



**NCLB NYS Field Memo
#05-2004**

December 20, 2004

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

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Subject: New Regulations that Implement the NCLB's Requirements for Teachers and Title I Paraprofessionals in New York State

At their December meeting, the Board of Regents adopted a new section 120.6 of the Regulations of the Commissioner of Education that takes effect on January 6, 2005. It implements the requirements for teachers and Title I paraprofessionals in the No Child Left Behind Act of 2001 (NCLB). The new section 120.6 and the federal regulations that it incorporates by reference are attached for your information.

Section 120.6 does not change any of the guidance that the Department has issued to date. The purpose of section 120.6 is to incorporate by reference the federal requirements of the NCLB relating to the qualifications for teachers and Title I paraprofessionals in order to (1) ensure that local educational agencies are in compliance with this federal law; (2) provide an underlying legal basis in regulation for the State Education Department's guidance on the NCLB requirement in this area; and (3) clarify that local educational agencies are required to provide a teacher of a core academic subject who is not new to the profession the opportunity to meet the NCLB requirement to be highly qualified, in part, through passing a high objective uniform State standard of evaluation (HOUSSE).

Questions about section 120.6 should be sent to nclbnys@mail.nysed.gov. In the near future, the Department will issue updated guidance on the recently reauthorized Individuals with Disabilities Education Act (IDEA) and its impact on the NCLB. As needed, section 120.6 will be updated to conform to the IDEA.

Attachments

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 215, 305, and 3713 of the Education Law.

Section 120.6 of the Regulations of the Commissioner of Education is added,
effective January 6, 2005, as follows:

120.6 Qualifications of teachers and paraprofessionals.

(a) For the purpose of compliance with the NCLB, a local educational agency shall ensure that its teachers of core academic subjects are highly qualified in accordance with the requirements and definitions prescribed in 34 CFR 200.55 and 200.56 (Code of Federal Regulations, Revised as of July 1, 2003, Title 34, Volume 1, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001, 2003; available at the NYS Education Department, Office of Higher Education, 2M West Wing, Education Building, 89 Washington Avenue, Albany, NY 12234). A local educational agency shall provide a teacher of core academic subjects who is not new to the profession the opportunity to meet the NCLB requirement to be highly qualified, in part, through passing the high objective uniform State standard of evaluation (HOUSSE). The HOUSSE shall be an evaluation, prescribed by the department and conducted locally either during a

pre-employment review or at the time of an annual professional performance review prescribed in section 100.2(o) of this Title, that enables a teacher who is beyond the first year of the effective date of the teacher's first teaching certificate to demonstrate subject matter competency in all core academic subjects that the teacher teaches. The evaluation shall be based upon objective, coherent information as prescribed by the department, and shall include, but not be limited to, information on the teacher's education, credentials, professional experience, and professional development.

(b) For the purpose of compliance with the NCLB, a local educational agency shall ensure that a paraprofessional who is hired by the LEA and works in a program supported with funds under Title I meets qualifications in accordance with the requirements of 34 CFR 200.58 (Code of Federal Regulations, Revised as of July 1, 2003, Title 34, Volume 1, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001, 2003; available at the New York State Education Department, Office of Higher Education, 2M West Wing, Education Building, 89 Washington Avenue, Albany, NY 12234).

Title 34 Code of Federal Regulations Part 200

Sec. 200.55 Qualifications of teachers.

(a) Newly hired teachers in Title I programs. (1) An LEA must ensure that all teachers hired after the first day of the 2002-2003 school year who teach core academic subjects in a program supported with funds under subpart A of this part are highly qualified as defined in Sec. 200.56.

(2) For the purpose of paragraph (a)(1) of this section, a teacher teaching in a program supported with funds under subpart A of this part is--

(i) A teacher in a targeted assisted school who is paid with funds under subpart A of this part;

(ii) A teacher in a schoolwide program school; or

(iii) A teacher employed by an LEA with funds under subpart A of this part to provide services to eligible private school students under Sec. 200.62.

(b) All teachers of core academic subjects. (1) Not later than the end of the 2005-2006 school year, each State that receives funds under subpart A of this part, and each LEA in that State, must ensure that all public elementary and secondary school teachers in the State who teach core academic subjects, including teachers employed by an LEA to provide services to eligible private school students under Sec. 200.62, are highly qualified as defined in Sec. 200.56.

(2) A teacher who does not teach a core academic subject--such as some vocational education teachers--is not required to meet the requirements in Sec. 200.56.

(c) Definition. The term "core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

(d) Private school teachers. The requirements in this section do not apply to teachers hired by private elementary and secondary schools.

(Authority: 20 U.S.C. 6319; 7801(11))

Sec. 200.56 Definition of "highly qualified teacher."

To be a "highly qualified teacher," a teacher covered under Sec. 200.55 must meet the requirements in paragraph (a) and either paragraph (b) or (c) of this section.

(a) In general. (1) Except as provided in paragraph (a)(3) of this section, a teacher covered under Sec. 200.55 must--

(i) Have obtained full State certification as a teacher, which may include certification obtained through alternative routes to certification; or

(ii)(A) Have passed the State teacher licensing examination; and

(B) Hold a license to teach in the State.

(2) A teacher meets the requirement in paragraph (a)(1) of this section if the teacher--

(i) Has fulfilled the State's certification and licensure requirements applicable to the years of experience the teacher possesses; or

(ii) Is participating in an alternative route to certification program under which--

(A) The teacher--

(1) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(2) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(3) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(4) Demonstrates satisfactory progress toward full certification as prescribed by the State; and

(B) The State ensures, through its certification and licensure process, that the provisions in paragraph (a)(2)(ii) of this section are met.

(3) A teacher teaching in a public charter school in a State must meet the certification and licensure requirements, if any, contained in the State's charter school law.

(4) If a teacher has had certification or licensure requirements waived on an emergency, temporary, or provisional basis, the teacher is not highly qualified.

(b) Teachers new to the profession. A teacher covered under Sec. 200.55 who is new to the profession also must--

(1) Hold at least a bachelor's degree; and

(2) At the public elementary school level, demonstrate, by passing a rigorous State test (which may consist of passing a State certification or licensing test), subject knowledge and teaching skills in reading/language arts, writing, mathematics, and other areas of the basic elementary school curriculum; or

(3) At the public middle and high school levels, demonstrate a high level of competency by--

(i) Passing a rigorous State test in each academic subject in which the teacher teaches (which may consist of passing a State certification or licensing test in each of these subjects); or

- (ii) Successfully completing in each academic subject in which the teacher teaches--
 - (A) An undergraduate major;
 - (B) A graduate degree;
 - (C) Coursework equivalent to an undergraduate major; or
 - (D) Advanced certification or credentialing.
- (c) Teachers not new to the profession. A teacher covered under Sec. 200.55 who is not new to the profession also must--
 - (1) Hold at least a bachelor's degree; and
 - (2)(i) Meet the applicable requirements in paragraph (b)(2) or (3) of this section; or
 - (ii) Based on a high, objective, uniform State standard of evaluation in accordance with section 9101(23)(C)(ii) of the ESEA, demonstrate competency in each academic subject in which the teacher teaches.

(Authority: 20 U.S.C. 7801(23))

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Sec. 200.58 Qualifications of paraprofessionals.

(a) Applicability. (1) An LEA must ensure that each paraprofessional who is hired by the LEA and who works in a program supported with funds under subpart A of this part meets the requirements in paragraph (b) of this section and, except as provided in paragraph (e) of this section, the requirements in either paragraph (c) or (d) of this section.

(2) For the purpose of this section, the term "paraprofessional"--

(i) Means an individual who provides instructional support consistent with Sec. 200.59; and

(ii) Does not include individuals who have only non-instructional duties (such as providing technical support for computers, providing personal care services, or performing clerical duties).

(3) For the purpose of paragraph (a) of this section, a paraprofessional working in "a program supported with funds under subpart A of this part" is--

(i) A paraprofessional in a targeted assisted school who is paid with funds under subpart A of this part;

(ii) A paraprofessional in a schoolwide program school; or

(iii) A paraprofessional employed by an LEA with funds under subpart A of this part to provide instructional support to a public school teacher covered under Sec. 200.55 who provides equitable services to eligible private school students under Sec. 200.62.

(b) All paraprofessionals. A paraprofessional covered under

paragraph (a) of this section, regardless of the paraprofessional's hiring date, must have earned a secondary school diploma or its recognized equivalent.

(c) New paraprofessionals. A paraprofessional covered under paragraph (a) of this section who is hired after January 8, 2002 must have--

(1) Completed at least two years of study at an institution of higher education;

(2) Obtained an associate's or higher degree; or

(3)(i) Met a rigorous standard of quality, and can demonstrate-- through a formal State or local academic assessment--knowledge of, and the ability to assist in instructing, as appropriate--

(A) Reading/language arts, writing, and mathematics; or

(B) Reading readiness, writing readiness, and mathematics readiness.

(ii) A secondary school diploma or its recognized equivalent is necessary, but not sufficient, to meet the requirement in paragraph (c)(3)(i) of this section.

(d) Existing paraprofessionals. Each paraprofessional who was hired on or before January 8, 2002 must meet the requirements in paragraph (c) of this section no later than January 8, 2006.

(e) Exceptions. A paraprofessional does not need to meet the requirements in paragraph (c) or (d) of this section if the paraprofessional--

(1)(i) Is proficient in English and a language other than English; and

(ii) Acts as a translator to enhance the participation of limited English proficient children under subpart A of this part; or

(2) Has instructional-support duties that consist solely of conducting parental involvement activities.

(Authority: 20 U.S.C. 6319(c)-(f))