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NCLB: The Highly Qualified Teacher and Certification Requirement**Overview**

The federal *No Child Left Behind Act (NCLB)*, 20 U.S.C. 6301, *et seq.*, requires, among other things, that all children gain access to a “high quality education.” The statute’s intent “is to ensure that all children have a fair, equal, and significant opportunity to obtain a high quality education and reach, at a minimum, proficiency on challenging State academic assessments.” As a part of ensuring that this mandate is carried to fruition, NCLB [20 U.S.C. 6319(a)] requires that all teachers (including elementary, middle, or secondary levels; special education; and charter schools) involved in teaching *core academic subjects* (as listed in the statute) must meet specific certification requirements to be considered “highly qualified.”

Suffice it to say, public school officials have been striving, for almost a decade, to interpret and comply with the “highly qualified teacher” mandate of NCLB by bringing state certification requirements for core academic teachers in line with what is expected. This process often is confounded when *teacher certification* is mistakenly blended with teacher employment *contract status* —especially involving staff who possess tenure.

Teacher Certification and Employment Contracts

Certification. As my colleague Professor Boshier and I explain in our law text, the terms *certificate* and *license* are synonymous. Teacher certification requirements are governed by state law and regulations and certificates are issued by state level agencies (e.g., in the Commonwealth of Virginia teaching certificates [including endorsements] are issued by the State Board of Education). It must be emphasized, that “[c]ertification requirements are subject to judicial scrutiny under federal and state anti-discrimination statutes and broadened interpretations of the Fourteenth Amendment.” Russo (2004)

While the certificate itself offers evidence of basic competence and gives a person formal permission to practice his or her profession (classroom teacher), it is not a contract and, as such, “does not ensure that the individual holding the certificate will gain employment.” Vacca and Boshier (2008) It should also be noted that while local school boards prefer and are encouraged to hire fully certified classroom teachers, they are not restricted in hiring non-certified individuals where a need exists to do so.

Contract. Public school classroom teachers and other employees enter into *contracts* (agreements enforceable by law) for employment when they are officially hired by a local school board. And, once an individual signs the employment contract he or she is subject to all policies, regulations, and procedures in effect at the time of their signing the contract and to all subsequent changes as well. Individuals who are employed in states that allow collective bargaining also must look to the existing collective bargaining agreement for other work-related provisions.

Assignment. As a matter of state law local school boards retain ultimate authority to assign and reassign all personnel “to any one position or combination of positions for which they are qualified.” However, to meet various accreditation standards local public school boards are, as a general rule, required to assign professional personnel to positions for which they are certified and endorsed. If individuals are assigned to positions for which they are not fully certified and endorsed the employing school board is more often than not required by state law to see to it that these individuals “immediately pursue additional training for the new job.” Vacca and Boshier (2008)

Local school boards may prescribe additional requirements over and above state requirements. Vacca and Boshier (2008) However, “[l]ocal boards cannot impose requirements that are arbitrary, capricious, or enacted in bad faith.” Alexander and Alexander (2008) Individuals who refuse to comply with local school board requirements may be subject to dismissal from employment. Harrah I.S.D. v. Martin (1979)

NCLB and Teacher Certification

While the regulations for achieving full compliance with NCLB’s “highly qualified teacher” mandate allow for a gradual good faith effort over time to meet full compliance [initially set as the 2005-2006 school year], legal and policy issues nonetheless spring up each year. One issue that remains viable involves the impact of NCLB on the certification and subsequent recertification of classroom teachers who already are employed and teaching core academic subjects for a major portion of the school day.

Recently, while doing research in the law library, I came across an interesting case involving two public school teachers caught in the middle when NCLB requirements caused changes in their state’s heretofore existing certification requirements. In my opinion, while the decision itself lacks value as precedent, it nonetheless offers an example of the impact of changing certification requirements on experienced, tenured faculty.

Buell and Forte v. Hughes (D.Conn. 2008)

Facts: At the time of this law suit the two plaintiffs (Buell and Forte) were tenured teachers of mathematics in the Connecticut Technical High School System (hereafter referred to as CTHSS). Ms. Buell was originally hired as a part-time teacher in 1979. Two years later she was employed full-time and obtained tenure status in 1984. During her years of employment she taught mathematics and typing. Mr. Forte was initially hired in 1998 as a substitute and part-time trade-mathematics teacher. In 1999 he was hired full-time. He obtained tenure status in 2003. Both Buell and Forte possessed teaching certificates (*Conn. Cert. 091*) which made them eligible to teach trade-related mathematics, trade-related science, and/or blueprint reading. Mr. Forte also possessed Connecticut certification as an administrator and supervisor, a technical school administrator, and a coach.

Prior to the enactment of NCLB (January 2002), the State of Connecticut permitted teachers with 091 certificate endorsements to teach mathematics or science “as core subjects.” Both Buell and Forte were given classroom assignments under this allowance. When NCLB became effective the Connecticut State Department of

Education (hereafter referred to as the State Department) determined that all teachers were required to hold a 029 certificate in order to teach mathematics, or science, or art as a core subject at any of the schools that came under CTHSS. The new requirement meant that all teachers had to show evidence that, in addition to meeting assessment requirements (Praxis I and II), they: (1) hold a bachelor's degree from an approved institution, (2) completed a survey course in U.S. History (at least 3 semester hours credit), (3) completed a subject-area major consisting of a major awarded by an approved institution in the subject area for which certification is sought, (4) completed a minimum of 30 hours of credit in the subject for which endorsement is sought, (5) completed a minimum of 9 semester hours in a related subject or subjects related to the subject for which endorsement is sought, and (6) completed a minimum of 18 credit hours in professional education in a planned program of study.

As of July 1, 2003, a total of seventy-four teachers held 091 endorsements and were teaching mathematics, science, or art. Within this group sixty-three possessed a bachelor's degree. The State Department arranged for the seventy-four teachers to be given time to pursue their core academic certification. While the State Department decided to waive the requirement that existing teachers take Praxis I (because they had teaching experience), all other requirements had to be met.

When reviewing the CTHSS faculty to ensure that NCLB's "highly qualified" standard was being met the State Department separated teachers who failed to meet all certification requirements into the three following categories: (1) those possessing full core academic certification who obtained certification endorsement prior implementation of CONNTENT or Praxis II, (2) those possessing 091 certification and bachelor's degree and (3) those possessing 091 certification but who did not have a bachelor's degree.

Teachers who already possessed a bachelor's degree and at least 12 credit hours in their core subject area were issued durational shortage area permits (DSAP) while pursuing the rest of their requirements. The DSAP could be issued no more than twice to a teacher. Based on a teacher's category other waivers or requirements were added accordingly. Teachers were monitored as they worked toward full certification.

Following notification of the new requirements Buell proceeded to work on a bachelor's degree in general studies. She was told that this would leave her short of some mathematics credits needed to receive 029 certification. She was issued a DSAP. She also was told by a State Department worker that she needed to take and pass Praxis II to gain full certification in mathematics or science. Subsequently Buell earned her bachelor's degree and completed the remaining mathematics after graduation. She was twice issued a DSAP and told that if she failed Praxis II she will be released from employment when the second DSAP expired.

Forte also worked toward meeting the new requirements. He completed his bachelor's degree and the required 30 credits for mathematics certification. He worked under two DSAP's. Later on he took and failed Praxis II eleven times before finally passing it. It should be noted that he later claimed that this subjected him to unnecessary strain and expense.

Federal Court Action: Buell and Forte, both tenured teachers, filed suit in a federal district court under 42 U.S.C sections 1983 and 1988. They named as defendants administrators of the Connecticut Technical High School System (CTHSS) and administrators of the Connecticut State Department of Education. Defendants were sued in both their individual and official capacities. Alleging denial of Fourteenth Amendment Equal Protection and procedural due process "arising from the imposition of new certification requirements for teaching mathematics as a core academic subject," Buell and Forte sought compensatory and punitive damages, injunctive relief, and attorney fees.

District Court Decision and Rationale: Regarding equal protection the court held that Buell and Forte could not show that they were being treated in any way different (i.e., discriminated against) from other teachers. Plaintiffs also failed to show any violation of procedural due process. In order to prevail, said the court, plaintiff must identify a constitutional protected property or liberty interest and demonstrate that government has deprived him or her of that interest without due process. Citing Board of Regents v. Roth (1972), the court held that plaintiffs had failed to carry this burden.

At this point in the court decision the judge focused on the premature nature of plaintiffs' law suit. Because Forte has met the certification requirements including passing Praxis II (which he did after filing this law suit), said the judge, he now has acquired a property interest. Thus, if in the future he is terminated he will have a viable due process claim. As of now he has not suffered a deprivation of due process. As for Buell, she is at the time of this law suit teaching mathematics under certification other than that required by law and has yet to pass Praxis II. Thus, she does not now possess a property interest in her job. Even if she passes Praxis II, said the judge, she too has not suffered an adverse employment action and as such cannot prove a deprivation of due process.

In summary the court characterized plaintiffs' lawsuit as premature. In Forte's situation he had not yet been terminated from employment. In addition, the court opined that the imposition of new state certification requirements for teaching core academic subjects (in this case mathematics) did not violate Forte's procedural due process rights as a tenured teacher even where he already had passed the required assessment test (Praxis II). In Buell's situation the court held that the imposition of new certification requirements for teaching mathematics as a core subject did not deprive her of due process because she: (1) had yet to pass the required certification examination and therefore was teaching mathematics under certification other than that required by state law, and (2) she had yet to establish a property interest in her job.

Policy Implications

Buell and Forte v. Hughes (D.Conn. 2008) represents an example of how changes in state certification requirements spawned by the imposition of federal mandates enumerated in the *No Child Left Behind Act* (2002) have the potential to cause both legal and policy issues, especially as local school boards reevaluate the certification status of tenured (continuing contract status), experienced teachers currently assigned to teach core academic subjects for a major portion of their teaching assignment. As I interpret the judicial rationale, the value of the case lies more in what can be inferred from the court's opinion. For example, the court does not find fault with the State of Connecticut changing the certification requirements, nor does it find fault with local school boards requiring all teachers, including those with tenure, to meet the new requirements. In other words the court is not bothered by the fact that there was no "grandfather clause." In addition, the court does not find fault with local school systems requiring all teachers, including tenured staff, to work toward meeting the new State certification requirements. Obviously, the results in this case would have been different had both tenured teachers already completed the new certification requirements (i.e., were practicing under a valid license) but still were terminated from their teaching positions by the local school board.

In my opinion the policy implications of NCLB found in Buell and Forte v. Hughes (D.Conn. 2008) are important to ponder. In this era of accountability and continuous change, as local public school boards continue to work toward providing all students with equal access to high quality educational opportunities, school system policies must make it clear that the Board:

- Reaffirms its goal of striving to hire (contract with) and retain (renew the contract of) properly certified and endorsed teachers.
- Acknowledges its responsibility to implement and be accountable for the mandates of both NCLB and state law
- Possesses the legal authority to employ (contract with), assign, transfer, non-renew, and dismiss all personnel.
- Possesses the legal authority to assign teachers (including tenured and continuing contract teachers) to any one position or combination of positions for which they are qualified.
- Expects that all teachers (especially those teaching core academic subjects and including tenured teachers and those on continuing contract), hold and maintain valid state certification and endorsement in the subject area(s) taught by them.
- Expects that teachers who are not fully certified and endorsed continuously work toward meeting full certification and endorsement.
- Expects that all teachers (especially those teaching core academic subjects and including tenured teachers and those on continuing contract) will renew certification and endorsement(s) to adjust to and fulfill all future changes in specific requirements and timelines specified by state law.

The reader is reminded that the applicability and/or modification of the above policy suggestions must be judged against the provisions of collective bargaining agreements in states where such agreements exist.

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Note: The views expressed in this commentary are those of the author.