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Michael Yudin
Deputy Assistant Secretary
Office of Elementary and Secondary Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Mr. Yudin:

We are writing to inquire about whether a school that is in its first year of receiving Title I funds, but has failed to make adequate yearly progress (AYP) for the two prior years is considered in year 1 of school improvement under the Elementary and Secondary Education Act (ESEA).

According to the ESEA, a school that fails to make AYP for 2 consecutive years must be identified for improvement status in the following year.¹ In the scenario we are concerned with, the school missed its AYP target for 2 consecutive years, and in year 3 the school is first receiving Title I funds. Significant to this fact pattern is that this school was not a Title I school in previous years and therefore not subject to Title I sanctions.

Under the ESEA, applicable regulations, and guidance, it is unclear how the school should be identified. An October 24, 2004 policy letter issued by the U.S. Department of Education (ED) to the Chief State School Officers states, "The statute does not expressly address the situation of how the school improvement provisions apply when a school receives Title I funds in one year but not the next. In these cases we believe that States have flexibility to establish their own guidelines."²

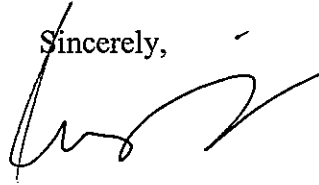
Based upon the statute and policy letter, it appears that in the scenario described above, the LEA would have the discretion to determine whether the school would be treated as if it is in year one of school improvement or as a school failing AYP for the first time and not subject school improvement unless it fails in the subsequent year.

¹ Elementary and Secondary Education Act § 1116(1)(A).

² *Use of Title I Funds, Districts and Schools Identified for Improvement*, ED policy letter to Chief State School Officers (October 12, 2004).

Thank you for the opportunity to raise this question. Your response will be greatly appreciated since this issue is of compelling and immediate interest to our clients. Thank you for your prompt assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Manasevit', written in a cursive style.

Leigh M. Manasevit