

AFT Analysis of Revised Paraprofessional Guidance from the U.S. Department of Education (March 2004)

The U.S. Department of Education has released revised guidance for paraprofessionals. Following are AFT comments on the revisions as summarized by the department. Please note that this is **guidance**, which means it has not gone through the regulatory process and does not carry the weight of law. The Department has gone through the formal regulatory process on only two areas with regard to paraprofessionals: the definition of working under the direction of a teacher and the definition of working in a school that gets Title I funds. All other information in this document is **guidance** only. You may hear from your school district that these are absolutes. It is our contention that **guidance** is open to interpretation and negotiations at the school district level, and some issues can and should be legislated at the state level.

The statements in the left-hand column come directly from the overview of the major changes. The right-hand column provides analysis of the change and indicates whether or not we feel you should be concerned about this new language. Following this section are the questions referenced below. For a copy of the entire revised document, visit the U.S. Department of Education Web site at <http://www.ed.gov/policy/elsec/guid/paraguidance.pdf>.

Additional questions about these or other paraprofessional issues under Title I should be directed to Tish Olshefski at the AFT PSRP Department (202/879-4520) or tolshefs@aft.org.

Department's Statement on the Revision	AFT Analysis
B-15 is revised to highlight the discretion LEAs have for distinguishing "new" and "existing" paraprofessionals in the case of paraprofessionals hired prior to Jan. 8, 2002, but laid off and subsequently rehired after Jan. 8, 2002. The revised response includes an example of what a district policy addressing this issue might say.	This clarification is very important and quite good for our locals and members working in districts facing a fiscal crisis, as it provides flexibility for districts to rehire laid-off paraprofessionals without the paraprofessional having to automatically meet the requirements on rehire. If their original hire date was prior to Jan. 8, 2002, and they are rehired after layoff, they still must meet the requirements by the Jan. 8, 2006, deadline. (Note: This deadline was extended to the end of the 2005-06 school year in late June 2005 by the Department.) We still suggest that you negotiate this change, perhaps as a sidebar agreement prior to the end of the school year.
B-16 clarifies that LEAs have the discretion to determine that a paraprofessional meets Title I qualification requirements if the individual was previously determined to meet those requirements when employed by another LEA.	This doesn't appear to be changed significantly from the original guidance and it would be important, especially for state federations, to try to establish this in a more formal way at the state level.
A new question (B-19) is added to say that, in general, the paraprofessional requirements do not apply to individuals working in 21st Century Community Learning Center Programs.	This question and the one directly following are both new and don't change the original document. They just provide an example of the types of programs in which paraprofessionals might be working.
A new question (B-20) is added to clarify that the requirements do not apply to paraprofessionals working in Head Start programs unless the paraprofessional is working in a Head Start program jointly funded with Title I, Part A, funds and the paraprofessional's salary is paid with Title I, Part A, funds.	This doesn't change current practice, as the original regulations say that all paraprofessionals providing instructional support in Title I schoolwide programs must meet the requirements. This and the previous question simply delineate examples of the types of programs in which paraprofessionals might be working.

B-22 is revised to clarify that “two years of study” at an institution of higher education means the equivalent of two years of study defined by the institution of higher education rather than the state educational agency.	It’s unclear why this change was made. It seems to place a greater burden on the individual paraprofessional or else the school district to determine how two years is defined by each and every institution of higher education from which a paraprofessional could provide documentation. And a concern could be raised by a paraprofessional who has the equivalent of two years of study from more than one institution with different definitions.
The guidance includes a new question (B-25) describing how continuing education credits may be used to meet the requirement that a paraprofessional complete at least two years of study at an institution of higher education.	This can be very beneficial to paraprofessionals, especially those in districts that track participation in professional development programs that provide continuing education credits. In many instances these can be converted to college credits on a formula basis and on the determination of the college, but most paraprofessionals do not do this unless they are pursuing a degree.
A new question (C-5) is added stating that Title I, Part A, funds may be used to pay for the paraprofessional assessment.	This clarification could be problematic as the original guidance said that Title I funds MUST be used to assist paraprofessionals in meeting the NCLB requirements. That language is still in guidance document (Question E.1) and could cause some confusion.
D-1 addressing the requirements for the supervision of paraprofessionals is expanded to include examples of programs that are inconsistent with the statutory and regulatory requirements.	This clarification of the question does not at all change the definition, which was regulated, so the language could prove to be helpful as it provides some direction.
A new question (D-2) is added to clarify that the direct supervision requirements apply to paraprofessionals who work for a third-party contractor.	While this clarification is useful for paraprofessionals, it does serve to undermine the teacher quality regulations by further reinforcing that third-party providers can employ teachers who do not meet the highly qualified requirements. It does not appear that paraprofessionals who work for third-party providers have to meet the education requirements, as that is not specified elsewhere in the document, but they must be supervised by a teacher.

Following are the questions referenced in the table above. For the entire guidance document, go to the U.S. Department of Education Web site at <http://www.ed.gov/policy/elsec/guid/paraguidance.pdf>.

B-15. Do the Title I requirements for new paraprofessionals (explained in B-1) apply to paraprofessionals who are laid off and then recalled? In other words, are these individuals “new” or “existing” paraprofessionals?

The statute and regulations state that “new” paraprofessionals are paraprofessionals hired after Jan. 8, 2002 (the date of enactment of the NCLB Act), and “existing” paraprofessionals are paraprofessionals hired before that date. An LEA has discretion to define its policies for distinguishing “new” and “existing” paraprofessionals in the case of paraprofessionals hired before Jan. 8, 2002, but laid off and subsequently rehired after Jan. 8, 2002. These policies might say, for example: A paraprofessional who was initially hired on or before Jan. 8, 2002, but who, because of the LEA’s fiscal constraints, was laid off at the end of one school year—

- (1) Is considered an “existing” paraprofessional if the individual was rehired when the LEA recalled laid-off paraprofessionals such that the individual has continuous years of employment;
- (2) Is considered a “new” paraprofessional if the individual did not rejoin the LEA when it recalled laid-off paraprofessionals if and when the individual is rehired.

B-16. Once a paraprofessional has met the requirements in B-1, is the status of being qualified “portable”? That is, can the paraprofessional be deemed qualified in other LEAs within a state?

An LEA may, at its discretion, determine that a paraprofessional meets the Title I qualification requirements if the individual was previously determined to meet these requirements when employed by another LEA.

B-22. The statutory language refers to “two years of study at an institution of higher education.” [Section 1119(c)(1)(A)] What does “two years of study” mean?

“Two years of study” means the equivalent of two years of full-time study, as defined by the institution of higher education (IHE). For some IHEs that may mean 12 credit hours per semester (requiring a total of 48 credit hours), while in others it may mean 15 credit hours a semester (requiring a total of 60 credit hours).

B-25. May continuing education credits (CECs) be used to meet the requirement that paraprofessionals complete at least two years of study at an institution of higher education?

A state or LEA, as appropriate, may count CECs toward the requirement that a paraprofessional complete at least two years of study at an institution of higher education if the CECs are part of an overall training and development program plan and an institution of higher education accepts or translates them to course credits.

C-5. May Title I funds be used to pay for the paraprofessional assessment?

Yes.

D-2. Do the direct supervision requirements apply to paraprofessionals who provide services under contract?

Yes, paraprofessionals hired by a third-party contractor to work in a Title I program must work under the direct supervision of a teacher. That teacher does not have to meet the teacher qualification requirements if he/she is also employed by the third-party connection.

E-1. What funds are available for helping paraprofessionals in Title I schools meet the new requirements?

A number of key ESEA programs authorize funds that may be used:

- 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 school year 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 including paying for the paraprofessional assessment. *[Section 1119(l) of Title I, §200.60 of the Title I regulations]*
- LEAs also may use their general Title I funds “to support ongoing training and professional development to assist teachers and paraprofessionals, including paying for the paraprofessional assessment.” *[Section 1114(b)(1)(D) and Section 1115(c)(1)(F) of Title I]*