



Labor and Employment Law Update

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INTERNS DO NOT MEET “HIGHLY QUALIFIED” STANDARDS

At last the courts have confirmed this simple fact: **Intern teachers are not highly qualified.** The federal Ninth Circuit Court of Appeals has ruled that the federal administrative regulations, mirrored in California law, do not comply with highly qualified (HQ) requirements of the federal No Child Left Behind (NCLB) law.¹ This communication is a followup to the discussion of this topic at our all client workshop on September 29, 2010.

The ruling does require immediate administrative action at the local level. Ripple effects of the ruling should also impact policy decisions from the local board room to Sacramento to the halls of Congress. We outline the case, then preliminarily list some of those actions and impacts.

Case Outline

Background. Individual student and advocacy groups complained that certain underperforming California schools have a disproportionate number of intern teachers when compared to scores and staff in more affluent areas. They argued that lack of preparation contributed to lower student performance at the schools where interns were concentrated. Title I audit records and reports by the school districts counted interns in the group of HQ staff. Plaintiffs asked the federal courts to intervene by declaring that the federal NCLB statute itself precluded any regulation which would lump interns together with fully credentialed staff.

The state of California was not named as a defendant. The federal government defended the case. No one seems to have tried to bring the state of California in as a codefendant.

Facts and Issues Presented. The facts in the case itself are quite simple and there was no serious dispute. Interns are disproportionately assigned to underperforming schools and disadvantaged students. The sole issue centered on whether the federal administrative regulation, state law, and state regulation all conflict with the NCLB statute. Is an intern teacher, still short of meeting requirements for a preliminary credential, "highly qualified?"

Answer and Ruling. California law and federal regulations on the NCLB HQ status of interns are invalid. Using California's current definition, an intern is not highly qualified under the NCLB statute.

¹ *Sonya Renee et al. v. Duncan*, 9th Circuit (2010) ___ Fed.3d; 2010 Lexis 19933, Sept. 27, 2010.

Impacts

Personnel Practices

A. **Parent notification letters.** School districts will be (are) required to add interns to the categories of teachers who are not HQ. Parent notification letters must now be sent to the parents of children being taught by an intern.

B. **Seniority List Data.** Up to this time, certificated seniority lists have indicated that an intern meets HQ standards. No longer. The lists will have to be reviewed and revised accordingly. That status may affect skipping or tie-break determinations in layoff settings. Please contact us if you need further assistance in determining how these revisions should be made.

Policy Issues

A number of "what ifs" hang in the air.

- ❖ What if the Secretary of Education now decides to withhold Title I funds from California due to the precipitous drop in HQ teachers?
- ❖ What if parents who receive notice letters start to push for classroom - or school site - transfers?
- ❖ How will program improvement schools react to the news that their interns do not count toward HQ compliance?
- ❖ What if California tries to evade the ruling simply by declaring that an intern authorization is the equivalent of a preliminary credential (a scenario anticipated by this court in dicta)?

Conclusion

This court essentially telegraphed this decision about intern status last year, withholding a formal ruling at the time solely because of a disagreement over the right of the plaintiffs to challenge the regulations. That problem has been resolved. We will await developments and keep you up-to-date.

Please contact our office if you have any questions regarding the above information.

~ Peter C. Carton

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