



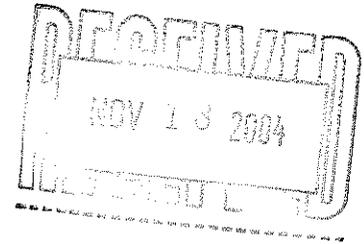
UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

NOV 16 2004

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Washington, D.C. 20007



Dear Mr. Manasevit:

This is in response to your letter seeking clarification on the question of the qualification and supervision requirements that apply to a paraprofessional employed by a third-party contractor under Section 1119 of Title I of the Elementary and Secondary Education Act, as amended by the No Child Left Behind (NCLB) Act. I will respond to your questions in the order they were asked.

Question 1. The newly released guidance refers to “third-party contractors.” Does this term include, (a) supplemental services providers, (b) private organizations contracted by local educational agencies (LEAs) to provide equitable services to eligible private school students, and (c) third-party contractors that are education management organizations contracted with LEAs to operate schools.

Response: The term “third-party contractor,” in the context of the paraprofessional guidance, does not apply to supplemental educational service providers. As used in the guidance, the term applies to an entity with which an LEA contracts to perform services that the LEA would otherwise need to perform to carry out its responsibilities under Title I, Part A. In two of the examples you cite—providing equitable services to eligible private school students and operating schools under a management agreement—a “third-party contractor” is fulfilling the responsibilities an LEA would otherwise be required to carry out under the statute. With respect to supplemental educational services, an entity—be it a school, an LEA, or a private contractor—applies to the State educational agency (SEA) to become a provider. If an approved private provider is selected by a parent of an eligible child, the LEA arranges for that provider to provide services. However, the provider has independent authority to provide those services based on its approval by the SEA; it is not performing services the LEA would otherwise be required to provide.

Question 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 NCLB Act?

Response: A paraprofessional employed by a third-party contractor and working in a program supported with Title I funds is not required to meet the paraprofessional qualification requirements in section 1119(c), (d), (e), and (f). This is because section 1119 speaks to paraprofessionals “hired” by an LEA that receives Title I funds. Paraprofessionals who work for a third-party contractor are not “hired” by an LEA.

However, a third-party contractor that works in a program supported with Title I funds—i.e., providing services in place of the LEA that has contracted for the services—must comply with the programmatic requirements of section 1119(g) of Title I and § 200.59 of the regulations, as well as all other programmatic requirements, because the contractor is, in effect, “standing in the shoes” of the LEA.

Paraprofessionals employed by a supplemental educational service provider are not required to meet these requirements. Those paraprofessionals are neither hired by an LEA nor performing services that an LEA would otherwise be required to perform.

Question 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?

Response: The term “direct supervision” in questions D-1 and D-2 is the same. The authority for this is section 1119(g)(3) of the statute and § 200.59(c) of the Title I regulations.

I hope this information clarifies these issues for you.

Sincerely,

A handwritten signature in black ink, appearing to read "Raymond Simon". The signature is written in a cursive style with a large, stylized initial "R".

Raymond Simon