachers. In response, a Teachers' union sued the Board for requiring teachers to take the tests as a pre-condition to renewing their teaching certificates. The Court held that the testing requirement was rationally related to the legitimate state purpose of achieving a "high quality public education for every child,"¹⁰⁰ and that the law did not treat "[similarly situated teachers differently] based on irrational criteria."¹⁰¹

2. Title VII Disparate Impact Claims

In contrast to Due Process and Equal Protection, past experience reveals that the greatest prospect for success in teacher testing litigation lies with Title VII Disparate Impact claims.¹⁰² While there is no precise mathematical formula to determine what constitutes a disparate impact, the Supreme Court in *Griggs v. Duke Power Co.*,¹⁰³ established that a competency test that disproportionately disqualifies minority applicants "at a substantially higher

⁹⁷ Strassle *supra* note 93, at 496. See, e.g., *Tolleson v. Educ. Testing Serv.*, 832 F.Supp. 158 (D.S.C. 1992).

⁹⁸ Strassle *supra* note 93, at 496.

⁹⁹ *Massachusetts Fed. of Teachers v. Bd. of Educ.*, 767 N.E.2d 549 (Mass. 2002).

¹⁰⁰ *Id.* at 560.

¹⁰¹ *Id.* at 562.

¹⁰² Parkinson *supra* note 90, at 878. Title VII provides that, "[i]t shall be an unlawful employment practice for an employer...[to] classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities...because of the individual's race, color, religion, sex, or national origin." Strassle *supra* note 93, at 509 (quoting 42 U.S.C. 2000(e)-2(a) (1982)). It is important to note that federal claims might also arise where testing disproportionately impacts persons with disabilities. See, e.g., *Upshur v. Love*, 474 F.Supp. 332 (N.D. Cal. 1979) (finding no Equal Protection violation where a school district permitted a blind teaching candidate to take a written competency examination with the aid of a reader).

¹⁰³ *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

rate than White applicants” implicates Title VII concerns.¹⁰⁴ Where litigants can show statistical evidence that an employment practice results in a disparate impact on members of a protected class, courts may scrutinize such employment practices more closely for unlawful exclusionary purposes.¹⁰⁵ The federal courts, however, are “sharply divided on whether [states that] require teachers to pass tests to begin or continue their employment can be liable under Title VII.”¹⁰⁶ In *Richardson v. Lamar County Board of Education*, the Court upheld a Disparate Impact claim made by an African-American, already employed as a teacher, who could not obtain full certification because she failed the state’s competency examinations several times. In analyzing disparate impact, the court compared the performances of African-American and White candidates on the state competency test on the first attempt, finding that African-American test-takers had a forty-nine percent pass rate, while White test-takers had a 91.1 percent pass rate on the state’s Basic Skills test.¹⁰⁷ Underlying the Court’s holding prohibiting the use of the competency test was a finding that the test did not possess the requisite level of content validity to justify its use as a measure of teacher qualification. The problem was that the minimum pass scores “did not bear a rational relationship to competence as that construct was defined by the Alabama educators.”¹⁰⁸

VI. State Statutes on Teacher Certification: A Comparison

State legislative responses to the NCLBA’s demands for greater accountability in

¹⁰⁴ Parkinson *supra* note 90, at 880 (quoting *Griggs v. Duke Power Co.*, 401 U.S. at 426).

¹⁰⁵ Pullin *supra* note 86, at 410.

¹⁰⁶ Blotevogel *supra* note 85, at 582. Blotevogel cites the Fifth and Seventh Circuits as holding States *not* liable under Title VII for disparate impact claims for competency tests because the testing only creates a licensing relationship between the State and the candidate, and the State does not have any power over hiring and firing. In contrast, the Ninth Circuit has held the state liable for competency testing in disparate impact cases because the State “requires only public school teachers to pass an exam prior to employment,” which “[interferes] with the hiring and firing of a school district’s teachers.” *Id.* at 583 (internal citations omitted). Thus, the claim appears to turn factually on how the court interprets the relationship created by the State as licensor versus employer of teaching candidates. Inferentially, with greater regulation and state involvement in the educational certification process for public school teachers, the more likely it is that the Ninth Circuit’s approach will hold sway in the future.

¹⁰⁷ *Richardson*, 729 F.Supp. at 816.

¹⁰⁸ *Id.* at 822.

the area of teacher quality vary considerably. Generally, most states require teaching candidates to have a minimum grade point average and score on state Basic Skills general knowledge tests in order to be considered for initial teaching credentials.¹⁰⁹ In addition, some states also require a Bachelor's degree in the teaching subject or a subject matter competency assessment, and some training in teaching skills and pedagogy.¹¹⁰ A critical component of state policy also identified by policymakers and scholars, apart from teacher-specific requirements, is the need for coherence and standardization between state law certification requirements, the school district's standards, and the curriculum of teacher preparatory programs.¹¹¹ Alignment of all of the organs of the state's educational machinery is a necessary prerequisite to meaningful teacher assessment. Before school districts as employers, and teacher preparatory programs as teacher educators, can appropriately make conclusions about teacher quality based on assessments, those assessments must be clearly linked to the standards for teacher quality prescribed by the state.¹¹²

A. Content Area Requirements

1. Definition and Purpose

The NCLBA requires that "highly qualified teachers" hold at least a Bachelor's degree in their teaching subject areas.¹¹³ In addition, the law requires that all teachers, to be "highly qualified," must pass rigorous state subject matter competency examinations if they are new teachers,¹¹⁴ or, if they are not new teachers, individuals must demonstrate academic competency by passing a "High Objective Uniform State Standard Evaluation" equivalency test.¹¹⁵ According to one scholar, a "thorough comprehension of the discipline entails an understanding of the subject's facts, concepts, and theories, as well as knowledge of the

¹⁰⁹ Darling-Hammond *supra* note 2, at 1065.

¹¹⁰ *Id.*

¹¹¹ Arthur Wise and Jane Leibbrand, *Standards in the New Millennium: Where We Are and Where We're Headed*, 52 JOURNAL OF TEACHER EDUCATION 244 (2001) ("Linking the standards involves linking the systems that develop them.")

¹¹² *Id.* at 246.

¹¹³ 20 U.S.C. 7801(23)(B)(i)(I) (2002).

¹¹⁴ 20 U.S.C. 7801(23)(B) (2002).

substantive structures or explanatory frameworks of the discipline.”¹¹⁶ Thus, for a teacher to demonstrate that he or she is highly qualified to teach, it is necessary to weigh the level of mastery at which the teacher claims knowledge of the teaching subject.

2. State Statutory Comparison

U.S. Department of Education data divides state content area requirements into three camps: 1) “states requiring content-specific degrees for all initial teaching certificates”; 2) “states requiring content-specific degrees for at least one initial certificate”; and 3) “states not yet requiring any uniform content-specific degree.”¹¹⁷ The evidence shows that, as of 2004, thirty-four states fell into the first category, five states fell into the second category, and fifteen states fell into the third category.¹¹⁸ In addition, the Department reports that some of the states in the third category, those not requiring content area Bachelor’s degrees, compensate for this fact by requiring teachers to pass content area assessments; only six states require neither a content area degree nor an assessment.¹¹⁹

B. Standardization

Scholars consistently emphasize the need for high standards in defining the requirements of quality teachers.¹²⁰ The Department of Education data above seem to suggest that developing uniform standards may be the most daunting task for lawmakers, since the heart of the policy problem lies in increasing expectations for low-performing schools at a level on par with adequately performing schools. For example, in 2004, only twenty-five states reported definitive standards for language arts teachers at all grade levels, though this number marks an

¹¹⁵ 20 U.S.C. 7801(23)(C) (2002).

¹¹⁶ Baldwin *supra* note 15, at 85.

¹¹⁷ See source cited *supra* note 1, at 34.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 33. The data does not specify which six States lack either content area degree or assessment requirements.

¹²⁰ See Pullin *supra* note 91 and accompanying text; see also, Wise and Leibbrand *supra* note 111 and accompanying text. “Standards,” as used in this section, refers to the minimum threshold of qualifications required of teachers; for example, a hypothetical standard might include a requirement that all English teachers in the State possess at least a Bachelor’s degree in English Literature to qualify for certification.

improvement from nineteen states in 2001.¹²¹ Only twenty-three states reported uniform standards for mathematics teachers last year, up from eighteen in 2001.¹²² While these numbers appear modest, the Department found that forty-two states reported that they were in the process of implementing new standards in order to “align teacher preparation, certification or licensure standards with content standards.”¹²³

C. Reliance on Waivers, Emergency, and Provisional Certification

1. Definition and Purpose

Professor Darling-Hammond reports that the number of teachers within the state authorized to teach by any permit short of full certification—including waivers, emergency, and provisional certificates—is “an important determinant of student outcomes.”¹²⁴ Generally, schools employ teachers on a provisional basis in order to fill shortages; these teachers may be teaching on a temporary certificate while in the process of training for full certification, teaching outside of their subject areas, or teaching simply as a “stopgap measure” to fill vacancies, with no intention to pursue full certification.¹²⁵ The Title II reporting data also reveals that provisional teachers are “more likely to work in high-poverty school districts and in high-need subject areas.”¹²⁶

2. State Statutory Comparison

State statutes may be divided into five groups, including states in which: 1) “all emergency and provisional certificates are renewable”; 2) “at least one temporary or provisional license is renewable”; 3) “no emergency or provisional license is renewable”; 4) “such statutes are not specified”; and 5) “no emergency or provisional certificates are reported.”¹²⁷ The ability to renew emergency licenses or waivers seems to be a significant indicator of state reliance on non-certificated teachers in the classroom; allowing waiver renewal suggests reduced incentives for teachers to complete full certification prior to employment as a teacher. The first category, which

¹²¹ See source cited *supra* note 1, at 35.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Darling-Hammond *supra* note 2, at 1074.

¹²⁵ See source cited *supra* note 1, at 39.

¹²⁶ *Id.*

includes twenty states, reveals the disparagingly high volume of schools that continue to depend on unqualified teachers to fill space.¹²⁸ The second category includes sixteen states,¹²⁹ while the third category includes only thirteen states.¹³⁰ Two states fall in the fourth category and do not specify whether they allow waiver renewals, and finally three states do not report any emergency or temporary licenses.¹³¹

D. Alternative Route Programs

The only states and outlying areas that do not report any kind of alternative route program include: Pennsylvania, Oregon, Arizona, Alaska, the District of Columbia, and Guam.¹³² Another variable measured by Title II reports is the number of states requiring the same certification assessments for teachers trained through traditional programs as those trained through alternative programs; in 2004, thirty-seven states reported following this method,¹³³ which perhaps suggests that states are starting to hold alternative route teachers to the same standard as traditional route teachers.

VII. Is there an ideal solution?

While it is still somewhat too early in the life of the NCLBA to determine whether the new accountability provisions will improve state certification schemes, some general observations are worthy of note in these initial stages of reform. First, states must attempt to decrease the localization of alternative certification programs. It seems relatively clear that alternative

¹²⁷ *Id.* at 43.

¹²⁸ *Id.* at 43. In addition, the subject areas with the greatest number of teachers on certification waivers at all grade levels are Special Education and Bilingual Education. *Id.* at 42. Interestingly, one scholar notes that the enforceability of federal rights under the Individuals with Disabilities Education Act and the Bilingual Education Act results in school districts allocating federal funds to students falling under these categories before non-special needs students, possibly in anticipation of litigation. This in turn leads to the “perverse effect” that schools have “fewer resources to allocate among poorly performing students.” C. Joy Farmer, *THE NO CHILD LEFT BEHIND ACT: Will It Produce a New Breed of School Financing Litigation?*, 38 COLUM. J.L. & SOC. PROBS. 443, 456-457 (2002) (citing David M. Engstrom, *Civil Rights Paradox? Lawyers and Educational Equity*, 10 J.L. & POL’Y 387, 421 (2002)).

¹²⁹ See source cited *supra* note 1, at 43.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.* at 48.

¹³³ *Id.* at 46.

certification programs are becoming a necessary tool for states to expedite certification and fill shortages in areas where the process of traditional certification cannot keep pace with the rising demand for teachers.¹³⁴ The major problem with alternative certification, however, appears to be the standardization of programs in ways that do not unduly restrict the utility of these programs to the local level.¹³⁵ In order to measure accountability at the national level, one result of reporting alternative program performance data must be comparability of programs,¹³⁶ which requires states to limit: 1) the number of alternative certification programs available, and 2) the number of teaching certificates available. It is true that higher standards may result in some groups claiming that certain standards have a disparate impact upon them, which may in turn result in the exclusion of some otherwise qualified individuals. However, states should address these concerns when defining program types, taking particular care to define as precisely as possible the standards for certification, in order to ensure the validity of teacher quality measures.¹³⁷

Second, on a related note, states must ensure alignment of state certification standards with teacher quality measures.¹³⁸ States may substantially reduce the prospect of litigation, as well as strengthen the measures of teacher quality, if they ensure that such measures, usually competency tests, assess precisely what they purport to assess.¹³⁹ States, however, might take additional steps to tackle the disparate impact problem, enabling them to include a greater number of qualified professionals, by identifying the specific disadvantages faced by habitually excluded groups.¹⁴⁰ While addressing such problems is concededly difficult, it is necessary for

¹³⁴ See *supra* note 34; see also, *supra* note 131.

¹³⁵ See *supra* note 59 and accompanying text.

¹³⁶ See Feistritzer *supra* note 36.

¹³⁷ See Parkinson *supra* note 90 and accompanying text.

¹³⁸ See Wise and Leibbrand *supra* note 111 and accompanying text.

¹³⁹ *Id.*

¹⁴⁰ Pullin *supra* note 86, at 409 (“Any significant difference in the performance success of particular groups of examinees should be analyzed to ascertain the potential sources of these different levels of performance.”). However, one should not give short shrift to the very real difficulty of directly addressing the “disadvantages” faced by a disproportionately impacted class—such as African-Americans—who historically perform less well on tests than their White counterparts. While the State can provide a reader to aid a blind teaching candidate on a competency test in one case, *Upshur v. Love* *supra* note 102, what “aid” can the State provide to a test-taker based on race?

two reasons. First, the pressing need to ensure the reliability of such measures, particularly where federal law imposes a significant burden upon a state to prove validity in the face of demonstrated disparate impact,¹⁴¹ requires States to screen carefully and formulate certification criteria to maximize validity. Second, minority teachers are in increasing demand, particularly in areas where minority students are “quickly becoming the majority,”¹⁴² which suggests that it may prove highly beneficial for States to make a conscious effort to include more minorities in the teaching force.

VIII. Conclusion

There are advantages and disadvantages to both professionalization and de-regulation in determining the best method to improve the quality of teachers. On one hand, professional standards should not suffer because they create additional hurdles for non-traditional individuals to enter teaching; on the other, traditional certification is certainly not the only proven means of training candidates to become “highly qualified teachers.” Indeed, diversification of the student population may require states in the near future to explore more alternative programs, and to reform teaching curriculum and certification in ways that increase diversity in the teaching force.¹⁴³ To avoid localization of alternative programs, and sacrificing standards to accommodate more teachers, a prudent approach for states might be to maintain the same standards for alternative candidates as those for traditional teachers, while incorporating alternative route candidates more gradually into the teaching force. Such an approach might give alternative candidates more opportunity to learn pedagogy, while at the same time facilitating a more long-term solution to the teacher quality problem.

In addition, for the NCLBA to have some efficacy across states and school districts, there need to be adequate incentives for teachers to tackle teaching at the low-performing schools. There already exists a major problem of attracting and retaining highly-qualified teachers in low-income urban and rural areas due to the cultural and behavioral hurdles empirically presented by

¹⁴¹ See *supra* note 95 and accompanying text.

¹⁴² Pullin *supra* note 86, at 409.

student populations in those areas. As current scholarship suggests, however, there may also be additional hurdles from a legislative standpoint unrelated to teacher improvement strategy. A recent publication by the The Civil Rights Project at Harvard University questions the approach taken by the NCLBA in imposing sanctions on schools for not meeting national standards.¹⁴⁴ The authors argue that by withholding much needed funds from low-performing schools, the Act “may create disincentives for [teachers] to stay by holding schools to test-based standards that they will not likely meet and labeling and sanctioning them when they do not, even when such schools might be eliciting achievement gains.”¹⁴⁵ At that point, just when these schools start to lose teachers, the NCLBA will authorize additional sanctions because the schools are unable to meet the highly qualified teacher requirements.¹⁴⁶ In sum, while states must do their best to improve teacher quality, the NCLBA for its part, cannot punish the very school districts that its trying to improve by exacting impossible standards that even highly-qualified teachers cannot meet.

¹⁴³ See Birkeland and Peske *supra* note 52 and accompanying text.

¹⁴⁴ Gail L. Sunderman and Jimmy Kim, Teacher Quality: Equalizing Educational Outcomes (Apr. 2005), available at http://www.civilrightsproject.harvard.edu/research/esea/Teacher_Quality.pdf (last accessed Nov. 7, 2006).

¹⁴⁵ *Id.* at 11.

¹⁴⁶ *Id.*

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