

**ANALYSIS OF SEPTEMBER 6, 2007 DRAFT OF NCLB TITLE II, PART A,
“Improving Teacher and Principal Quality”**

Date: September 10, 2007

PREMIUM PAY, SEC. 2111

Sec. 2111 of this act would require the secretary of Education to make grants to school districts to provide higher salaries to “exemplary, highly qualified principals and...teachers” who agree to serve for four years in a “high-need” public school. The teachers are required to have at least 3 years of experience and must agree to serve full-time for 4 years in a “high-need” school. A “high-need” school is one in which no less than 65% of students come from low-income families.

The school district receiving the grant “may use” the funds to provide up to \$10,000 in an annual bonus to qualified teachers who agrees to work in a high need school full-time for four years. The teacher can earn up to \$12,500 if he also teaches a subject for which there is a documented shortage. Teachers and principals at schools identified as in need of school improvement, corrective action or restructuring would have priority for premium pay.

As a condition for receiving the grant, the school district must have in place a plan, or propose a plan “developed on a collaborative basis with the local teacher organization, to develop a system “in which principals, and if available, master teachers rate teachers as exemplary.” The system must be based on classroom observations and feedback at least four times per year, conducted by master teachers and principals, and based on “strong learning gains for students” i.e., growth of the teacher’s students on any state-required tests, and value-added student achievement gains if the state uses a value-added longitudinal data system.” [Sec. 2111(f)(3).]

In its application for money under this section, the district must assure that it will match funds for the program carried out under the grant, create incentives for exemplary, highly qualified teachers to work in the high-need schools, and “accelerate the time line for hiring new teachers...”

Sec. 2111 (g) also requires a district to include in its application the following requirements regarding hiring time lines:

Retiring teachers must notify the district of their pending retirement by March 15;

School staffing allocations must be done by April;

Schools must consider external candidates at the same time as internal candidates are considered for available positions;

Teacher transfer period to be moved up to April; and

Schools could not be required to accept 'excessed' or transferring teachers without "selection and consent."

There is a collective bargaining "savings" clause applicable to subsection (g) only, so the provisions prescribing early hiring and transfer would not alter the provisions of state law or collective bargaining agreements

IMPLICATIONS FOR COLLECTIVE BARGAINING AND STATE LAW

Passage of this section regarding premium pay would undermine collective bargaining in California because it removes employee organizations and the agreements they have negotiated from any role in shaping the contours of a professional compensation system. This section not only places a cap on what can be earned, but it limits "merit" to student test scores, classroom observations, and agreement to work in high-need schools for four years. Because the district would have to match funds for the premium pay program, the overall amount of money available for traditional, across-the-board salary increases or benefits increases could be drastically reduced. In short, the negotiable subject of salary and benefits will be significantly circumscribed if this section becomes law.

Obviously, the same comment applies to the hiring time lines contained in these bills. Transfer is a negotiable subject of bargaining, but these bills would undercut the range of proposals that would be negotiable. While the collective bargaining savings clause protects state law and contracts regarding transfers, its presence in that particular part of Title II will be used by management to claim that the rest of Title II supersedes collectively bargained contracts.

The provisions of a premium pay program must be developed "on a collaborative basis" with the local teacher organization.[Sec. 2111(e)]. "Collaborative basis" is not collective bargaining. Indeed, it is a code for "meet and consult," a process that places no obligation on the employer to reach agreement with the union. It could be argued that this is the authors' way of insulating merit pay and the related subjects (evaluation, transfer) as described and funded by these bills from collective bargaining.

Procedures for evaluation, another enumerated subject of bargaining, would also be adversely affected by this section because it prescribes factors that must be included in evaluations, e.g. student test scores, value-added models, in addition to requiring a certain

number of observations per year. The requirement that master teachers participate in evaluations of teachers in schools who apply for these grants has the potential to undermine basic unionism, as it could result in those master teachers being removed from the bargaining unit because they would be performing supervisory functions.

CAREER LADDERS FOR TEACHERS PROGRAM, SEC. 2112

This program combines the concept of career ladders with merit pay. Section 2112 reads: “The Secretary *may* make grants” to districts to establish and implement career ladders that increase teachers’ pay in high-need schools for taking on new professional roles, such as serving on school leadership teams, serving as instructional coaches, and serving in “hybrid roles.” Teachers who would be eligible for salary augmentations under this program are classed as either “career,” “mentor,” or “master” teacher. Master teachers could get up to \$10,000 per year, and mentor teachers could get up to \$5,000 per year for serving in a teacher induction program.

All three classes of teachers could earn up to \$4,000 per year if they serve in a high-need school and have at least three classroom evaluations per year and student performance increases as measured by student growth on any test required by the state or district. The evaluations must be conducted by multiple evaluators, including master teachers and the principal. Career ladder programs may not be implemented unless “the percentage of teachers required by prevailing union rules votes affirmatively to adopt the program,” or in non-collective bargaining states, not unless 75% of the teachers vote affirmatively to do so.

IMPACT ON COLLECTIVE BARGAINING

The career ladder program also interferes with collective bargaining by setting a ceiling on what can be earned for particular activities. Another insidious swipe at collective bargaining is the requirement that the career ladder program be adopted by a vote of the teachers, as opposed to the procedures established through collective bargaining. The bill does not define the mysterious term “hybrid role,” but it likely refers to teachers who also serve part-time as administrators. This too will undercut bargaining units because those individuals would undoubtedly be considered to be supervisory or management by PERB.

TEACHER RESIDENCY PROGRAM GRANTS, SEC. 2113

This program sounds similar to California’s university or district intern programs. Grants shall be made to high-need districts to establish “school-based teacher preparation programs” in which a prospective teacher teaches along side a mentor teacher for at least one year and receives course work in the subject matter in which they are teaching and pedagogical instruction and receives full state certification before the completion of the residency program. The district must partner with an institution of higher education.

The district must commit to hiring graduates from its own residency programs. [Sec. 2113(b)(2)(F).] The resident must agree to be placed in any school the district chooses for at least five academic year. If the resident fails to complete that obligation, he/she must repay the cost of training.

No more than ten grants per year can be made under this program and the district must provide 50% of the grant amount in matching funds.

IMPLICATIONS FOR COLLECTIVE BARGAINING

One assumes that the residency teacher is to be paid a salary while participating in the program, but that is not stated anywhere in this bill. The requirement that the teacher remain in a high-need school for five years would conflict with California's lay-off statutes, which requires the most junior teachers to be laid off first because residency hires will usually be the most junior teachers. The draconian repayment requirements if they don't complete five years sets up the potential for a conflict with the Education Code.

MISCELLANEOUS COMMENTS ON OTHER SECTIONS

Section 2201 requires districts to make reasonable progress toward equitable teacher quality. This section promotes the equitable distribution of experienced and highly qualified teachers between schools serving high percentages of low income and minority group students and those with low percentages of such students.

Section 2211(c) authorizes withholding funds if a state fails to implement policies to eliminate disparities in teacher assignments. The state must develop a plan to achieve equitable distribution of highly qualified teachers between the top and bottom quartiles of enrollment of students who are low income or from minority groups, or who are proficient on reading and mathematics, including teachers having one to three years of experience, those who are emergency credentialed, and those who are not highly qualified. The plan must also reduce the disparities in teacher attrition rates. These requirements may lead to state mandates on teacher assignments and restrictions on our ability to engage in collective bargaining regarding assignment and transfer.

These requirements undermine collective bargaining by mandating massive changes in district assignment and transfer policies which are currently subject to collective bargaining; it would also conflict with California laws governing layoff and recall.