



**Field Memo
NCLB NYS #03-2003**

June 11, 2003

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

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Office of the Professions and Continuing Education

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Subject: Update on the NCLB's Requirements for Title I Paraprofessionals

The attached guidance is an update on New York State's implementation of the NCLB's requirements for Title I paraprofessionals based on the statute and on final regulations, draft non-regulatory guidance and technical assistance provided by the U.S. Department of Education (USDOE).

You can find all NCLB NYS field memos about teachers and paraprofessionals and related information at <http://www.highered.nysed.gov>.

Please continue to send your questions about the NCLB to nclbnys@mail.nysed.gov and to send your questions about State certification to tcert@mail.nysed.gov.

UPDATED GUIDANCE:

Implementing

The No Child Left Behind Act's

Requirements

For Title I Paraprofessionals

in New York State

The University of the State of New York
The New York State Education Department

June 2003

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Introduction

This non-regulatory guidance on Title I paraprofessionals is the New York State Education Department's (SED) interpretation of the No Child Left Behind Act of 2001 (NCLB) based on the statute and on final regulations, draft non-regulatory guidance and technical assistance provided by the U.S. Department of Education (USDOE) through the date of its publication. Federal information, including *Title I Paraprofessionals*, dated November 15, 2002, can be found at <http://www.ed.gov/offices/OESE/asst.html>.

This guidance supersedes previous SED guidance on the NCLB, unless otherwise noted, and is subject to change in response to additional federal regulations and guidance. References to federal and state information are in brackets throughout the document, and are described in Appendix A.

For further information about the NCLB's requirements, please refer to federal links available at <http://www.highered.nysed.gov/nclbfederal.htm>. For other information about the NCLB's requirements in New York State, please refer to other NCLB NYS Field Memos at <http://www.highered.nysed.gov/nclbhome.htm>. Information about New York State's certification requirements is at <http://www.highered.nysed.gov/tcert/>.

PART A GENERAL INFORMATION

A1. What change does the NCLB make to existing requirements for paraprofessionals in New York State?

In section 80-5.6 of the Commissioner's Regulations, the term "school support personnel" is used instead of the term "paraprofessional" but the two are substantially equivalent. With the enactment of the NCLB, school support personnel who are performing the duties of teaching assistants, as defined in section 80-5.6(b), and who are paid with Title I, Part A funds, as defined in A3 through A5 below, must now meet two sets of standards.

- They must meet the applicable State requirements for certification as teaching assistants based on the standards in effect at the time they are certified, or meet applicable requirements for comparable positions in New York City.
- They must also meet the NCLB standards for being a "qualified" Title I paraprofessional, as defined in this document.

For further information about State certification requirements, see <http://www.highered.nysed.gov/tcert/> or email tcert@mail.nysed.gov. This document focuses on NCLB standards.

A2. What requirements concerning paraprofessionals apply to local educational agencies receiving NCLB Title I, Part A funds?

A local educational agency (LEA) receiving Title I, Part A funds must ensure that paraprofessionals are “qualified” by the deadlines in the NCLB if they:

- are employed by the LEA; and
- provide instructional support services; and
- work in a “program supported with Title I, Part A funds.” [34 CFR 200.58]

A3. What does “supported with Title I, Part A funds” mean for Title I paraprofessionals?

A Title I paraprofessional is supported with Title I, Part A funds if the paraprofessional:

- works in a “schoolwide” program; or
- works in a “targeted assistance” program and is paid with funds from Title I, Part A; or
- is employed by an LEA with funds under Title I, Part A, Subpart A to provide instructional support to a public school teacher who provides equitable services to eligible private school students. [34 CFR 200.58]

“Schoolwide” program schools combine Title I, Part A funds with other funds to provide services to all students in the school. In contrast, schools with “targeted assistance” programs receive Title I, Part A funds for services provided only to eligible students. [NCLB sections 1114 and 1115]

A4. Do the NCLB’s requirements for paraprofessionals apply to LEAs or schools that do not receive Title I, Part A funds?

No. The NCLB’s requirements for paraprofessionals only apply to LEAs and schools that receive Title I, Part A funds.

- If an LEA does not receive Title I, Part A funds, the NCLB’s requirements do not apply to the entire LEA. (However, paraprofessionals in non-Title I programs who provide instructional support services must still be certified as teaching assistants or meet comparable requirements in New York City.)
- If an LEA receives Title I, Part A funds, but a school within that LEA does not receive Title I, Part A funds, the requirements do not apply to paraprofessionals working in that school. [USDOE 11/15/02]

A5. Do the NCLB's requirements apply to paraprofessionals employed by a BOCES or a State school?

No. Under New York State Education Law, Boards of Cooperative Educational Services (BOCES) and the State schools at Batavia and Rome are not LEAs that can receive Title I, Part A funds. As a result, paraprofessionals employed by a BOCES or a State school are not subject to the NCLB, regardless of where they provide services.

A6. What is the definition of a Title I paraprofessional under Title I, Part A of the NCLB?

For the purposes of Title I, Part A, a Title I paraprofessional is an employee of an LEA who provides instructional support services in a program supported with Title I, Part A funds. Regardless of the employee's job title in the LEA, this includes paraprofessionals who:

- provide one-on-one tutoring for eligible students if the tutoring is scheduled for a time when a student would not otherwise receive instruction from a teacher; or
- assist with classroom management, such as organizing instructional and other materials; or
- provide instructional assistance in a computer laboratory; or
- conduct parental involvement activities; or
- provide support in a library or media center; or
- act as translators; or
- provide other instructional support services under the "direct supervision" of a teacher. *[34 CFR 200.58 and 200.59]*

The federal definition of a Title I paraprofessional does not include individuals, regardless of their job titles, who have only non-instructional duties, such as providing technical support for computers, providing personal care services for students or performing clerical duties. *[34 CFR 200.58]*

A7. What are the State's requirements for paraprofessionals?

The Commissioner's Regulations define the duties of paraprofessionals (or school support personnel). The duties of some paraprofessional positions in New York City are comparable to the duties of teaching assistants.

- Individuals who provide instructional support are performing the duties of a teaching assistant, regardless of their job titles assigned by their LEAs, and must be certified by the State as teaching assistants, or meet applicable New York City requirements for comparable positions. For further information about State certification requirements for teaching assistants, please refer to <http://www.highered.nysed.gov/tcert/part80.htm#5.6>. [8 NYCRR80-5.6(b)]
- Individuals who do not provide instructional support, regardless of their job titles assigned by their LEAs, are “teacher aides.” [8 NYCRR80-5.6(a)] Individuals performing only the non-instructional support duties of teacher aides are not Title I paraprofessionals.

A8. When must Title I paraprofessionals be “qualified?”

There are two possible deadlines. The one that should be used for any given individual depends on when that individual was hired. [34 CFR 200.58]

- The NCLB and Federal regulations states that Title I paraprofessionals hired after January 8, 2002, the date the NCLB was enacted, must be “qualified” when hired. However, SED recognizes that LEAs were not able to meet that deadline – though many were making a good faith effort to do so – because they (1) did not know about the requirement until some time after January 8, 2002; (2) the final Federal regulations addressing the qualifications of Title I paraprofessionals did not take effect until January 2, 2003; and (3) the New York State Assessment of Teaching Assistant Skills was not available until June 21, 2003. Therefore, SED recommends that LEAs, prior to the start of the 2003-2004 school year, have procedures in place to assure that all Title I paraprofessionals hired after January 8, 2002 who do not have the required coursework or an associate's or higher degree are able to meet the NCLB requirements through the assessment option.
- Title I paraprofessionals hired on or before January 8, 2002 must be “qualified” by January 8, 2006.

A9. What is the definition of “working under the direct supervision” of a teacher?

Under the NCLB, a Title I paraprofessional must work under the direct supervision of a “highly qualified” teacher. This condition is met if:

- the teacher plans the instructional activities that the Title I paraprofessional carries out; and
- the teacher evaluates the achievement of the students with whom the Title I paraprofessional is working; and

- the Title I paraprofessional works in “close and frequent physical proximity” to the teacher. [34 CFR 200.59(c)(2)]

A program staffed entirely by Title I paraprofessionals would not be permitted because of this requirement. [USDOE 11/15/02]

SED interprets “close and frequent physical proximity” to mean that the assigned teacher must be in the same building and readily available to the Title I paraprofessional whenever the Title I paraprofessional is working with students. When a Title I paraprofessional supports an itinerant teacher, the LEA must ensure that another teacher is in the same building and readily available to the Title I paraprofessional whenever the Title I paraprofessional is working with students and the itinerant teacher is not in the building.

A10. Must a Title I paraprofessional who provides services to eligible private school students and is employed by an LEA with Title I funds be under the direct supervision of a *public* school teacher?

Yes. A paraprofessional who provides instructional support services to eligible private school students and is employed by an LEA must be under the direct supervision of a public school teacher throughout the duration of the services/program being offered. [USDOE 11/15/2002]

A11. How do the NCLB’s requirements for Title I paraprofessionals align with State certification requirements for teaching assistants?

Every Title I paraprofessional must meet both the NCLB’s requirements and the State’s requirements for teaching assistants.

- Individuals who apply for a teaching assistant certificate on or before February 1, 2004 and are certified do not automatically meet the NCLB’s requirements. They must meet the NCLB’s requirements in addition to being certified, as described in Part B, below.
- Individuals who apply for a teaching assistant certificate after February 1, 2004 and are certified will automatically meet the NCLB’s requirements for Title I paraprofessionals because they will have passed the New York State Assessment of Teaching Assistant Skills (NYSATAS).

**PART B
DEFINITION OF A “QUALIFIED” TITLE I PARAPROFESSIONAL**

B1. What is the definition of a “qualified” Title I paraprofessional?

To be “qualified,” Title I paraprofessionals, regardless of their hiring date or their specific duties, must have a high school diploma or a recognized equivalent

when they are hired. This includes Title I paraprofessionals who serve only as translators or who only conduct parental involvement activities. This requirement has been in effect since January 8, 2002. [34 CFR 200.58(b)]

The Commissioner's Regulations require all certified teaching assistants, regardless of the NCLB, to have a high school diploma or a recognized equivalent. [8 NYCRR 80-5.6]

In addition to having a high school diploma or a recognized equivalent, Title I paraprofessionals must meet one of the following requirements. They must:

- have completed “two years of study at an institution of higher education;” or
- have obtained an associate's or higher degree; or
- have met a rigorous standard of quality and demonstrated, through a formal State or local academic assessment, knowledge of and the ability to assist in instructing reading, writing and mathematics (or, as appropriate, reading readiness, writing readiness and mathematics readiness). [34 CFR 200.58(c), (d) and (e)]

B2. What are the NCLB's requirements for Title I paraprofessionals who serve as translators or who conduct parental involvement activities?

Title I paraprofessionals whose sole duties consist of serving as translators or conducting parental involvement activities must have a high school diploma or a recognized equivalent when they are hired. They are, however, exempted from meeting the additional educational or assessment requirements. [34 CFR 200.58(b) and (e)]

- To qualify for the translator exemption, a Title I paraprofessional must be proficient in English and a language other than English and have duties that consist solely of providing services primarily to enhance the participation of limited English proficient children in Title I programs. [34 CFR 200.58(e)(1)]
- To qualify for the parental involvement exemption, a Title I paraprofessional must have instructional support duties that consist solely of conducting parental involvement activities. [34 CFR 200.58(e)(2)]

B3. Are existing State-certified, tenured teaching assistants “qualified” under the NCLB?

Under New York State policy, teaching assistants who are State-certified and have achieved tenure in a review conducted in accordance with Education Law sections 2509(2), 3012(2) or 2573 have met the NCLB's criteria for the assessment option as described in E1.

B4. Are existing New York City Title I paraprofessionals “qualified” under the NCLB?

Existing New York City paraprofessionals who hold a high school diploma and who have received an evaluation as set forth in Article 24 of the United Federation of Teachers – Para-Professional Contract, where such evaluation is determined by the Chancellor to have met the standards for the local assessment option, as described in Item E1, have met the NCLB criteria. Existing New York City paraprofessionals who hold a high school diploma may also be qualified through other evaluative processes that meet the requirements for the local assessment option.

**PART C
TWO YEARS OF STUDY OPTION**

C1. What is the two years of study option?

The NCLB permits a Title I paraprofessional to complete at least two years of study at an institution of higher education to become “qualified.”

C2. What does “two years of study at an institution of higher education” mean?

In New York State, “two years of study” means 48 semester hours or its equivalent. [8 NYCRR 145-2.1] Under this option, a Title I paraprofessional must successfully complete 48 semester hours.

The NCLB defines an “institution of higher education” as the term is defined in section 101(a) of the Higher Education Act of 1965, as amended. [NCLB 9101 (24)] According to that definition, an “institution of higher education” is an educational institution that:

- admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;
- is legally authorized within such State to provide a program of education beyond secondary education;
- provides an educational program for which the institution awards a bachelor’s degree or provides not less than a two-year program that is acceptable for full credit toward such a degree;
- is a public or other non-profit institution; and
- is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted pre-accreditation

by such an agency or association that has been recognized by the Secretary for the granting of pre-accreditation status, and the Secretary has determined that there is a satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

For New York State institutions, that definition includes:

- campuses of the State University of New York (SUNY); and
- campuses of The City University of New York (CUNY); and
- independent institutions authorized by the New York State Board of Regents to provide a program of at least two years duration beyond secondary education.

SUNY, CUNY and independent institutions are listed in the Directory of Colleges and Universities in New York State, which can be found at <http://www.highered.nysed.gov/ocue/>. If an institution that a paraprofessional attended in the past does not appear in that directory, questions about the institution can be sent to nclbnys@mail.nysed.gov. Such questions should include the full name of the institution and the dates of attendance.

Note that the NCLB does not permit Title I paraprofessionals to use two years of study at private for-profit institutions, such as degree-granting proprietary institutions, to become “qualified.”

C3. What course of study must have been pursued in the two years of study option?

No specific course of study is required. Title I paraprofessionals must demonstrate knowledge of, and the ability to assist in instructing in, the areas of reading, writing and math, or in “school readiness.” Paraprofessionals are expected to have a working knowledge of these academic areas. [USDOE 11/15/02]

**PART D
ASSOCIATE’S DEGREE OPTION**

D1. What is the associate’s degree option?

Title I paraprofessionals can demonstrate that they are “qualified” by having an associate’s or higher degree.

PART E ASSESSMENT OPTION

E1. What is the assessment option?

If a Title I paraprofessional does not meet the two years of study option or the associate's degree option, the individual can meet the NCLB's requirements by demonstrating through a formal State or local academic assessment:

- knowledge of, and the ability to assist in instructing, reading/language arts, writing and mathematics [34 CFR 200.58] ; or
- knowledge of, and the ability to assist in instructing, reading readiness, writing readiness and mathematics readiness. [34 CFR 200.58]

The assessment must address these areas of knowledge and abilities to comply with federal statute and regulations.

E2. If a performance review or other evaluative process has been used in the past, can it be used to satisfy the NCLB assessment option?

Performance reviews and other evaluative processes used in the past can be used to satisfy the NCLB assessment option provided that the superintendent of the local educational agency assures that the performance review or evaluative process met the NCLB's criteria for the assessment option as described in E1. Performance reviews or other evaluative processes conducted at any time can be used to satisfy the NCLB's assessment option if they meet the NCLB's requirements for the assessment option.

E3. When must a Title I paraprofessional have passed an assessment?

The deadlines for being a "qualified" Title I paraprofessional are described in A8.

E4. Will the USDOE approve State or local assessments for Title I paraprofessionals?

No. The USDOE makes LEAs responsible for ensuring that all paraprofessionals have the qualifications required by the NCLB. LEAs must work with the State education agency to ensure that those paraprofessionals who demonstrate their competence by passing a State or local assessment are assessed in ways that meet the requirements of section 1119 of the NCLB.

Note that the State or local assessment must ensure that more than just basic skills are being assessed. The law requires that it be an assessment of subject knowledge and the ability to assist in instructing. [USDOE 11/15/2002]

E5. Has the USDOE provided guidance about assessments for Title I paraprofessionals?

Yes. On November 15, 2002, the USDOE issued non-regulatory draft guidance on assessments for paraprofessionals. This guidance does not have the force of law and is subject to change. Furthermore, SED does not concur with all of the statements that USDOE has made regarding assessments in its draft guidance. Accordingly, SED is currently working with the USDOE in an attempt to resolve those issues with which we disagree, and we will provide further guidance to the field as soon as more information becomes available. Although the USDOE's guidance does not have the force of law and is subject to change, it does represent the USDOE's position and unless a different understanding is reached, it cannot be ignored.

Following are some of the comments made by USDOE regarding assessments in their guidance document, which is available at <http://www.ed.gov/offices/OESE/asst.html>. Again, however, it should be noted that SED is working with the USDOE on those issues with which we disagree.

- "The law does not require a paper and pencil test." "SEAs and LEAs have flexibility to determine the content and format of any assessment of paraprofessionals. For example, while an appropriate assessment might be entirely a written test, it alternatively could be a combination of a written test on content (reading, writing, and math) and a demonstration of competence in instruction (assessed through observations via a series of rubrics)."
- "There must be evidence that the assessment is valid and reliable." "...the assessment should be rigorous and objective. "
- "Each evaluation should have a standard that the candidate is expected to meet or exceed. These standards for evaluation must be applied to each candidate in the same way."
- "The results of the assessment should establish the candidate's competence as a paraprofessional relative to the standards in section 1119(c)(1)(C) of the NCLB, or target the areas where additional training and staff development may be needed to help the candidate succeed at meeting the standard before being hired."
- "The assessment results must be documented - i.e., there needs to be a record of the assessment and the individual's performance on that assessment." "The results should be documented and the LEA should retain that documentation."
- "The content of the assessment should reflect both the State academic standards and skills expected for a child at a given school level (elementary,

middle, or high school), as well as the ability of the candidate to assist in instructing students in the content." (SED disagrees with this.)

- "The paraprofessional assessment is expected to evaluate paraprofessional candidates at a level equivalent to the second year of college. Having skills at the level of the second year of college is the intent of the law." (SED disagrees with this.)

E6. Is there a New York State assessment for Title I paraprofessionals?

Yes. The New York State Assessment of Teaching Assistant Skills (NYSATAS) is designated by SED as a State assessment that will meet NCLB requirements.

National Evaluation Systems (NES) has developed the NYSATAS for candidates who apply for a State teaching assistant certificate after February 1, 2004 and for NCLB purposes. The first NYSATAS administrations will be on June 21, 2003 in Brooklyn, Manhattan, Queens, Long Island, Westchester, Albany, Syracuse, Rochester, Buffalo and Plattsburgh and on August 2, 2003 in the same sites except Plattsburgh. Registration for these test dates will be available in late April by Internet or phone only. Registration information and test preparation materials are available at <http://www.nysatas.nesinc.com/>. In addition, questions about the NYSATAS can be sent to SED at HEATAS@mail.nysed.gov.

SED is not mandating the use of the NYSATAS. LEAs may also use a local assessment.

E7. What are local assessment options for LEAs?

LEAs may select or develop their own assessments for NCLB purposes. LEAs may use the following possible assessment options, or any other options that meet the NCLB's requirements identified in E1. *Please note that these options will not satisfy New York State certification requirements for teaching assistants certified after February 1, 2004.*

POSSIBLE VENDOR OPTIONS FOR NCLB PURPOSES ONLY

The following two assessments from national vendors are possible options that would meet the NCLB's requirements. *Please note that these options will not satisfy New York State certification requirements for teaching assistants certified after February 1, 2004.*

- **WorkKeys Proficiency Certificate for Teacher Assistants.** ACT of Iowa City, Iowa offers a new WorkKeys Proficiency Certificate for Teacher Assistants to help LEAs comply with the NCLB. The ACT system combines testing, training and on-the-job observation and evaluation of paraprofessionals. Further information can be obtained at the ACT website at

<http://www.act.org/workkeys/profcert/index.html> or by calling 1-800-WORKKEY.

- **ParaPro.** ParaPro is an assessment designed by the Education Testing Service (ETS) of Princeton, New Jersey. LEAs or consortia of LEAs working directly with ETS can administer the test, which may be taken online or in a written version. LEAs interested in using the ParaPro assessment may either call 609-771-7395 or send an email to parapro@ets.org. Some information is available at <http://www.ets.org/parapro/index.html>.

POSSIBLE LOCALLY DEVELOPED OPTIONS FOR NCLB PURPOSES ONLY

LEAs may develop their own local assessments for NCLB purposes provided that:

- the assessments address NCLB-required knowledge and ability, as defined in E1; and
- the LEA provides assurances that each locally-developed assessment it uses (or used in the past) addresses the NCLB-required knowledge and ability identified in E1.

Please note that locally developed assessments will not satisfy New York State certification requirements for teaching assistants certified after February 1, 2004.

Locally developed assessments may be in any format, including:

- employment tests or interview protocols;
- paper-and-pencil tests;
- computer-assisted tests;
- tenure reviews, due to the evaluative nature of the tenure process;
- performance reviews; or
- a combination of the above and other approaches.

E8. What procedural steps should LEAs take when using local assessments?

The NCLB does not require State guidance or approval for local assessments for Title I paraprofessionals. However, SED suggests that the assessments be:

- consistently used for all candidates in the same school year;

- documented;
- signed and dated by the candidate and the evaluator, as applicable; and
- retained in each Title I paraprofessional’s personnel file for at least six years from the end of the last school year in which the Title I paraprofessional is employed.

**PART F
 APPLYING REQUIREMENTS FOR TITLE I PARAPROFESSIONALS TO SPECIFIC
 CIRCUMSTANCES**

F1. How do the requirements for Title I paraprofessionals apply in “schoolwide” and “targeted assistance” programs?

In “schoolwide” programs, the requirements apply to every paraprofessional providing instructional support services, regardless of the source of funds used to pay for positions. *[USDOE 11/15/2002]*

In “targeted assistance” programs, the requirements only apply to paraprofessionals with instructional duties who are paid with Title I, Part A funds. *[USDOE 11/15/2002]*

F2. How do the requirements apply to individuals with both instructional and non-instructional duties?

The requirements apply to individuals with both instructional and non-instructional duties because these individuals have instructional support duties. *[USDOE 11/15/2002]*

F3. Would a paraprofessional hired on or before January 8, 2002 and currently working in an LEA in a non-Title I program be considered a “new” Title I paraprofessional (and subject to the requirements for “new” paraprofessionals) if that individual is re-assigned to a program supported with Title I funds?

No. A new paraprofessional is one who is newly hired by an LEA. If an individual is working as a paraprofessional in another school in the same district – either in a Title I or non-Title I school – the individual is not considered to be a new paraprofessional, even if the individual transfers to a new school in that district. *[USDOE 11/15/2002]*

F4. When a Title I paraprofessional is “laid off” and then recalled by the same LEA, is the individual a “new” paraprofessional for NCLB purposes?

No. Paraprofessionals who are regularly “pink-slipped” at the end of one school year and then rehired at the beginning of the next school year, with the result that they have continuous employment, are deemed “existing” employees, as their initial hiring date is on or before January 8, 2002. *[USDOE 11/15/2002]*

F5. How do the requirements apply to individuals performing non-instructional duties whose duties are changed to include instructional duties?

The individual would have to have a secondary diploma or its recognized equivalent when the duties were changed. In addition, as an existing employee of the LEA, the individual would have until January 8, 2006 to demonstrate competence through postsecondary education or a formal State or local assessment. *[USDOE 11/15/2002]*

F6. What are the requirements for Title I paraprofessionals, such as home-school liaisons, whose duties consist solely of parental involvement activities?

A Title I paraprofessional with duties that consist solely of conducting parental involvement activities must have a secondary school diploma or its recognized equivalent but does not have to meet the other requirements for Title I paraprofessionals. *[USDOE 11/15/2002]*

F7. What are the requirements for individuals who serve special education students?

The requirements for individuals who serve special education students differ depending upon the situation.

- The NCLB requirements do not apply to individuals who do not provide any instructional support to special education students (such as individuals who solely provide personal care services). *[USDOE 11/15/2002]*
- The NCLB requirements apply to individuals working in Title I targeted assistance programs who have instructional support duties and are paid with Title I funds. *[USDOE 11/15/2002]*
- The NCLB requirements apply to individuals working in Title I “schoolwide program” schools who have instructional support duties, without regard to the source of funding that supports the individual’s position. *[USDOE 11/15/2002]*

F8. Do the paraprofessional requirements apply to persons paid with funds under Title I, Part B (Student Reading Skills Improvement Grants), Part C (Education of Migratory Children) or Part D (Programs for Children and Youth who are Neglected, Delinquent, or At-Risk)?

The requirements for Title I paraprofessionals do not apply to individuals paid with funds under Title I, Part B (Student Reading Skills Improvement Grants), Part C (Education of Migratory Children) or Part D (Programs for Children and Youth who are Neglected, Delinquent, or At-Risk) unless these individuals are working in a “schoolwide school.” [USDOE 11/15/2002]

F9. Once a Title I paraprofessional has met the NCLB’s requirements in one LEA, can the paraprofessional be deemed to have met the requirements in another LEA in New York State or in another State?

In its November 15, 2002 non-regulatory draft guidance, the USDOE said that a State might, at its discretion, establish a policy that would permit qualified Title I paraprofessionals to have reciprocity among the LEAs within the State. Reciprocity would be important for Title I paraprofessionals who passed a local assessment in one LEA and subsequently became employed in another LEA.

All Title I paraprofessionals in New York State must be State certified teaching assistants. LEAs do not have discretion to override that requirement.

When a Title I paraprofessional has passed the State assessment for NCLB, the NYSATAS, that individual is “qualified” under the NCLB in all LEAs in New York State. In addition, LEAs may establish their own policies for recognizing NCLB local assessments used by other LEAs in New York State or other states. LEAs may establish recognition and reciprocity policies as they see fit so long as they ensure that all their Title I paraprofessionals meet the NCLB’s requirements.

F10. Do the paraprofessional requirements apply to people working in schools as part of the AmeriCorps program?

“The National Community Service Act states that AmeriCorps volunteers are not considered employees of the entities where they are placed (42 U.S.C. 12511 (17B). Unless AmeriCorps volunteers are considered employees under State law, the paraprofessional requirements” in section 1119 of the NCLB “do not apply. However, even though the requirements do not apply, districts should make every effort to ensure that AmeriCorps volunteers who provide instructional support in a Title I program have the skills necessary to assist effectively in instructing reading, writing, and mathematics or reading readiness, writing readiness, and mathematics readiness, as appropriate.” [USDOE 11/15/2002]

F11. Do the new requirements apply to volunteers?

No. Private individuals frequently volunteer to assist teachers in the classroom and support local schools by performing a variety of tasks for limited periods of time. Since they are not paid employees of a school district, they are not covered by the requirements for Title I paraprofessionals in section 1119 of the NCLB. *[USDOE 11/15/2002]*

F12. Sometimes early childhood programs, such as birth-to-3 and Head Start programs, or State-funded early childhood programs, are located in buildings housing Title I schoolwide programs. Do the paraprofessional requirements apply to paraprofessionals working in such early childhood programs?

“The paraprofessional requirements do not apply to individuals working in early childhood programs that are physically located in a Title I school but are not part of the schoolwide program and are not funded with Title I funds -- such as a Head Start program.” *[USDOE 11/15/2002]*

“However, these requirements do apply to paraprofessionals with instructional duties in Title I-funded early childhood programs. In a targeted assistance school, this means that paraprofessionals with instructional duties paid with Title I funds in an early childhood program would have to meet the requirements.... In a schoolwide program school, all paraprofessionals with instructional duties working in the early childhood program must meet the requirements, regardless of how their salary is funded.” *[USDOE 11/15/2002]*

F13. Some paraprofessionals work in programs for children ranging in age from birth to age 20 that are supported by Title I, Part A funds. Are they required to meet the Title I requirements?

“Paraprofessionals in a targeted assistance program paid for by Title I funds or paraprofessionals with instructional duties in a schoolwide school must meet the qualification requirements without regard to the age of the children being served.” See response above regarding early childhood services funded solely with non-Title I funds. *[USDOE 11/15/2002]*

PART G

FUNDING TO HELP PARAPROFESSIONALS BECOME QUALIFIED

G1. What funds are available for helping paraprofessionals in Title I schools meet the NCLB’s requirements?

The USDOE has listed NCLB programs authorizing funds that can be used to help teachers and paraprofessionals meet the NCLB’s requirements. *[USDOE 11/15/2002]*

- Under section 1119 of Title I, “an LEA must use not less than five percent or more than ten percent of its Title I allocation in the school years 2002-2003 and 2003-2004 (and not less than five percent in subsequent years) for professional development activities to ensure that teachers and paraprofessionals meet the qualification requirements in section 1119.” *[USDOE 11/15/2002]* An LEA is not required to spend the amount required for a given fiscal year if a lesser amount is sufficient to ensure that the LEA’s teachers and paraprofessionals meet the NCLB’s requirements. *[34 CFR 200.60(a)(2)]*
- LEAs also may use their general Title I funds “to support ongoing training and professional development to assist teachers and paraprofessionals.” *[USDOE 11/15/2002 and NCLB section 1114(b)(1)(D) and section 1115(c)(1)(F) and (d) and 34 CFR 200.60(b)]*
- Schools and LEAs identified as needing improvement must also reserve funds for professional development and these funds may be used for paraprofessionals. *[USDOE 11/15/2002 and NCLB sections 1116(b)(3)(A)(iii) and 1116(c)(7)(A)(iii)]*
- Title III, Part A, the English Language Acquisition, Language Enhancement, and Academic Achievement Act, authorizes LEAs to use formula grant funds for professional development of teachers and other instructional personnel providing instruction to students needing English language acquisition and language enhancement. *[USDOE 11/15/2002 and NCLB section 3111(a)(2)(A)]*
- Title V, Part A, Innovative Programs, authorizes LEAs to use funds innovatively in certain areas for teachers and other school personnel. *[USDOE 11/15/2002 and NCLB section 5131(a)]*
- Title VII, Part A, the Indian Education Program, requires a comprehensive program for meeting the needs of Indian children that, among other things, calls for professional development opportunities to ensure that teachers and other school professionals have been properly trained. *[USDOE 11/15/2002 and NCLB section 7114(b)(5)]*

G2. May an LEA use the Title II, Part A *Improving Teacher Quality State Grants* funds to provide training for paraprofessionals?

Yes. The law allows LEAs to use these funds to provide professional development activities “that improve the knowledge of teachers and principals, and, in appropriate cases, paraprofessionals” concerning:

- one or more core academic subjects that teachers teach; or

- effective instructional strategies, methods, and skills, and use of challenging content and academic achievement standards and State assessments to improve teaching practices and student academic achievement. *[NCLB section 2123(a)(3)(A)]*

“Note that, provided that an LEA maintains records of the amount of Title I and Title II, Part A funds used for these professional development activities, and the Title I funds are used as permitted in the Title I statute and regulations, Title I and Title II, Part A funds may be used jointly for this purpose.” *[USDOE 11/15/2002]*

“In addition, Title IX, section 9101(34) states that professional development programs can be created that enable paraprofessionals to obtain the education necessary to become certified and licensed teachers.” *[USDOE 11/15/2002]*

PART H ACCOUNTABILITY AND REPORTING

H1. What attestations must LEAs provide about meeting the NCLB’s requirements for Title I paraprofessionals?

Starting in fall 2002, the NCLB requires LEAs receiving Title I, Part A funds to require the principal of each school receiving Title I, Part A funds to attest annually, in writing, as to whether the school is in compliance with the NCLB’s standards for both teachers and paraprofessionals. Copies of the attestations must be maintained at both the district office and the school and must be available upon request to any member of the public. *[NCLB 1119(i)]*

H2. What specific attestations must schools receiving Title I, Part A funds make before January 8, 2006 about the qualifications of Title I paraprofessionals?

The USDOE has not issued guidance on this issue. SED recommends that principals of schools receiving Title I, Part A funds make attestations based on the requirements of the NCLB at the time of the attestation.

- Attestations made on or before January 8, 2006 must address whether Title I paraprofessionals hired after January 8, 2002 are “qualified” as defined by the NCLB.
- Attestations made after January 8, 2006 must address whether all Title I paraprofessionals are “qualified” as defined by the NCLB.

H3. What are the NCLB’s reporting requirements regarding Title I paraprofessionals?

As required by the USDOE in the State Consolidated Application, SED has agreed to report on the percent of Title I paraprofessionals who are “qualified” as

defined by the NCLB. *[New York State's Consolidated State Application, Page 75, Performance Indicator 3.3]* Reporting forms and deadlines have not yet been provided by the USDOE.

H4. How will SED obtain data for required reporting?

SED will ask LEAs receiving Title I funds to submit data on Title I paraprofessionals as required by the USDOE, either as part of their Title I end-of-year reports or in another format.

SED does not yet know the exact data elements that the USDOE will require. However, SED suggests that every LEA receiving Title I, Part A funds maintain records that will enable it to make complete and accurate reports on the qualifications of its Title I paraprofessionals.

H5. How would an LEA demonstrate that its Title I paraprofessionals are “qualified” in the event of an audit?

SED recommends that LEAs maintain records to demonstrate that a Title I paraprofessional satisfies the NCLB's requirements for no less than six years from the end of the last school year in which the Title I paraprofessional is employed.

APPENDIX A GUIDE TO REFERENCES

REFERENCES TO FEDERAL INFORMATION

The NCLB statute is also known as the Elementary and Secondary Education Act (ESEA). The statute and related regulations and guidance can be found at <http://www.ed.gov/offices/OESE/asst.html>.

References to the statute, regulations and related materials are presented in this guidance in brackets and italics, as described below.

- *[NCLB xxxx]* refers to the federal statute and a section number. NCLB stands for the No Child Left Behind Act of 2001.
- *[34 CFR xxxx]* refers to the USDOE's final regulations and a section number. These regulations have the force of law. CFR stands for Code of Federal Regulations.
- *[USDOE mm/dd/yy]* refers to the USDOE's comments on final regulations or the USDOE's non-regulatory draft guidance, with a publication date. Neither of these have the force of law.

REFERENCES TO STATE INFORMATION

- *[8 NYCRR xxxx]* refers to Regulations of the Commissioner of Education in New York State and a section number. NYCRR stands for New York Codes, Rules and Regulations. These regulations have the force of law in New York State. Regulations cited in this document can be found on-line at:

<http://www.highered.nysed.gov/tcert/regulations.htm>
<http://www.emsc.nysed.gov/part100>.