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## **Topic: Private School Student and Educator Participation in ESEA/NCLB Programs**

### **The No Child Left Behind Act of 2001**

The Elementary and Secondary Education Act (ESEA), as reauthorized by the No Child Left Behind Act of 2001 (NCLB), provides educational services and benefits to private school students and educational personnel, including those in religiously affiliated schools. These services are considered to be of assistance to students and educators and not to private schools. The reauthorized ESEA requires the equitable participation of private school students and educational personnel in some of its major programs. Following are explanations of some of the law's provisions, brief summaries of each program, and questions and answers regarding the participation of private school students and educational personnel in the programs. Information is also provided on the transfer of funds from one program to another. Much of the information in this document has been drawn from federal guidance documents posted on the United States Department of Education website, [www.ed.gov](http://www.ed.gov)

The following programs, which are administered by the Department of Public Instruction, are addressed in this document:

- A. Title I, Part A—Improving Basic Programs Operated by LEAs
- B. Title I, Part B—Reading First, Subparts 1 and 3 and Part C
- C. Title II, Part A— Improving Educator Quality
- D. Title II, Part D—Enhancing Education through Technology
- E. Title III, Part A—English Language Acquisition, Language Enhancement, and Academic Achievement
- F. Title IV, Part A—Safe and Drug-Free Schools and Communities
- G. Title IV, Part B—21st Century Community Learning Centers
- H. Title V, Part A—Innovative Programs

## Questions and Answers

Following are questions and answers to *general* and *program specific* private school participation requirements of NCLB.

### General

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The following questions and answers apply to all of the programs listed on page 1 unless otherwise noted.

**1. What does equitable participation by private school students and educational personnel mean?**

The uniform provisions in Title IX of ESEA, sections 9501-9504, govern the participation of private school students and educational personnel in the ESEA programs (<http://www.ed.gov/legislation/ESEA02/pg111.html>).

Under the uniform provisions, local education agencies (LEAs) or other entities receiving federal financial assistance are required to make educational services available to eligible private school students and educational personnel *consistent with the number* of eligible students enrolled in private elementary and secondary schools in the areas served by the LEA. These educational services and other benefits must be comparable to the services and other benefits provided to public school students and educational personnel participating in the program and address their needs under the program. The services are to be provided in a timely manner. Private schools are not required to accept the educational services.

To ensure equitable participation, the LEA receiving federal financial assistance must:

- consult with private schools to assess, address, and evaluate the needs of private school students and educators;
- spend an equal amount of funds per student to provide services;
- provide private school students and educators with an opportunity to participate in activities equivalent to the opportunity provided to public school students and educators; and
- offer services that are secular, neutral, and non-ideological.

Equitable participation is not achieved when an LEA invites private schools to participate in pre-planned programs without prior consultation. In order to facilitate consultation between public and private school officials and the effective implementation of programs and services for private school students and teachers, SEAs/LEAs are encouraged to create non-public school working groups, made up of representatives from the full spectrum of private schools. Such groups exist in some states and LEAs, meet on a regular basis, and smooth the progress of federal education program implementation for private school students and teachers.

## **2. What are the requirements for timely and meaningful consultation?**

To ensure timely and meaningful consultation, the LEA shall consult with appropriate private school officials during the design and development of the programs under this act. At a minimum, the LEA must consult with private school representatives on:

- how the needs of private school students and educational personnel will be identified;
- what services will be offered;
- how, where, and by whom the services will be provided;
- how the services will be assessed and how the results of the assessment will be used to improve those services;
- the size and scope of the equitable services to be provided to the eligible private school students and educational personnel and the amount of funds available for those services; and
- how and when the LEA will make decisions about the delivery of services, including a thorough consideration and analysis of the views of the private school officials on the provision of contract services through potential third-party providers.

The LEA is to consult with private school administrators prior to the submission of the grant application to the department. During the grant application process, the Department of Public Instruction annually will collect information on how the LEA has complied with this requirement through the Application Requirements Checklist (form PI-9550-W).

## **3. Must an LEA contact the officials of all private schools every year, even when there have been no recent indications of a desire to participate in the federal program(s)?**

Yes. The LEA is required to contact appropriate officials of all private schools within the boundaries of the school district annually to determine if they want their educators and/or students to participate in the program, regardless of whether or not those officials have indicated any interest in program participation in the past. In addition, for Title I, the LEA must contact the private schools in other communities that are serving eligible students who are residents of the school district. The LEA is required to annually collect and maintain on file a Private School Participation Verification form (PI-9550-A) for each nonprofit private school in the district. This form can be found at <http://www.dpi.state.wi.us/dpi/esea/9550/pi-9550-a.pdf>

## **4. When must an LEA consult with appropriate private school officials?**

To ensure timely and meaningful consultation, an LEA must consult with appropriate private school officials during the design and development of the proposed programs and prior to the submission of the grant application to the department. Decisions that affect the opportunities of eligible private school

educators and/or students to participate in federal program activities should be made only after consultation has taken place. [Section 9501(c)(3) and (4)].

**5. May an LEA require private school representatives to submit written documentation in order to receive services?**

LEAs may request that reasonable documentation be submitted in a timely manner, as needed, from private school officials to help the LEA identify educational services that may be appropriate to the needs of private school students and educators. Such documentation should be limited to a description of the needs of the students and/or educators and a brief description of the services and programs desired to meet those needs.

**6. What kinds of records should an LEA maintain to show that it has met its responsibilities for equitable participation of private school educators and/or students?**

To meet its general record-keeping responsibility, an LEA should document that: (a) representatives of private schools were informed of the availability of services; (b) the needs of private school educators and/or students were identified; (c) private school officials were consulted and provided an opportunity for input into the planning of the LEA's program activities; and (d) the amount of funds made available were equitable to that for public school students and educators. The LEA is required annually to collect and maintain on file a Private School Participation Verification form (PI-9550-A) for each nonprofit private school in the district. This form can be found at <http://www.dpi.state.wi.us/dpi/esea/9550/pi-9550-a.pdf>

The LEA also should maintain records of its efforts to resolve any complaints by private school representatives regarding equitable services.

Note: For Title I, see Question A.7 in the Program Specific section.

**7. Who has control of the funds?**

The LEA maintains control of the federal funds used to provide services under the grant programs funded through the No Child Left Behind Act. It also maintains title to materials, equipment, and property purchased with those funds. LEAs may allow the private schools to keep the items from year to year, in accordance to approved ongoing activities, so long as records are maintained.

**8. What are the private school involvement requirements if an LEA decides to transfer NCLB funds from one title to another?**

In general, an LEA may transfer up to 50 percent of each fiscal year's funds that it receives *by formula* under the following provisions:

Title II, Part A—Improving Educator Quality Grants

Title II, Part D—Enhancing Education through Technology Grants

## Title IV, Part A—Safe and Drug-Free Schools and Communities Grants

## Title V, Part A—Innovative Programs

Before transferring funds, an LEA must:

- (a) conduct consultations in accordance with section 9501 of the ESEA to provide for the equitable participation of private school students and staff (see II-C-2);
- (b) determine what funds are to be transferred (subject to the applicable percentage limitation) and the programs to which the funds will be transferred on the basis of the LEA's priorities and after engaging in the consultations referenced in paragraph (1);
- (c) modify each affected LEA plan or application to account for the transfer;
- (d) establish an effective date for the transfer; and
- (e) notify the department of the transfer at least 30 days *before* the effective date of the transfer. (If a transfer results in a significant change in the administration or operation of a local plan or application, the LEA must also submit to the department, within 30 days after the transfer, a copy of its revised local plan or application.)

Each of the programs covered by the LEA transferability authority is subject to the equitable participation requirements of each title. Thus, before an LEA may transfer any funds, it must engage in timely and meaningful consultation with private school officials. With respect to the transferred funds, private school students and teachers are entitled to receive equitable services from the LEA under the programs to which the funds are transferred.

An LEA may not transfer funds to a particular program solely to provide services for private school students and/or educators. Rather, the LEA provides equitable services to private school students and educators from the overall funds of a program, including the transferred funds.

For more information on this topic, see ESEA Information Update bulletin 02.13, "Flexible Use of ESEA Program Funds Across Titles (Transferability)," at [http://www.dpi.state.wi.us/dpi/esea/bul\\_0213.html](http://www.dpi.state.wi.us/dpi/esea/bul_0213.html)

Also, complete guidance on private school involvement in the transferring of funds can be found at [www.ed.gov/flexibility/transferabilityguidance.doc](http://www.ed.gov/flexibility/transferabilityguidance.doc).

**9. Are private school students and educators entitled to equitable participation in competitive grants as well as in formula grants?**

In some cases, private school students and educators are entitled to equitable participation in competitive grants. These competitive grant programs include 21<sup>st</sup> Century Learning Centers, Reading First, Even Start, and Title IID - Enhancing Education through Technology.

The department will include information in this regard in the relevant Requests for Proposals (RFPs).

**10. How can private schools assist the LEA in meeting the obligation for equitable participation and consultation?**

Private schools can facilitate the process by:

- annually completing and submitting the Private School Participation Verification form (PI-9550-A) to the district (this form can be found at <http://www.dpi.state.wi.us/dpi/esea/9550/pi-9550-a.pdf>);
- responding to the LEA's request for information in a timely manner;
- providing documentation on the needs of students and educators in accordance with each grant program's requirements; and
- assessing student achievement in accordance with the grant program requirements (see A.1, B.1, E.3).

**11. What recourse is available if an LEA will not use its federal funds to provide equitable services to private school students and educational personnel?**

The private school should first work to resolve the concerns at the local level. If this does not work, then concerns about an LEA's failure to provide equitable services to private school students and educational personnel may be submitted in writing to the state superintendent. The state department's resolution may be appealed to the United States Department of Education.

**12. Do charter schools need to provide equitable services to private schools?**

No. Although charter schools are considered LEAs for the purpose of receiving federal entitlement funds, they are not subject to the provisions regarding equitable participation of private schools.

**13. Does the law require that LEAs provide equitable services with NCLB funding only to private "nonprofit" schools?**

Yes. Section 9501(a) requires LEAs to provide equitable services to teachers and students in "private elementary and secondary schools." NCLB defines "elementary" and "secondary" schools as "nonprofit institutional day or residential school(s)" [Section 9101(18) and (38)].

## PROGRAM SPECIFIC INFORMATION

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The following questions and answers pertain to specific programs.

### A. Title I, Part A—Improving Basic LEA Programs: Overview

Title I, Part A, provides supplementary instruction by public school teachers or through a third-party contractor to students who are educationally disadvantaged and failing or are most at risk of failing to meet high academic standards and who live in areas of high poverty. Instruction may take place during the school day, before or after school, or during the summer.

#### A.1. What is the applicability of state academic assessment to private schools?

Private schools, including private schools with Title I students, are not required to participate in a state's academic assessments. If a private school has students who receive Title I services, the LEA must consult with private school officials about how those students will be assessed.

34 CFR section 200.10 addresses this issue. Specifically, it states:

Nothing in Sec. 200.1 or Sec. 200.2 requires a private school whose students receive Title I services to participate in a state's academic assessment system.

(a) If an LEA provides services to eligible private school students, the LEA must, through timely consultation with appropriate private school officials, determine how services will be academically assessed and how the results of that assessment will be used to improve those services.

(b) The assessments **may** be the state's academic assessments **or** other appropriate academic assessments. These Title I regulations for standards and assessment requirements went into effect August 5, 2002, and are available at <http://www.ed.gov/legislation/FedRegister/finrule/2002-2/070502a.html>.

#### A.2. How are Title I funds for private school students determined?

Funds are generated on the basis of the number of students from low-income families who **reside** in participating public school attendance areas and attend private schools, whether the private **schools** are located **within** or **outside** district boundaries. Private school students who **reside** within a Title I attendance area and who are failing or most at risk of failing to meet high academic standards are eligible for services.

Methods an LEA may use for determining low-income private school students are:

- same poverty data as for public school students,
- comparable poverty data,
- extrapolated data based on representative sample,
- comparable data from a different source (e.g., scholarship applications),

- apply low-income percentage of each participating public school attendance area to the number of private school children who reside in that attendance area, or
- equated measure of low income correlated with the measure used for public school children. Final Regulations, Sec. 200.78 (a)(2)(ii)(A-E).

After timely and meaningful consultation, "...the LEA shall have the final authority in determining the method used to calculate the number of private school children from low-income families." Final Regulations, Sec. 200.78 (a)(2)(iv).

The amount of funds available to provide equitable services from the applicable reserved funds must be proportionate to the number of private school children from low-income families residing in participating public school attendance areas. Final Regulations, Sec. 200.64 (a)(2)(i)(B).

### **A.3. Where may Title I services be provided to private school students?**

Title I services may be provided at the private school, including religiously affiliated schools, or at other locations. See Guidance on the Supreme Court's Decision in *Agostini v. Felton* and Title I (Part A) of ESEA at [www.ed.gov/legislation/ESEA/feltquid.html](http://www.ed.gov/legislation/ESEA/feltquid.html).

### **A.4. What services may be provided to private school students, parents, and educators?**

Services may include assistance through a pullout model, supplementary instruction, direct instruction, computer-assisted instruction, tutoring, counseling, family literacy, and early childhood programs. In addition, the law requires equitable participation of private school educators of Title I students in professional development activities and of parents of Title I students in parent involvement activities.

### **A.5. Who may be contracted to provide services in private schools?**

Services shall be provided:

- by employees of the LEA or another public agency, or
- through a contract by the public agency with an individual, association, agency, organization, or other entity.

In the provision of those services, the employee, person, association, agency, organization, or other entity shall be independent of the private school and of any religious organization. The employment or contract shall be under the control and supervision of the LEA.

### **A.6. What qualifications must contracted service providers have?**

Educators hired with Title I, Part A funds must be "highly qualified" as defined by the No Child Left Behind Act of 2001. "Draft Non-Regulatory Guidance:

Improving Teacher Quality State Grants” can be found at <http://www.ed.gov/offices/OESE/SIP/TitleIguidance2002.doc>

**A.7. What records does the LEA need to maintain regarding private school participation in Title I services?**

Under Title I, LEAs are required to maintain records of an offer of consultation to officials at private schools where eligible students attend, as well as a written affirmation signed by an official for each participating private school that the required consultation has occurred. The LEA is required annually to collect and maintain on file a Private School Participation Verification form (PI-9550-A) for each nonprofit private school in the district. This form can be found at <http://www.dpi.state.wi.us/dpi/esea/9550/pi-9550-a.pdf>

**B. Title I, Part B — Reading First**

Reading First provides funding to implement comprehensive reading instruction for students in kindergarten through third grade. Funds must be used for reading programs; instructional materials; professional development; administering screening, diagnostic, and classroom-based reading assessments; collecting and reporting data; and promoting reading and library programs. Private school students in areas served by public schools receiving Reading First funds are eligible for services.

**B.1. Are private school students eligible to participate in the Reading First program?**

Yes. Funds awarded to LEAs under Reading First are subject to the equitable participation requirements of Section 9501 of ESEA. The statute requires LEAs to provide private school students and educational personnel with educational services that address their needs related to Reading First on an equitable basis with public school students and educational personnel. LEAs must provide these services in a timely manner.

Funds going toward educational services (and other benefits) for private school students and their educators must be **equal** on a per-pupil basis to the funds provided for participating public school students and educators, taking into account the number and educational needs of the students to be served.

All services and benefits provided to private school students and their educators under Reading First must be secular, neutral, and non-ideological.

LEAs seeking Reading First grants must consult with appropriate private school officials during the design and development of their Reading First plans on such issues as determining eligibility of private school students; identifying students' needs; what services will be offered; how, where, and by whom services will be provided; and how the services will be assessed.

**B.2. How is the eligibility of private school students determined?**

In general, private school students in areas served by public schools receiving Reading First funds would be eligible. This determination can be made *either* through private school students residing in the attendance area of a public school receiving Reading First funds or by the location of a private school in the attendance area of a public school receiving Reading First funds. The department will provide further guidance on this area through its competitive Reading First Request for Proposals process.

**C. Title II, Part A— Preparing, Training, and Recruiting High Quality Teachers and Principals**

Title II, Part A provides assistance for preparing, training, recruiting, and retaining highly qualified teachers. The amount of funding available or services to private school personnel is governed by Section 9501(b)(3), which requires equitable participation of private school education personnel to the extent that the LEA uses its funds for professional development. The activities allowed under the law are summarized as follows: (1) Providing professional development activities that improve the knowledge of teachers, principals, and paraprofessionals; (2) Developing and implementing initiatives to promote retention of highly qualified teachers and principals, particularly within schools with a high percentage of low-achieving students, and initiatives, including activities related to PI 34, to improve the quality of teachers, principals, and superintendents; (3) Staff advancement initiatives that promote professional growth and emphasize multiple career and pay differentiation, including activities related to PI 34; and (4) Developing and implementing mechanisms and initiatives to assist in recruiting, hiring, and retaining highly qualified teachers for the purpose of reducing class sizes. Private schools can only participate in the first three activities above.

**C.1. What are the previous uses of Title II, Part A by private schools?**

The participation of private schools in Title II, Part A has shown a significant increase during the last seven years. In 2002, only 3.2% of Title II funds were spent in providing professional development services to private schools. In 2008, about 4.2% of the funds were allocated to provide professional development services to private schools. Almost all private schools in Wisconsin developed their own professional development plans ranging from participation in workshops and graduate courses in core academic areas to obtaining advanced degrees and acquiring new licenses.

**C.2. How does an LEA determine the amount of funds required for equitable services to private school educational personnel?**

Funds provided for professional development for private school teachers must be equal to the amount spent for public school teachers on a per-

pupil basis. Hence, on a per-pupil basis, expenditures for professional development for public and private school teachers must be equal.

LEAs are required to provide equitable services for private school teachers and other educational personnel for that portion of Title II, Part A funds used for professional development. The amount of Title II, Part A funds that an LEA must make available for equitable services to private school teachers and other educational personnel must be at least as much for professional development under Title II, Part A as was available in FY 2001 under the Eisenhower Professional Development Program. The Eisenhower FY 2001 allocations can be accessed at <http://www.dpi.wi.gov/cal/t2agrant.html>.

To determine the per pupil allocation, the LEA divides the total amount allocated for professional development by the number of eligible private and public school children. This amount should then be multiplied by the total number of students enrolled in private schools to arrive at a total amount of funds to be designated for professional development for nonpublic school educators participating in the program.

**C.3. What happens if an LEA decides not to use any of its Title II, Part A funds for professional development? How does the LEA meet its obligation to provide for the equitable participation of private school educators?**

To determine the amount of Title II, Part A funds that an LEA must make available for equitable services to private school educational personnel, the LEA must assume that it is spending at least as much for professional development under Title II, Part A as it did in 2001-02 under the Eisenhower Professional Development and federal Class-Size Reduction programs.

**C.4. How does the LEA ensure that it is providing equitable services?**

To ensure that it is providing equitable professional development services to private school educational personnel, the LEA should consider ways to:

- assess, address, and evaluate the needs and progress of both public and private school educators through meaningful consultation;
- spend an equal amount of funds per student to serve the needs of public and private school educators and their students;
- provide private school educators with an opportunity to participate in Title II activities equivalent to the opportunity provided public school educators; and
- offer educational services to private school educators that are secular, neutral, and non-ideological [*Section 9501(a)(2)*].

**C.5. What are some of the eligible activities under this program in which private school teachers and other educational personnel may participate?**

As with any activity sponsored by the LEA for public school educators, activities supported with Title II, Part A funds benefiting private school educators must meet the requirements of the Title II statute. Activities carried out for private school personnel must be based on a review of scientifically-based research and must be expected to improve student academic achievement. Only activities meeting these standards are eligible for funding.

Professional development activities may include:

- improving the knowledge of teachers, principals, and other educational personnel in one or more of the core academic subjects and in effective instructional teaching strategies, methods, and skills;
- training in effectively integrating technology into curricula and instruction;
- training in how to teach students with different needs, including students with disabilities or limited English proficiency, and gifted and talented students;
- training in methods of improving student behavior, identifying early and appropriate interventions, and involving parents more effectively in their children's education;
- leadership development and management training to improve the quality of principals and superintendents; and
- training in the use of data and assessments to improve instruction and student outcomes.

**C.6. Does the professional development program for private school teachers have to be the same as the professional development program for public school teachers?**

No. Consultation and coordination are essential to ensuring high-quality, sustained, intensive, and classroom-focused professional development activities for private school teachers. LEAs must assess the needs of private school educators in designing the professional development program for private school teachers. If the professional development needs of the private school educators are different from those of public school educators, the LEA, in consultation with private school representatives, should develop a separate program.

**C.7. What happens if an LEA's professional development offerings address some, but not all, of a private school's needs? How are**

**costs calculated for private school participation in these activities, and how does this affect the total private school allocation?**

After consultation, a district and private school may decide that the district's professional development activities address some of the private school's needs but not all. Therefore, they may determine that the private school should participate in those activities and receive a reduced allocation to address its other needs. This reduction in allocation would reflect the cost of a private school's participation in a district's activity.

To arrive at the reduced allocation, the district would determine the cost of the professional development activity the private school wants to attend and then divide the total cost by the number of total participants to arrive at a per participant figure for that particular district offering. The district would then multiply the number of private school attendees by the per-participant cost to determine the private school's cost for participating in the activity. The district and private school would then deduct this amount from the total private school allocation. The private school would be able to use the remainder of its "allocation" for other activities that address its needs.

**C.8. May funds be used to support the acquisition of advanced degrees by private school teachers?**

Yes. An LEA may use Title II, Part A funds to support a teacher's acquisition of an advanced degree if the degree program is consistent with the results of the needs assessment conducted for private school teachers. The financial support must be for graduate courses that would enable the teacher to provide more effective instruction.

**C.8. May funds be used to pay stipends to private school educators participating in a Title II, Part A, *Improving Educator Quality Grants* professional development program?**

Yes. Title II, Part A funds may be used to pay for stipends for private school educators. The use of funds for stipends must be reasonable and necessary. For example, if the professional development activity is conducted during after-school hours or in the summer, stipends may be needed to compensate educators for their participation outside their regular employment hours. The stipends must be paid directly to the private school educators for their own use and not to the private school.

**C.10. May Title II, Part A, *Improving Educator Quality Grants* funds be used to pay for substitute teachers who replace teachers from private schools while they attend professional development activities?**

No. The Title II, Part A program does not authorize payments to private schools to be used for hiring substitute teacher.

**C.11. May *Improving Teacher Quality State Grant* funds be used to pay any portion of a private school teacher’s salary or benefits?**

No. While LEAs must set aside an amount of Title II, Part A funds for the equitable participation of private school teachers in professional development activities, funds may not be used to pay or subsidize any portion of a private school teacher’s salary or benefits.

**C.12. May administrative costs be considered in determining the per-teacher expenditures for private school teachers?**

No. LEAs pay the costs of administering professional development programs for public and private school educational personnel "off the top" of their total allocation. This is calculated **before** determining how much of the Title II, Part A funds are to be made available for professional development of public and private school educators.

**C.13. Must the LEAs administer and retain control over the Title II, Part A, *Improving Educator Quality* grant funds used to serve private school educators?**

The LEA must administer and retain control over the funds and, therefore, may not provide program funds directly to private schools.

**D. Title II, Part D—Enhancing Education through Technology: Overview**

The Enhancing Education through Technology program provides funds for innovative initiatives to support the integration of educational technology into classrooms to improve teaching and learning. Activities may include professional development in technology integration and the use of the Internet, distance learning initiatives, acquiring educational technology, and using technology to enhance parental involvement. This program is governed by the uniform provisions and requires the equitable participation of students and educators in private schools located in school districts that receive a Title II-D grant.

**D.1. What do the equitable participation provisions in Title II-D require LEAs to do?**

LEAs must engage in timely and meaningful consultation with appropriate private school officials during the design and development of programs and continue the consultation throughout the implementation of these programs. Therefore, for both Ed Tech formula and competitive awards, the consultation should begin during the development of the local grant proposals. Eligible LEAs that seek both competitive and formula funding under Ed Tech may engage in consultations that simultaneously involve the Ed Tech competitive and formula grants.

LEAs must provide, on an equitable basis, educational services or other benefits that address the educational technology needs of students and educational personnel in private schools in areas served by the LEAs.

Activities may include professional development in technology integration and the use of the Internet, distance learning initiatives, acquiring educational technology, and using technology to enhance parental involvement.

**D.2. Must the expenditures that the LEA provides for private school educators be equal on a per-pupil basis?**

Title II, Part D services for private school students and educational personnel must be equitable in relation to services to public school students and educational personnel. The law also requires that funds for private schools be equal on a per-pupil basis. Hence, on a per-pupil basis, expenditures for public and private school students and educators must be equal.

The per-pupil allocation is based on the number of eligible students "enrolled in private elementary schools and secondary schools in areas served" by the school district. Residence is not a factor here as it is in Title I.

**D.3. Who has control of the funds?**

The LEA maintains control of funds used to provide services under Title II, Part D. It also maintains title to materials, equipment, and property purchased with those funds.

**E. Title III, Part A—English Language Acquisition, Language Enhancement, and Academic Achievement: Overview**

The English Language Acquisition, Language Enhancement, and Academic Achievement program provides funds for helping limited English proficient (LEP) students attain English proficiency and meet the same challenging state academic content and student achievement standards as all students are expected to meet. Private school students and educators whose schools are located within an LEA that receives a grant from the state are eligible to participate in this program as required by the uniform provisions.

**E.1. What is meant by “equitable” participation by public and private school students and educational personnel in a Title III program?**

Participation is considered to be equitable if the LEA (a) assesses, addresses, and evaluates the needs and progress of public and private school students and educational personnel on a comparable basis; (b) provides, in the aggregate, approximately the same amount of services to students and educational personnel with similar needs; (c) spends an equal amount of funds to serve similar public and private school students and educational personnel; and (d) provides both groups of students and educational personnel equal opportunities to participate in program activities.

**E.2. Must an LEA’s Title III program design be the same for both public and private school students and educational personnel?**

No. Consultation and coordination between LEA and private school officials are essential to ensure a high-quality program that addresses the needs of the

students being served and assists those students in attaining English proficiency and meeting the same challenging standards as all students are expected to meet. The LEA must assess the needs of private school students and educational personnel in designing a program that addresses their needs. If their needs are different from those of public school students and educational personnel, the LEA, in consultation with private school officials, must develop a **separate program** design that is appropriate for their needs.

**E.3. Are private school students receiving Title III services required to participate in the same English language proficiency assessments that are required of public school students receiving Title III services?**

No. However, private school students receiving Title III services, like participating public school students, must be assessed annually for their level of English proficiency in the domains of speaking, listening, reading, writing, and comprehension. The state assessments may be used, if they are appropriate, or other assessments may be used. In any case, the assessments must be comparable to those used for the public school students and aligned with the academic learning standards established by the state or by the private school.

**E.4. Does the Title III requirement on language qualifications for teachers providing Title III services to public school students apply to teachers providing these services to private school students?**

Yes. Like teachers serving public school limited English proficient students, teachers providing Title III services to private school students must be fluent in English and any other language used for instruction.

**E.5. How are limited English proficient students identified?**

Private schools receiving Title III services must establish a consistent and reasonable process for identifying LEP students. This will entail using qualified staff and appropriate procedures and assessments to assess the ability of students whose first language is not English to do ordinary classwork in English.

**F. Title IV, Part A—Safe and Drug-Free Schools and Communities: Overview**

The Safe and Drug-Free Schools and Communities Act supports programs that foster a safe and drug-free learning environment. Authorized activities include drug, violence, and suicide prevention programs; professional development and training; developing school security plans; conflict resolution, community service, and character education programs; family involvement activities; counseling; mentoring; and emergency intervention services.

**F.1. What private school students can receive Title IV, Part A services?**

Any student attending a private school within the boundaries of the LEA and whose school chooses to participate in the program may receive services.

**F.2. How must public school districts work with private schools to design services that meet the needs of both private and public school students**

LEAs must consult with appropriate private school officials during the design, development, and implementation of programs on issues such as how the children's and teachers' needs will be identified; what services will be offered; how, where, and by whom the services will be provided; how the services will be assessed and how the results of the assessment will be used to improve those services; the size and scope of the equitable services; the amount of funds available for those services; how and when the LEA will make decisions about the delivery of services; and a thorough consideration and analysis of the views of the private school officials on the provision of contract services through potential third-party providers. If the needs of private school students and teachers are different from those of public school students and teachers, the LEA, in consultation with private school representatives, is required to develop a separate program. Decisions affecting the opportunities of eligible private school student and teacher participation in Title IV, Part A programs are made only after consultation has taken place.

The services must be secular, neutral, and non-ideological and must be furnished following timely and meaningful consultation with private school officials.

Funds provided for programs and services for private school students and teachers must be equal on a per-pupil basis, taking into account the number and educational needs of the children to be served, to the funds provided for participating public school students and teachers. Hence, on a per-pupil basis, expenditures for public and private school students and teachers must be equal. Costs for administering programs for public and private school students and teachers, such as costs expended to meet requirements common to grants in general, including financial management and retention of records, must come "off the top" of the allocation before determining how much of the allocation should be used for public and private school students and teachers.

In addition, funds used to provide services to private school students and their teachers must remain under the control of the LEA or public agency. Title to materials, equipment, or property purchased to support services or benefits to private school children must remain with a public agency. (See 9501, Title IX, Part E, Subpart 1 of the ESEA).

### **F.3. Who may provide the services?**

Services shall be provided by employees of the LEA or another public agency or through a contract by the public agency with an individual, association, agency, organization, or other entity.

In the provision of those services, the employee, person, association, agency, organization, or other entity shall be independent of the private school and of any religious organization, and the employment or contract shall be under the control and supervision of the LEA.

### **F.4. Who has control of the funds?**

The LEA maintains control of funds used to provide services under Title IV, Part A. It also maintains title to materials, equipment, and property purchased with those funds.

## **G. Title IV, Part B—21st Century Community Learning Centers: Overview**

The 21st Century Community Learning Centers (21st CCLC) program provides before- and after-school (including summer) services to students and their families that include academic enrichment activities, particularly for students who attend low-performing schools, to help them meet state and local student performance standards in core academic subjects. Activities may include remedial education, academic enrichment, art, music, tutoring, mentoring, recreation, technology, drug and violence prevention, counseling, character education, and family literacy. The uniform provisions apply to the 21st CCLC program and require the equitable participation of private school students and education personnel who are part of the target population.

### **G.1. Are religious organizations, including entities such as religious private schools, eligible to receive 21<sup>st</sup> CCLC grants from the state Department of Public Instruction?**

Yes. Faith-based organizations (FBOs) are eligible to apply for a 21<sup>st</sup> CCLC grant provided they meet all statutory and regulatory requirements of the program. A local grantee, including an FBO, may not discriminate against beneficiaries on the basis of religion. In matters of program eligibility, the department may not discriminate against grant applicants with regard to religion. However, Section 4204(i)(1)(B) requires that states give priority to applications submitted jointly by an LEA receiving Title I funds and a CBO or other agency proposing to serve students in schools in need of improvement under Section 1116.

Funds shall be used solely for the purposes set forth in this grant program. No funds may be expended to support religious practices, such as religious instruction, worship, or prayer. FBOs may offer such practices, but not as part of the program receiving assistance, and FBOs should comply with generally applicable cost accounting requirements to ensure that funds are not used to support these activities. For example, FBOs may wish to keep grant funds in a separate account or accounts to ensure that they are not used inappropriately. OMB circulars A-21 (for educational institutions) and A-122 (for nonprofit organizations) provide further guidance regarding these accounting requirements.

### **G.2. Are private school students and educational personnel eligible to participate in 21<sup>st</sup> CCLC activities carried out by public schools?**

Yes. Students and educational personnel are eligible to participate in 21st CCLC programs on an equitable basis. A public school or other public or private organization that is awarded a grant must provide equitable services to private school students and their families. In designing a program that meets this requirement, grantees must provide comparable opportunity for the participation

of both public- and private-school students in the area served by the grant. Grantees must consult with private school officials during the development and design of the 21st CCLC program on issues such as how the children's needs will be identified and what services will be offered. Services and benefits provided to private schools must be secular, neutral, and non-ideological.

## **H. Title V, Part A—Innovative Programs: Overview**

Innovative programs support education reform and innovative school improvement programs to improve school, student, and teacher performance. Private school students and educational personnel may receive supplemental services that are allowable for private schools under the innovative assistance programs listed in the law [section 5131(a)].

### **H.1. How may private school students and educators receive services under Title V, Part A?**

An LEA must provide Title V, Part A services to private school students and educators if, after consultation with private school officials, the private school officials indicate they wish their students and/or educational personnel to participate. The LEA must contact the private schools within the LEA annually to determine which schools wish to participate. The LEA must consult with the officials of interested private schools in a timely and meaningful manner to determine the needs of the students, the types of Title V, Part A services that will be provided, and how those services will be provided. The LEA provides those services on an equitable basis whether or not the services are the same Title V, Part A services the LEA provides to the public school students and educators. The expenditures for such services, however, shall be equal on a per pupil basis (consistent with the number of students enrolled) to Title V, Part A services provided to the public school.

When calculating the per-pupil allocation for Title V, Part A, the per-pupil allocation is based on the number of students "**enrolled** in private elementary and secondary schools in areas served" by the school district. Residence is **not** a factor as it is in Title I, See A2.

LEAs pay the cost of administering Title V, Part A services for public and private school students "off the top" of their allocations before calculating how much of the Title V, Part A funds are to be made available for services for public and private school students and educational personnel. [Section 5142(a) and (b).]

### **H.2. What administrative requirements apply regarding the provision of services to private school students and educators?**

The services, materials, and equipment that an LEA provides for the benefit of participating private school students and educators must be secular, neutral, and non-ideological. The control of Title V, Part A funds and the title to any equipment and materials purchased with those funds must remain in the LEA. No Title V, Part A funds may be paid to any private school, and the title to equipment and materials may not be transferred to any private school.

Title V, Part A services must be provided by a public agency either directly or through a contractor. Any contractor must be a person or an association, agency, or corporation who or that, in the provision of the Title V, Part A services, is independent of the private school and any religious organization. A public agency must supervise and have ultimate control over any contractor hired to provide Title V, Part A services.

Title V, Part A services for private school students must supplement, and in no case supplant, the level of services that would be available to participating students and educational personnel in the private schools in the absence of the Title V, Part A funds [Sections 5142(a)(1)(A) and (c)].

### **H.3. How may an LEA ensure that Title V, Part A resources are provided in a proper manner for the benefit of private school students and educational personnel?**

LEAs should implement safeguards and procedures to ensure that Title V, Part A funds are used properly for private school students and educators.

First, private school officials should be fully informed of and agree to the limitations on the use of any equipment and materials located in the private school. LEAs should obtain from the appropriate private school official a written assurance that any equipment and materials placed in the private school will be used only for secular, neutral, and non-ideological purposes; that private school personnel will be informed as to these limitations; and that the equipment and materials will supplement, and in no case supplant, the equipment and materials that, in the absence of the Title V, Part A program, would have been made available for the participating students.

Second, the LEA is responsible for ensuring that any equipment and materials placed in the private school are used only for proper purposes. The LEA should determine that any Title V, Part A materials, such as library books and computer software, are secular, neutral, and non-ideological. A good benchmark for this review is that the equipment and materials would be appropriate for use in public schools.

The LEA should mark all equipment and materials purchased with Title V, Part A funds so they are clearly identifiable as Title V, Part A property of the LEA. The LEA should maintain an up-to-date inventory of all Title V, Part A equipment and materials provided for the benefit of private school students. It also is helpful for private schools to maintain logs to document the use of Title V, Part A equipment and materials located in their schools.

The LEA should perform periodic onsite monitoring of the use of the equipment and materials. The monitoring could include on-the-spot checks of the use of the equipment and materials, discussions with private school officials, and a review of any logs maintained.

Third, the LEA should designate one public school official to oversee Title V, Part A services for private school students and ensure that services, materials, and

equipment provided for these students are secular, neutral, and non-ideological. The designated official also should be responsible for receiving and handling any complaints or allegations that Title V, Part A funds are being used for improper activities for private school students and educators.

LEAs need to ensure that any violations that may occur are corrected at once. An LEA must remove materials and equipment from a private school immediately if removal is needed to avoid an unauthorized use.

#### **H.4. May private school students and educational personnel receive services under any Title V, Part A innovative program area?**

If Title V, Part A funds are used to provide services for private school students and educators, these services must primarily benefit the students and educators, not the private schools. This means that the funds must be used to meet specific needs of students enrolled in the private schools, rather than the needs of the private schools themselves or the general needs of the students enrolled in the private schools. (See section 76.658 of the Education Department General Administrative Regulations (EDGAR).)

In working with private schools to decide what Title V, Part A programs and activities will be carried out for students and educational personnel in those schools, LEAs must ensure that the programs and activities are supplemental in nature and will meet the specific needs of the students enrolled in the schools. For example, LEAs may not use funds for class-size reduction purposes in a private school [Section 5131(a)(1)]. This use of funds, which would involve hiring teachers for private school classrooms, would meet the needs of the private schools themselves, as well as the general needs of the students enrolled in the schools, rather than the specific needs of those students. However, LEAs may use funds to provide professional development activities for educators in private schools [Section 5131(a)(2)].

There are several innovative assistance programs that, by their nature, cannot be carried out in a private school. These include: (1) the planning, design, and initial implementation of charter schools [Section 5131(a)(8)]; (2) activities to promote, implement, or expand public school choice [Section 5131(a)(12)]; and (3) programs to implement the unsafe school choice policy in section 9532 [Section 5131(a)(25)].

For all other innovative assistance programs, particularly those involving education reform or school improvement activities, LEAs must evaluate closely whether the activities proposed to be carried out in a private school will primarily benefit the students enrolled in the school or the school itself. If the latter, then the LEA may not permit that activity or program to be implemented in the private school. In some instances, a program or activity that primarily benefits the private school's students (because it addresses specific, rather than general, needs of the students) will also incidentally benefit the school. The LEA may permit a program or activity of this type to be carried out in the private school. However, LEAs must be careful in this determination and may not authorize any services

whose purpose is to benefit the general needs of the private school or its students.

**H.5. What are the obligations of LEAs to private schools that did not participate in Title V, Part A programs in the preceding year?**

The LEA has the obligation to contact, on an annual basis, appropriate officials from private schools within the LEA to determine whether such schools desire that their students and/or educational personnel participate in Title V, Part A programs. This must be done for all schools whether or not they participated in the program during the previous year. Once a private school agrees on behalf of its students and educators to participate, the enrollment of those students is considered in calculating the allocation for the LEA for the following year. The method for calculating funds does not diminish the responsibilities of the LEA under section 5142.

**H.6. What happens if an LEA chooses not to participate in the Title V, Part A program?**

If no program is carried out in the LEA, the SEA shall make arrangements to provide students and educators in private schools in the LEA with services and materials to the same extent as would have occurred if the LEA had received funds. These arrangements may be set up through contracts with nonprofit agencies or organizations.

Specific questions related to this bulletin should be directed to:

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