

## ALTERNATIVE CERTIFICATION AND TEACH FOR AMERICA: THE SEARCH FOR HIGH QUALITY TEACHERS

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### I. INTRODUCTION

Over the past two decades, a great deal of academic and political attention has focused on recruiting and retaining highly qualified, effective classroom teachers.<sup>1</sup> Countless efforts have been made to remedy long-standing teacher shortages in underperforming schools and to enhance the pool of high-quality teachers, but shortage remains a concern.<sup>2</sup> Effective teachers can have a tremendous impact on student achievement. Unfortunately, staffing schools is becoming increasingly difficult, especially in historically low-performing schools—schools that have consistently reported low test scores and poor academic achievement for their students.<sup>3</sup>

Schools with high-minority and low-socioeconomic populations have always experienced difficulty recruiting and retaining high-quality teachers.<sup>4</sup>

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1. See generally Richard J. Murnane & Jennifer L. Steele, *What is the Problem? The Challenge of Providing Effective Teachers for All Children*, 17 *FUTURE CHILD* 15, 35–36 (2007) (discussing the importance of recruiting and retaining high-quality teachers and the various strategies that have been proposed).

2. See generally Cassandra M. Guarino et al., *Teacher Recruitment and Retention: A Review of the Recent Empirical Literature*, 76 *REV. EDUC. RES.* 173, 189–99 (2006) (providing an overview of strategies promoting the recruitment and retention of teachers).

3. *Id.* at 191.

4. See Geoffrey D. Borman & N. Mariza Dowling, *Teacher Attrition and Retention: A*

Since low-performing schools are often located in high-poverty neighborhoods, the working conditions and characteristics of those neighborhoods (population density, income level, violent crime rate) have impacted their potential teachers' career decisions.<sup>5</sup> As might be expected, research shows that teachers often avoid taking jobs in schools serving low-performing minority and poor students.<sup>6</sup> In turn, low-income students have limited opportunities to learn from high-quality teachers.<sup>7</sup>

## II. ALTERNATIVE PATHWAYS TO TEACHING

To remedy these long-standing teacher quality disparities, alternative pathways were created to increase both the quality and quantity of teachers. The National Center for Alternative Certification ("NCAC") reported that in 1984, 275 alternative certificates were issued.<sup>8</sup> By 2009, the number of licenses issued by state-run alternative programs swelled to 59,000.<sup>9</sup> The following year, forty-eight states and the District of Columbia reported having in place at least some type of alternative route to teacher certification, with only Alaska and Oregon abstaining from implementing such programs.<sup>10</sup> As of 2010, there were 136 different paths to certification spread out over nearly 600 programs.<sup>11</sup> Altogether, NCAC data concludes approximately half a million teachers have been placed in classrooms through alternative routes since 1984.<sup>12</sup> In some states, this represents between thirty to fifty percent of new teacher recruits.<sup>13</sup>

The reauthorization of the Elementary and Secondary Education Act ("ESEA") of 2002—also known as the No Child Is Left Behind Act ("NCLB")<sup>14</sup>—established a requirement that all teachers be "highly qualified."<sup>15</sup> This provision aimed to remove numerous state-by-state

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*Meta-Analytic and Narrative Review of the Research*, 78 REV. EDUC. RES. 367, 371 (2008).

5. See Susanna Loeb et al., *How Teaching Conditions Predict Teacher Turnover in California*, 80 PEABODY J. EDUC. 44, 44 (2005).

6. See generally Eric Hanushek et al., *Why Public Schools Lose Teachers*, 39 J. HUM. RESOURCES 326, 328 (2004) (noting a Texas study finding many teachers avoid positions in low-income schools).

7. See generally Donald Boyd et al., *The Influence of School Administrators on Teacher Retention Decisions*, 48 AM. EDUC. RES. J. 303 (Sept. 2010) (discussing why teachers choose to leave schools serving low-income students).

8. NAT'L CTR. FOR ALTERNATIVE CERTIFICATION, *ALTERNATIVE TEACHER CERTIFICATION: A STATE BY STATE ANALYSIS* (2010), available at <http://www.teach-now.org/intro.cfm>.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. C. EMILY FEISTRITZER & CHARLENE K. HAAR, *ALTERNATE ROUTES TO TEACHING* 97, 100, 103 (Prentice Hall, 2008).

14. No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2002) (codified at 20 U.S.C. §§ 6301–7941 (2006)).

15. See 20 U.S.C. § 6319 (2006).

loopholes that allowed emergency-certified teachers to pervade low-performing schools. Despite the language in NCLB seeking to increase the quality of teachers, the law concurrently requires states to have “a program to recruit and retain highly qualified mid-career professionals (including highly qualified paraprofessionals), and recent graduates of an institution of higher education, as teachers in high-need schools, including recruiting teachers through alternative routes to certification.”<sup>16</sup> As a result, NCLB mandates that states support and expand Alternative Certification Programs (“ACPs”) to provide alternative routes to the classroom.<sup>17</sup> Our analysis of NCAC data shows that NCLB increased alternative routes to the classroom, with about 133,000 teachers certified via alternative routes in the seventeen years before NCLB, compared to 359,000 in the seven years since its introduction.<sup>18</sup>

Following the passage of the NCLB, the Bush administration championed some of the more successful ACPs. The U.S. Department of Education highlighted model ACPs in a series of annual reports, including Teach for America (“TFA”) and New York City Teaching Fellows.<sup>19</sup> The report aligned with research arguing that alternative routes produced teachers who boosted student achievement, identified recruits who were more likely to stay in teaching, and provided a pool of more diverse candidates.<sup>20</sup> Secretary of Education, Rod Paige, wrote in the 2003 report, “Each of these programs has developed its own way to compensate for the shortfalls that have historically prevented schools of education from achieving their full potential as sources of high-quality teachers.”<sup>21</sup>

In the last decade, alternative routes to the classroom have continuously gained momentum. While TFA is probably the most widely-known alternative route, there are other programs of varying quality that place alternatively certified teachers in high-need schools.<sup>22</sup> For example, iteachTEXAS is a less-selective program allowing anyone without a felony conviction or conviction of a lesser crime “involving moral turpitude,” who has a college degree with a grade-point average of 2.5 in their last sixty credit hours, to complete teacher training online for about \$4,000.<sup>23</sup> There are also highly selective alternative certification programs such as Teach Kentucky in Louisville and Mississippi

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16. 20 U.S.C. § 6681(1) (2006)

17. *Id.*

18. NAT'L CENTER FOR ALTERNATIVE CERTIFICATION, *supra* note 8.

19. U.S. DEPT. OF EDUC., MEETING THE HIGHLY QUALIFIED TEACHERS CHALLENGE: THE SECRETARY'S SECOND ANNUAL REPORT ON TEACHER QUALITY 28, 30 (2003) [hereinafter SECRETARY ANNUAL REPORT].

20. *Id.* at 24–31.

21. *Id.* at 21.

22. See Linda Darling-Hammond et al., *Does Teacher Preparation Matter? Evidence about Teacher Certification, Teach for America, and Teacher Effectiveness*, 13 EDUC. POL'Y ANALYSIS ARCH. 1, 9 (2005) (identifying different types of alternative certification).

23. *Alternative Teacher Certification Application*, ITEACHTEXAS (2011), <http://www.iteachtexas.com/Teacher-Certification.aspx> (follow “Admission Requirements,” “Program Fees,” and “Application” hyperlinks).

Teacher Corps in the Mississippi Delta region, which place select college graduates in schools.<sup>24</sup> These alternative routes expect candidates to remain in the classroom for a long-term commitment. As a group, ACPs include various different requirements and expectations for their recruits. What is clear across ACPs is that there are no standardized commitments for teaching. Yet despite the spectrum of compulsory teaching time, it is notable that TFA, with an abbreviated two-year commitment, has continued to garner enormous political and financial support.<sup>25</sup> Since its inception, TFA has dominated the conversation about alternative routes via exceptional public interest campaigns. TFA capitalizes on feel-good stories of fresh-faced college graduates “giving back” by parachuting in to save the poor students of low-performing, mostly inner-city schools.

This Article explores the evolution of ACPs and their manifestation in one of the most popular programs, TFA. The Article examines the research focusing on these programs and the impact they have had on increasing student success. The Article seeks to un-package much of the sweeping press and public policy support that touts TFA as an efficacious policy to ensure high quality teachers for schools and students most in need. This Article critically explores whether teachers within ACPs—namely TFA—are truly effective in countering the failing trajectory of poor and minority students. Current assumptions about ACPs are examined through data on TFA, teacher quality, student outcomes, distribution of teachers, and teacher turnover. In addition, to provide context for the momentum of TFA, this Article provides a legal analysis of California’s seminal case on alternative teacher certification, *Renee v. Duncan*, and its impact on national policy.<sup>26</sup> Finally, this Article concludes by discussing the implications of alternative certification for teaching as a profession, and comparing teaching to other occupations charged with delivering services for the greater public good.

Education has long been a determining factor, if not the most important factor, of adult success, life stability, and earning opportunity. Tremendous focus is placed upon children to successfully complete the education publicly provided to them, but many questions remain about the quality of the providers and the best way to ensure every child reaches their full learning potential. This Article attempts to answer some of these questions about alternative certification programs and TFA by examining a surfeit of research on teacher quality, distribution, turnover, and the cost of turnover. We conclude by arguing that the loosening of requirements enabled by alternative certification and TFA exacerbates the inconsistencies within the teaching profession and perpetuates inequality.

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24. JULIAN VASQUEZ HEILIG & SU JIN JEZ, *TEACH FOR AMERICA: A REVIEW OF THE EVIDENCE 1* (2010), <http://nepc.colorado.edu/files/PB-TeachAmerica-Heilig.pdf>.

25. Jordan Haas, *Teach for America Gains Financial Assistance*, THE SPECTRUM, March 23, 2011, <http://www.sacredheartspectrum.com/news/teach-for-america-gains-financial-assistance-1.2520924>.

26. 573 F.3d 903 (9th Cir. 2009).

### III. TEACH FOR AMERICA

Teach For America is “a non-profit organization whose purpose is to eliminate disparities in educational outcomes by recruiting recent graduates of elite colleges to teach in low-income urban and rural schools for a two-year commitment.”<sup>27</sup> As an alternative to the extensive preparation traditionally-educated teachers receive over four years as education majors in undergraduate programs, TFA candidates attend a five-week training program over the summer between college graduation and the start of their teaching assignments.<sup>28</sup>

TFA’s teaching corps has grown since its inception in 1990, when 500 teachers were placed in six sites nationwide.<sup>29</sup> During 2009–2010 academic year, there were more than 7,000 TFA teachers in some 170 sites across the country, reflecting many educational leaders’ willingness to hire TFA personnel.<sup>30</sup> TFA teachers are placed across the U.S. in low-income urban and rural communities. While detailed information on how sites are selected is not publicly available, TFA does publish data on sites that engage its services. Data extracted from various tabulations on the TFA website reveal notable patterns across regions and states. For the 2009–2010 academic year, the highest percentage of TFA teachers (forty-five percent) and greatest number of sites (ninety-eight) were in the South; the lowest percentage of TFA teachers (nine percent) and the fewest sites (ten) were in the Midwest.<sup>31</sup>

**Table 1: Distribution of TFA Teachers by U.S. Census Bureau Regions (2009-2010)**<sup>32</sup>

Region	Sites	Number of TFA Teachers	Percentage of All TFA Teachers
South	98	3212	44.8%
Northeast	20	1899	26.5
West	40	1427	19.9
Midwest	10	633	8.8
Total	168	7171	100%

As of 2010, the multi-state, rural Mississippi Delta region had the most sites (thirty-eight), followed by the state of Texas (twenty-two).<sup>33</sup>

27. This section draws heavily from a previous policy brief by Professor Julian Vasquez Heilig. See HEILIG & JEZ, *supra* note 24.

28. *Id.*

29. *History*, TEACH FOR AMERICA, <http://www.teachforamerica.org/about-us/history/> (last updated 2010).

30. HEILIG & JEZ, *supra* note 24, at 2.

31. See *infra* Table 1; HEILIG & JEZ, *supra* note 24, at 2.

32. HEILIG & JEZ, *supra* note 24, at 2.

33. See *infra* Table 2. TFA sites are districts and individual schools.

**Table 2: Distribution of TFA Teachers by State (2009-2010)<sup>34</sup>**

State	Sites	Number of TFA Teachers	Percentage of All TFA Teachers
Texas	22	844	11.8%
New York	2	820	11.4
California	14	727	10.1
Louisiana	11	652	9.1
Pennsylvania/Delaware/New Jersey (Mid-Atlantic)	4	445	6.2
Washington D.C.	2	424	5.9
North Carolina	12	401	5.6
Illinois	2	399	5.6
Arkansas/Mississippi (Mississippi Delta)	38	358	5.0
Arizona	14	322	4.5
Missouri	7	317	4.4
Georgia	2	210	2.9
Florida	2	197	2.7
Colorado	4	184	2.6
Connecticut	8	160	2.2
Tennessee	2	152	2.1
Nevada	3	98	1.4
New Mexico	5	96	1.3
Indiana	1	91	1.3
Oklahoma	2	81	1.1
South Dakota	5	62	0.9
Massachusetts	4	50	0.7
Minnesota	1	43	0.6
Wisconsin	1	38	0.5
Rhode Island	New in 2010	—	—
Alabama	New in 2010	—	—
Total	168	7171	100%

Data Source: Teach For America

34. HEILIG & JEZ, *supra* note 24, at 3.

#### IV. TEACHER QUALITY

##### A. *The Research*

Teacher quality has been identified as the most important indicator of school quality.<sup>35</sup> The effectiveness of the teacher is the major determining factor of long-term student academic progress.<sup>36</sup> Teacher quality has a cumulative effect on student achievement.<sup>37</sup> As a result, when students are assigned several under-qualified teachers consecutively, those students are less likely to demonstrate grade-level proficiency than students who had three highly effective teachers in a row.<sup>38</sup>

Alternative pathways to teacher certification have gained in popularity. Yet, the debate in the literature surrounding the efficacy of such pathways is ongoing. Researchers have identified several indicators of teacher quality that can help predict student achievement.<sup>39</sup> One important indicator of teacher quality is possessing “[q]ualifications and experience appropriate to grade level and subject matter.”<sup>40</sup> Studies have shown a positive relationship between teacher certification and student achievement,<sup>41</sup> finding that traditionally-certified teachers raise student achievement more than “under-certified” teachers.<sup>42</sup> Still, a minority of studies finds no specific achievement trends associated with either traditional or alternative pathways.<sup>43</sup>

One way of measuring teaching effectiveness is to analyze the correlation

35. See Steven. G. Rivkin et al., *Teachers, Schools, and Academic Achievement*, 73 *ECONOMETRICA* 341, 419 (2005).

36. William L. Sanders & Sandra P. Horn, *Research Findings From the Tennessee Value-Added Assessment System (TVAAS) Database: Implications for Educational Evaluation and Research*, 12 *J. PERSONNEL EVAL. EDUC.* 247, 247 (1998).

37. LINDA DARLING-HAMMOND, CTR. FOR THE STUDY OF TEACHING & POL'Y, U. OF WASH., *TEACHER QUALITY AND STUDENT ACHIEVEMENT: A REVIEW OF STATE POLICY EVIDENCE* 5 (1999).

38. WILLIAM L. SANDERS & JUNE C. RIVERS, U. OF TENN. VALUE-ADDED RESEARCH AND ASSESSMENT CTR., *CUMULATIVE AND RESIDUAL EFFECTS OF TEACHERS ON FUTURE STUDENT ACADEMIC ACHIEVEMENT* 6 (1996); see also DARLING-HAMMOND, *supra* note 37, at 6 (“Students who are assigned to several ineffective teachers in a row have significantly lower achievement and gains in achievement than those who are assigned several effective teachers in sequence.”).

39. LAURA GOE, Executive Summary, NAT'L COMPREHENSIVE CTR. FOR TEACHER QUALITY, *THE LINK BETWEEN TEACHER QUALITY AND STUDENT OUTCOMES: A RESEARCH SYNTHESIS* 1 (2007).

40. *Id.*

41. Darling-Hammond, *supra* note 22, at 57–59.

42. Ildiko Laczko-Kerr & David C. Berliner, Abstract, *The Effectiveness of “Teach for America” and Other Under-certified Teachers on Student Academic Achievement: A Case of Harmful Public Policy*, 10 *EDUC. POL'Y ANALYSIS ARCH.* (2002), available at <http://epaa.asu.edu/epaa/v10n37/>.

43. See, e.g., Michael Podgursky, *Teacher Licensing in U.S. Public Schools: The Case for Simplicity and Flexibility*, 80 *PEABODY J. EDUC.* 15 (2005) (arguing that “raising the bar” for teacher licensing in ways that have been proposed is unlikely to have any effect on student achievement).

between teaching experience and student achievement. Teaching experience is an important predictor of student achievement.<sup>44</sup> Beginning teachers—individuals with three or fewer years of experience—are not as effective as teachers with more than three years of experience.<sup>45</sup> Brand-new teachers are the least effective when compared to all other experience levels.<sup>46</sup> Considering that teacher quality impacts school climate and learning environment, schools that are inundated with large numbers of inexperienced teachers face an acute challenge to increasing student achievement.<sup>47</sup>

### **B. Teach for America and Student Outcomes**

The debate over the specific impact of TFA and whether its recruits should be considered high quality teachers has been covered extensively in education-related academic literature. Julian Vasquez Heilig and Su Jin Jez recently conducted a comprehensive analysis of peer-reviewed research on TFA.<sup>48</sup> Examining more than a decade's worth of research examining TFA outcomes, the study concluded TFA teachers had a positive impact on student achievement in mathematics only when they had obtained training and certification beyond the typically two-year TFA classroom commitment.<sup>49</sup> TFA teachers rarely had a positive impact on reading achievement.<sup>50</sup> In fact, four peer-reviewed studies found novice TFA recruits to have significant negative effects on elementary students' reading achievement when compared to fully-prepared teachers.<sup>51</sup> TFA recruits' negative effects on achievement also extended to mathematics in three of the studies.<sup>52</sup> Despite the decidedly mixed effects of its teachers noted in the peer-reviewed research, TFA continues to claim, "Teach For America corps members are more effective than other teachers, including certified and veteran teachers."<sup>53</sup>

A recent report by the National Education Policy Center concisely sums up the ongoing debate surrounding the effects of TFA teachers on student achievement in the following statement:

A few experimental studies give conflicting findings on the ability of

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44. See Eric A. Hanushek & Steven G. Rivkin, *Pay, Working Conditions, and Teacher Quality*, 17 *FUTURE CHILD*. 69, 77–78 (2007).

45. *Id.*

46. See generally Rivkin, *supra* note 35, at 435 (discussing the sharp learning curve beginning teachers face and comparing performance to more experienced teachers).

47. See generally DANIEL P. MAYER, ET AL., NAT'L CTR. FOR EDUC. STATISTICS, *MONITORING SCHOOL QUALITY: AN INDICATORS REPORT 13–14* (2000) (suggesting students learn more from experienced teachers compared to inexperienced teachers).

48. See generally HEILIG & JEZ, *supra* note 24 (reviewing the effectiveness of TFA teachers).

49. See *id.* at 5.

50. *Id.*

51. *Id.* at 6–7.

52. *Id.*

53. *Our Impact*, TEACH FOR AMERICA, <http://www.teachforamerica.org/what-we-do/our-impact/> (last visited May 8, 2011).

“Teach for America” teachers to produce higher achievement among their students. Discrepancies among the studies hinge on abstruse matters of statistical methods. There is little reason to expect any consensus on the question of relative effectiveness, or to expect test score data to quiet the debate. . . .<sup>54</sup>

When considering the peer-reviewed research literature, TFA teachers have not produced astoundingly positive effects on student achievement. Research indicates “the quality of teachers and the quality of teaching are undoubtedly among the most important factors shaping the learning and growth of students.”<sup>55</sup> Proponents and opponents of alternative pathways would likely agree with the presumption that sending a would-be TFA corps member, one with strong academic ability and considerable drive, to a traditional teacher education program would yield a teacher who would outperform a “TFA-certified teacher who had not received the additional education or a less academically able teacher who went the traditional route.”<sup>56</sup> A recent study found that teachers trained in Stanford University’s teacher education program are on average significantly more effective than others in the Bay Area, suggesting that “heterogeneity exists within teacher education programs, the students they serve, or both.”<sup>57</sup> Therefore, the most useful question to pose may not be whether alternative certification or traditional routes are preferable, but rather how to interest America’s most talented college students in teaching as a *profession*.

## V. DISTRIBUTION OF HIGH QUALITY TEACHERS

### A. *The Research*

The inequitable distribution of effective teachers in high-poverty schools is one of the most fundamental problems facing America today. Experienced teachers are more likely to teach in schools with fewer instructional obstacles, lower concentrations of poor and minority students, and a greater number of high-achieving students.<sup>58</sup> Schools with greater concentrations of high-poverty, high-minority, and lower-achieving students are more likely to be populated by beginning teachers<sup>59</sup> and teachers with weaker credentials.<sup>60</sup>

54. GENE V. GLASS, ALTERNATIVE CERTIFICATION OF TEACHERS 1 (2008), [http://nepc.colorado.edu/files/PB-Glass-ALT-TEACH\\_FINAL\\_050508.pdf](http://nepc.colorado.edu/files/PB-Glass-ALT-TEACH_FINAL_050508.pdf).

55. RICHARD M. INGERSOLL & BRIDGET K. CURRAN, NGA CTR. FOR BEST PRACTICES, OUT-OF-FIELD TEACHING: THE GREAT OBSTACLE TO MEETING THE “HIGHLY QUALIFIED” TEACHER CHALLENGE 2 (2004).

56. HEILIG & JEZ, *supra* note 24, at 13.

57. *See id.* (citing XIAOXIA NEWTON, TEACHER EFFECTIVENESS AND PATHWAYS INTO TEACHING IN CALIFORNIA, (April 2010)).

58. *See generally* Charles T. Clotfelter et al., *Would Higher Salaries Keep Teachers in High-Poverty Schools? Evidence from a Policy Intervention in North Carolina*, 92 J. PUB. ECON. 1352, 1353 (2008) (suggesting teachers may be more attracted to and willing to stay at these types of schools).

59. *See* Charles T. Clotfelter et al., *Teacher Credentials and Student Achievement:*

Additionally, poorer schools are more likely than their more affluent counterparts to hire substitutes to fill classroom vacancies.<sup>61</sup>

An expansive body of research has documented the patterns of teacher mobility and the sorting of teachers between schools.<sup>62</sup> Sorting occurs when the least qualified, least effective, and least-experienced teachers are disproportionately placed in classrooms serving larger concentrations of poor, minority, and low-achieving students, inevitably compounding their disadvantage.<sup>63</sup> In general, a transferring teacher will seek a position at a higher performing school, regardless of the degree to which he or she had been effective at their previous school. Evidence shows less-effective teachers transferred into schools with race and poverty characteristics similar to their previous school.<sup>64</sup> However, the average and highly-effective teachers transferred into schools with even higher-achieving students, lower poverty rates, and lower percentages of minorities.<sup>65</sup>

Problems with school staffing are often attributed to high teacher turnover, which can lead to sub-standard instruction and low student achievement. Low-achieving schools experience higher rates of turnover, resulting in a cycle of ineffectiveness, underperformance, and inequality.<sup>66</sup> As a result of their higher turnover rates, lower-achieving schools have a consistently greater demand for new hires. Younger teachers, who typically have fewer years of experience, are the largest group of transferring teachers.<sup>67</sup> Moreover, because these teachers make up the single largest group in the applicant pool, they are more likely to assume positions at disadvantaged schools.<sup>68</sup> Since younger teachers have little or no experience, the students within these schools are further disadvantaged, as “inexperienced teachers tend to be less effective.”<sup>69</sup> Furthermore, new hires, regardless of years of experience, need time to acclimate to new school characteristics, decreasing

*Longitudinal Analysis with Student Fixed Effects*, 26 *ECON. EDUC. REV.* 673, 675–80 (2007).

60. *Id.*

61. Brian A. Jacob, *The Challenges of Staffing Urban Schools with Effective Teachers*, 17 *FUTURE CHILD* 129, 134 (2007).

62. See, e.g., William K. Ingle, *Teacher Quality and Attrition in a U.S. School District*, 47 *J. EDUC. ADMIN.* 557 (2009) (citing two recent studies).

63. See Donald Boyd et al., *The Effect of Certification and Preparation on Teacher Quality*, 17 *FUTURE CHILD* 45, 46 (Spring 2007).

64. See generally Hamilton Lankford et al., *Teacher Sorting and the Plight of Urban Schools: A Descriptive Analysis*, 24 *EDUC. EVAL. POL'Y ANALYSIS* 37, 47 (2002) (finding low-quality teachers find positions in schools with low-income students).

65. *Id.* at 50.

66. See Linda Darling-Hammond, *Race, Inequality and Educ. Accountability: The Irony of 'No Child Left Behind'*, 10 *RACE, ETHNICITY & EDUC.* 245 (2007).

67. See JAMES HUNT & TOM CARROLL, NAT'L COMM'N ON TEACHING & AM.'S FUTURE, UNRAVELING THE “TEACHER SHORTAGE” PROBLEM: TEACHER RETENTION IS THE KEY 4 (Aug. 20–22, 2002), [http://www.ncsu.edu/mentorjunction/text\\_files/teacher\\_retentionsymposium.pdf](http://www.ncsu.edu/mentorjunction/text_files/teacher_retentionsymposium.pdf).

68. See Elisha Watlington et al., *The High Cost of Leaving: An Analysis of the Cost of Teacher Turnover*, 36 *J. EDUC. FINANCE* 22, 26 (2010).

69. Hanushek & Rivkin, *supra* note 44, at 77.

their initial effectiveness.<sup>70</sup>

### ***B. Distribution of TFA Teachers***

Research shows that poor students and minority students in urban schools are most likely to be assigned low-quality teachers.<sup>71</sup> To address this issue, TFA publicly stated its goal as “one of the nation’s largest providers of teachers for low-income communities,” where classrooms might otherwise be staffed by substitutes, emergency hires, or other inexperienced or unprepared personnel.<sup>72</sup> A study of the rapid increase of teachers entering New York schools via alternative credentialing programs found that such teachers filled slots that “previously had been filled by teachers with temporary licenses.”<sup>73</sup> However, the increase also resulted in a “small decrease in college recommended teachers.”<sup>74</sup>

In the current era of massive budget shortfalls and cuts, TFA has begun placing teachers in jobs previously held by veteran teachers, who were laid off to ease school districts’ financial problems.<sup>75</sup> The practice of laying off experienced teachers and replacing them with inexperienced TFA teachers, referred to as “laying off people to accommodate Teach For America,” has been reported in various cities including Boston, Charlotte-Mecklenburg, Chicago, Dallas, and Washington, D.C.<sup>76</sup>

In fact, an analysis of teacher shortage data across the U.S. tentatively confirms that TFA placements have been moving outside the original targeted high-need districts.<sup>77</sup> Since 1990, the U.S. Department of Education has produced a nationwide listing of teacher shortage areas based on data submitted by state educational agencies.<sup>78</sup> All of the states employing TFA teachers report teacher shortages by subject area, but a closer look at more detailed geographic data undermines the initial impression that TFA is working primarily with districts experiencing staffing problems. In the only two states that list shortages by geographic area, Arizona and South Dakota,<sup>79</sup> TFA placements are primarily outside high-need areas. In Arizona, thirteen of

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70. Abigail Jurist Levy et al., *Overview of Research: What We Know and Don't Know About the Consequences of K-12 Science and Mathematics Teacher Turnover*, NCTAF SYMPOSIUM ON THE SCOPE AND CONSEQUENCES OF K-12 SCIENCE AND MATHEMATICS TEACHER TURNOVER (Oct. 2006).

71. Linda Darling-Hammond, *Research and Rhetoric on Teacher Certification*, 10 EDUC. POL'Y ANALYSIS ARCH. (2002), <http://epaa.asu.edu/epaa/v10n36.html>.

72. TEACH FOR AMERICA, *supra* note 29.

73. Donald Boyd et al., *How Changes in Entry Requirements Alter the Teacher Workforce and Affect Student Achievement*, 1 EDUC. FINANCE & POL'Y 176, 183 (2006).

74. *Id.*

75. HEILIG & JEZ, *supra* note 24, at 4.

76. *Id.*

77. *Id.*

78. OFFICE OF POSTSECONDARY EDUC., U.S. DEP'T OF EDUC., TEACHER SHORTAGE AREAS NATIONWIDE LISTING: 1990-91 THRU 2010-11, 1 (2011).

79. *Id.* at 9-13, 84-86.

fifteen counties report shortages, but TFA places teachers in Phoenix, which lies in Maricopa County—one of the two counties that does not report teacher shortages.<sup>80</sup> Similarly, in South Dakota, where TFA has five sites, only one site is identified as a geographic teacher shortage area.<sup>81</sup>

TFA supporters proffer TFA is not only concerned with sending teachers to schools facing staffing shortages, but also seeks to improve the teacher labor supply and shape individuals who will care about education in their future jobs outside the classroom on Wall Street, Washington, or elsewhere. Whatever the rationale, there is substantive evidence that TFA is not exclusively focused on filling teaching positions for which other qualified candidates cannot be found.

## VI. TEACHER TURNOVER

### A. *The Research*

It is estimated that as many as one-third of teachers will leave the profession within their first three years on the job, and almost half after five years.<sup>82</sup> For alternatively-certified teachers, the annual attrition rate might be as high as sixty percent.<sup>83</sup> Thus, it is necessary to explore the factors contributing to teacher mobility and address the shortage of effective teachers in schools serving disadvantaged student populations. As student enrollment has increased over the past two decades, so too has the demand for teachers.<sup>84</sup> The increase in demand, resulting from high rates of teacher mobility, is commonly compared to a “revolving door,” wherein “the sheer size of the teaching force combined with its relatively high annual turnover means that there are large flows of teachers in, through, and out of schools each year.”<sup>85</sup> As the revolving door phenomenon makes clear, the problem of teacher shortages is not one that is due solely to an insufficient supply of teachers; rather, it is primarily a problem of demand for replacement teachers as the turnover rate increases.<sup>86</sup>

Research suggests that teachers with the strongest academic skills, as measured by test scores, competitiveness of undergraduate institution, and degrees awarded, are more likely to leave the teaching profession.<sup>87</sup> Furthermore, teachers with the strongest qualifications, also as measured by

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80. TEACH FOR AMERICA, <http://www.teachforamerica.org/about-us/regions/phoenix/> (last visited May. 9, 2011).

81. OFFICE OF POSTSECONDARY EDUC., *supra* note 78, at 84–86.

82. HUNT & CARROLL, *supra* note 67, at 4.

83. *Id.*

84. Richard M. Ingersoll & Thomas M. Smith, *The Wrong Solution to the Teacher Shortage*, 60 EDUC. LEADERSHIP 30, 30 (May 2003).

85. RICHARD M. INGERSOLL, CTR. FOR THE STUDY OF TEACHING AND POL’Y, IS THERE REALLY A TEACHER SHORTAGE? 11 (Sept. 2003).

86. *Id.* at 7, 9.

87. Dan Goldhaber & Emily Anthony, *Can Teacher Quality be Effectively Assessed? National Board Certification as a Signal of Effective Teaching*, 89 REV. ECON. STAT. 134, 143 (2007); Lankford et al., *supra* note 64, at 50.

test scores, competitiveness of undergraduate institution, and licensure status, are more likely to transfer out of high-poverty, high-minority schools.<sup>88</sup> Teacher turnover is strongly affected by academic field; in public schools, math, science, and special education teachers are more often subject to attrition.<sup>89</sup> However, even when vacancies are in subject areas not typically associated with a shortage of qualified teachers, replacement takes time; many schools are forced to hire temporary teaching staff who may “lack adequate preparation, deliver substandard instruction, and, in turn, compromise the quality of students’ learning experiences.”<sup>90</sup> Notably, traditionally-prepared teachers are the most likely to remain in the classroom after three years, while alternatively-certified teachers are the most likely to leave.<sup>91</sup>

High-poverty and low-performing schools have greater difficulties retaining teachers than higher performing schools with relatively low poverty levels.<sup>92</sup> In fact, in 2003–2004, the teacher turnover rate was twenty-one percent for high poverty schools compared to fourteen percent for low-poverty schools.<sup>93</sup> In addition, the rate of teacher transfers within high-poverty schools was higher than in low-poverty schools.<sup>94</sup> The moniker of “low-performing” can also act as a disincentive for attracting high-quality teachers. Recent research examined the effect that school accountability ratings have on patterns of teacher mobility.<sup>95</sup> It found that highly-qualified teachers facing high accountability pressures in schools rated as low-performing are more likely to leave schools than those teachers in highly-rated schools with low accountability pressures.<sup>96</sup>

### **B. TFA Teacher Turnover**

While the debate about the impact of TFA teachers on student achievement and distribution continues, there is little disagreement across the research literature regarding the attrition of TFA teachers.<sup>97</sup> TFA argued that two-thirds of its alumni are in the field of “education,” based on an in-house

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88. Goldhaber & Anthony, *supra* note 87, at 143.

89. INGERSOLL, *supra* note 85, at 13.

90. Xiaofeng Steven Liu & J. Patrick Meyer, *Teachers’ Perceptions of Their Jobs: A Multilevel Analysis of the Teacher Follow-Up Survey for 1994–95*, 107 TEACHERS COLLEGE RECORD 985, 986 (May 2005).

91. LINDA DARLING-HAMMOND, POWERFUL TEACHER EDUCATION: LESSONS FROM EXEMPLARY PROGRAMS 312 (Jossey-Bass ed., 2006).

92. JOHN MARVEL ET AL., NAT. CTR. FOR EDUC. STATISTICS, U.S. DEPT. OF EDUC., TEACHER ATTRITION AND MOBILITY: RESULTS FROM THE 2004-05 TEACHER FOLLOW-UP SURVEY (2007).

93. M. PLANTY ET AL., NAT. CTR. FOR EDUC. STATISTICS, U.S. DEPT. OF EDUC., THE CONDITION OF EDUCATION 2008 51 (2008).

94. *Id.* (noting the transfer rate among high-poverty schools is 11% compared to 6% in low-poverty schools).

95. See Li Feng et al., *School Accountability and Teacher Mobility* (Nat’l Bureau of Econ. Research, Working Paper No. 16070, June 2010).

96. *Id.*

97. HEILIG & JEZ, *supra* note 24, at 8.

national survey.<sup>98</sup> What is deceptive about TFA's statistic, however, is that due to the response rate, TFA bases this information on a little more than half of its alumni network.<sup>99</sup> Moreover, journalist Barbara Miner reports that TFA loosely defines the field of education to include "everything from working with a nonprofit advocacy group to getting a graduate education degree."<sup>100</sup> As a result, a student in law school or employed by the Gates Foundation would be lumped together with the limited number of TFA alumni that remain in the classroom. Miner suggests that "[t]he only thing one can say with certainty is that in 2007, at least 16.6 percent of those recruited by Teach For America were teaching in a K-12 setting beyond their two-year commitment."<sup>101</sup>

A number of peer-reviewed research studies over the past decade have examined TFA retention rates in localities nationwide using district-provided administrative data, which are more accurate for this purpose than in-house survey data collected by TFA. Empirical literature has found a rate of attrition for TFA teachers of eighty percent or more by the fourth year of teaching.<sup>102</sup> By requiring only a two-year commitment, TFA validates "the conception of teaching not as a profession but a short-term stopover before graduate school or employment in the "real" world."<sup>103</sup> Barry Barnett, President and CEO of the Center for Teacher quality, suggests, "TFA gets its recruits ready for a sprint, not a 10K or a marathon."<sup>104</sup>

## VII. COST OF TEACHER TURNOVER

### A. *The Research*

As previously discussed, teacher turnover has the potential to diminish teaching quality and student achievement as well as compound embedded disadvantages within high-poverty schools and urban school districts.<sup>105</sup> Moreover, teacher turnover creates a financial burden on the school, school district, and state,<sup>106</sup> as recruiting and training new teachers costs more than retaining them.<sup>107</sup>

As a result of turnover, many urban school districts cyclically battle a range of expenses including separation costs, recruiting and replacement costs,

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98. *Alumni Social Impact Report – 2009*, TEACHFORAMERICA (June 2009), [http://www.teachforamerica.org/mission/documents/2009\\_ASIR\\_Final.pdf](http://www.teachforamerica.org/mission/documents/2009_ASIR_Final.pdf).

99. Barbara Miner, *Looking Past the Spin: Teach for America*, RETHINKING SCHOOLS (last visited May 16, 2011).

100. *Id.*

101. *Id.*

102. *Id.* (describing results of a district study in Houston of TFA attrition rates).

103. HEILIG & JEZ, *supra* note 24, at 9.

104. Miner, *supra* note 99.

105. HUNT & CARROLL, *supra* note 67, at 9.

106. *See generally* Watlington et al., *supra* note 68.

107. *See generally* Kacey Guin, *Chronic Teacher Turnover in Urban Elementary Schools*, 12 EDUC. POL'Y ANALYSIS ARCHIVES 1, 3 (Aug. 2004) (noting the cost of teachers leaving could be as high as 150% of the teacher's salary).

training costs, decreased productivity, and other intangible costs.<sup>108</sup> Typically, separation costs include payment of accrued sick leave, vacation days, and severance pay;<sup>109</sup> however, separation costs also include any cost incurred when a teacher leaves. Recruiting and replacement costs include job fairs, staff time, and hiring incentives such as signing bonuses.<sup>110</sup> Training costs can include professional development, substitute teachers during professional development sessions, mentoring, and induction. Notably, the financial outlays for entering teaching through an alternative route are substantially less than the costs of traditional university-based preparation because the teacher earns a salary while completing training and pays a reduced rate for coursework.<sup>111</sup> However, the teachers' savings result in increased costs because the district subsidizes the ongoing education of the TFA teachers.<sup>112</sup>

Productivity and other intangible costs due to teacher turnover are not costs in a fiscal sense, but are externalities from personal and professional losses. From an organizational perspective, a high level of employee turnover is both a cause and an effect of ineffectiveness and poor performance in an organization.<sup>113</sup> Productivity cost is incurred when "the replacement worker has a lower skill level or needs to learn the job in order to reach the level of productivity of the original worker."<sup>114</sup> In the field of education, productivity is the impact a teacher has on student achievement. The final cost is the intangible collective cost that impacts the school's ability to function cohesively with high rates of teacher mobility due to a decrease in employee morale or an increased strain on working relationships.<sup>115</sup>

### **B. Cost of TFA**

The actual cost of TFA has rarely been discussed or debated.<sup>116</sup> In an era where school districts are struggling financially due to the massive loss of tax revenue, it is critical to explore the estimated costs associated with TFA. Beyond the impact of TFA on educational outcomes and equity, any comprehensive analysis of the program's viability must consider the financial reality of TFA. The expenditures associated with TFA teacher turnover include costs to the teacher, to the district, to TFA, and to the public.<sup>117</sup> Inevitably, someone must pay, and the cost to one constituency may well be

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108. *Id.* at 2.

109. Anthony T. Milanowski & Allan R. Odden, *A New Approach To The Cost Of Teacher Turnover* 3 (Ctr. on Reinventing Pub. Educ., Working Paper 13, 2007).

110. *See id.*

111. Boyd et al., *supra* note 63, at 4–5.

112. *Id.* at 5.

113. Richard M. Ingersoll, *Teacher Turnover and Teacher Shortages: An Organizational Analysis*, 38 AM. EDUC. RES. J. 499, 505 (2001).

114. Milanowski & Odden, *supra* note 109, at 4.

115. Guin, *supra* note 107, at 3.

116. Like Section III *supra*, this Section draws heavily from a previous policy brief by Professor Julian Vasquez Heilig. *See* HEILIG & JEZ, *supra* note 24, at 10–11.

117. HEILIG & JEZ, *supra* note 24, at 10.

decreased by a proportionate increase in cost to another. Therefore, policymakers should think about the consequences for each group incurring costs and try to strategically distribute those costs to secure an optimal outcome.

Between 2000 and 2008, TFA's operating expenditures increased from \$10 million to \$114.5 million.<sup>118</sup> Of those expenditures, TFA's annual reports show that about a third of the operating costs are currently borne by the public.<sup>119</sup> Notably, TFA received a direct allocation of \$50 million in federal support for 2011 and beyond from the I3 grant competition.<sup>120</sup> TFA also announced a \$100 million grant from the Broad Foundation and others.<sup>121</sup> Table 3 provides a breakdown of TFA's operating costs by sources.

**Table 3: TFA Operating Contributions Sources**

	2005	2006	2007	2008
Public Funds (Federal, State, Local)	33%	31%	33%	33%
Foundations	33%	30%	26%	26%
Individuals	15%	15%	18%	20%
Corporations	14%	18%	17%	15%
Special Events	5%	6%	6%	6%

Data Source: Teach For America

Even with funding, however, the cost of TFA to taxpayers is actually higher than the direct local, state, and federal allocations revealed in TFA's annual report. For example, in addition to the thousands of dollars that districts pay TFA for each of its corps members, each district must also still maintain a human resources department that recruits, screens, interviews, and places all other new teacher candidates. A former superintendent of a large, urban district in Texas reflected on the cost to a district and the recent TFA expansion in the Lone Star State: "In a large school district like Houston, they may recruit and hire 175 TFA teachers a year, which means that after the first year of using TFA, the cost to the district could well run about \$700k annually."<sup>122</sup>

As a result of the TFA model, a participating district has to pay twice for new teachers—the outsourced costs of teacher recruitment and training by TFA, costing thousands of dollars per teacher, along with the fixed costs of the in-house provision of human resources for all other teachers in the district.

118. *Id.*

119. See *infra* Table 3; HEILIG & JEZ, *supra* note 24, at 11.

120. *Update on Federal Support for Teach for America*, TEACH FOR AMERICA, (last visited May 8, 2011), <http://www.teachforamerica.org/federal/funding/>. An additional \$20 million is still pending. *Id.*

121. Howard Blume, *Eli Broad, Others Pledge \$100 million to Teach for America Endowment*, L.A. TIMES (Jan. 27, 2011, 10:08 AM), <http://latimesblogs.latimes.com/lanow/2011/01/teach-for-america-endowment-eli-broad.html>.

122. E-mail from Ray Garcia (psuedonym), former Superintendent (April 20, 2010) (on file with author).

These costs are exacerbated by the high turnover of TFA teachers, leading districts to replace nearly all TFA teachers after three years of service. The cost of attrition typically exceeds \$15,000 in large cities for each teacher who leaves.<sup>123</sup>

To fully assess these costs, the special costs incurred by TFA must be considered. In 2009, for example, TFA spent approximately \$38,406 for each entering corps member it recruited and placed.<sup>124</sup> Added to these costs are the “finders fees” local districts are charged by TFA—as much as \$5,000 per recruit—plus salary costs.<sup>125</sup> A third cost is the local teacher education and mentoring and professional development programs in which TFA corps members enroll, which range from \$10,000 to \$20,000 on average.<sup>126</sup> Thus, the total cost of a two-year commitment from a TFA recruit can approach \$70,000.

### VIII. SUMMARY

The population of school-aged children is growing and school districts face the challenge of recruiting and retaining quality teachers.<sup>127</sup> In order for the public school system to meet those student needs and provide a high-quality education, there must be an adequate supply of qualified candidates from which to hire. TFA and other alternative routes have sought to fill the high-quality teacher void. Although TFA may make headlines with feel good sound bites, the preponderance of peer-reviewed research literature shows TFA teachers have not produced astoundingly positive effects on student achievement. The high attrition rate of TFA teachers indicates that many corps members find they are not well-suited to the teaching profession and choose to pursue something else entirely. Research also shows that there are significant financial implications of TFA's high attrition rates. Furthermore, TFA's constant teacher turnover perpetuates the “revolving door” as inexperienced teachers are distributed to schools with greater concentrations of poor, minority students and lower-achieving students—continuing the cycle of failure these students have historically experienced.

In order for our nation's schools to provide the best possible teaching and opportunities, it is essential that all teachers enter the classroom with appropriate training and certification. Despite the fact that NCLB enacted

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123. GARY BARNES ET AL., NAT'L COMM'N ON TEACHING & AM.'S FUTURE, THE COST OF TEACHER TURNOVER IN FIVE SCHOOL DISTRICTS: A PILOT STUDY 5 (2007).

124. *Teach for America*, GIVE WELL, [http://www.givewell.org/united-states/charities/tfa#footnote25\\_s7wz91e](http://www.givewell.org/united-states/charities/tfa#footnote25_s7wz91e) (last visited Apr. 9, 2011).

125. Valerie Straus & Larry Lee, *What Football Can Teach School Reformers*, WASH. POST, (Jan. 5, 2011, 09:30 AM), <http://voices.washingtonpost.com/answer-sheet/guest-bloggers/what-football-can-teach-school.html>.

126. See Gary Barnes et al., *The Cost of Teacher Turnover in Five School Districts: A Pilot Study* 4–5 (2007) (noting the total per teacher costs of recruiting, hiring, and training ranges from \$10,000 to \$20,000 annually).

127. Guarino et al., *supra* note 2, at 173.

requirements for preparing and hiring “highly qualified” teachers, our nation’s classrooms still fall short of ensuring a quality level of teaching and learning in every classroom.

## IX. CURRENT LEGAL AND POLICY CONTEXT

A highly qualified teacher, as defined by NCLB, must hold at least a bachelor’s degree from an accredited institution of higher education, obtain full state certification, and demonstrate subject-matter competency in each of the academic subjects he or she teaches.<sup>128</sup> While NCLB established requirements for the qualification of teachers as “highly qualified,” there is skepticism regarding whether the standards for teacher qualification translate into standards for teacher quality.<sup>129</sup> NCLB gave states free reign to define what a high-quality teacher entails.<sup>130</sup> For example, in Texas, as long as a teacher is working towards certification, she will be considered “highly qualified.”<sup>131</sup> As a result, an individual who one day happens upon an ad for alternative certification, that evening enrolls for a modest down-payment in a teaching course and begins Internet training modules, could conceivably be considered “highly qualified,” if she entered the classroom relatively soon after.

With such extreme cases possible, it is no wonder that the debate over whether alternatively certified teachers are “highly qualified” has intensified in recent years. When this is coupled with persistent under-performance of schools serving poor and minority students, the public begins to question who is teaching in their children’s classroom. This debate came to a head in a trilogy of seminal legal cases fought first in California’s district court, and then ultimately, in the Ninth Circuit Court of Appeals. These cases set the stage for a public policy change that ultimately has defined what constitutes “highly qualified” teachers.

### A. *Renee v. Spellings*

In June of 2008, a group of California plaintiffs including public school students,

parents, and community organizations,<sup>132</sup> sued then-U.S. Secretary of Education, Margaret Spellings, challenging a federal regulation that they alleged was inconsistent with NCLB.<sup>133</sup> They sought regulatory and injunctive

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128. 20 U.S.C. § 7801(23)(a)(i) (2006).

129. Linda Darling-Hammond & Barnett Berry, *Highly Qualified Teachers for All*, 64 EDUC. LEADERSHIP 14, 15–17 (2006).

130. 20 U.S.C. § 7801(23) (2006).

131. *See id.*; *How to Become a Teacher in Texas*, EDUCATOR CERTIFICATION ONLINE SYSTEM, <http://www.sbec.state.tx.us/sbeconline/certinfo/becometeacher.asp?width=1280&height=800#basicreq>.

132. *Renee v. Spellings*, No. C 07-4299 PJH, 2008 U.S. Dist. LEXIS 49369 (N.D. Cal. June. 17, 2008)

133. *Id.*

relief.<sup>134</sup> In particular, they were concerned with a regulation that allowed highly qualified teachers to include teachers “participating in an alternative route certification program,”<sup>135</sup> and “demonstrating progress toward full certification as prescribed by the state.”<sup>136</sup> In California, this would include “intern” teachers that by state law had not yet completed certification.<sup>137</sup>

The plaintiffs alleged that the regulation violated NCLB’s stated standard of “highly qualified” teachers.<sup>138</sup> They argued that the regulation essentially relabeled more than 10,000 novice teachers still in training in California and tens of thousands of such teachers nationwide as “highly qualified.”<sup>139</sup> As noted, NCLB defines a highly qualified teacher as one that has obtained full State certification either through traditional or alternative routes or passed the State teacher licensing examination.<sup>140</sup> The teacher cannot have the certification or licensure requirements waived on an emergency, temporary, or provisional basis.<sup>141</sup> The regulation essentially watered down the NCLB requirements, lowering the threshold to mere enrollment in a program to qualify. Actual certification was no longer the determining factor, simple progress was enough to qualify.

The plaintiffs asked the court to strike down the regulation, asserting it was contrary to the plain language of NCLB and inconsistent with the intent of Congress.<sup>142</sup> Further, they asserted a claim for declaratory relief, asking for a judicial declaration that the challenged regulation was unlawful and in excess of the Secretary’s statutory authority.<sup>143</sup> Finally, they also requested injunctive relief, seeking an order to enjoin the defendants from further use of the unlawful “highly qualified” standard set forth in the challenged regulation.<sup>144</sup>

Both parties filed for summary judgment. The court granted summary judgment in favor of the Secretary.<sup>145</sup> In the decision, the court agreed with the defendant’s argument that the regulation was a proper application of the agency’s expertise and was not contrary to legislative intent.<sup>146</sup> The Secretary contended she was only defining one possible way to alternative certification, and that the new definition did not permit teachers with no prior training or experience to be deemed “highly qualified.”<sup>147</sup>

The plaintiffs argued that the regulation was entirely inconsistent with the

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134. *Id.* at \*2–3.

135. *Id.* at \*10; 34 C.F.R. § 200.56.

136. *Renee*, 2008 U.S. Dist. LEXIS 49369, at \*9; 34 C.F.R. § 200.56..

137. *See Renee*, 2008 U.S. Dist. LEXIS 49369, at \*3.

138. *Id.*

139. *Id.* at \*2–3.

140. 20 U.S.C. § 7801(23) (2006).

141. *See id.*

142. *Renee*, 2008 U.S. Dist. LEXIS 49369, at \*10.

143. *Id.*

144. *Id.* at \*2.

145. *Id.* at \*15.

146. *Id.* at \*16.

147. *Id.* at \*16–17.

minimal expectations of NCLB.<sup>148</sup> The court disagreed, citing the plaintiffs' misunderstanding of minimal expectations, including "full-state certification."<sup>149</sup> In the decision, the court rejected the plaintiffs' contention that such certification requires the completion of teacher preparation programs.<sup>150</sup> The court found that the routes of alternative certification should be read broadly, and its inclusion parenthetically in NCLB should be understood to mean something entirely different from traditional full certification.<sup>151</sup> Whatever that difference was to be, it was left to the regulations to define.<sup>152</sup> The court rejected the plaintiffs' argument that alternative certification should meet the same strict requirements of full certification.<sup>153</sup> To the court, it was reasonable that alternative certification could be something unlike full certification, even if that might mean a lower standard of training or credentials. Thus, the Secretary's regulation was consistent with NCLB and only added clarity. In addition, the court added that had the regulation been contrary to Congress' intent, their failure to reverse the regulation in the five years after its promulgation spoke otherwise.<sup>154</sup>

### **B. Renee v. Duncan**

In 2009, the plaintiffs appealed the decision of the district court to the Ninth Circuit Court of Appeals.<sup>155</sup> They were, however, met with new arguments by the defendant, now named as the recently appointed Secretary, Arne Duncan.<sup>156</sup> This time, the defense argued that the plaintiffs had no standing.<sup>157</sup> On appeal, the plaintiffs continued to argue the harm brought by the regulation, providing evidence that in the years since its issuance, California had hired thousands of alternative-route teachers, placing most of them in low-income, minority areas and treating them as "highly qualified."<sup>158</sup> Specifically, with regard to "intern" teachers, the plaintiffs offered evidence that forty-one percent of interns taught in the twenty-five percent of schools with the highest concentrations of minority.<sup>159</sup> The plaintiffs believed the damage was clear. These teachers were the least experienced and the least prepared; yet, they were being placed, in significant numbers, in schools with

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148. *Id.* at \*19.

149. *Id.*

150. *Id.* at \*20–21.

151. *See id.* at \*7–8.

152. *Id.* at \*8.

153. *Id.*

154. *Id.*

155. *See Renee v. Duncan*, 573 F.3d 903, 905 (9th Cir. 2009), *vacating Renee v. Spellings*, No. C 07-4299 PJH, 2008 U.S. Dist. LEXIS 49369 (N.D. Cal. June 17, 2008).

156. *Id.* at 908.

157. *Id.*

158. *Id.* at 913.

159. *See id.* at 908; *see also Renee v. Duncan*, 623 F.3d 787, 797 (9th Cir. 2010) (reviewing the statistics that were presented to the court in the first appeal, *Renee v. Duncan*, 573 F.3d 903 (9th Cir. 2009)).

students most in need of experienced and effective teachers.

The appellate court found that full certification was a matter of state law, and California could still determine, as it already had, that alternatively certified teachers were “highly qualified,” even if the federal regulation was struck down.<sup>160</sup> Thus, the plaintiffs could not prove that the striking down of the law would have any real effect, failing to prove the courts could redress the plaintiffs’ injuries.<sup>161</sup> As a result, the plaintiffs had no standing, and the case was vacated and remanded with instructions to dismiss.<sup>162</sup>

### C. *Renee v. Duncan (2010)*

In a strange twist of events, in September of 2010, the Ninth Circuit panel reversed its previous decision, holding the plaintiffs did in fact have legal standing.<sup>163</sup> The court went on to rule that the federal regulation went too far in relaxing the definition of “highly qualified” teachers; the court asserted, “that the Secretary’s regulation impermissibly expands the definition of ‘highly qualified teacher’ contained in [the NCLB statute] by including in that definition an alternative-route teacher who merely ‘demonstrates satisfactory progress’ toward the requisite ‘full State certification.’”<sup>164</sup>

In the court’s new interpretation of the NCLB, full state certification was indeed the standard for “highly qualified teachers,” and such certification was intended to apply to traditionally as well as alternatively-certified teachers.<sup>165</sup> In the majority opinion, Judge Fletcher noted that it was debatable whether Congress was correct in deciding that teachers with full state certification are in fact better than teachers without such certification and made mention of the alternatively certified teachers coming out of TFA.<sup>166</sup> In the dissent, Judge Tallman explicitly accused the plaintiffs of bringing a lawsuit that was clearly an attack on TFA in a “hope to lower the number of Teach for America teachers legally allowed to fill vacant positions in low-income area schools.”<sup>167</sup>

Interestingly, the debate moved from what should be allowable in classrooms and the type of training that should be required, to an explicit articulation of who should be teaching in America’s public schools. In the minds of the Ninth Circuit panel at least, ACPs like TFA produce competent teachers even if they hold diminished qualifications. In a microcosm, the judges’ comments mirrored a growing public reliance and acceptance of alternatively-certified teachers in public schools. This perception is not only that alternatively-certified teachers are needed, but also that those coming from ACPs like TFA was preferred. Soon after, the judges’ beliefs were reflected in

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160. *Renee*, 573 F.3d at 911.

161. *Id.*

162. *Id.* at 913.

163. *Renee v. Duncan*, 623 F.3d 787, 796–800 (9th Cir. 2009).

164. *Id.* at 796 (citing 20 U.S.C. § 7801(23) (2006)).

165. *Id.*

166. *See id.* at 800.

167. *Id.* at 797.

a new legislative reality, the implications of which are still to be determined.<sup>168</sup>

#### ***D. Legislative Response: Politics and Silent Reform***

In the final days of Congress' 2010 session, a piece of legislation with little fanfare and no public debate slipped quietly through Congress, buried in an unrelated federal spending bill.<sup>169</sup> Essentially, the bill dismantled the Ninth Circuit decision allowing states to continue to rely upon non-credentialed teachers in public schools.<sup>170</sup> Proponents of the legislation argued that the debate over "highly qualified" teachers should not be determined by the courts, but rather by Congress. Proponents believe this law was needed in order to ensure that debate could take place before the relabeling of qualified teachers came into effect with the court's decision.<sup>171</sup>

The amendment that appeared as a Continuing Resolution in the budget bill was pushed with lobbying efforts by Teach for America.<sup>172</sup> For their part, Congress defended the Resolution. Senator Tom Harkin, Chairman of the Senate Committee that covers education issued the following statement:

There is broad, bipartisan agreement among members of Congress and the Obama administration that it is the intent of Congress for alternative-route teachers to be considered highly qualified, consistent with the regulation that has been in place for several years. Chairman Harkin strongly believes that teacher quality is essential to student success, and intends to address this issue as part of a comprehensive ESEA reauthorization. While that process is underway, the Ninth Circuit's decision – which reverses a previous court ruling in favor of the regulation – could cause significant disruptions in schools across the country and have a negative impact on students. Maintaining current practice is a temporary solution, and underscores the need to act quickly to reauthorize ESEA early in the next Congress.<sup>173</sup>

While some may believe that a later debate of the definition of "highly qualified" teachers could be accomplished during the reauthorization process for the ESEA, it is likely the debate will be engulfed by a sea of other pressing controversies with the legislation including greater accountability, standardized

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168. See Continuing Appropriations and Surface Transportation Extensions Act, Pub. L. No. 111-322, 124 Stat. 3518 (2010).

169. See *id.*

170. Sec. 163 § 1, 124 Stat. at 3521 (to be codified as amended at 20 U.S.C. § 7891); Bob Egelko, *New Federal Law Makes Interns Qualified to Teach*, SFGATE.COM, (Jan. 2, 2001), <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/01/02/MNM61H0KT1.DTL>.

171. *Id.*

172. § 1, 124 Stat. at 3518; John Affeldt, *Congress Poised to Call Novice Teachers "Highly Qualified" and Allow Concentration in Poor, Minority Schools*, HUFFINGTON POST (Dec. 16, 2010, 10:39 PM), [http://www.huffingtonpost.com/john-affeldt/senate-poised-to-call-nov\\_b\\_798046.html](http://www.huffingtonpost.com/john-affeldt/senate-poised-to-call-nov_b_798046.html).

173. John Affeldt, *Congress Lowering Standards for Teachers; Hiding Truth from Poor, Minority Parents*, HUFFINGTON POST, (Dec. 21, 2010, 03:59 AM), [http://www.huffingtonpost.com/john-affeldt/congress-lowering-standar\\_b\\_799523.html](http://www.huffingtonpost.com/john-affeldt/congress-lowering-standar_b_799523.html) (quoting S. Tom Harkin, Chairman, S. Comm. on Health, Educ., Labor, & Pensions).

testing, and measurements of student performance. John Affeldt, Managing Attorney at Public Advocates, a non-profit civil rights law firm, and the plaintiffs' attorney in *Renee v. Duncan*, argues the dangers of Senator Harkin's statement by noting:

Senator Harkin's statement fails to acknowledge that what the courts have called an illegal expansion of the "highly qualified" teacher definition has never been part of the law, and was rejected by Senator Kennedy and Congressman Miller early on. To write what was an illegally expansive regulation into law will be a major change from the past. To permit a teacher who may have only just enrolled in preparation to be called "highly qualified" before they have met any training standards defies common sense. To visit those unprepared teachers disproportionately on low-income students and students of color—and on special education students who are among those most often taught by unprepared teachers—and then hide that fact from parents and the public under a "highly qualified" moniker flies in the face of the equity, transparency and accountability that NCLB and our leaders apparently stand for.<sup>174</sup>

## X. CONCLUSION

As evidenced by countless reform recommendations, current educational policies, and the amount of education research dedicated to student achievement, it is clear the U.S. educational system is meant to provide equal access to academic achievement opportunities for all students.<sup>175</sup> Teachers are one of the pivotal components of this system, but there is substantial variation in their effectiveness. While it is essential that classrooms be led by well-educated, competent, and high-quality teachers,<sup>176</sup> low-achieving students are often taught by teachers who are less qualified and less effective than are high-achieving students.<sup>177</sup> Poor and minority students are also disproportionately assigned less qualified and less effective teachers.<sup>178</sup> This inequitable distribution of effective teachers further compounds the disadvantage that high-poverty and high-minority students are faced with in school. Children most in need of strong teachers are being denied what arguably might be their most invaluable resource—teachers, which is reinforcing the inequalities.<sup>179</sup>

The beginning of this Article noted alternative pathways for teacher certification were developed to address both quality and quantity of available

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174. *Id.*

175. Spyros Konstantopoulos, *Effects of Teachers on Minority and Disadvantaged Students' Achievement in the Early Grades*, 110 *ELEMENTARY SCHOOL J.* 92, 93 (2009).

176. See PENNY KOTTERMAN, *THE TEACHER QUALITY CONTINUUM: RECRUITMENT, PREPARATION AND RETENTION IN AN ERA OF TEACHER SHORTAGES* 106 (2000).

177. Clotfelter et al., *supra* note 59, at 681.

178. HEATHER G. PESKE & KATI HAYCOCK, *TEACHING INEQUALITY: HOW POOR AND MINORITY STUDENTS ARE SHORTCHANGED ON QUALITY, A REPORT AND RECOMMENDATIONS* 1 (2006).

179. *Id.* at 2.

teachers. We must ensure that neither goal is forgotten. Alternative pathways were never intended to be an end in and of themselves. Surely, teacher training and experience can never be replaced with short-term, Band-Aid solutions. Teachers trained at selective and highly ranked teacher education programs are effective teachers. Teachers who stay in the profession for more than five years are better than teachers with less time in the classroom. We know who good teachers are, and we know something about how to train them to be effective. Unfortunately, we are not using that knowledge across the profession. Instead, we use an ad hoc system, which is hurting some students. There remains a political push to remove standards, and the loosening of requirements and definitions is only likely to exacerbate the inconsistencies within the profession.

In the end, teaching is a public service and there is an argument of equity of opportunity that must be considered. Educational rights as reflected in the access arguments of what may be the educational sector's most important case, *Brown v. Board of Education*,<sup>180</sup> and protected by the Fourteenth Amendment, must not be pushed aside in the interest of strong lobbying efforts and political gaming. No one would argue that doctors and lawyers should not be required to pass qualifying exams to ensure they have mastered the requisite skills to practice within their professions. Why is it that such threshold skills are not considered at least as important in the teaching profession?

To be fair, teachers are one of the most underpaid and undervalued of professions. There is little or no deference paid to teachers by the general public. Everyone has been to school and everyone assumes that they know something about teaching. We have all been a part of the process. However, the same might be said of doctors, dentists, or even police officers, but few people would assume they could do any of these jobs without significant training and experience on the job. In other countries, such as Finland, where students are performing better and there is greater equity in access to quality education, there are more stringent demands on teacher training programs, competition for admission into these programs, and greater pay and prestige for the profession.<sup>181</sup>

In conclusion, at a time when accountability leads almost any discussion within or about the education sector, it is a disconcerting irony that we continue to require more and more out of students in terms of skills, performance, and results, but less out of their teachers. The policy disconnect cannot be ignored. Now is the time to elevate the teaching profession, not dismantle it.<sup>182</sup> Men and women entering the profession via TFA should do so not as a short-term stepping stone to other vocations—but because they feel a long-term calling and a commitment to dedicate a career to teaching.

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180. 347 U.S. 483 (1954).

181. Linda Darling-Hammond, *The Flat Earth and Education: How America's Commitment to Equity Will Determine Our Future*, 36 EDUC. RESEARCHER 318, 319, 330–31 (2007).

182. We also do not discount the need for significant reform in teacher training, Colleges of Education, and alternative certification programs.

Sometimes reform needs reform.