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**NO CHILD LEFT BEHIND ACT OF 2001:
REAUTHORIZATION OF ELEMENTARY
AND SECONDARY EDUCATION ACT**

RESEARCH AND EDUCATIONAL SERVICES

FACT SHEET 5: PARAPROFESSIONALS

STATUTORY SUMMARY —

PARAPROFESSIONALS COVERED BY THE LAW

Title I: Section 1119 established new requirements for new and currently employed paraprofessionals who provide instructional services and are working in a program supported with Title I, Part A funds.

The U.S. Department of Education (USDOE) regulations clarify that “working in a program” supported by Title I funds refers to paraprofessionals in a targeted assistance school who are paid with Part A funds, or any paraprofessional in a “school-wide program” school. Targeted Assistance programs include one-on-one tutoring, after school or pullout programs. According to USDOE guidance, for those paraprofessionals in a school-wide program, these requirements apply “without regard to the source of funding of the positions.”

NEW YORK STATE EDUCATION DEPARTMENT POSITION

Obviously these requirements raised many questions among paraprofessionals currently employed in schools across our state. Through intense discussions with the State Education Department, NYSUT was able to get clarification regarding how paraprofessionals in New York would qualify under No Child Left Behind (NCLB) (See IB# 200312, Teacher Aides and Teaching Assistants - NCLB Requirements for Paraprofessionals). Three key points provide this clarification.

- SED clearly states that **an individual’s job title**, which is established by an employer, **is not relevant for determining** whether an individual is subject to either the state’s or the NCLB’s requirements. Rather, job duties are the guiding factor. If an individual’s job duties include providing instructional support, the individual is serving as a “teaching assistant” (or in a comparable position in New York City) and must be state certified (or meet applicable New York City requirements). If an individual’s job duties include providing instructional support and the individual is “working in a program supported with Title I funds,” the individual is a Title I paraprofessional and must meet both state (or New York City) certification requirements and NCLB requirements.
- Regarding NCLB requirements, the State Education Department has further determined that, “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.” **No additional tests or courses are required.** In New York City paraprofessionals will be qualified under NCLB through an individual evaluation.
- Finally, the State Education Department has determined that the new state test for teaching assistants, the Assessment of Teaching Assistant Skills test, will satisfy the requirements of state certification beginning in September 2004 **and** will qualify appropriate individuals under NCLB.

PARAPROFESSIONALS EXEMPTED FROM THE LAW

Section 1119 of NCLB exempts paraprofessionals working primarily as translators or solely on parental involvement activities, from the requirements described below. In addition, guidance from the USDOE indicates that the term “paraprofessional” 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.

NEW PARAPROFESSIONALS QUALIFIED UNDER NCLB

As of **January 8, 2002**, newly hired paraprofessionals must have:

- ▶ completed at least two years of study at an institution of higher education;
- ▶ obtained an associate's degree or higher degree; or
- ▶ met a rigorous standard of quality that demonstrates, through a formal State or local academic assessment:
 - knowledge of and the ability to assist in instructing, reading, writing and mathematics; or
 - knowledge of and the ability to assist in instructing, reading readiness, writing readiness, and math readiness.
(*This applies to those primarily working with early childhood.*)

EXISTING PARAPROFESSIONALS QUALIFIED UNDER NCLB

Paraprofessionals hired prior to **January 8, 2002** have until January 2006 to meet the new requirements noted above.

ALL PARAPROFESSIONALS

Effective **January 8, 2002**, all paraprofessionals, regardless of hiring dates, must possess a high school diploma or its recognized equivalent. This includes even those working primarily as translators or solely in parental involvement activities.

DUTIES OF PARAPROFESSIONALS

Section 200.59(b) of the Code of Federal Regulations describe specific instructional support duties that may be assigned to a paraprofessional including:

- providing one-on-one tutoring for eligible students, if tutoring is scheduled at a time when a student would not otherwise receive instruction by a teacher;
- assisting in classroom management;
- assisting in computer instruction;
- conducting parental involvement activities;
- providing instructional support in a library or media center;
- acting as a translator; or
- providing instructional support services.

A paraprofessional may not provide instructional support unless the paraprofessional is working under the direct supervision of a teacher. Federal guidance contains an explanation of "direct supervision" as required by the NCLB. It states that a paraprofessional works under the direct supervision of a teacher if:

- (i) The teacher plans the instructional activities that the paraprofessional carries out;
- (ii) The teacher evaluates the achievement of the students with whom the paraprofessional is working; and
- (iii) The paraprofessional works in close and frequent physical proximity to the teacher.

TEACHER AIDES AND TEACHING ASSISTANTS IN NEW YORK STATE

Teacher Aide

Section 80-5.6(a) of Commissioner's Regulations state that a teacher aide may be assigned nonteaching duties such as:

- (1) managing records, materials and equipment;
- (2) attending to the physical needs of children; and

- (3) supervising students and performing such other services as support teaching duties when such services are determined and supervised by teacher.

Teaching Assistant

According to State Education Law 3009(2)(b), a teaching assistant works under the general supervision of a teacher. NCLB calls for “direct” supervision. (See previous section on “Duties of Paraprofessionals”)

Commissioner’s Regulations, Section 80-5.6(b)(1)(ii)(a) describe the duties of a teaching assistant as follows:

- (1) working with individual pupils or groups of pupils on special instructional projects;
- (2) providing the teacher with information about pupils that will assist the teacher in the development of appropriate learning experiences;
- (3) assisting pupils in the use of available instructional resources, and assisting in the development of instructional materials;
- (4) utilizing their own special skills and abilities by assisting in instructional programs in such areas as: foreign languages, arts, crafts, music and similar projects; and
- (5) assisting in related instructional work as required.

RESOURCES FOR TRAINING AND SUPPORT —

A school district may use its Title I funds to support ongoing training and professional development to assist paraprofessionals in satisfying the above requirements. In addition, these funds may be combined with funds provided under Title II of NCLB, as well as other sources designated under NCLB. Should the school district fail to make Adequate Yearly Progress (AYP) for three consecutive years, the state must prohibit the use of funds to support newly hired paraprofessionals. They can however, fill vacancies, or add staff in the event of an increase in student enrollment.

NYSUT is prepared to assist paraprofessionals to become certified teaching assistants and to qualify under NCLB. The NYSUT Education and Learning Trust offers a test preparation program to assist members taking the Assessment of Teaching Assistant Skills (ATAS) and undergraduate courses for those who must meet state certification requirements for teaching assistants. For more information contact the Trust at 1-800-528-6208.

— ADVICE TO LOCAL LEADERS —

1. Examine the tasks performed by teaching aides and teaching assistants in Title I schools and programs to determine which individuals are required to comply with Title I federal requirements and Part 80 of Commissioner’s Regulations.
2. Survey your members to determine the amount of schooling they have completed (the number of credits and courses they have taken) and what degrees, if any, they’ve earned. Identify those who will need assistance to meet the new requirements.
3. Assess the existing professional development opportunities available to your members, provided by: the district, the union, the NYSUT Education and Learning Trust, local colleges or other entities.
4. Investigate what financial resources are available to provide support for tuition, tests, textbooks, etc.
5. Consult your Labor Relations Specialist on the appropriate placement of teaching assistants and teacher aides in the appropriate bargaining unit.