

April 15, 2004

Raymond J. Simon
Assistant Secretary
Office of Elementary and Secondary Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Assistant Secretary Simon:

I am writing to obtain clarification on a question that has emerged as a result of the non-regulatory guidance on Title I paraprofessionals issued by the Department on March 1, 2004.

My question concerns the qualification and supervision requirements that apply to a paraprofessional employed by a third party contractor. The recent guidance seems to contradict the Department's earlier interpretation that a paraprofessional employed by a third-party contract would not need to meet section 1119 requirements concerning professional staff qualifications.

The answer to question D-2, the paraprofessional guidance of March 2004 states, "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 [contractor]." The requirement of working under the direct supervision of a teacher suggests that the requirements of section 1119 would apply to the paraprofessional. In the absence of being covered under section 1119, there does not appear to be authority to require such supervision.

Yet, in earlier guidance the Department has consistently stated that section 1119 requirements do not apply to employees of third-party contractors. For example, in question C-18 of the nonregulatory guidance on Supplemental Education Services issued on August 22, 2003, the Department states, "[t]he requirements of section 1119 do not apply to supplemental service providers." In question B-54 of the non-regulatory guidance on Title I Services to Eligible Private School Children issued on October 17, 2003, the Department states, "[t]he highly qualified personnel requirements only apply to those teachers and paraprofessionals who are directly employed by the LEA."

To resolve this contradiction, I ask for your response to the following questions:

According to the Department's prior guidance, it appears a paraprofessional working in a program supported by Title I funds but employed by a third party provider need not meet the professional qualification requirements of sections 1119(c) and (d). The Department's newly released guidance clearly states that paraprofessionals employed by LEAs must meet those requirements. However, it leaves open the question of whether paraprofessionals hired by third-party employers must meet the same requirements. Therefore, my questions are as follows:

1. The newly released guidance refers to "third-party contractors." Does this term include, (a) supplemental education services providers, (b) private organizations contracted by LEAs to provide equitable services to eligible private school students, and (c) third party-contractors that are education management organizations contracted with local education agencies to operate schools?
2. If a paraprofessional is employed by a third-party contractor and works in a program supported by Title I funds, must the paraprofessional meet the professional qualification requirements of section 1119? If not, is he or she required to meet any minimum qualifications under the No Child Left Behind Act?
3. The guidance concludes that paraprofessionals employed by third-party contractors must be under the "direct supervision" of a teacher. Is this the same "direct supervision" defined in the answer to question D-1 of the paraprofessional guidance? If so, what is the authority for this requirement?

Thank you for the opportunity to raise these questions. These are issues of compelling and immediate interest to states and local school districts. Thank you in advance for your prompt assistance.

Sincerely,

Leigh M. Manasevit