

## **Individuals with Disabilities Education Act (IDEA) 2004 Regulations and Comments Related to Paraprofessionals/Teacher Assistants**

### **IDEA REGULATION**

#### §300.156 Personnel qualifications.

(a) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

(b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that--

(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and

(2) Ensure that related services personnel who deliver services in their discipline or profession--

(i) Meet the requirements of paragraph (b)(1) of this section; and

(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.

**COMMENTS:** The following provides comments received by the U.S. Department of Education on the federal regulations when they were in proposed form, followed by the U.S. Department of Education response (Discussion and Changes made, if any, to the regulations). These comments help to provide clarification regarding this and related federal regulations.

Comment: One commenter recommended that the regulations include standards for highly qualified special education paraprofessionals, similar to the requirements under the ESEA.

Discussion: Section §300.156(b) specifically requires the qualifications for paraprofessionals to be consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services.

In addition, the ESEA requires that paraprofessionals, including special education paraprofessionals who assist in instruction in title I-funded programs, have at least an associate's degree, have completed at least two years of college, or meet a rigorous standard of quality and demonstrate, through a formal State or local assessment, knowledge of, and the ability to assist in instruction in reading, writing, and mathematics, reading readiness, writing readiness, or mathematics readiness, as appropriate. Paraprofessionals in title I schools do not need to meet these requirements if their role does not involve instructional support, such as special education paraprofessionals who solely provide personal care services. For more information on the ESEA requirements for paraprofessionals, see 34 CFR 200.58 and section 1119 of the ESEA, and the Department's nonregulatory guidance, Title I Paraprofessionals (March 1, 2004), which can be found on the Department's Web site at: <http://www.ed.gov/policy/elsec/guid/paraguidance.pdf>.

We believe these requirements are sufficient to ensure that children with disabilities receive services from paraprofessionals who are appropriately and adequately trained. Therefore, we decline to include additional standards for paraprofessionals.

Changes: None.

Comment: Some commenters recommended that the regulations require high standards for paraprofessionals. Several commenters requested guidance on the appropriate use of paraprofessionals to ensure that paraprofessionals and assistants are not used as a means of circumventing certification and licensing requirements for related services providers. A few commenters requested language clarifying that the elimination of the requirement that State professional requirements be based on the highest requirements in the State in current §300.136(b) must not be used to justify the inappropriate use of paraprofessionals or related services providers. Another commenter asked that the regulations require

States to ensure that paraprofessionals are properly supervised at all times. One commenter stated that the regulations should clarify the use of State standards for speech-language pathology paraprofessionals.

Discussion: We believe the provisions in §300.156, consistent with section 612(a)(14) of the Act, are sufficient to ensure that paraprofessionals meet high standards and that including additional requirements in these regulations is unnecessary. These provisions require an SEA to establish and maintain qualifications to ensure that personnel, including paraprofessionals, are appropriately and adequately prepared and trained, and have the content knowledge and skills to serve children with disabilities; and require the qualifications for paraprofessionals to be consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services. In addition, the ESEA requires that paraprofessionals working in a program supported by title I of the ESEA, including special education paraprofessionals who assist in instruction in title I-funded programs, have at least an associate's degree, have completed at least two years of college, or meet a rigorous standard of quality and demonstrate, through a formal State or local assessment, knowledge of, and the ability to assist in instruction in reading, writing, and mathematics, reading readiness, writing readiness, or mathematics readiness, as appropriate. Paraprofessionals in title I schools do not need to meet these requirements if their role does not involve instructional support, such as special education paraprofessionals who solely provide personal care services. For more information on the ESEA requirements for paraprofessionals, see 34 CFR 200.58 and section 1119 of the ESEA, and the Department's nonregulatory guidance, Title I Paraprofessionals (March 1, 2004), which can be found on the Department's Web site at: <http://www.ed.gov/policy/elsec/guid/paraguidance.pdf>.

With regard to the commenter requesting that the regulations clarify the use of State standards for speech-language paraprofessionals, we do not believe it is appropriate to include clarification regarding a specific discipline in these regulations because the Act requires States to establish and maintain qualifications to ensure that paraprofessionals, including speech-language paraprofessionals, are appropriately and adequately prepared and trained.

Section 300.156(b)(2)(iii), consistent with section 612(a)(14)(B)(iii) of the Act, does specifically allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, to assist in providing special education and related services to children with disabilities under the Act. However, this provision should not be construed to permit or encourage the use of paraprofessionals as a replacement for teachers or related services providers who meet State qualification standards. To the contrary, using paraprofessionals and assistants as teachers or related services providers would be inconsistent with the State's duty to ensure that personnel necessary to carry out the purposes of Part B of the Act are appropriately and adequately prepared and trained. Paraprofessionals in public schools are not directly responsible for the provision of special education and related services to children with disabilities; rather, these aides provide special education and related services to children with disabilities only under the supervision of special education and related services personnel. We believe the provision in §300.156(b)(2)(iii) sufficiently ensures that paraprofessionals and assistants are adequately supervised and further clarification in these regulations is unnecessary.

The Act makes clear that the use of paraprofessionals and assistants who are appropriately trained and supervised must be contingent on State law, regulation, and written policy giving States the option of determining whether paraprofessionals and assistants can be used to assist in the provision of special education and related services under Part B of the Act, and, if so, to what extent their use would be permissible. However, it is critical that States that use paraprofessionals and assistants to assist in providing special education and related services to children with disabilities do so in a manner that is consistent with the rights of children with disabilities to FAPE under Part B of the Act. There is no need to provide additional guidance on how States and LEAs should use paraprofessionals and assistants because States have the flexibility to determine whether to use them, and, if so, to determine the scope of their responsibilities.

Changes: None.

Comment: One commenter stated that LEAs must train special education teachers because most special education teachers are not highly qualified upon graduation from a college program. A few commenters recommended that the regulations encourage SEAs to require coursework for both special education and

general education teachers in the areas of behavior management and classroom management. One commenter recommended that the requirements for special education teachers include competencies in reading instruction and in properly modifying and accommodating instruction. Another commenter supported training in special education and related services for general education teachers. One commenter expressed support for collaboration between special education and regular education teachers. Some commenters recommended requiring a highly qualified general education teacher teaching in a self-contained special education classroom to work in close collaboration with the special education teacher assigned to those children. Another commenter stated that the definition of a highly qualified special education teacher will be meaningless if the training for teachers is not consistent across States.

Discussion: Personnel training needs vary across States and it would be inappropriate for the regulations to require training on specific topics. Consistent with §300.156 and section 612(a)(14) of the Act, each State is responsible for ensuring that teachers, related services personnel, paraprofessionals, and other personnel serving children with disabilities under Part B of the Act are appropriately and adequately prepared and trained and have the content knowledge and skills required to serve children with disabilities.

Changes: None.

Comment: One commenter recommended different requirements for paraprofessionals who perform routine tasks and those who perform specific activities to assist in the provision of special education and related services.

Discussion: We do not see the need to make a change to the regulations as suggested by the commenter because, under §300.156, consistent with section 612(a)(14) of the Act, SEAs have the responsibility for establishing and maintaining qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained. Furthermore, SEAs and LEAs have the flexibility to determine the tasks and activities to be performed by paraprofessionals and assistants, as long as they are consistent with the rights of children with disabilities to FAPE.

It should be kept in mind, however, that the ESEA has different requirements for paraprofessionals, including special education paraprofessionals, who assist in instruction in title I schools versus paraprofessionals in title I schools who do not provide instructional support, such as special education paraprofessionals who solely provide personal care services.

Changes: None.

Comment: Many commenters recommended that §300.156 provide more guidance to ensure that States and LEAs implement proven strategies for recruiting and retaining qualified personnel. A few commenters stated that this is especially important for speech-language pathologists because large caseloads, increased paperwork, and lack of time for planning and collaboration have been shown to contribute to their burn out and attrition. Several commenters recommended that strategies to recruit and retain qualified personnel include reasonable workloads, improved working conditions, incentive programs, salary supplements, loan forgiveness, tuition assistance, signing bonuses, streamlined application processes, State and national advertising venues, school and university partnerships, release time for professional development, certification reciprocity between States, grants to LEAs for recruitment and retention programs, alternate professional preparation models, caseload size standards, and classroom size standards.

One commenter requested that the requirements to recruit, hire, train, and retain highly qualified personnel in §300.156(d) apply to paraprofessionals who provide special education and related services.

Discussion: The list of strategies recommended by the commenters includes many strategies that may be effective in recruiting and retaining highly qualified personnel; however, we do not believe it is appropriate to include these or other strategies in our regulations because recruitment and retention strategies vary depending on the unique needs of each State and LEA. States and LEAs are in the best position to determine the most effective recruitment and retention strategies for their location.

With regard to the comment regarding the applicability of §300.156(d) to paraprofessionals who provide special education and related services, §300.156(d), consistent with section 612(a)(14)(C) of the Act, applies to all personnel who provide special education and related services under the Act, including paraprofessionals.

Changes: None.

Comment: One commenter recommended requiring that the procedural safeguards notice include a parent's right to request the credentials of any teacher who supports the child in the educational environment, as well as documentation regarding the type of supervision provided for any teacher who is supervised by a highly qualified teacher.

Discussion: The content of the procedural safeguards notice is based on the items listed in section 615(d)(2) of the Act, which do not include providing information about teachers' credentials and personnel qualifications in a procedural safeguards notice, as requested by the commenter. Nor is there any requirement elsewhere in the Act for public agencies to provide information about teachers' credentials and personnel qualifications.

Section 1111(h)(6) of the ESEA, however, requires LEAs to inform parents about the quality of a school's teachers in title I schools. Under the ESEA, an LEA that accepts title I, part A funding must notify parents of students in title I schools that they can request information regarding their child's teacher, including, at a minimum: (1) whether the teacher has met State requirements for licensure and certification for the grade level(s) and subject-matter(s) in which the teacher provides instruction; (2) whether the teacher is teaching under emergency or other provisional status through which State qualification or licensing criteria has been waived; (3) the college major and any other graduate certifications or degrees held by the teacher, and the field of discipline of the certifications or degrees; and (4) whether the child is provided services by paraprofessionals, and if so, their qualifications. In addition, each title I school must provide each parent timely notice that the parent's child has been assigned, or has been taught for four or more consecutive weeks, by a teacher who is not highly qualified. These requirements also apply to special education teachers who teach core academic subjects in title I schools.

Changes: None.