

**COMMISSION ON TEACHER CREDENTIALING**

1812 Ninth Street  
Sacramento, California 95814-7000



January 25, 1991

91-9104

TO: All County Superintendents and County Personnel Administrators

FROM:   
Philip A. Fitch, Ed.D., Executive SecretarySUBJECT: Appropriate Credential Assignment Practices in Connection With  
Continuation, Alternative and Opportunity Schools

There has been some confusion regarding the appropriate definition of the term "school" as used in Education Code section 44865. Questions have arisen in connection with the statutorily mandated responsibilities for monitoring for appropriate credential assignment practices pursuant to the provisions of SB 148 and 435. (See generally Education Code sections 44225(e) and 44256-44258.9.)

Accordingly, we asked our General Counsel for a legal opinion in order to clarify the meaning of the term "school" in this context and in relation to the efforts of school districts to implement programs and classes pursuant to the provisions of Education Code section 44865. That opinion is reprinted in its entirety hereinbelow.

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**Question Presented:** For the purposes of credential assignment monitoring as mandated by SB 435, do the provisions of *Cal. Ed. Code* § 44865 pertaining to continuation, alternative and opportunity schools embrace programs and classes offered and taught in regular school facilities?

*Cal. Ed. Code* § 44865 provides as follows:

A valid teaching credential issued by the State Board of Education or the Commission for Teacher Preparation and Licensing, based on a bachelor's degree, student teaching, and special fitness to perform, shall be deemed qualifying for assignment as a teacher in the following assignments, provided that the assignment of a teacher to a position for which qualifications are prescribed by this section shall be made only with the consent of the teacher:

- (a) Home teacher.
- (b) Classes organized primarily for adults.
- (c) Hospital classes
- (d) Necessarily small high schools.
- (e) Continuation schools.
- (f) Alternative schools.
- (g) Opportunity schools.
- (h) Juvenile court schools.
- (i) County community schools.

Subsections (f) and (g) were added by amendment in 1980, and subsections (h) and (i) were added by amendment in 1981.

There is concern that attempts to enforce the "assignment-misassignment" provisions of SB 435 may be complicated or thwarted by the establishment and maintenance of continuation, alternative and/or opportunity *classes* and *programs*, as opposed to *schools*, on regular school campuses. Such classes and programs may appear indistinguishable for SB 435 monitoring purposes.

When viewed from a physical facilities perspective, the monitoring problem is apparent. We are advised that presently, alternative and opportunity schools programs and classes may be offered either on separate campuses or in the same facilities as the traditional program. As mentioned above, we are concerned with the latter scenario. Although it may be possible to distinguish alternative and opportunity programs and classes in which an identifiable group of students assembles for more than one class period per day, it may be impossible to determine appropriate teacher credentialing assignments when the alternative or opportunity program label is applied to single classes which may be offered for only one (1) period per day on a regular school campus.

Continuation schools are typically maintained in physically distinct facilities and do not present an immediate problem. (That is not to say, however, that districts may at some time determine that it would be more efficient to utilize all or a portion of the regular school campus for this purpose.) *Cal. Ed. Code* § 58500 defines alternative schools as a "...school or separate class group within a school..." And *Cal. Ed. Code* §§ 48630 *et seq.* speak to classes and programs, as well as schools, and clearly envision the use of both separate and combined facilities. From a review of the pertinent statutes, it seems clear that all of these offerings are intended to supplement and enrich the opportunities for students who are not well-served by the traditional school program. It seems equally clear that from the students' perspective, the location of these specialized offerings is not as important as the fact that they are offered and available.

*Cal. Ed. Code* § 44865 was construed in a case called *California Teachers' Association v. Governing Board of Central Union High School District et al.*, (141 Cal. App. 3d 606). Although the

controversy in this case was over the consent requirement, it is instructive to note that the court chose to set out in full the text of a letter dated August 29, 1978 to then Governor Edmund G. Brown, Jr. from then Executive Secretary of the Commission Peter L. LoPresti. Former section 44865 had simply dealt with the qualifications for a home teacher; SB 433 (Stiern) substituted the expanded section and was strongly endorsed and supported by the Commission. The letter to the Governor reads in pertinent part:

The Commission ... strongly supports SB 433 (Stiern) which provides relief from the single-subject authorization of 'Ryan' and 'Fisher' credentials in order to more effectively staff and utilize teachers in special schools, classes or program organization....

...

We have learned that as the need and demand for a broadened curriculum increases in these special situations and the supply of teachers holding the General Secondary Credential decreases, it is becoming increasingly difficult to staff these special type classes and programs.

Clearly, then, the administrative inconvenience of monitoring for potential credential misassignment pursuant to SB 435 in the regular setting must be weighed against the desirability of permitting the widest possible latitude in the establishment and implementation of programs historically urged and supported by the Commission.

**Conclusion:** We have discovered no statutory definition of the term "school" as used in *Cal. Ed. Code* § 44865 which would preclude school districts from operating and staffing continuation, alternative and opportunity schools within regular school facilities. Accordingly, on the basis of our review of the applicable statutes and the previously expressed position of the Commission, we conclude that the use of the word school in *Cal. Ed. Code* § 44865 does embrace classes and programs offered in units of one (1) or more periods per day, and districts may appropriately assign teachers to these classes pursuant to the provisions of *Cal. Ed. Code* § 44865.