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Via email to aira_submission@omb.eop.gov and ICDocketMgr@ed.gov

March 18, 2011

Office of Information and Regulatory Affairs
Attn: Education Desk Officer
Office of Management and Budget
725 17th Street NW, Room 10222
New Executive Office Building
Washington, D.C. 20503

**RE: FR DOC 2011-3489, DATA COLLECTION ON TEACHER QUALITY
& EQUITY**

Dear Director King,

We are pleased to learn that your Office will soon undertake the collection of important information related to states' and local districts' implementation of NCLB's and ARRA's teacher quality and equity provisions. We write to bring to your attention a critical gap in state and local implementation of these provisions caused by a Department of Education regulation that undermined NCLB's and ARRA's statutory definition of the term "highly qualified teacher." That regulation, 34 C.F.R. § 200.56(a)(2)(ii), permits states to label teachers as "highly qualified" when they are still in training—and, in many cases, just beginning training—in alternative route programs. It has had broad ripple effects in that it allows states and districts to concentrate teacher trainees in schools serving low-income and minority students, to hide that fact from parents and the public, and to avoid developing and implementing meaningful teacher equity plans to overcome these inequities.

Public Advocates represents numerous California students, parents, and grassroots community organizations in a legal challenge to the Department's regulation. The plaintiffs in *Renee v. Duncan* filed suit to enforce their right to equal access to "highly qualified" teachers and to full disclosure when their child is being taught by a teacher who is not "highly qualified." They want for their own children what students in more affluent communities have: fully-prepared teachers. And, indeed, research confirms what our clients' experiences (and common sense) dictate: that teachers-in-training are significantly less effective in supporting student

achievement than those who are fully trained when they enter teaching.¹ Even the Department's own study found that the students of California interns were outperformed by those of fully-credentialed teachers.²

California, with its more than 8,000 alternative route trainees (or "interns"), exemplifies the pernicious consequences of the Department's regulation. Notwithstanding the state's approved Teacher Equity Plan, a California student's chance of being taught by an intern is strongly correlated with the concentration of students of color at the school, the concentration of low-income students at the school, and the level of academic achievement at the school. For example, nearly a quarter of California interns (23%) teach in the 10% of schools serving the highest concentrations of minority students (98-100% non-white), while less than 2% teach in the 10% of schools with the lowest concentration of minority students. As Attachment 1 demonstrates, public schools in California with the highest percentages of intern teachers are the lowest-performing schools with the highest concentrations of low-income students and students of color.³ And significantly, more than half of California's interns teach special education.

In September 2010, the Ninth Circuit Court of Appeals sided with our clients and ruled that the Department's regulation was unlawful because it "patent[ly]" conflicted with the statutory definition of "highly qualified teacher, which requires that only fully-certified teachers may be "highly qualified." *Renee v. Duncan*, 623 F.3d 787 (9th Cir. 2010). Fearing mid-year disruptions to schools that might be caused by the court's decision, Congress passed in a temporary provision to delay implementation of the court's ruling by codifying the Department's regulation until June 2013. Section 163 of H.R. 3082, enacted in December 2010 without public notice or comment, has since been opposed by a broad coalition of over 70 civil rights, disability, parent, student, community, and education groups (including our clients) and is likely to be reexamined as part of the ESEA reauthorization. (See Attachment 2).

As you undertake a study of teacher equity, we urge you to examine the national effects of the Department's unlawful regulation. For example, how many states relied on the loophole created by the Department's regulation and labeled individuals still participating in alternate route programs as "highly qualified"? How many alternate route trainees are teaching in each state, and how are these trainees distributed? How are states enforcing the requirements of the Department's regulation that mandate "highly qualified" trainees to receive high-quality professional development before and while teaching, to be intensively supervised, and to be permitted to claim this exemption for no more than three years? This information will provide critical context for Congress to consider as it undertakes ESEA reauthorization and considers changes to NCLB's teacher quality and equity provisions.

¹ See, e.g., Heilig, J.V., & Jez, S.J., Teach for America: A Review of the Evidence. Education and the Public Interest Center & Education Policy Research Unit (June 2010), available at http://greatlakescenter.org/docs/Policy_Briefs/Heilig_TeachForAmerica.pdf

² See Jill Constantine et al., *An Evaluation of Teachers Trained Through Different Routes to Certification*, U.S. Department of Education (2009) at 65, available at <http://www.mathematica-mpr.com/publications/pdfs/education/teacherstrained09.pdf>.

³ See generally Center for the Future of Teaching and Learning, et al., *Teaching and California's Future, The Status of the Teaching Profession 2007, Full Report*, at 13, 73, 76, available at <http://www.cftl.org/documents/2007/tcf07/TCFReport2007.pdf>

Thank you for the opportunity to comment on your proposed study. Please do not hesitate to contact me at (415) 431-7430 ext. 306/ tkini@publicadvocates.org if I can answer any further questions.

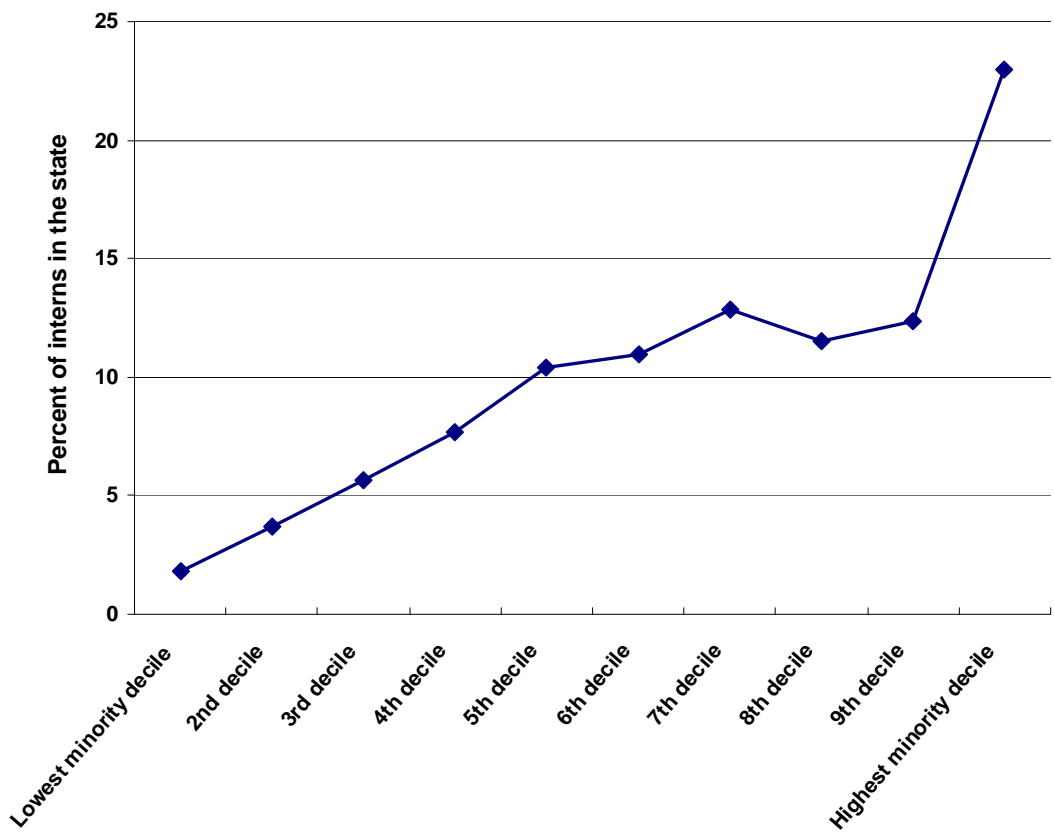
Sincerely,

A handwritten signature in black ink that reads "Tara Kini". The signature is written in a cursive, flowing style.

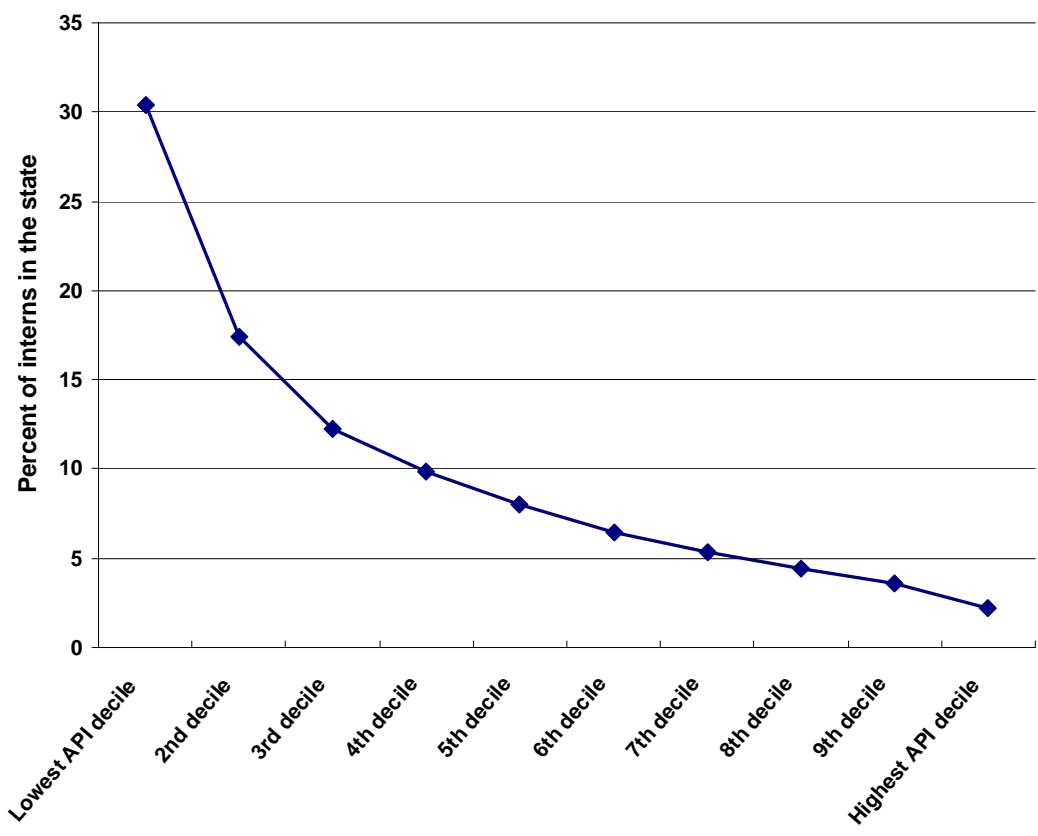
Tara Kini
Attorney for *Renee v. Duncan* Plaintiffs

Attachments

Percentage of Interns in California by Minority Decile (2006-07)



Percentage of Interns in California by Academic Performance Index Decile (2006-07)



Source: Decl. of Patrick Shields, Exhibit B

January 27, 2011

Honorable Barack Obama
President of the United States
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. President:

As organizations concerned with promoting educational quality and equity, particularly for students who have traditionally been least well served by our educational system, we are deeply committed to the development of well-prepared, experienced, and effective teachers for all communities, and to ensuring that every student has a fully prepared and effective teacher. On behalf of the nation's 50 million elementary and secondary students, we write to you with a sense of urgency about a critical issue that threatens the welfare of many of them.

We are deeply concerned about a provision inserted in H.R. 3082, the Continuing Resolution for government funding passed in December, which undermined the federal definition of a "highly qualified teacher" in the No Child Left Behind Act by allowing states to label teachers as "highly qualified" when they are still in training – and, in many cases, just beginning training – in alternative route programs.

This provision – inserted in the law without notice to concerned public stakeholders and without public debate – codifies a Bush-era regulation that was challenged by parents of low-income students of color in court because their children were disproportionately taught by such underprepared teachers and because the regulation removed the obligation of states and districts to disclose and rectify the inequity. The provision seeks to reverse the recent federal appeals court ruling these parents obtained, which held that the regulation patently violated NCLB's unambiguous requirement that only fully prepared teachers be deemed "highly qualified" and that, as such, teachers still in-training must be publicly disclosed and not concentrated in low-income, high-minority schools.

Our concern with this provision (and with any federal policy that reinforces the unequal allocation of fully trained and certified teachers to all students) is that it disproportionately impacts our most vulnerable populations: low-income students and students of color, English language learners, and students with disabilities who are most often assigned such underprepared teachers. Further, this provision hides this disparate reality from parents and the public by disingenuously labeling teachers-in-training as "highly qualified" and hindering advocacy for better prepared teachers. Research confirms what logic and experience dictate: that teachers-in-training are significantly less effective in supporting student achievement than those who are fully trained when they enter teaching, and that the negative effects are particularly pronounced for students whose success depends most acutely on fully-trained professionals. We believe that students with the greatest needs should have the best-prepared and most effective teachers to support their success, and that pursuit of that goal should be the purpose of federal policy.

In the coming weeks, we will propose specific actions to the Administration and the Congress that can achieve this goal, including repeal of this provision and development of a transparent definition of teacher quality, along with a set of policies that will allow the nation to put a well-prepared and effective teacher in every classroom. We will work tirelessly and in concert to see that policy is enacted that will support high-quality teaching for every child.

Respectfully,

Action United

Alliance of Californians for Community Empowerment

Alliance for Multilingual Multicultural Education

American Association of Colleges for Teacher Education

American Association of People with Disabilities

American Association of School Librarians

American Association of State Colleges and Universities

American Council for School Social Work

American Federation of Teachers

ASPIRA Association

Association for Persons in Supported Employment

Association of University Centers on Disabilities

Autistic Self Advocacy Network

Bay Area Parent Leadership Action Network

California Association for Bilingual Education

California Latino School Boards Association

Californians for Justice

Californians Together

Campaign for Fiscal Equity

Campaign for Quality Education

Center for the Future of Teaching and Learning

Center for Teaching Quality

Citizens for Effective Schools

Coalition for Educational Justice

Conference of Educational Administrators of Schools and Programs for the Deaf

Council for Exceptional Children

Council of Parent Attorneys and Advocates

Disability Rights Education and Defense Fund

Easter Seals

ELC, Education Law Center

FairTest, The National Center for Fair & Open Testing

Higher Education Consortium for Special Education

Justice Matters

Knowledge Alliance

Latino Elected and Appointed Officials National Taskforce on Education

Lawyers' Committee for Civil Rights Under Law

Learning Disabilities Association of America

Los Angeles Educational Partnership

Movement Strategy Center
NAACP
National Alliance of Black School Educators
National Association of Councils on Developmental Disabilities
National Association of School Psychologists
National Association of State Directors of Special Education
National Center for Learning Disabilities
National Council for Educating Black Children
National Council of Teachers of English
National Council of Teachers of Mathematics
National Disability Rights Network
National Down Syndrome Congress
National Down Syndrome Society
National Education Association
National Latino/a Education Research and Policy Project
National League of United Latin American Citizens
North American Association for Environmental Education
Parent-U-Turn
Parents for Unity
Philadelphia Education Fund
Philadelphia Student Union
Public Advocates Inc.
Public Education Network
Rural School and Community Trust
RYSE Center
School Social Work Association of America
Southeast Asian Resource Action Center
Statewide Parent Advocacy Network, Inc.
TASH: Equity, Opportunity, and Inclusion for People with Disabilities
Teacher Education Division of the Council for Exceptional Children
Teachers of English to Speakers of Other Languages
Texas Association for Chicanos and Higher Education
United Church of Christ Justice & Witness Ministries
Youth Together

cc: Arne Duncan, Secretary of Education, U.S. Department of Education