

December 11, 2002

Selected notations from the Federal Register regarding NCLB. Improving the Academic Achievement of the Disadvantaged, Final Regulations, Nov 22, 2002  
See website address following for the entire text of the final document. Text is in HTML format: <http://www.ed.gov/legislation/FedRegister/finrule/2002-4/120202a.html>

### **Qualifications Of Teachers And Paraprofessionals**

30. Add new Sec. Sec. 200.55 through 200.59 and place them under the new undesignated center heading "Qualifications of Teachers and Paraprofessionals" in subpart A of part 200 to read as follows:

#### **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.

[[Page 71730]]

(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.
- (Approved by the Office of Management and Budget under control number 1810-0581)

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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 school-wide 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))

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**Sec. 200.59 Duties of paraprofessionals.**

(a) A paraprofessional covered under Sec. 200.58 may not be assigned a duty inconsistent with paragraph (b) of this section.

(b) A paraprofessional covered under Sec. 200.58 may perform the following instructional support duties:

(1) One-on-one tutoring for eligible students if the tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher.

(2) Assisting in classroom management.

(3) Assisting in computer instruction.

(4) Conducting parent involvement activities.

(5) Providing instructional support in a library or media center.

(6) Acting as a translator.

(7) Providing instructional support services.

(c)(1) A paraprofessional may not provide instructional support to a student unless the paraprofessional is working under the direct supervision of a teacher who meets the requirements in Sec. 200.56.

- (2) 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.
- (d) A paraprofessional may assume limited duties that are assigned to similar personnel who are not working in a program supported with funds under subpart A of this part--including non-instructional duties and duties that do not benefit participating students--if the amount of time the paraprofessional spends on those duties is the same proportion of total work time as the time spent by similar personnel at the same school.

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### **School-wide and Targeted Assistance Paraprofessionals**

**Comment:** One commenter expressed concern about the requirement that all paraprofessional instructional staff in the school-wide program meet the requirements for paraprofessionals that apply to targeted assistance schools. The commenter expressed concern that many schools will elect to remain in or return to targeted assistance status.

**Discussion:** Section 1119(c) of the ESEA requires that paraprofessionals hired after January 8, 2002 and working in a program supported with Title I, part A funds be highly qualified. Section 200.58 of the regulations further clarifies that statutory requirement by providing that all paraprofessionals working in a school-wide program are considered to be supported by Title I, Part A funds. The Secretary believes that individual schools will make the decision to operate a school-wide program, and continue their operation based on the need to reform the school and improve student achievement.

**Changes: None.**

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### **Section 200.58 Qualifications of Paraprofessionals**

**Comment:** One commenter asked that the regulations clarify that it is the paraprofessional's choice as to which of the three allowable options (two years of study at an institute of higher education, an associate's degree, or demonstrating knowledge and ability to assist in instruction through an assessment) the paraprofessional will meet. The commenter also recommends that the regulations clarify that once a paraprofessional has met qualification requirements in one district, he or she does not have to re-qualify after moving to another school district.

**Discussion:** The Secretary does not believe a change in the regulations is necessary. Any needed clarifications will be addressed in future non-regulatory guidance.

**Changes: None.**

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## **Paraprofessional requirements, non-instructional duties.**

**Comment:** Several commenters asked for greater clarification about which paraprofessionals must meet the requirements in Sec. 200.58. One commenter requested that the regulations be revised to clarify that the requirements apply only to paraprofessionals hired by the school district or school. Another commenter asked whether the requirements apply to paraprofessionals with non-instructional duties working in a school-wide project school.

[[Page 71766]]

**Discussion:** The requirements of section 1119(c) of the ESEA and Sec. 200.58 apply to individuals hired by an LEA whether individually or as part of a partnership. They do not apply to volunteers or other paraprofessionals who may be employed by a private contractor. They also do not apply to individuals with solely non-instructional roles in school-wide project schools.

**Changes:** **Section 200.58(a)(1)** has been amended to clarify that the qualification requirements apply to each paraprofessional "who is hired by the LEA" and who meets the other criteria set out in this section of the regulations.

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## **Paraprofessionals—10 years of experience, 4 year phase-in?**

**Comment:** Two commenters asked that the regulations be modified to provide a four-year transition period for paraprofessionals to obtain a high school diploma or the equivalent. Another commenter recommended that the regulations include a grandfather clause that would exempt paraprofessionals with ten or more years of experience from having to meet any of the qualification requirements.

**Discussion:** **Section 1119(f)** of the ESEA requires that LEA's receiving Title I, part A funds ensure that all paraprofessionals working in a program supported with Title I, part A funds, regardless of the paraprofessional's hiring date, have a high school diploma. The ESEA provides no authority for a phase-in of this requirement or to exempt paraprofessionals with ten or more years of experience from meeting this requirement.

**Changes:** None.

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## **Paraprofessional in existing Associate Degree Programs?**

**Comment:** One commenter requested that the regulations be modified to permit a paraprofessional enrolled in an associate's degree program to be considered as meeting the qualification requirements through an alternative qualification process.

**Discussion:** The statute does not authorize paraprofessionals to meet the qualification requirements in the manner suggested.

**Changes:** None.

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## **Associate Degree's for Paraprofessionals?**

**Comment:** Two commenters objected to the qualification option that paraprofessionals have an associate's degree.

**Discussion:** An associate's degree is one of the three ways that the statute provides for paraprofessionals to demonstrate they are qualified. A paraprofessional may (1) complete two years of study at an institution of higher education, or (2) have an associate's degree, or (3) pass a state or local assessment that demonstrates knowledge of and ability to assist in the instruction of reading, writing or mathematics (or reading readiness, writing readiness, or mathematics readiness), as appropriate. The options recognize that, depending on a paraprofessional's background and experience, there is more than one way to demonstrate the appropriate competency.

**Changes: None.**

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## **Two years of study is 'How Many Hours?' (Utah is 48 Semester Hours)**

**Comment:** Several commenters sought clarification of what it means for a paraprofessional to have completed at least two years of study at an institution of higher education. One commenter asked that the regulations specify the specific number of semester hours necessary to demonstrate that a paraprofessional has completed the required two years of study. On the other hand, other commenters asked that the regulations make it clear that there is no specific number of credit hours that defines two years of study.

**Discussion:** The number of credit hours necessary to demonstrate that a paraprofessional has completed at least two years of study at an institution of higher education will vary by institution. Therefore, a "one-size-fits-all" definition would be inappropriate. Each State may choose to define, for paraprofessionals working in the State, what these two years of study encompass. If it does not do so, the policies of each institution will govern whether a paraprofessional has completed two years of study.

**Changes: None.**

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## **Paraeducators in Private Schools?**

**Comment:** One commenter requested that the regulations make it clear that paraprofessionals providing instructional support for teachers of eligible students attending private schools must meet the same standards as other paraprofessionals.

**Discussion:** The Secretary agrees with this recommendation. Paraprofessionals hired by an LEA to provide instructional support for Title I, part A teachers of eligible students attending private schools are employees of the school district and must meet the same requirements as any other paraprofessionals providing instructional support in a program supported by Title I, part A funds.

**Change:** Section 200.58(a)(3)(iii) is added to clarify that the qualification requirements apply to paraprofessionals hired by an LEA to provide instructional support to public school teachers providing Title I services to eligible private school students.

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### **The Rigorous standard of demonstrating competency**

**Comment:** Several commenters sought clarification of the option that paraprofessionals may meet a rigorous standard of quality by demonstrating competency through a formal State or local academic assessment. One commenter requested clarification that the assessment does not have to be in writing. Other commenters wanted the regulations to require States and districts to develop these assessments; make clear that States or districts may adopt an existing assessment; require that assessments be available before September 2003; specify that the assessment should be made available at no cost to the paraprofessionals; and clarify that Title I, part A funds may be used to develop or purchase such assessments.

**Discussion:** Under the ESEA, States and LEAs have considerable flexibility in how they design and administer their assessments. The Secretary does not believe that additional regulations are necessary and intends to highlight this flexibility in future non-regulatory guidance.

**Change:** None.

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### **Hire date for Paraprofessionals**

**Comment:** Two commenters sought clarification on how the requirements apply to paraprofessionals hired "on" January 8, 2002 as opposed to those before or after that date.

**Discussion:** The Secretary agrees that clarification is needed.

**Changes:** Section 200.58(d) is amended to clarify that existing paraprofessionals are those hired on or before January 8, 2002.

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### **Paraprofessionals in Multiple roles in Schools.**

**Comment:** Several commenters sought clarification on how the requirements apply to paraprofessionals in specified circumstances, e.g., paraprofessionals with multiple roles, such as translators who also provide instructional support, paraprofessionals who provide instructional support to teachers of subjects other than core academic subjects, such as physical education, and non-instructional computer technicians.

**Discussion:** The ESEA is very explicit about the requirements and to whom they apply. The requirements apply to any paraprofessionals in Title I, part A programs who are assigned an instructional support duty, even as one of many assigned responsibilities, identified in section 1111(g)(2) of the ESEA and Sec. 200.59(b). With regard to computer technicians, Sec. 200.58(a)(2)(ii) of the regulations states that solely providing technical support for computers is a non-instructional duty.

**Changes:** None.

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## **Paraprofessional is pre-Kindergarten, Head Start programs.**

**Comment:** One commenter sought clarification on how the requirements apply to paraprofessionals working in a variety of pre-Kindergarten programs, such as Head Start, or pre-Kindergarten programs funded with Head Start and State pre-Kindergarten funds.

**Discussion:** A number of questions have been raised about how the paraprofessional qualification [\[\[Page 71767\]\]](#)

requirements apply to paraprofessionals working in these pre-Kindergarten programs. The Secretary intends to address this issue in non-regulatory guidance.

**Change: None.**

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## **Section 200.59 Duties of Paraprofessionals**

**Comment:** One commenter wanted changes in the proposed Sec. 200.59 in order to reinforce the difference between instructional and non-instructional duties.

**Discussion:** The Secretary agrees with the recommendation.

**Changes: Section 200.59(b)** is amended to read, "A paraprofessional covered under Sec. 200.58 may perform the following instructional support duties:" Regardless of an employee's title, an individual hired by an LEA who does not perform instructional support duties as identified in Sec. 200.59 is not a "paraprofessional" for purposes of Section 1119 of the ESEA or these regulations. Moreover, it is possible that one employee, for example, performs parental involvement that is instructional support while another employee performs parental involvement that is not instructional support. The Department intends to issue guidance to help explain that distinction.

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## **One-on-One Tutoring provided by Paraprofessionals**

**Comment:** Several commenters recommended deleting language that would specify that one-on-one tutoring must take place outside of the regular school day.

**Discussion:** The Secretary agrees that there may be circumstances in which tutoring could be provided during the school day at a time when a student is not receiving instruction from a teacher.

**Changes: Section 200.59(b)(1)** is amended to remove the language requiring one-on-one tutoring to take place outside of the regular school day.

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## **Paraprofessionals working under supervision of a Teacher.**

**Comment:** Many commenters addressed the regulatory provisions in paragraph (c), and asked that it clarify what it means for a paraprofessional to work under the direct supervision of a teacher. For example, several commenters said that the proposed language was too prescriptive, while another proposed that the regulations require paraprofessionals to work in the same room as the teacher. One commenter sought additional clarification of what "close and physical

proximity to a teacher" means, while still another commenter recommended deleting this language.

**Discussion:** This regulatory provision responds to a finding of the National Assessment of Title I that, even though the prior statute also required paraprofessionals to work under the direct supervision of a teacher, 41 percent of paraprofessionals reported that half or more of the time they spent teaching or helping to teach was on their own, without a teacher present.

**Changes: None.**

**Material prepared by**

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