

**SUZANNE HEATH**  
90 MOOAR HILL ROAD  
HOLLIS, NEW HAMPSHIRE 03049

[sueheath@charter.net](mailto:sueheath@charter.net)  
603-465-2444

July 9, 2004

Michael Sentance, Secretary's Regional Representative  
Kristen Lepore, Deputy Secretary's Regional Representative  
U.S. Department of Education  
540 J.W. McCormack Courthouse  
Boston, MA 02109-4557

Re: New Hampshire Bureau of Special Education FY'04 Memo # 9  
Deliberate violation of NCLB and IDEA

Dear Mr. Sentance and Ms. Lepore:

I am the co-author of the book Wrightslaw: No Child Left Behind and am very familiar with the law and the U.S. Department of Education's policy guidance publications. As a parent of a child with a disability, I am also familiar with the Individuals with Disabilities Education Act of 1997. I reside in New Hampshire.

No Child Left Behind (NCLB) requires that "Highly Qualified Teachers" be certified by the state, pass the state teacher examination, and have training in the subject area taught. Elementary school teachers must demonstrate their knowledge of teaching reading and math. Middle and high school teachers must have a major or demonstrate knowledge in the subjects that they teach. (20 U.S.C. § 6319)

On January 14, 2004, New Hampshire issued a Memorandum that deliberately violates the "Highly Qualified Teacher" requirements of NCLB. This new policy statement appears to track the anti-NCLB proposals issued by the National Education Association and National Association of State Directors of Special Education. If the U. S. Department of Education permits New Hampshire's Memo to remain in effect and fails to take quick action, all states can be expected to follow New Hampshire in short order.

This new policy does not apply to the teachers of children from low-income families, English language learners, racial minorities, or children who do not have disabilities. This policy only applies to the teachers of children with disabilities.

The New Hampshire policy not only violates NCLB, but also violates the personnel standards of the Individuals with Disabilities Education Act of 1997.

New Hampshire's policy is to accept a certification in Mental Retardation in place of a certification in a core academic subject for secondary education teachers of children with disabilities. Mental Retardation is not a core academic subject as defined in No Child Left Behind.

The Memo regarding New Hampshire's policy for the certification of special education teachers appears on the state website at <http://www.ed.state.nh.us/SpecialEd/Memos/FY04/memo9.htm>. I have attached the Memo to this letter.

The Memo makes a distinction between teachers who assign grades and those who do not. New Hampshire's identification of, and focus on, the assigning of grades as a critical part of instruction is unsupportable. There is nothing to substantiate this distinction as being meaningful in any way. It is **teaching** that requires subject knowledge. It is **teaching** that is addressed in NCLB.

New Hampshire cannot be allowed to violate the No Child Left Behind Act and the Highly Qualified Teacher requirements with respect to the teachers of **any** groups of children. The statement of Purpose in No Child Left Behind is very clear –

The purpose of this title is to ensure that all children have a fair, **equal**, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments. (20 U.S.C. § 6301) (WrightsLaw: No Child Left Behind at page 137)

I have copied the federal definition of a Highly Qualified Teacher below. Neither it, nor the No Child Left Behind Act, contains any reference to assigning grades to students. Clearly this was seen as a function not worth mentioning in the description of adequate teacher training and certification. It is not mentioned in NCLB **at all** in any location.

What the law does specify is the requirement for certification or subject knowledge in the subject **taught, not the ones for which the teacher assigns a grade.**

“**HIGHLY QUALIFIED.**—The term ‘highly qualified’—

“(A) when used with respect to any public elementary school or secondary school teacher teaching in a State, means that—

“(i) the teacher has obtained full State certification as a teacher (including certification obtained through alternative routes to certification) or passed the State teacher licensing examination, and holds a license to teach in such State, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State’s public charter school law; and

“(ii) the teacher has not had certification or licensure requirements waived on an emergency, temporary, or provisional basis;

“(B) when used with respect to—

“(i) an elementary school teacher who is new to the profession, means that the teacher—

“(I) holds at least a bachelor’s degree; and

“(II) has demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum (which may consist of passing a State-required certification or licensing test or tests in reading, writing, mathematics, and other areas of the basic elementary school curriculum); or

“(ii) a middle or secondary school teacher who is new to the profession, means that the teacher holds at least a bachelor’s degree and has demonstrated a high level of competency in each of the academic subjects in which the teacher teaches by—

“(I) passing a rigorous State academic subject test in each of the academic subjects in which the teacher teaches (which may consist of a passing level of performance on a State-required certification or licensing test or tests in **each of the academic subjects in which the teacher teaches**); or

“(II) successful completion, in each of the academic subjects in which the teacher **teaches**, of an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing; and

“(C) when used with respect to an elementary, middle, or secondary school teacher who is not new to the profession, means that the teacher holds at least a bachelor’s degree and—

“(i) has met the applicable standard in clause (i) or (ii) of subparagraph (B), which includes an option for a test; or

“(ii) demonstrates competence in all the academic subjects in which the teacher **teaches** based on a high objective **uniform** State standard of evaluation that—

“(I) is set by the State for both **grade appropriate academic subject matter knowledge** and teaching skills;

“(II) is aligned with challenging State academic content and student academic achievement standards and developed in consultation with core content specialists, teachers, principals, and school administrators;

“(III) provides objective, coherent information about the teacher’s attainment of core content knowledge in the academic subjects in which a teacher teaches;

“(IV) **is applied uniformly to all teachers in the same academic subject and the same grade level throughout the State;**

“(V) takes into consideration, but not be based primarily on, the time the teacher has been teaching in the academic subject;

“(VI) is made available to the public upon request; and

“(VII) may involve multiple, objective measures of teacher competency.  
(20 U.S.C. § 7801 (23)) (Note: Emphasis added by Heath) (Wrightslaw: No Child Left Behind at page 76)

The Memo states, as noted earlier, that New Hampshire will allow a certification in Mental Retardation for teachers in some situations where federal law calls for a subject certification. Mental Retardation is not a core academic subject:

CORE ACADEMIC SUBJECTS – The term ‘core academic subjects’ means

- English,
- reading or language arts,
- mathematics,
- science,
- foreign languages,
- civics and government,
- economics,
- arts,
- history, and
- geography. (20 U.S.C. § 7801 (11)) (Wrightslaw: No Child Left Behind at page 67)

In addition, the Individuals with Disabilities Education Act of 1997 requires that the standards for special education personnel “be consistent with any State-approved or State-recognized certification . . . that apply to the professional discipline in which those personnel are providing special education or related services.” This is clearly not the case when lower standards are required for special education teachers. I have included the full text of that requirement below.

**Personnel standards.--**

(A) In general.--The State educational agency has established and maintains standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained.

(B) Standards described.--**Such standards shall—**

**(i) be consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;**

(ii) to the extent the standards described in subparagraph (A) are not based on the **highest requirements in the State** applicable to a specific profession or discipline, the State is taking steps to require retraining or hiring of personnel that meet appropriate professional requirements in the State; and

(iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services to children with disabilities under this part.

C) Policy.--In implementing this paragraph, a State may adopt a policy that includes a requirement that local educational agencies in the State make an ongoing good-faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services to children with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subparagraph (B)(i), consistent with State law, and the steps described in subparagraph (B)(ii) within three years. (20 U.S.C. § 1412(a) (15)) ( Note: Emphasis added by Heath) (Wrightslaw: Special Education Law at page 47)

If New Hampshire is allowed to apply lower standards than the federal requirements to the teachers of one group of children, it will not be long before they do this for teachers of other groups. If this is allowed in New Hampshire, it will not be long before other states replace federal law with National Education Association and the National Association of State Directors of Special Education proposals.

This is a state mandated policy of discrimination against children with disabilities. By a copy of this letter to the Office of Civil Rights, I am alerting them to this policy and Memo for appropriate consideration and action.

This state mandated policy of lower certification standards for special education teachers violates 20 U.S.C. § 1412(a)(15). By a copy of this letter to the Office of the Inspector General, I am alerting them to this policy and Memo for appropriate consideration and action.

I am requesting that you require the state of New Hampshire to comply with the federal Highly Qualified Teacher requirements on a statewide basis and to apply these requirements uniformly to the teachers of all children in New Hampshire.

Please confirm receipt of this letter. If you have any questions or if you need me to take any further steps in this matter, please contact me.

I look forward to hearing from you.

Sincerely,

Suzanne Heath

cc: Gary E. Mathison, Special Agent in Charge  
Office of Inspector General  
U.S. Department of Education  
540 J.W. McCormack Courthouse  
Boston, MA 02109-4557

Office for Civil Rights  
U.S. Department of Education  
540 J.W. McCormack Courthouse  
Boston, MA 02109-4557

## **Bureau of Special Education FY'04 Memo # 9**

Date: January 14, 2004

To: Superintendents of Schools Special Education Directors

From: Bureau of Special Education  
Bureau of Credentialing  
Bureau of Integrated Programs

Re: Special Education and the NCLB Highly Qualified Teacher (HQT) Requirement

This memo is intended to help clarify questions and concerns that have arisen due to the No Child Left Behind, Improving Teacher Quality Non-Regulatory Revised Draft Guidance issued September 12, 2003, specifically addressing Special Education Teachers and the HQT requirements of NCLB. The September 12, 2003 Non-Regulatory Revised Draft Guidance specifically states:

“Special education teachers who provide instruction in core academic subjects must meet the highly qualified teacher requirements for those core academic subjects that they teach. These requirements apply whether a special education teacher provides core academic instruction in a regular classroom, a resource room, or another setting.”

According to the federal definition, “highly qualified” means that a teacher:

1. Holds a minimum of a bachelor’s degree;
2. Has obtained full state certification, and;
3. Has demonstrated competency in each of the core academic subjects in which the teacher teaches.

It is important to note that the reauthorization of IDEA has not been completed, nor has there been guidance through IDEA regarding special education teachers and how they will meet the HQT requirements of the NCLB Act of 2001. The guidelines that have been developed will continue to be refined as information and guidance become available.

The following guidelines have been developed by the NHDOE regarding the demonstration of competency in core academic subjects by special education teachers:

If a special education teacher provides instruction in support of the general curriculum for one or more core academic subjects in a co-teaching, team teaching, or resource setting, and the general education teacher is the student’s teacher of record and meets the Highly Qualified Teacher requirements, then the Special Education teacher does not need to meet the HQT requirements.

- NHDOE has determined that the “teacher of record” is the teacher that gives the student the grade. Currently, the student’s teacher of record must meet HQT

requirements by 2005-2006 unless the teacher was hired after September 2002 and is employed in a “Title I schoolwide school,” (see attached list). In this case the teacher should have met the HQT requirements prior to hire.

- This language was adopted from IDEA/ESEA, The Intersection of Access and Outcomes, a joint project of the National Education Association and the National Association of State Directors of Special Education.

Teachers of substantially self-contained classes (those with program approval to serve students more than 50% of the day) that are designed for students with developmental disabilities, meet HQT requirements by holding categorical certification in Mental Retardation.

- The NHDOE is in the process of reviewing categorical certifications for special education to determine if categorical certification for teachers in substantially separate settings meet NCLB requirements for HQT.

At this time it is not clear what the HQT requirements will be for special education teachers in other substantially separate settings, pending the reauthorization of IDEA. Possibilities under discussion include these scenarios, singly or in combination:

- HQT for each core academic subject that the teacher teaches;
- Categorical certification appropriate for the setting
- Regular, documented consultation with HQT teacher(s) for each core academic area taught

At this time teachers who are teaching alternative classes attain HQT only through demonstrating competency in each core academic area. Those who are unsure of their final status are advised to pursue HQT in the applicable core academic area(s).

It is noted that teachers demonstrate that they meet the HQT requirements through the following options:

Certification specific to the core academic area

Hold an academic major in the core content area or have the equivalent (30 credit hours) in the core content area

The Housse process

Passing the Praxis II examination for the core academic area

Master Teacher or National Board Certification

The New Hampshire Department of Education will provide updates, assistance, and clarification as additional information becomes available. [Click here for more detailed information regarding](#)

the HQT requirement. Please contact Martina Green at [mgreen@ed.state.nh.us](mailto:mgreen@ed.state.nh.us) or 271-6052 with any questions or concerns.

### **Title 1 Schoolwide Schools 2003-2004**

Claremont	Disnard Elementary School
Concord	Dame School
Concord	Rumford School
Conway	Conway Elementary School
Dover	Woodman Park School
Farmington	Valley View Community School
Franklin	Bessie Rowell School
Franklin	Paul Smith School
Governor Wentworth	Ossipee Central School
Manchester	Bakersville School
Manchester	Beech Street School
Manchester	Gossler Park
Manchester	McDonough School
Manchester	Wilson School
Nashua	Amherst Street School
Nashua	Dr. Norman W. Crisp School
Nashua	Ledge Street School
Newport	Richards Elementary School
Portsmouth	New Franklin School
Rochester	Allen School
Rochester	Maple Street School
Rochester	School Street School
Somersworth	Hilltop School
Stratford	Stratford Public School
Stewartstown	Stewartstown Community
White Mtn Regional	Dalton Elementary School
Winchester	Winchester Elementary School