



**ADDENDUM #1**  
**NCLB NYS Field Memo #09-2003**

August 25, 2004

**To:** Charter Schools  
Deans, Directors and Chairs of Teacher Education  
District Superintendents of Schools  
New York State Standards and Practices Board for Teaching  
Nonpublic School Administrators  
Regional Certification Officers  
Superintendents of Public Schools

**From:** Johanna Duncan-Poitier                      James A. Kadamus  
Deputy Commissioner                      Deputy Commissioner  
Office of Higher Education                      Office of Elementary, Middle, Secondary  
Office of the Professions                      and Continuing Education

**Subject:** Addendum to NCLB NYS Field Memo #09-2003 on the NCLB's Requirements for Teachers

This addendum to NCLB NYS Field Memo #09-2003 amends existing items and adds new items in response to information from the U.S. Department of Education (USDOE) and questions from the field.

You can find all NCLB NYS field memos relating to requirements for teachers and paraprofessionals at <http://www.highered.nysed.gov>.

Please continue to send your questions about the NCLB to [nclbnys@mail.nysed.gov](mailto:nclbnys@mail.nysed.gov) and your questions about State certification to [tcert@mail.nysed.gov](mailto:tcert@mail.nysed.gov).

**UPDATED GUIDANCE:**

**ADDENDUM #1**

**to**

**NCLB NYS Field Memo #09-2003**

**The University of the State of New York  
The New York State Education Department  
August 2004**

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**ADDENDUM #1 TO NCLB NYS Field Memo #09-2003  
April 2004**

This addendum amends existing items and adds new items to NCLB NYS Field Memo #09-2003 in response to new information from the U.S. Department of Education (USDOE) and questions from the field. New federal guidance dated March 31, 2004 is available online at <http://www.ed.gov/policy/elsec/guid/secletter/040331.html>.

This addendum supersedes previous SED guidance and is subject to change in response to additional federal regulations and guidance. Questions about this guidance should be sent to [nclbnys@mail.nysed.gov](mailto:nclbnys@mail.nysed.gov).

**Part A**

**Teachers Subject to the NCLB**

**CHANGES TO EXISTING ITEMS**

**A4. What are examples of classes whose teachers are subject to the NCLB?**

*Replace the sixth item in the list with the following item.*

- Classes in core academic subjects taught in languages other than English or in a bilingual format;

**NEW ITEM**

**A7. Does the NCLB apply to teachers who only supplement or enrich instruction provided by another teacher with primary responsibility for instruction in a core academic subject?**

No. Federal guidance explains that teachers who only enrich or supplement instruction provided by another teacher with primary responsibility for instruction in a core academic subject are not subject to the NCLB. Item C21 of federal guidance issued on September 12, 2003 says:

*An extended learning time program that offers core academic instruction because an LEA has determined that particular students need additional time to learn to State standards can be distinguished from an after-school program offering academic enrichment, tutoring and homework assistance, including supplemental educational services under Section 1116 of No Child Left Behind. In the latter case, the “highly qualified” teacher (and paraprofessional requirements) do not apply. It is up to the LEA to draw the distinction between extended time and enrichment programs.*

In the guidance above, the USDOE defines supplementary instruction and enrichment to include academic enrichment, tutoring, homework assistance and supplemental education services (SES). In New York State, this federal definition applies to academic intervention services (AIS), instruction in gifted and talented programs and resource rooms and comparable supplemental instruction identified by LEAs.

**Part B**  
**Deadlines for Being a “Highly Qualified” Teacher**

**NEW ITEM**

**B4. Do teachers of multiple core academic subjects who are employed by “eligible rural LEAs” have extended deadlines for meeting the NCLB definition of “highly qualified?”**

Yes. Please refer to NCLB NYS Field Memo #04-2004 for detailed information and a form for submitting a Notice of Intent to Use Extended Deadlines for Teachers of Multiple Core Academic Subjects. “Eligible rural LEAs” who intend to use the extended deadlines must submit a completed Notice of Intent form by October 1, 2004.

**Part C**  
**Definitions of “Highly Qualified” Teachers**

**NEW ITEMS**

**C9. What is the “effective date” of a teaching certificate?**

As explained in Item C1 of NCLB NYS Field Memo #09-2003, the “effective date” of a teaching certificate from New York State or any other jurisdiction determines when a teacher is “new” or “not new” to the profession of teaching. The “effective date” of a teaching certificate is the earlier of the “effective date” appearing on the certificate or the date on which the certificate was issued. Effective dates appearing on New York State certificates are September 1 and February 1, as required by section 80-1.2 of the Regulations of the Commissioner of Education.

**C10. What State certification requirements must a teacher meet to be “certified” for a teaching assignment in a core academic subject?**

A teacher is deemed “certified” for a teaching assignment in a core academic subject if (1) the teacher has an acceptable credential for that teaching assignment **or** (2) if the assignment is:

- covered by a school district's approved experiment in organizational change under section 80-5.12 of the Commissioner's Regulations at <http://www.highered.nysed.gov/tcert/part80.htm#80-5>; or
- approved as "incidental teaching" under section 80-5.3 of the Commissioner's Regulations at <http://www.highered.nysed.gov/tcert/part80.htm#80-5>, **except that the provisions of section 80-5.3 do not apply to teachers providing special education programs or services**; or
- in a charter school in which the teacher is not required to be certified under section 2854(3)(a-1) of the State Education Law, which is available online at <http://assembly.state.ny.us/leg/?cl=30&a=73> or <http://public.leginfo.state.ny.us/>.

NOTE ON INCIDENTAL TEACHING FOR STUDENTS WITH DISABILITIES. The Individuals with Disabilities Education Act's (IDEA) highest standard requirement for personnel prohibits incidental teaching assignments for teachers of students with disabilities.

Acceptable credentials for a teaching assignment are:

- licenses issued by the City School District of the City of New York for employment in that district; or
- licenses issued by City School District of the City of Buffalo for employment in that district that have been equated to New York State certificate titles; or
- currently valid teaching credentials issued by SED except for the following two credentials:
  - a modified temporary license; and
  - an internship certificate held by an individual who has not passed all applicable examinations. Applicable examinations are those required to demonstrate subject matter competency for the NCLB, as explained in Items C2 and C5 of NCLB NYS Field Memo #09-2003. For further information on internship certificates, please refer to section 80-5.9 of the Commissioner's Regulations, available online at <http://www.highered.nysed.gov/tcert/part80-5.htm#5.9>.

NOTE ABOUT EXPIRED CERTIFICATES OF QUALIFICATION. A certificate of qualification (CQ) is not an acceptable credential because all of them expired by August 31, 2003. A teacher holding a CQ should convert it as soon as possible to a provisional certificate at no cost by following the directions printed on the CQ. See section 80-5.11 of the Commissioner's Regulations at

<http://www.highered.nysed.gov/tcert/part80-5.htm#5.11> for further information about CQs.

**C11. Can a teacher be deemed certified for “incidental teaching” that exceeds five classroom hours per week in a block schedule?**

No. Section 80-5.3 of the Commissioner’s Regulations clearly states that a superintendent of schools may assign a teacher to teach a subject not covered by such a teacher’s certificate or license for a period not to exceed five classroom hours a week, when no certified or qualified teacher is available after extensive and documented recruitment, and provided that approval of the commissioner is obtained in accordance with the procedural requirements in section 80-5.3. If a teaching assignment does not meet the criteria for “incidental teaching,” it is out-of-field teaching and the teacher is not “highly qualified” for that teaching assignment because the teacher does not meet State certification requirements for that teaching assignment.

**C12. Can a teacher use the Multi-Subject Content Specialty Test to demonstrate subject matter competency in all the core academic subjects covered by that test?**

Yes. The Multi-subject Content Specialty Test is required for initial certification for the certificate title of Generalist in Middle Childhood Education (grades 5-9) but it may be used by any teacher who teaches instructional content at the level of grades 5 through 9 and seeks to demonstrate subject matter competency for multiple core academic subjects at those grade levels.

**C13. May employers limit the options that teachers of core academic subjects use to demonstrate their subject matter competency?**

Items C1, C2, C4 and C5 of NCLB NYS Field Memo #09-2003 describe all the options that teachers may use to demonstrate subject matter competency to meet the NCLB definition of “highly qualified,” including the high objective uniform State standard of evaluation (HOUSSE).

SED’s policy is that all public school employers should permit their teachers to use all the options permitted by the NCLB, including the HOUSSE. To advance the State interest in meeting the NCLB deadlines for teacher quality, SED is planning to ask the Board of Regents to adopt amendments to Part 120 of the Regulations of the Commissioner, relating to the NCLB, to create a State requirement for LEAs to use all the options in the NCLB definition of “highly qualified,” including the HOUSSE.

In addition to the HOUSSE, employers can use other tools to strengthen their teachers subject matter competency and teaching skills. These tools include Annual Professional Performance Reviews and Professional Development Plans

required under sections 100.2(o) and 100.2(dd), respectively, of the Regulations of the Commissioner of Education.

**C14. Can a public school employer change NCLB standards for being a “highly qualified” teacher?**

No. While employers can set their own local standards for hiring teachers, they have no authority to change NCLB requirements for teachers. In addition, Section 9101(23)(C)(ii)(IV) of the NCLB clearly requires that each State’s HOUSSE be “uniformly applied to all teachers in the same academic subject and the same grade level throughout the State.” This means that employers are not permitted to change the substance of the HOUSSE rubrics in NCLB NYS Field Memo #05-2003, as revised and updated.

**C15. Who is responsible for determining whether a teacher meets the NCLB definition of “highly qualified?”**

Employers of public school teachers are responsible for determining whether a teacher meets the NCLB definition of “highly qualified” because the employers are subject to the NCLB, not the individual teachers. This applies to all the NCLB’s requirements related to

- parents’ right to know, described in Part E of NCLB NYS Field Memo #09-2003; and
- accountability and reporting, described in Part G of NCLB NYS Field Memo #09-2003.

**C16. What tools can help LEAs determine whether their teachers meet the NCLB definition of “highly qualified?”**

SED has created two tools.

- Appendix A of NCLB NYS Field Memo #09-2003 is a one-page summary of the four definitions of a “highly qualified” teacher.
- Appendix G of this Addendum to NCLB NYS Field Memo #05-2003 is a flow chart for determining whether the NCLB applies to a specific teaching assignment and whether a teacher meets the applicable NCLB definition of “highly qualified” for that assignment.

**C17. Does New York State have reciprocity with other states regarding “highly qualified” teachers?**

No. The NCLB authorizes each state to interpret the NCLB definition of “highly qualified” in its own statutory and regulatory context. This means that NCLB qualifications do not necessarily transfer from one state to another.

- A teacher from another state who seeks credentials in New York State may refer to <http://www.highered.nysed.gov/tcert/certificate/appotherstates.htm>. A teacher certified by a jurisdiction other than New York State may use the effective date of his or her certificate to determine whether he or she is “new” or “not new” to the profession.
- A teacher who is certified in New York State and seeks employment in another state will need to meet the “highly qualified” definition in that state.

**C18. What additional qualifications are required for teachers supported with NCLB Title III funds?**

Title III of the NCLB requires all teachers in language instruction educational programs funded under Title III to be fluent in English and any other language in which they provide instruction, including having written and oral communication skills. Even teachers who are not responsible for instruction in English need to be fluent in English in order to communicate and interact effectively with English-speaking parents, other teachers and administrators.

**Part D**

**Applying the “Highly Qualified” Definitions to Specific Circumstances**

**CHANGES TO EXISTING ITEMS**

**D1. What definition of “highly qualified” applies to classes of English as a Second Language (ESL)?**

*Replace the entire existing Item D1 in NCLB NYS Field Memo #09-2003 with the following item to clarify the requirements for teachers of ESL and bilingual classes.*

The definition depends on the classes being taught.

- ESL itself is not a core academic subject, which means that teachers of classes that solely cover ESL are not subject to the NCLB and do not need to meet the NCLB definition of “highly qualified.” However, all ESL teachers must meet the State’s high standards for ESL certification for grades K through 12.

- When a teacher teaches a core academic subject with ESL methodology at the instructional level of grades K through 6, the teacher must meet the “elementary” definition of “highly qualified.” Note that the teacher must have dual certification, in both ESL and elementary/common branch subjects, in order to meet all State certification requirements and the certification condition in the NCLB’s “elementary” definition of “highly qualified.”
- When a teacher teaches ESL at the instructional level of grades 7 through 12 to limited English proficiency/English language learners (LEP/ELL) who use the class to satisfy English or language arts requirements for high school graduation, the teacher must meet the “middle/secondary” definition of “highly qualified” for English or language arts.

NOTE ON BILINGUAL EDUCATION. State regulations require classes taught in a bilingual format to be taught by teachers with certificates in the subjects they teach who also have applicable bilingual extensions.

- Teachers of bilingual classes that cover core academic subjects at the instructional level of grades K through 6, including specially designed instruction deemed equivalent to the general curriculum, must meet the NCLB definition for “elementary” teachers.
- Teachers of bilingual classes in core academic subjects at the instructional level of grades 7 through 12, including specially designed instruction deemed equivalent to the general curriculum, must meet the NCLB definition for “middle/secondary” teachers for each core academic subject they teach.

NOTE FOR TEACHERS IN POSITIONS FUNDED BY TITLE III OF THE NCLB. Title III of the NCLB requires all teachers in language instruction educational programs funded under Title III to be fluent in English and any other language in which they provide instruction, including having written and oral communication skills. Even teachers who are not responsible for instruction in English need to be fluent in English in order to communicate and interact effectively with English-speaking parents, other teachers and administrators.

**D2. What definition of “highly qualified” applies to special education teachers?**

*Replace the fourth bullet in existing Item D2 of NCLB NYS Field Memo #09-2003 with the following paragraph to reflect the USDOE’s clarification of Items C26 and C27 of federal guidance issued on September 12, 2003.*

*USDOE clarification indicates that resource room teachers and consultant teachers are not subject to the NCLB and do not need to meet the NCLB definition of “highly qualified” because they only reinforce or supplement direct instruction that is provided by another teacher who meets the NCLB definition of “highly qualified.”*

- The NCLB's "highly qualified" teacher requirements only apply to teachers providing direct instruction at the level of K through 12 in core academic subjects as the teacher of record. Special educators who do not directly instruct students in core academic subjects as the teacher of record at the level of grades K through 12 do not need to demonstrate subject matter competency in core academic subjects and do not need to meet the NCLB definition of "highly qualified." This means that special education teachers serving as resource room teachers and consultant teachers (whether they provide direct or indirect services) are not subject to the NCLB. In these teaching assignments, special education teachers provide supplemental instruction to students or consultative services such as adjusting the learning environment, modifying instructional methods, adapting curricula, using positive behavioral supports and interventions, and implementing appropriate accommodations to meet the needs of individual children. Special education teachers serving as resource room teachers or consultation teachers must be State certified as special education teachers, but are not required to meet the NCLB definition of "highly qualified" and, therefore, are not required to demonstrate NCLB subject matter competency in core academic subjects.

**D4. What definition of "highly qualified" applies to teachers of science classes in grades 7 through 12?**

*The following text should be added at the end of the existing Item D4 of NCLB NYS Field Memo #09-2003.*

In a March 31, 2004 letter to Chief State School Officers, the U.S. Secretary of Education explained how the NCLB definition of "highly qualified" applied to science teachers at the middle/secondary level. The letter contains the following information that is fully consistent with existing guidance in New York State. No changes to New York State guidance are needed.

*"The new policy allows States to rely on their own teacher certification requirements for science to determine areas in which teachers must have subject matter knowledge in order to be considered "highly qualified" under NCLB. For example, if a State currently requires individual certification for teaching biology, chemistry, and physics, the State should require a teacher to demonstrate competency in each field of science. On the other hand, if a State currently certifies high school teachers in the general field of science, a State may require these teachers to demonstrate competency through a "generalist" science test, general science major, or, for experienced teachers, a general science HOUSSSE. In the same manner, if a State certifies science teachers in other configurations such as "physical sciences," which combines the fields of physics and chemistry, the State may require*

*teachers to demonstrate competency through a physical science major, or a single HOUSSE or assessment that covers both physics and chemistry.”*

## **NEW ITEMS**

### **D8. Which definitions of “highly qualified” apply to a teacher of students with disabilities in a “special class?”**

Some students with disabilities receive specially designed instruction in core academic subjects in “special classes.” A “special class” is a class consisting of students with disabilities who have been grouped together because of similar individual needs for the purpose of receiving specially designed instruction. A “special class” may be located in a general education classroom or be provided in a self-contained setting. The NCLB definition that applies to the teacher of a “special class” depends on the level of the instructional content of the class.

- The teacher of a “special class” with no instructional content at the level of grades K through 12 in a core academic subject is not subject to the NCLB in New York State and is not required to meet the NCLB definition of “highly qualified,” although the teacher must meet the State’s certification requirements. NCLB NYS Field Memo #06-2003 provides further information about the NCLB and pre-K instruction in New York State. The principles used in that field memo apply to teachers providing instruction below the level of Kindergarten to students with severe cognitive difficulties. SED recommends, but does not require, that a teacher of a “special class” with no instruction in core academic subjects at the level of grades K-12 meet the NCLB definition of “highly qualified” for “elementary” teachers so that the teacher can teach core academic subjects at the level of grades K through 6 as needed in other special classes or in other teaching assignments.
- The teacher of a “special class” with instructional content at the level of grades K through 6 in one or more core academic subjects must meet the “elementary” definition of “highly qualified.”
- The teacher of a “special class” with instructional content in one or more core academic subjects at the level of grades 7 through 12 must meet the “middle/secondary” definition of “highly qualified” for each core academic subject the teacher teaches. That definition requires the teacher to demonstrate subject matter competency in each core academic subject being taught using one of the methods required by the NCLB.
- When a “special class” covers core academic subjects at the instructional levels of both K-6 and 7-12, the teacher(s) must meet all applicable definitions of “highly qualified.” For each core subject at an instructional level of grades

7-12, the teacher(s) must demonstrate subject matter competency with using the “middle/secondary” definition of “highly qualified.”

**NOTE ABOUT TEACHERS OF A “SPECIAL CLASS” WITH MULTIPLE CORE ACADEMIC SUBJECTS AT THE INSTRUCTIONAL LEVEL OF GRADES 7-12.**

A school may consider a number of options to ensure that teachers with NCLB subject matter competency provide instruction in a “special class” covering multiple core academic subjects at the instructional level of grades 7-12. At this time, options include, but are not limited to, the following. Other options – such as a collaborative teaching model for special education teachers serving as teachers of record for multiple core academic subjects in a self-contained “special class” – may become available when the Individuals with Disabilities Education Act (IDEA) is reauthorized.

- The “special class” may be taught by a single teacher who is certified to teach students with disabilities and has demonstrated subject matter competency using the “middle/secondary” definition of “highly qualified” in all the core academic subjects the teacher teaches.
- The “special class” may be taught by multiple teachers certified to teach students with disabilities, each of whom demonstrates subject matter competency using the “middle/secondary” definition of “highly qualified” in all the core academic subjects that the teacher teaches.
- The “special class” may be co-taught by a teacher who is certified to teach students with disabilities and one or more teachers who are certified to teach general education and “highly qualified” in the core academic subjects they teach.

**D9. When a Career and Technical Education (CTE) teacher uses the Collaborative Teaching Model, how do the NCLB’s parents’ right to know and reporting requirements apply?**

When a CTE teacher uses the Collaborative Teaching Model to teach a core academic subject, that CTE teacher is no longer subject to the NCLB because the teacher is not responsible for instruction in the core academic subject. The collaborating teacher, who is “highly qualified” in the core academic subject, is responsible for the instruction in the core academic subject. Because the CTE teacher who is using the Collaborative Teaching Model is not subject to the NCLB, the NCLB’s parents’ right to know provisions do not apply to that teacher and the teacher’s teaching assignments covered by the Collaborative Teaching Model should be reported as “not core” on Basic Educational Data System (BEDS) reports.

**Part E  
Parents' Right to Know**

**NEW ITEMS**

- E4. When must an LEA provide notice to parents that a teacher who is not “highly qualified” is teaching a core academic subject their children?**

The NCLB requires LEAs to provide timely notice to parents whenever their children have been assigned, or been taught for four or more consecutive weeks by, a teacher of a core academic subject who is not “highly qualified.” Timely notice must be provided whenever this occurs during a school year.

- E5. Must LEA notices to parents inform parents about how to obtain information to which they are entitled?**

Yes. The notice is meaningless unless it tells parents how they can get the information to which they are entitled.

- E6. How can parents resolve complaints about an LEA’s compliance with the NCLB’s parents’ right to know provisions?**

Parents must attempt to resolve their complaints at the school and district level. If all local complaint procedures have been exhausted, parents can contact SED by writing to [NCLBNYS@mail.nysed.gov](mailto:NCLBNYS@mail.nysed.gov). Their complaint needs to be specific and they should state what resolution would satisfy them. These complaints will be routed to the appropriate units within SED for a response and possible resolution.

**Part F  
Professional Development for Teachers**

**NO CHANGES**

**Part G  
Accountability, Reporting and Records**

**NEW ITEM**

- G9. What are the consequences if an LEA, or the State, fails to meet the NCLB’s deadlines for “highly qualified” teachers?**

The USDOE has explained that that section 2141 of the NCLB indicates that technical assistance is required when LEAs fail to make progress toward meeting their staffing goals. The USDOE has also explained that it is essential for states and LEAs to make a good faith effort to comply and to demonstrate progress toward compliance.

**NEW**

**Appendix G**

**Flow Charts  
for Determining Whether a Teacher  
Meets the NCLB Definition of “highly qualified”**

**Flow Chart G-1**

**Does the NCLB apply to a teaching assignment?**

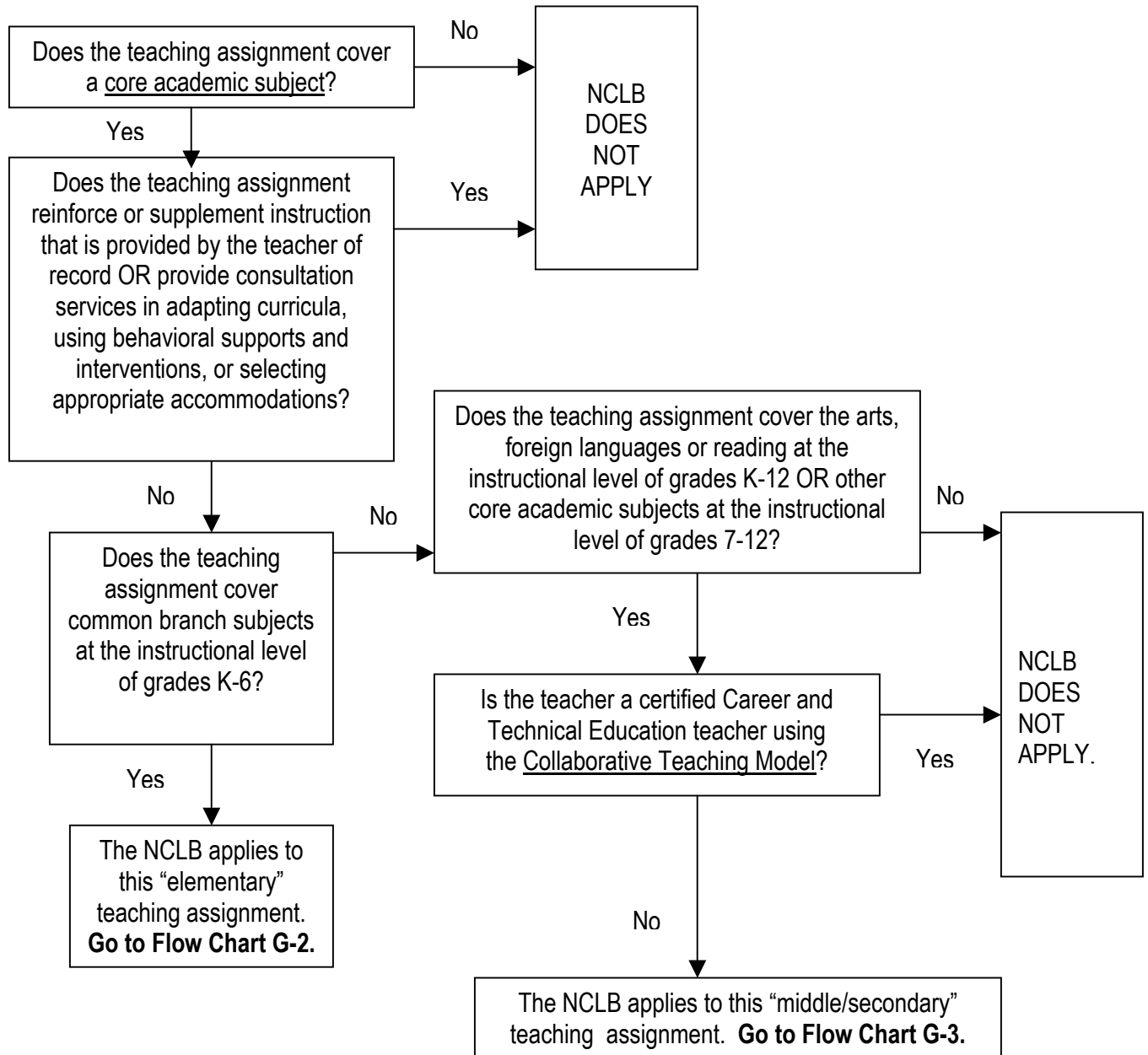
**Flow Chart G-2**

**Does a teacher meet the NCLB definition of “highly qualified”  
for an “elementary” teaching assignment?**

**Flow Chart G-3**

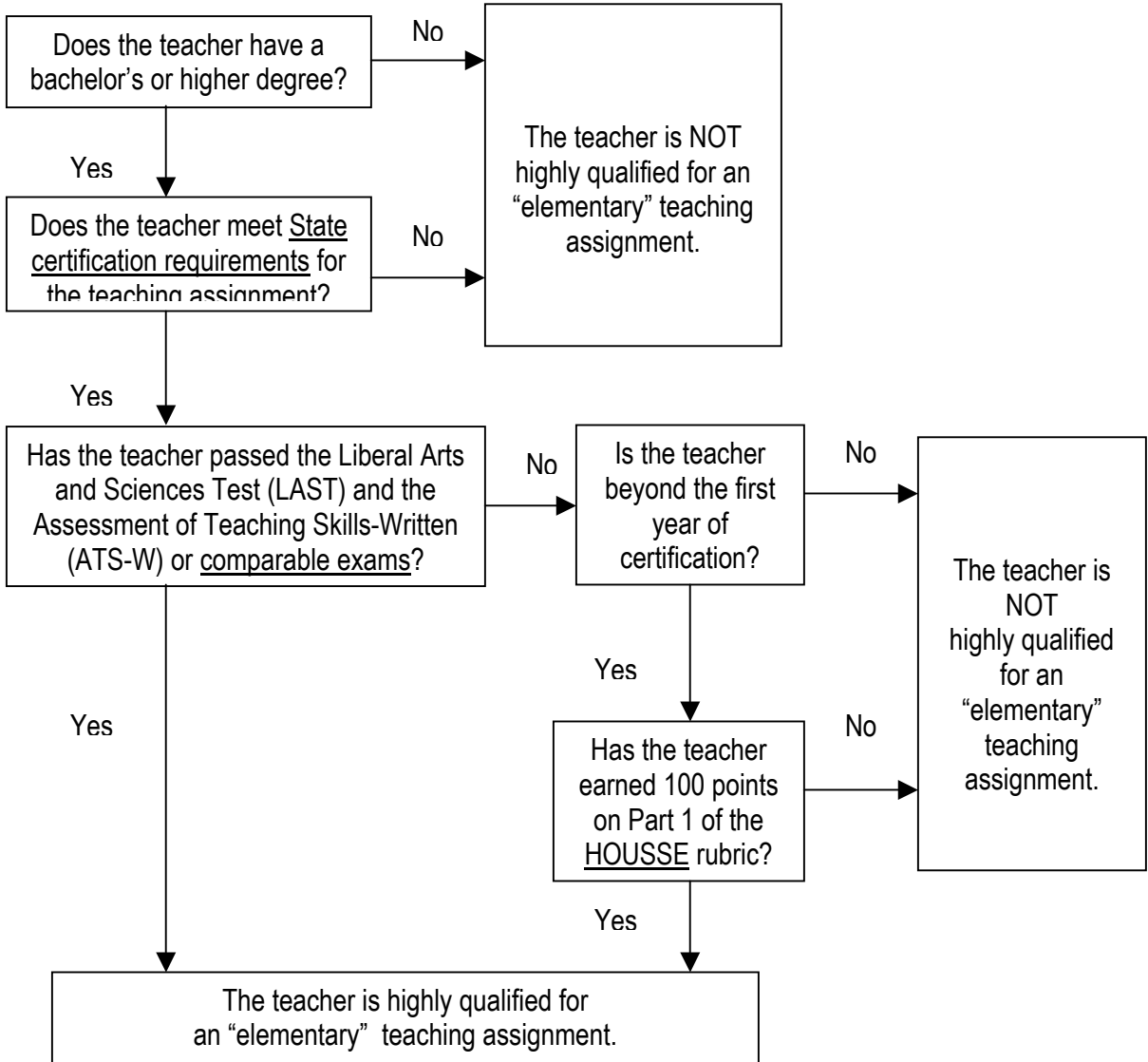
**Does a teacher meet the NCLB definition of “highly qualified”  
for a “middle/secondary” teaching assignment in a core academic subject?**

**Flow Chart G-1  
Does the NCLB apply to a teaching assignment?**



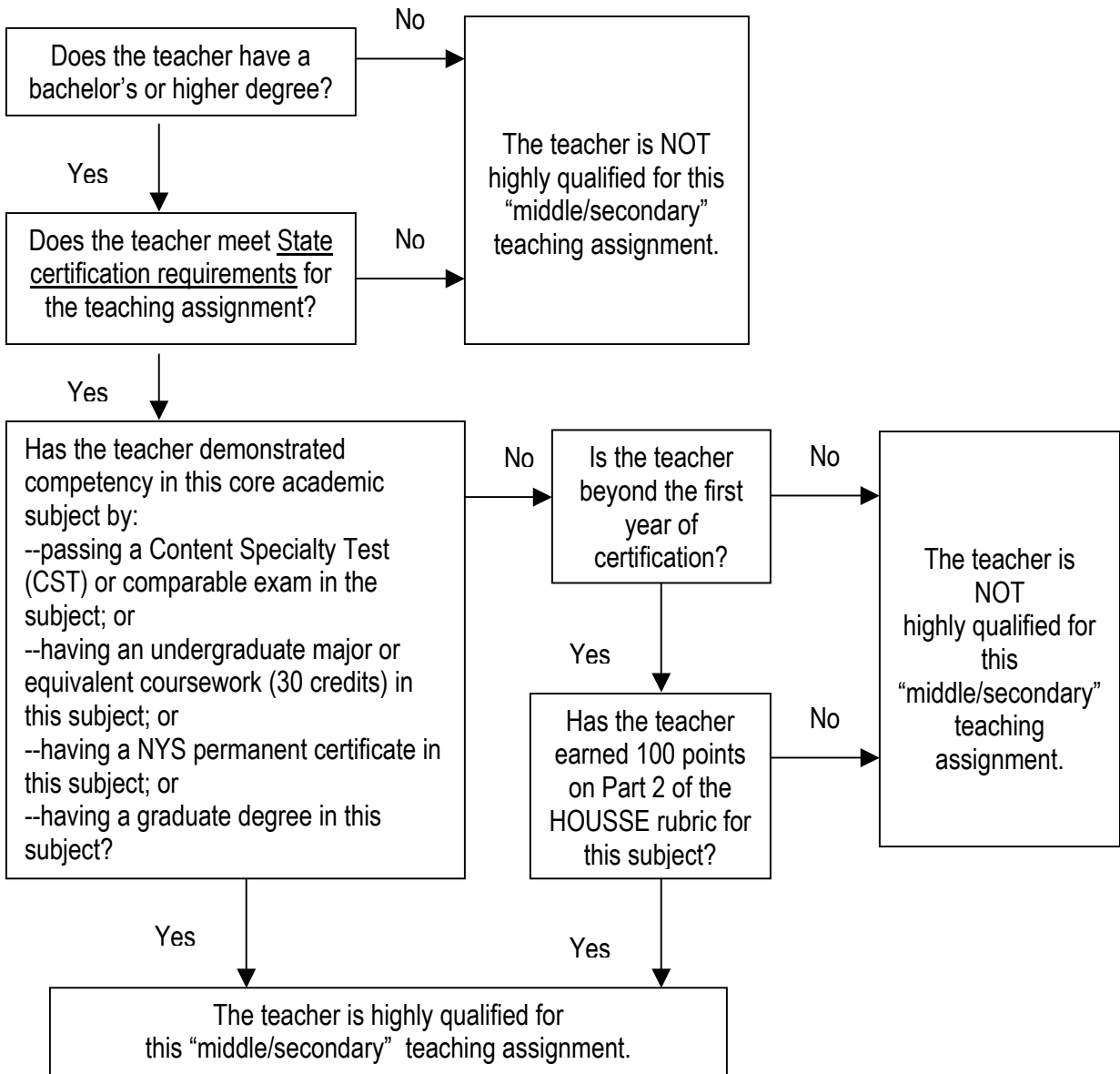
Collaborative teaching model for CTE teachers is defined in NCLB NYS Field Memo #04-2004. Core academic subjects are English; reading; language arts; mathematics; science; history; geography; economics; civics and government; foreign languages; and the arts. The arts include art, dance, music, theater (including public speaking) and drama. Teaching assignment means specific teaching duties with a specific group of students, consistent with the Basic Educational Data System (BEDS) Administration Manual for the Personnel Data Form for Teachers.

**Flow Chart G-2**  
**Does a teacher meet the NCLB definition of “highly qualified”**  
**for an “elementary” teaching assignment?**



State certification requirements are defined in Addendum #1 to NCLB NYS Field Memo #09-2003.  
Comparable exams are listed in Item C4 of NCLB NYS Field Memo #09-2003.  
 The HOUSSE, or high objective uniform State standard of evaluation, is explained in NCLB NYS Field Memo #05-2003.

**Flow Chart G-3**  
**Does a teacher meet the NCLB definition of “highly qualified”**  
**for a “middle/secondary” teaching assignment**  
**in a core academic subject?**



State certification requirements are defined in Addendum #1 to NCLB NYS Field Memo #09-2003. Comparable exams are listed in Item C4 of NCLB NYS Field Memo #09-2003. The HOUSSE, or high objective uniform State standard of evaluation, is explained in NCLB NYS Field Memo #05-2003.