Are Teachers Participating in Alternative Route to Certification Programs
“Highly Qualified” Under the No Child Left Behind Act?

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I. Introduction

In 2008, parents of students attending California public schools and two community
groups sued the U.S. Department of Education (DOE), questioning the legality of DOE’s
regulations implementing the No Child Left Behind Act (NCLB).1 Specifically, the plaintiffs
challenged DOE’s definition of “‘highly qualified’ teacher” (HQT) as contrary to legislative
intent.2 The U.S. District Court held that the regulations were a permissible exercise of DOE’s
administrative authority.3 The plaintiffs then appealed to the United States Court of Appeals for
the Ninth Circuit,4 which punted the issue on the merits and dismissed the plaintiffs’ case for
lack of standing.5 One judge dissented, argued that the plaintiffs had standing,6 and also
indicated that the plaintiffs should win their case on the merits.7 As a result of the case being
dismissed for lack of standing, there remains an open question as to whether DOE’s NCLB
regulations are legal.

The thesis of this paper is that under the framework established by the Supreme Court in
Chevron v. NRDC,8 DOE’s regulations implementing NCLB’s “‘highly qualified’ teacher”
provisions are legal. This paper will argue that neither the District Court nor the Ninth Circuit
gave sufficient analysis to the merits of the case but that the outcome reached by both courts was
nevertheless proper.

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1 Renee v. Spellings, No. C 07-4299 2008 WL 2468481, at *1–2 (N.D. Cal. June 17, 2008), vacated for lack of
standing sub nom. Renee v. Duncan, 573 F.3d 903 (9th Cir. 2009). The lawsuit was actually filed against DOE
Secretary Margaret Spellings. When the administration changed in January 2009, Arne Duncan became the new
DOE Secretary and was thus substituted as the defendant on appeal. For purposes of simplicity and clarity, I will
refer to the defendant as DOE.

2 Id. at *1. “Plaintiffs allege that defendant . . . has promulgated a regulation that violates the NCLB Act’s standard
for ‘highly qualified’ teachers by ‘relabeling’ more than 10,000 ‘novice teachers’ still in training in California and
tens of thousands of such teachers nationwide as ‘highly qualified.’”

3 Id. at *8.

4 See Duncan, 573 F.3d 903.

5 Id. at 905.

6 Id. at 913–15.

7 See id. at 914–15.

II. Background

In 2002, Congress passed NCLB.\(^9\) Among other goals, NCLB sought to ensure that students in public school classrooms were taught by competent and capable teachers.\(^{10}\) To achieve this objective, Congress mandated that, by the end of the 2005-06 school year, every core academic class in states receiving federal funding would be taught by a HQT.\(^{11}\) In addition to requiring that all HQTs have at least a bachelors degree and competence in their subject matter, Congress defined “highly qualified” to mean: “(i) the teacher has obtained full State certification as a teacher (including certification obtained through alternative routes to certification) . . . ; and (ii) the teacher has not had certification of licensure requirements waived on an emergency, temporary or provisional basis.”\(^{12}\)

DOE is vested with the authority to administer and enforce NCLB\(^{13}\) and in 2002 DOE issued regulations implementing NCLB.\(^{14}\) The regulations stated that a teacher can be “highly qualified” under NCLB if the teacher: “Ha[s] obtained full State certification as a teacher, which may include certification obtained through alternative routes to certification; or . . .[i]s participating in an alternative route to certification program . . . [and] demonstrates satisfactory progress toward full certification as prescribed by the State.”\(^{15}\)

The plaintiffs in Renee claimed that DOE’s regulations “redefine[ed] the term ‘highly qualified’ teacher”\(^{16}\) and that DOE’s interpretation of “highly qualified” was “contrary to the

\(^9\) Duncan, 573 F.3d at 905. NCLB was essentially a reauthorization of the Elementary and Secondary Education Act, first enacted in 1965. Id.

\(^{10}\) Other goals of NCLB included increasing accountability in public schools and closing the “achievement gap” between white and minority students.

\(^{11}\) Duncan, 573 F.3d at 906 (citing 20 U.S.C. § 6319(a)(2)(A)).

\(^{12}\) 20 U.S.C. § 7801(23)(A) (emphasis added). Congress did not define the term “full State certification.”

\(^{13}\) Implementation of NCLB, like many other federal statutes, is entrusted in an executive agency. Brief for Appellees at 5, Renee v. Duncan, 573 F.3d 903 (9th Cir. 2008). “NCLB placed conditions on receipt of federal education funds that were designed to bring about ‘overall, gradual school improvement.’” Id. (citing Flores v. Arizona, 516 F.3d 1140, 1172 (9th Cir. 2008)). DOE had the authority to “withhold funds or take other enforcement action if a state fails to comply substantially with the Act’s requirements.” Id. at 5–6.

\(^{14}\) Id. at 12. DOE’s promulgation of implementing regulations was preceded by public notice and a period for public comment. Id.


\(^{16}\) Appellants’ Opening Brief at 13, Duncan, 573 F.3d 903.
plain language of [NCLB]” and “inconsistent with the intent of Congress.” According to the plaintiffs, “the[ ]regulations permit individuals who are merely ‘participating in an alternative route to certification program’ and making ‘satisfactory progress toward full certification as prescribed by the State’ but who have not yet ‘obtained full state certification’ to be deemed ‘highly qualified.’”

A challenge to an administrative agency’s implementing regulations will generally be analyzed under the two-step process outlined by the Supreme Court in *Chevron.* The first step is to determine whether Congress “has directly spoken to the precise question at issue.” If Congress has done so, the inquiry is at an end; the court “must give effect to the unambiguously expressed intent of Congress.” If, however, the statute is silent or ambiguous on the question, the agency’s construction of the statute must be accepted so long as it is “based on a permissible construction of the statute.” Furthermore, in *Chevron,* the Court made clear that “considerable weight should be accorded to an executive department’s construction of a statutory scheme it is entrusted to administer.”

The District Court found that because “Congress never stated that teachers must complete any particular program to be considered as having obtained ‘full State certification,’” they had not “spoken to the precise question at issue,” as mandated by the first prong of *Chevron.* “By failing to define the phrase, ‘full State certification as a teacher . . . ,’” the court reasoned, “Congress gave [DOE] the discretion to clarify what the statute permits.” As for the second

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17 *Spellings,* 2008 WL 2468481, at *3. Specifically, the plaintiffs were concerned that “a teacher-in-training with no prior training and no prior teaching experience may be deemed “highly qualified” the very day he or she enters an ‘alternative certification program’ and begins to serve as a classroom teacher.” *Id.*
18 *Id.* opening Brief, supra note 16, at 13.
19 *Id.*
22 *Id.* at 843.
23 *Id.* A “permissible” interpretation is one that is “consistent with the purposes of the statute.” *Spellings,* 2008 WL 2468481, at *5 (citing *Chevron,* 467 U.S. at 843–45).
24 *Chevron,* 467 U.S. at 844. *But cf.* MCI Telecomms. Corp. v. AT&T Co., 512 U.S. 218, 229 (1994) (noting that an agency’s interpretation is not entitled to deference when it goes beyond the meaning that the statute can bear).
26 See *id.* at *5.
27 *Id.* at *8.
prong, the District Court held that DOE’s interpretation of NCLB’s HQT provisions was “reasonable,” and not “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.” Yet, the District Court failed to explain why Congress’s clear choice of the past tense, “has obtained” does not precisely answer the question posed by the plaintiffs, and foreclose DOE’s use of the present tense, “participating in.” Moreover, the District Court dedicated only two sentences of the opinion to its analysis of the second prong of the Chevron test, whether DOE’s interpretation was “permissible.”

On appeal, the Ninth Circuit ruled that the plaintiffs lacked standing. Under NCLB, the meaning of “full state certification” is a matter of state law. Thus, according to the Ninth Circuit, even if DOE’s regulations were invalidated, California could still determine that teachers merely “participating in” an alternative route to certification program are “highly qualified.” That is, California would still be free to define “full certification” to include teachers who are in the process of obtaining state certification. As a result, the plaintiffs were unable to show that any court action could “redress” their alleged injury because it was unclear what action California would take if the regulations were declared illegal.

This holding is unsatisfactory for two reasons. First, the issue of standing was not as clear-cut as the majority in Renee v. Duncan made it seem because, even when dealing in terms of “likelihood,” a court can find standing so long as a plaintiff’s injury is “fairly traceable” to a defendant’s allegedly illegal conduct. In this case, California state regulations in force in 2009 were directly based on DOE’s regulation. In fact, immediately after DOE promulgated its new regulations in 2002, California modified its definition of “full certification” to match the

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28 Id. at *7–8.
29 While a reviewing court should show deference to an administrative agency in applying this prong, see infra notes 66–68 and accompanying text, deference should not equate to carte blanche approval.
30 Duncan 573 F.3d at 905.
32 Duncan, 573 F.3d at 910.
33 See id. at 913–14 (Fletcher, J., dissenting).
34 See id. The court also held that even if plaintiffs could have established redressibility, it was unlikely that they could establish sufficient injury. See id. at 912 n.9.
36 Id. at 914 (Fletcher, J., dissenting).
definition provided by DOE. If DOE’s regulations were invalidated because they exceeded statutory authority, it seems likely that California (and other states) would change their definition of “full certification” to match new DOE guidelines; California’s previous efforts to mirror DOE regulations make it likely that they would not maintain a definition of HQT contrary to, and encompassing a wide swath of teachers not covered by, DOE guidelines.

Second, and more importantly, even if the Ninth Circuit properly determined that the plaintiffs lacked standing, this does not resolve the issue of whether DOE’s regulations are in fact contrary to congressional intent. If they are, then the regulations effectively undermine NCLB’s HQT provisions and they give states free license to place tens-of-thousands of teachers in classrooms that Congress never intended to certify as “highly qualified.” DOE is not a lawmakers body, and if DOE regulations are “in excess of [DOE’s] statutory authority,” they should be changed to reflect congressional intent. The Ninth Circuit’s finding that plaintiffs lacked standing should not provide an excuse to DOE to continue promulgating an illegal set of regulations.

Therefore, further analysis—greater than provided by either of the courts that addressed the issue in Renee—is required to determine whether DOE’s regulations are legal under the Chevron framework.

III. Analysis

Because the issue involves an administrative agency’s construction of a statute that it administers, analysis is governed by Chevron v. NRDC. Under the first prong of the Chevron test, a court must apply “traditional tools of statutory construction” to determine whether Congress has specifically addressed the precise question at issue. If congressional intent clearly answers the question at issue, then a Court must accept congressional intent, and

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37 See id. After Congress passed NCLB, California “did not change its definition of full [certification], even though such a change would have permitted the [immediate] assignment of disproportionate numbers of alternative route participants to low-income and minority area schools.” Id.
38 “Plaintiffs estimate that over 100,000 individuals are participating in alternative route programs nationally at any one time and are considered ‘highly qualified.’” Appellants’ Opening Brief, supra note 16, at 21 n.6.
invalidate an agency’s regulations if they are contrary to that intent." Yet, if Congress has not specifically addressed the precise question, a reviewing court must give deference to the agency’s construction so long as it is reasonable because of the agency’s greater familiarity with the “ever-changing facts and circumstances surrounding the subjects regulated.”

A. Has Congress Precisely Answered the Question?

Congress clearly used only the past tense to define a HQT as one who “has obtained full state certification as a teacher (including certification obtained through alternative routes to certification).” Under the cannons of statutory construction most commonly employed by courts, the first (and most important) cannon employed is often the ‘plain meaning’ doctrine, which permits a reviewing court to give a statute a commonsense reading of the words, without reference to extrinsic indication of congressional intent. However there are two reasons—unexplored by either of the courts to review the issue in Renee—that statutory interpretation, including analysis of the phrase “has obtained full state certification,” does not precisely answer the question of who qualifies as a HQT under NCLB.

First, cannons of statutory interpretation, including the ‘plain meaning’ doctrine, cannot be applied to a single phrase in a statute without looking at the statute as a whole; “the meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.” Therefore, when applying the first prong of Chevron, “a reviewing court should not confine itself to examining a particular statutory provision in isolation.” Second, in determining whether or not Congress has “spoken to the precise question at issue,” the meaning of a statute may be affected by subsequent congressional legislation that speaks to the topic at

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41 Id. at 843.
44 See, e.g., Connecticut National Bank v. Germain, 503 U.S. 249, 253–254 (1992). “Courts must presume that a legislature says in a statute what it means and means in a statute what it says . . . ; [w]hen the words of a statute are unambiguous, then this first cannon is also the last . . . .” Id.
46 Id. at 132–33.
This is so because at the time a statute is enacted, it may have a range of plausible meanings, but over time subsequent congressional acts can shape or focus those meanings. A reviewing court should analyze a statute as a whole, and not base its determination of the first Chevron prong on analysis of a single phrase in isolation. Therefore, the second paragraph of the statutory definition of HQT, which states: “the teacher has not had certification or licensure requirements waived on an emergency, temporary, or provisional basis,” must be considered in evaluating the first. If Congress truly intended to bar participants in alternative certification programs from being considered HQT, this is an odd choice of words because states do not generally consider these alternative certification program participants to be teaching on “emergency” or “temporary” credentials. Historically, emergency or temporary licenses have not gone to teachers participating in rigorous alternative certification programs, but rather to minimally-qualified individuals who served as a stop-gap measure to fill teacher vacancies in low-income school districts. DOE’s implementing regulations are demonstrative of the typical understanding of teachers “participating in” alternative routes to state certification. The regulations clarify that these teachers must:

[r]eceive[] high-quality professional development that is sustained, intensive, and classroom-focused. . . before and while teaching”; [p]articipate[] in a program of intensive supervision that consists of structured guidance and regular ongoing

47 Brown & Williamson, 529 U.S. at 133.
48 See id. at 143. “The ‘classic judicial task of reconciling many laws enacted over time, and getting them to ‘make sense’ in combination, necessarily assumes that the implications of a statute may be altered by the implications of later statutes.’” Id. (quoting United States v. Fausto, 484 U.S. 439, 453 (1988)); see also Whitman v. Am. Trucking Ass’ns, 531 U.S. 457, 492 (2001) (Breyer, J., concurring) (arguing that subsequent legislative history can be used to resolve “silences or ambiguities in the language of regulatory statutes”); Atkins v. Rivera, 477, U.S. 154, 166 n.10 (1986) (finding that “[S]ubsequent legislative history . . . makes clear” congressional intent”). But see Pension Benefit Guar. Corp. v. LTV Corp., 496 U.S. 633, 650 (1990) (“[S]ubsequent legislative history is a ‘hazardous basis for inferring the intent of an earlier’ Congress.”)
50 Brief of Amicus Curiae Teach for America et al. in Support of Defendants-appellees’ Argument to Affirm the Judgment of the District Court, at 25–26, Renee v. Duncan, 573 F.3d 903 (9th Cir. 2008). “In New York City, for example, temporary licensed teachers hired to fill vacancies before the city changed its policies were more than six times more likely to fail the state licensure examination than were the alternatively certified teachers who replaced them.” Id. at 26. Empirical studies have demonstrated that teachers with emergency or temporary licenses that have no specific training in teaching are markedly inferior to teachers trained participating in alternative certification programs. Id. at 25.
support for teachers or a teacher mentoring program” . . . ; and “[d]emonstrate[]
satisfactory progress toward full certification as defined by the State.”

Although Congress’s intent is not perfectly clear, it seems likely that this second paragraph of
Congress’s HQT definition was added to prevent the use of emergency or temporary licenses to
meet temporary teacher shortages, not to prevent states from counting alternative certification
program participants as HQTs.

Other provisions of NCLB, not directly related to the definition of HQT, also obfuscate
Congress’s intended definition of HQT. In Title II of NCLB, Congress implemented a number
of federally funded programs that use alternative routes to certification programs to help
“increas[e] the number of highly qualified teachers in the classroom.” For example, as part of
NCLB, Congress authorized the “Transition to Teaching Program,” which provides funds to
states to “recruit and retain highly qualified mid-career professionals . . . , and recent [college]
graduates [to serve] as teachers in high-need districts, including recruiting teachers through
alternative routes to certification.” Another statutory program created as part of NCLB is the
“Troops to Teachers Program.” The purpose of this program is to assist members of the Armed
Forces to “obtain certification or licensing” as teachers to become “highly qualified” teachers
serving in high need districts experiencing a shortage of such teachers.

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51 34 C.F.R. § 200.56(a). California law also demonstrates the difference between teachers participating in an
alternative route to certification program and a teacher who has had certification requirements “waived on an
emergency, temporary, or provisional basis:”

Under California law, alternative route participants receive teaching credentials issued under the
State’s [internship] program. To be eligible . . . applicants must (1) pass the California Basic
Education Skills Test; (2) hold at least a bachelor’s degree; and (3) demonstrate subject matter
competence. These requirements are more stringent than the requirements for entry into a
traditional teacher preparation program precisely because the internship credentials allow their
holders to serve as full classroom teachers . . . . What California regards as “emergency permits”
are governed by different provisions of California law that do not apply to intern credentials.

52 “It is a fundamental cannon of statutory construction that the words of a statute must be read in their context and
with a view to their place in the overall statutory scheme.” FDA v. Brown & Williamson Tobacco Corp., 529 U.S.
120, 133 (2000).


54 Id. at § 6681(1).

55 Id. at § 6672.

56 Id. at § 6672(b)(1)–(2).
These provisions indicate that Congress likely foresaw that some HQTs would be individuals participating alternative route to certifications programs such as these.\(^{57}\) A mandate that all core classes be taught by HQTs seems irreconcilable with funding for alternative certification programs—programs such as “Transition to Teaching” and “Troops to Teachers” that place participants in full classrooms—unless participants in these programs could be counted as HQTs.\(^{58}\) Furthermore, it would not make sense for Congress to force states and school districts choose between complying with the HQT requirements set out in one part of NCLB and taking advantage of the programs listed above.\(^{59}\) One could argue that these programs were created merely to steer individuals toward alternative certification programs and that they could become HQTs only after completing a certification program. However, Congress used the language of “certification or licensing” to describe the status of individuals participating in the “Troops to Teachers” program.\(^{60}\) Moreover, if one-hundred percent of core academic subjects were to be taught by HQTs, it would be impossible for states to take advantage of these programs and meet NCLB benchmarks, because the entire purpose of alternative route to certification programs is that participants are hired “by a school district to teach full-time as the sole teacher in a classroom while completing teacher preparation coursework from a local university or the district at night and on weekends.”\(^{61}\)

Given these NCLB provisions, it does not appear that Congress specifically addressed the precise question at issue. When looking at subsequent legislation, it becomes even clearer that congress has not directly spoken to the issue presented by this case. First, in the years since 2002, Congress has repeatedly reauthorized and appropriated funds for programs that rely on individuals participating in alternative route to certification programs, such as the “Transition to Teaching” and “Troops to Teachers” programs. Furthermore, in 2008, Congress passed the Higher Education Opportunity Act which authorized a five-year grant to Teach for America, a

\(^{57}\) “The hallmark of an alternative route program is that its participants serve as full classroom teachers,” Brief for Appellees, supra note 13, at 32–33.

\(^{58}\) “A court must . . . interpret [a] statute as a symmetrical and coherent regulatory scheme, and fit, if possible, all parts into a harmonious whole.” FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 133 (2000) (internal citations omitted).

\(^{59}\) “Congress plainly did not intend to diminish state and local incentives to hire alternative route participants as full time teachers, and thus undermine the vitality of these programs.” Brief for Appellees, supra note 13, at 33.

\(^{60}\) 20 U.S.C. § 6672(b)(1)-(2) (emphasis added).

\(^{61}\) Appellants’ Opening Brief, supra note 16, at 2 (some emphasis added).
program based entirely on the concept of using alternative certification programs to immediately place some of America’s best and brightest young adults into full classrooms.\textsuperscript{62} In the bill, Congress specified that grant funds were to be used to “provide \textit{highly qualified} teachers to high-need . . . communities.”\textsuperscript{63} These statutes have “effectively ratified” DOE’s position and they confirm that, in Congress’s view, TFA recruits can be “highly qualified” even though they serve as full classroom teachers while \textit{obtaining} alternative certification.\textsuperscript{64} Furthermore, if the Congressional intent were truly contrary to the DOE implementation guidelines, Congress could have overruled the DOE’s NCLB implementation guidelines and explicitly made clear that teachers obtaining alternative certification could not be considered HQTs: “Congress failure to reverse DOE’s regulations after more than eight years since its promulgation suggests that Congress does not believe that the regulation exceeds the scope of [NCLB].”\textsuperscript{65}

\textbf{B. DOE’s Permissible Construction}

Where a full statutory analysis does not reveal clear congressional intent, the question for a reviewing court, in determining whether an administrative regulation is valid, is whether the agency’s interpretation is based on a permissible construction of the statute.\textsuperscript{66} This “permissible construction” standard is highly deferential:\textsuperscript{67} “[i]n determining whether a construction is permissible, ‘[a] court need not conclude that the agency construction was the only one it permissibly could have adopted . . . or even the reading the court would have reached if the question initially had arisen in a judicial proceeding.’”\textsuperscript{68} Yet, where administrative regulations are inconsistent with a statutory mandate or frustrate the policies that Congress sought to

\textsuperscript{62} 20 U.S.C.A. § 1161f.
\textsuperscript{63} \textit{Id.} (emphasis added). Congress defined “highly qualified” to have the same meaning that the term is given in NCLB. \textit{Id.}
\textsuperscript{64} \textit{Cf.} FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 144 (2000) (reasoning that subsequent Congressional action can serve to “effectively ratify[ ]” a statutory interpretation provided by an administrative agency).
\textsuperscript{67} See \textit{e.g.}, National R.R. Passenger Corp. v. Boston & Me. Corp., 503 U.S. 407, 417 (1992) (“Judicial deference to reasonable interpretations by an agency of a statute that it administers is a dominant, well-settled principle of federal law.”).
implement, the regulations must be rejected.69 When analyzed under this precedent, DOE’s regulations are permissible and should be upheld.

The primary goals of NCLB were to bring all students to a “proficient” level in both reading in math by 2014 and to “close the achievement gap between low-income and minority students and their more affluent, white peers.”70 A secondary goal was to ensure that these students are taught by competent and capable teachers.71 Despite arguments to the contrary by the plaintiffs in Renee, a growing body of empirical research demonstrates that teachers participating in alternative routes to certification are “just as effective—and by some metrics more effective than—traditionally certified teachers.”72 For example, one study found that in states that have “genuine” alternative certification programs, test-scores for 8th-graders are higher, even among African-American students.73 Other methodologically rigorous studies have found that Teach For America teachers, all who are participating in alternative route to certification programs, had a significant positive impact on student test scores, especially in math,74 and were more effective than traditionally-certified teachers.75

Furthermore, Congress’s goal of placing more qualified teachers in classrooms with minority students would be seriously frustrated if alternatively certified teachers could not qualify as HQTs. By 2015, this country is likely to face a teacher shortfall of nearly 300,000 qualified math and science teachers.76 This number would only be exacerbated if schools could not hire teachers participating in alternative route to certification programs because nearly one-

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69 See Appellants’ Opening Brief, supra note 16, at 54 (citing FEC v. Democratic Senatorial Campaign Comm., 454 U.S. 27, 32 (1981)).
70 Id. at 55.
71 See supra note 10 and accompanying text.
72 Brief of Amicus Curiae Teach for America, supra note 50, at 9 (emphasis added). At a minimum, alternatively certified teachers are no less effective than teachers certified through more traditional routes. See generally Thomas J. Kane, et al., Photo Finish: Certification Doesn’t Guarantee a Winner, EDUCATION NEXT (Winter 2007), available at http://www.dartmouth.edu/~dstaiger/Papers/photo%20finish%20ednext_2007160.pdf.
76 See Peterson & Nadler, supra note 73. Over the next decade, over 100,000 teachers in California are expected to retire. Id.
third of all teachers hired in the U.S. are certified through alternative route to certification programs which emphasize immediate placement of teachers into full classrooms. Moreover, alternatively certified teachers are more likely to work in urban areas with low-income and low-achieving students. If DOE’s regulations were found impermissible, school districts would not be able to fill difficult-to-fill positions with “qualified and effective, though not traditionally certified, teachers.”

IV. Conclusion

Under the framework for analyzing administrative regulations established by the Court in Chevron, DOE’s HQT provisions are both permissible and legal. This is important because it makes clear that states that report teachers participating in alternative route to certification programs as being “highly qualified” are not circumventing explicit congressional intent by doing so.

Despite the fact that the thesis of this paper essentially affirms DOE’s regulations, the issue may soon become moot because President Obama has called for an overhaul of President George W. Bush’s signature NCLB legislation. The new Administration’s proposals focus less on achieving grade level “efficiency,” and more on preparing students for post-graduate work or studies. One of the changes proposed by Obama and his Secretary of Education, Arne Duncan, is a $405 million grant to support different “pathways” into teaching, including alternative routes to certification. While these proposals have not yet been adopted through legislation, they show that the Administration is committed to alternative programs such as Transition to Teaching and Teach For America. Any legislation signed by President Obama would likely provide funding to states and school districts that choose to hire teachers through these programs.

77 Brief of Amicus Curiae Teach for America, supra note 50, at 8–9.
78 Id. at 12 (citing Kane, supra note 72).
79 Id. at 21–22.
80 See id.; Sam Dillon, Obama Calls for Major Change in Education Law, N.Y. TIMES, Mar. 13, 2010.
81 One in three schools failed to meet academic targets as of the 2008-09 school year. Nick Anderson, Obama: Revise No Child Left Behind Law, WASH. POST, Mar. 14, 2010, at 1. Some of the goals set by NCLB are “widely seen as unreachable.” Id.
82 Dillon, supra note 80.