

# Last Minute Memorandum

**To:** STATE BOARD MEMBERS **Date:** July 8, 2003

**From:** Karen Steentofte, Chief Counsel, State Board of Education

**Re:** ITEM 9

**Subject** NO CHILD LEFT BEHIND (NCLB) ACT: TEACHER REQUIREMENTS (“HIGHLY QUALIFIED TEACHER”), INCLUDING, BUT NO LIMITED TO, PROPOSED TITLE 5 REGULATIONS

Attached are proposed regulations for implementing the NCLB Teacher Requirements. The proposed regulations are based on the proposal adopted by the Board in concept at the June 2003 meeting with modifications based on CDE and Board staff ‘s consultation with staff at the United States Department of Education (USDE) as directed by the Board.

Consultation with USDE suggested that two changes to the “adopted-in-concept proposal” were appropriate. First, while they understood California’s need for a limited transition period, they did not see anything in the law that would allow for such a transition period and advised us not to include it. Therefore the transition period in the “adopted-in-concept proposal” has not been included in the proposed regulations.

Secondly, USDE informed us that further Guidance on “Highly Qualified Teacher” would be released in late July or early August and that there would be a question and answer on how one determines if a teacher is teaching at the elementary, middle or high school level. USDE informed us that each State, or even each LEA, could make their own determination based on the curriculum taught. For example, based on the curriculum taught, teachers instructing multiple subjects taught together in one class of sixth or seventh graders could be considered elementary in nature, while eighth grade--where Algebra, foreign languages and other subjects are taught separately-- could be considered middle school. Differentiating teachers by the nature of curriculum taught should help school districts struggling with the NCLB Teacher Requirements in grades 6-8, and perhaps some alternative school programs. The proposed regulations include a definition for "elementary, middle and high school" as a result of this information.

Once approved by the Board, the proposed regulations will be sent out for the 45-day public comment period and will come back to the Board in September. Given that further written Guidance on Title II is expected from USDE before September further revisions to the proposed regulations that will require another 15-day or 45-day public review may be necessary or advisable.