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Paraprofessional Quality and the Elementary and Secondary Education Act: Background and Issues in Brief

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Summary

The No Child Left Behind Act of 2001 (NCLB) established minimum qualifications for paraprofessionals (also known as instructional aides) employed in Title I, Part A-funded schools. NCLB required that paraprofessionals must complete two years of college, obtain an associate's degree, or demonstrate content knowledge and an ability to assist in classroom instruction. Prior to the NCLB, the Elementary and Secondary Education Act of 1965 (ESEA) required only that paraprofessionals possess a high school diploma.

These requirements, as enacted through NCLB, apply to *all* paraprofessionals employed in a Title I-A Schoolwide (§1114) program without regard to whether the position is funded with federal, state, or local funds. In Title I-A programs known as Targeted Assistance (§1115), only those paraprofessionals paid with Title I-A funds must meet the requirements (not those paid with state or local funds). A report by the Education Department (ED) reveals that paraprofessionals accounted for about one-third of instructional staff in Title I-A funded schools and districts.

NCLB authorized most ESEA programs through FY2007. The General Education Provisions Act (GEPA) provided an automatic one-year extension of these programs through FY2008. While most ESEA programs no longer have an explicit authorization, the programs continue to receive annual appropriations and paraprofessional quality requirements continue to be in place. LEAs in states that have received an ESEA flexibility waiver are not restricted in the use of Title I-A funds for failing to meet NCLB teacher quality and student achievement accountability requirements; however, all LEAs still must comply with the law's paraprofessional quality requirements.

This report describes the paraprofessional quality provisions and guidance provided by ED regarding implementation. The report concludes with discussion of issues that may arise as Congress considers reauthorization of the ESEA.

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Introduction

The No Child Left Behind Act of 2001 (NCLB), signed into law on January 8, 2002 (P.L. 107-110), required that all paraprofessionals assigned instructional duties and employed in Title I, Part A-funded schools meet minimum qualifications by January 8, 2006.¹ The NCLB states that paraprofessionals (also known as instructional aides) must have completed two years of college, obtained an associate's degree, or demonstrated content knowledge and an ability to assist in classroom instruction. On June 17, 2005, the Education Department (ED) announced that the paraprofessional deadline would be extended to the end of the 2005-2006 school year to coincide with the related NCLB deadline for *highly qualified teachers* (HQT).²

The use of instructional aides in U.S. classrooms has been increasing every year since data on paraprofessionals were first collected by ED's National Center for Education Statistics. Instructional aides accounted for 2.5% of total full-time equivalent instructional staff in 1970, 11.9% in 1980, 16.5% in 2000, and 17.2% in 2009.³ ED's interim report on NCLB teacher quality implementation revealed that paraprofessionals accounted for about one-third of instructional staff in Title I-A funded schools and districts.⁴ Instructional aides are also increasingly handling classroom responsibilities without supervision. ED's final report on NCLB teacher quality implementation indicated that 19% of paraprofessionals spent "at least half of their time working with students in the classroom without a teacher present."⁵

Recognition that the quality of instruction in U.S. schools is increasingly affected by the quality of paraprofessional staff has bolstered support for federal instructional aide standards. Prior to the NCLB, the Elementary and Secondary Education Act of 1965 (ESEA) required only that paraprofessionals possess a high school diploma. This requirement was established in previous ESEA amendments passed under the Improving America's Schools Act of 1994 (P.L. 103-382).⁶ Legislative proposals establishing higher standards for paraprofessionals were supported by ED under both the Clinton and Bush Administrations, and were eventually enacted under the NCLB.

¹ Section 1119(c) states that all paraprofessionals newly hired after the date of enactment be *highly qualified*, and Section 1119(d) states that those hired prior to enactment be *highly qualified* not later than four years after enactment.

² This announcement is at <http://www.ed.gov/news/pressreleases/2005/06/06172005a.html>. For more information on the *highly qualified teacher* requirement, see CRS Report R42127, *Teacher Quality Issues in the Elementary and Secondary Education Act*, by (name redacted).

³ U.S. Education Department, *Digest of Education Statistics, 2011*, Table 85, available at <http://nces.ed.gov/programs/digest/>.

⁴ U.S. Education Department, Office of Planning, Evaluation, and Policy Development, *State and Local Implementation of the No Child Left Behind Act: Interim Report*, Washington, DC, 2007, <http://www2.ed.gov/rschstat/eval/teaching/nclb/report07.pdf>.

⁵ U.S. Education Department, Office of Planning, Evaluation, and Policy Development, *State and Local Implementation of the No Child Left Behind Act: Final Report*, p. xxxi, Washington, DC, 2009, <http://www2.ed.gov/rschstat/eval/teaching/nclb-final/report.pdf>.

⁶ Prior to those amendments, the ESEA was silent on this issue dealing with paraprofessionals.

Requirements for Paraprofessionals Under NCLB

As of the enactment of the NCLB on January 8, 2002, all newly hired Title I paraprofessionals whose duties include instructional support must possess the minimum qualifications prior to employment. That is, they must have

- completed two years of study at an institution of higher education,
- obtained an associate's (or higher) degree, or
- passed a formal state or local academic assessment, demonstrating knowledge of and the ability to assist in instructing reading, writing, and mathematics.

Paraprofessionals hired on or before January 8, 2002, who were performing instructional duties in a program supported with Title I funds, were required to meet these requirements by the end of the 2005-2006 school year.

The NCLB paraprofessional qualification requirements apply *only* to Title I paraprofessionals with instructional duties; that is, those who

- provide one-on-one tutoring if the tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher;
- assist with classroom management, such as organizing instructional and other materials;
- provide assistance in a computer laboratory;
- conduct parental involvement activities;
- provide support in a library or media center;
- act as a translator; or
- provide instructional services to students under the direct supervision of a teacher.

Individuals who work in food services, cafeteria or playground supervision, personal care services, non-instructional computer assistance, and similar positions are not considered paraprofessionals, and do not have to meet these requirements. Also, ESEA Section 1119(e) indicates that paraprofessionals who *only* serve as translators or who *only* conduct parental involvement activities must have a secondary school diploma or its equivalent, but do not have to meet additional requirements.

Under NCLB, local education agencies (LEAs) must make progress toward meeting their state's annual objectives for teacher quality and student achievement. If a state determines that an LEA has failed to make progress toward meeting those annual objectives for three consecutive years, the LEA is prohibited from using Title I-A funds on any paraprofessional hired after the date of the determination.⁷

⁷ For more information on accountability provisions in the ESEA, see CRS Report R41533, *Accountability Issues and Reauthorization of the Elementary and Secondary Education Act*, by (name redacted).

Guidance from the U.S. Department of Education

Who Must Meet the NCLB Rules?

The most recent non-regulatory guidance on paraprofessionals, issued by ED on March 1, 2004, clarifies a number of questions that have been raised during implementation of the NCLB. The guidance describes various school settings under which paraprofessionals may or may not be required to meet the NCLB rules. The requirements apply to *all* paraprofessionals employed in a Schoolwide Title I program without regard to whether the position is funded with federal, state, or local funds. In Targeted Assistance Title I programs, only those paraprofessionals paid with Title I funds must meet the requirements (not those paid with state or local funds); however, special education paraprofessionals in targeted assistance programs must meet the requirements even if only part of their pay comes from Title I funds. A paraprofessional who provides services to private school students and is employed by an LEA with Title I funds must meet the NCLB requirements; however, these requirements do not apply to those in the Americorps program, volunteers, or those working in either 21st Century Community Learning Centers or Head Start programs.

Qualified Status

LEAs have discretion when it comes to considering who is an “existing” paraprofessional and whether *qualified* status is “portable.” If an LEA laid off a paraprofessional who was initially hired on or before January 8, 2002, the LEA may consider that person an “existing” employee when the individual is subsequently recalled to duty. Also, an LEA may determine that a paraprofessional meets the qualification requirements if the individual was previously determined to meet these requirements by another LEA.

Education Credits

The ED guidance clarifies that “two years of study” means the equivalent of two years of full-time study as determined by an “institution of higher education” (IHE)—the definition of an IHE is specified in Section 101(a) of the Higher Education Act of 1965. Continuing education credits may count toward the two-year requirement if they are part of an overall training and development program plan and an IHE accepts or translates them to course credits.

Assessment of Paraprofessionals

Section C of the guidance discusses issues related to the assessment of paraprofessionals. The guidance indicates that a state or LEA may develop a paraprofessional knowledge and ability assessment using either a paper and pencil form, a performance evaluation, or some combination of the two. These assessments should gauge content knowledge (e.g., in reading, writing, and math) as well as competence in instruction (which may be assessed through observations). The content knowledge should reflect state academic standards and the skills expected of a child at a given school level. The results of the assessment should establish a candidate’s content knowledge and competence in instruction, and target the areas where additional training may be needed.

Most states are employing more than one type of written assessment along with performance evaluation. Two of the most common tests are ParaPro (developed by the Educational Testing Service). Thirty-four states and the District of Columbia allow LEAs to use ParaPro for paraprofessional assessment.⁸ In addition, 21 states allow LEAs to develop their own assessments. ECS considers 12 states to have established paraprofessional qualifications that exceed federal standards, and identifies 10 states that require paraprofessionals to obtain professional certification.⁹ The ECS also identifies 11 states that have professional development programs for paraprofessionals.

Supervision of Paraprofessionals

Section D of the guidance discusses programmatic requirements that pertain to the supervision of paraprofessionals. The guidance points out that ESEA Section 1119(g)(3)(A) stipulates that paraprofessionals who provide instructional support must work under the “direct supervision” of a *highly qualified teacher*. Further, the guidance states the following:

A paraprofessional works under the direct supervision of a teacher if (1) the teacher prepares the lessons and plans the instruction support activities the paraprofessional carries out, and evaluates the achievement of the students with whom the paraprofessional is working, and (2) the paraprofessional works in close and frequent proximity with the teacher. [§200.59(c)(2) of the Title I regulations] As a result, a program staffed entirely by paraprofessionals is not permitted.

In addition, the guidance states that the rules regarding direct supervision also apply to paraprofessionals who provide services under contract. That is, paraprofessionals hired by a third-party contractor to work in a Title I program must work under the direct supervision of a teacher (even though teachers employed by the contractor need not meet NCLB *highly qualified teacher* requirements).

Professional Development Funding

The ED guidance discusses funding sources for the professional development and assessment of paraprofessionals. An LEA must use not less than 5% of its Title I, Part A allocation for the professional development of teachers and paraprofessionals. LEAs may also use their general Title I funds for this purpose. Funds for professional development of paraprofessionals may also be drawn from Title II, Part A (for core subject-matter personnel); from Title III, Part A (for those serving English language learners); from Title V, Part A (for “Innovative” programs); and from Title VII, Part A, subpart 7 (for those serving Indian children). Schools and LEAs identified as needing improvement must reserve additional funds for professional development.

Section B-2 of the guidance describes conditions under which LEAs are prohibited from using Title I funds to hire new paraprofessionals. Such a prohibition may be imposed by a state on an LEA that has failed to make progress toward meeting the *annual measurable objectives* established by the state for increasing the percentage of *highly qualified teachers*, and has failed

⁸ Personal communication with ETS, January 30, 2015.

⁹ Ibid. Paraprofessional qualification requirements for each state can be found on ECS’s online interactive paraprofessional database, which is available at http://www.ecs.org/ecsmain.asp?page=/html/educationIssues/teachingQuality/parapro/NCLB_parapro_DB_intro.asp.

to make *adequate yearly progress* for three cumulative years.¹⁰ Two exceptions to this rule are (1) if the hiring is to fill a vacancy created by the departure of another paraprofessional, and (2) if the hiring is necessitated by a significant increase in student enrollment or an increased need for translators or parental involvement personnel.

Forty-two states and the District of Columbia reported data to ED on the qualifications of their paraprofessionals for the 2003-2004 school year. Among them, 10 states reported that fewer than half of their paraprofessionals met the NCLB requirements; four states reported that at least 9 of every 10 of their paraprofessionals met these standards.¹¹ However, ED officials indicated that most paraprofessionals acquired the minimum qualifications by the June 30, 2006, deadline.¹²

Reauthorization

NCLB authorized most ESEA programs through FY2007. The General Education Provisions Act (GEPA) provided an automatic one-year extension of these programs through FY2008. While most ESEA programs no longer have an explicit authorization, the programs continue to receive annual appropriations and paraprofessional quality requirements continue to be in place. LEAs in states that have received an ESEA flexibility waiver are not restricted in the use of Title I-A funds for failing to meet NCLB teacher quality and student achievement accountability requirements; however, all LEAs still must comply with the law's paraprofessional quality requirements.¹³

The 114th Congress has acted on legislation to reauthorize the ESEA.¹⁴ Possible reauthorization issues concerning the paraprofessional provisions in Title I include the following:

- *Are the assessments used to evaluate paraprofessional quality rigorous enough, and are they adequately tied to academic standards for students?* Some consider the ParaPro and WorkKeys tests to be the “easy route,” and claim they do not measure a instructional aide’s ability to improve classroom instruction. Might a reauthorized ESEA be more explicit about the nature of these tests by linking them to other accountability provisions? Should ED be given greater authority to enforce higher standards for paraprofessional assessments?
- *Should the paraprofessional qualification requirements be applied to a broader group of instructional aides?* For example, should these requirements be applied to all paraprofessionals with instructional responsibilities, not just to those paid with Title I-A funds? Should the exceptions currently made for computer lab

¹⁰ For more information on the *highly qualified teacher* requirement, see CRS Report R42127, *Teacher Quality Issues in the Elementary and Secondary Education Act*, by (name redacted).

¹¹ These reports were obtained from ED by *Education Week* through a Freedom of Information Act (FOIA) request and published on March 16, 2005; a state-by-state table is available at <http://www.edweek.org/media/27admin.pdf>. More recent ED data on paraprofessional qualifications are not available.

¹² According to an *Education Week* article published on August 30, 2006; available at <http://www.edweek.org/ew/articles/2006/08/30/01paras.h26.html?qs=paraprofessional>.

¹³ ESEA waivers do, however, contain other requirements states must meet to receive exemptions from NCLB accountability provisions. For more information on ESEA waivers see CRS Report R42328, *Educational Accountability and Secretarial Waiver Authority Under Section 9401 of the Elementary and Secondary Education Act*, by (name redacted) and (name redacted).

¹⁴ For more information, see CRS Report R43916, *ESEA Reauthorization Proposals in the 114th Congress: Selected Key Issues*, by (name redacted) and (name redacted).

assistants, translators, and those assisting with parental involvement be curtailed? Is the language regarding “direct supervision” too vague or too difficult to enforce?

- *Do current provisions for the professional development of instructional aides adequately encourage states to improve the paraprofessional workforce? Should states be given incentives to adopt paraprofessional certification requirements, as have been adopted in some states? Are there other ways to encourage paraprofessional development beyond the minimum qualifications that would positively affect the overall level of instructional quality?*
- *Have the paraprofessional qualification requirements significantly affected the extent to which Title I-A funds are used to hire these staff? In particular, have a significant number of paraprofessionals lost their jobs, or been assigned to non-Title I-A positions, after the end of the 2005-2006 school year because they were unable to meet the paraprofessional qualification requirements? Has this resulted in an overall decline or improvement in the quality of instruction?*
- *Should the roles of states versus LEAs in setting policies and implementing these requirements be clarified? Particularly in comparison to the teacher quality requirements of the NCLB, there has been relatively little guidance from ED, or clarity in the statute, on state-versus-LEA roles in the area of paraprofessional qualification requirements. Has the result been a constructive form of flexibility or dysfunctional ambiguity?*

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