

Excerpts from Guidance for Titles IC, IIA, IID, IIIA, IVA, and VA related to Participation of Private School Students, Teachers, and Parents

(U.S. Department of Education Guidance Documents as of 05/01/05)

Title I-C

SERVING MIGRANT CHILDREN WHO ATTEND PRIVATE SCHOOLS

H1. Must an SEA and local operating agency serve eligible migrant children who attend private schools?

Yes. Sections 9501 of the statute and 299.6 of the regulations require SEAs that receive MEP funds to provide special educational services or other benefits on an equitable basis to eligible children who are enrolled in private schools, and to their teachers and other educational personnel. This must be done after timely and meaningful consultation with appropriate private school officials.

H2. Who must comply with the consultation requirement – the SEA or the local operating agency?

The agency that operates the local MEP project must comply with this requirement.

H3. How does an agency meet the consultation requirement with private school officials?

To meet this requirement, the agency must consult with private school officials before making any decision that affects the opportunities of eligible private school children to participate in a MEP project. Consultation must cover all phases of the design and development of the MEP project, including:

- How the agency will identify the children's needs;
- What services the agency will offer;
- How and where the agency will provide those services;
- Who will provide the services;
- How the agency will assess the services and how it will use results of the assessment to improve those services;
- Amount of funds available for services;
- Size and scope of the services to be provided; and
- How and when the agency will make decisions about the delivery of services.

H4. Which children who attend private schools are eligible to receive MEP services?

Children who attend private school are eligible to receive MEP services if they: 1) meet the statutory and regulatory definition of a migrant child; 2) meet the priority for services criteria in section 1304(d); and 3) have special educational needs identified through the State's comprehensive needs assessment and service delivery plan.

H5. May a local operating agency decide not to serve eligible migrant private school children because there are too few of them to serve?

Yes. The SEA and local operating agency have the discretion to determine what number of eligible students is too few to serve, so long as this determination is made on an equitable basis (i.e., on the same basis as public schools). If it is feasible and equitable, agencies may adopt alternative methods that are cost-effective to serve small numbers, such as individual tutoring programs, professional development activities with the classroom teachers of eligible migrant students, or other strategies.

H6. If private school officials do not wish to have their children participate in the MEP, is the SEA or local operating agency still required to serve these children?

No. If, after consultation with private school officials, the officials do not wish to have their students participate in the MEP, neither the SEA nor the local operating agency are required to serve these children. However, in its consultation, the local operating agency should explain the various ways in which the agency can help provide services to children attending private schools.

H7. Should the SEA assess the needs of private school children residing in the State?

Yes. Through the consultation process with private school officials, the local operating agency may assess the needs of eligible migrant children enrolled in private schools in its service area. These children would then be included in the statewide needs assessment.

H8. Must the services the SEA provides private school children be the same as those it provides public school children?

No. Although the statute and regulations require SEAs to provide services on an equitable basis, the services do not have to be the same in order to be equitable. If the needs assessment reveals that private school children have different special educational needs than public school migrant children, the services offered should address those needs. (See 34 CFR 299.7(c).)

H9. How does an agency determine whether services are equitable?

Section 299.7(b)(2) of the regulations provides that services are equitable if the agency:

1. Addresses and assesses the specific needs and educational progress of private school children on a comparable basis as public school children;
2. Determines the number of students to be served on an equitable basis;
3. Meets the equal expenditure requirements; and
4. Provides private school children with an opportunity to participate that –
 - Is equitable to the opportunity and benefits provided to public school children; and
 - Provides reasonable promise that participating private school children will meet the challenging academic standards called for by the State’s student performance standards (or equivalent standards applicable to private school children and agreed upon during consultation between public and private school officials).

H10. What happens if, after offering to provide equitable services to private school children, participation is low or the children participate only in some of the services?

If the private school children’s participation is low or they choose to participate only in some of the services the agency offers, the agency should examine why this is so and, if appropriate, modify the project in a manner that increases participation. If modification of the project does not increase participation and the agency determines that it is not cost-effective to provide services, the agency may terminate the services, so long as this decision is made on an equitable basis. (See Question G5 of this chapter.)

H11. If children reside in a geographical area served by one local operating agency but their school is located in a geographical area served by another agency, which agency is responsible for serving them?

The local operating agency that serves the geographical area where the school is located is responsible for serving the children. (See section 9501(a)(1) of the statute.)

H12. How might an SEA ensure that local operating agencies collaborate with private school officials to provide appropriate services to migrant children enrolled in private schools?

SEA might use its subgrant application process as one way to ensure that local operating agencies consult with private school officials in providing services to eligible migrant children. For example, the SEA could establish procedures for refusing to award a subgrant unless the application addresses whether and how the local operating agency consulted with private school officials in designing and developing its migrant education project. Alternatively, the SEA might use its monitoring process to ensure that local operating agencies meet this requirement.

H13. May MEP personnel go on the premises of religiously affiliated private schools to provide MEP instructional services?

Yes. MEP personnel may provide direct services to eligible private school migrant students on site at private schools, including religiously affiliated schools.

H14. What can a small rural local operating agency with a small MEP allocation do to provide equitable services to private school children?

Rural local operating agencies may have special problems because of small allocations, large distances between private schools, and few locations to provide services. These agencies may consider leasing rather than purchasing equipment, renting a neutral site, or using home tutoring to provide equitable services. They may also consider setting up a joint project with neighboring operating agencies and submitting a combined application.

Title II-A – Improving Teacher Quality State Grants Non-Regulatory Draft Guidance – 1/16/04

Excerpt – Private School Participation

[For a complete copy of the guidance, go to the following link
<http://www.ed.gov/programs/teacherqual/guidance.doc>.]

J. PRIVATE SCHOOL PARTICIPATION

Under the *Title II, Part A* program, private school teachers, principals, and other educational personnel are eligible to participate to the extent that the LEA uses funds to provide for professional development for teachers and other school personnel.

General Issues

J-1. Are private school teachers, principals, and other educational personnel eligible to participate in the *Title II, Part A* program?

Yes. Private school teachers, principals, and other educational personnel are eligible to participate in *Title II, Part A*, to the extent that the LEA uses funds to provide for professional development for teachers and others. Funds awarded to SEAs and LEAs under *Title II, Part A* are subject to the uniform provisions of Section 9501 of the ESEA (*Participation by Private School Children and Teachers*). The statute requires LEAs to provide private school children, their teachers, and other educational personnel with educational services on an equitable basis and in a timely manner.

The requirement for the equitable participation of private school teachers and other educational personnel applies only to the LEA's *Title II, Part A* funds to the extent that the LEA uses these funds for professional development of its teachers and other staff. However, this flexibility is constrained by the requirement [described below in J-3](#).

J-2. What is meant by “equitable participation?”

Participation is considered to be equitable if the public and private educational agencies and institutions: (1) assess, address, and evaluate the needs and progress of both groups of teachers in the same manner; (2) provide approximately the same amount of training, and where appropriate, instruction, to teachers with similar needs; (3) spend an equal amount of funds per student to serve public and private school teachers; and (4) provide private school teachers with an opportunity to participate in *Title II, Part A* program activities equitable to the opportunity provided public school teachers.

J-3. How does an LEA determine the minimum amount required for equitable services to private school teachers and other educational personnel?

Under *Title II, Part A*, LEAs are required to provide equitable services for private school teachers and other educational personnel only to the extent that they use the funds for professional development. For purposes of determining 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, the statute has the LEA assume that it is spending at least as much for professional development under *Title II, Part A* as it did in FY 2001 under the Eisenhower Professional Development and Class-Size Reduction programs [*Title IX, Section 9501(b)(3)(B)*].

J-4. If a school district exercises *Title VI* transferability authority and moves funds from *Title II, Part A* to another covered program, is the district required to provide the “hold harmless” amount for private school teachers’ professional development?

Yes. As noted in J-3 above, for purposes of determining the amount of *Title II, Part A* funds it must reserve for professional development provided to private school teachers, the LEA must assume that it is spending at least as much *Title II, Part A* funds each year for professional development as it did with FY 2001 funds under the former Eisenhower Professional Development and Class-Size Reduction programs. Hence, the district must provide equitable services based on this minimal amount to private school teachers and other educational personnel even if the LEA transfers some *Title II* funds to other programs.

J-5. What are the obligations of the LEA regarding the participation of private school teachers in professional development programs funded under this program?

As part of the application process, LEAs must assure that they will comply with Section 9501 of ESEA (regarding participation by private school children and teachers). LEAs must consult with appropriate private school officials during the design, development, and implementation of the professional development program on such issues as:

- how the needs of children and teachers 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; and
- how and when the LEA will make decisions about the delivery of services.

Consultation on the delivery of services must also include a thorough consideration and analysis of the views of the private school officials on the provision of contract services through potential third-party providers [Section 9501].

J-6. What happens if an LEA chooses not to participate in the *Title II, Part A* program and a private school in that LEA expresses a desire to do so?

There is no authority for allowing non-public schoolteachers to receive services if the LEA elects not to participate in the program, nor does the program statute authorize an SEA to reallocate funds to another LEA for the purpose of allowing participation of teachers at a private school located in a nonparticipating LEA.

Eligible Activities

J-7. 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 that the LEA carries out for public school teachers, activities supported with *Title II, Part A* funds that benefit private school teachers must meet the requirements of the statute. For example, activities to be 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. 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.

J-8. Must the expenditures that the LEA provides for professional development for private school teachers be equal on a per-pupil basis?

Title IX, Section 9501 of ESEA requires that *Title II, Part A* services for professional development that are provided to private school teachers and other educational personnel be equitable in comparison to those provided to public

school teachers. It also requires that funds provided for professional development for private school teachers be equal on a per-pupil basis.

J-9. How does the LEA ensure that it is providing equitable services?

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

- Assess, address, and evaluate the needs and progress of both public and private school teachers;
- Spend an equal amount of funds per student to serve the needs of public and private school teachers and their students;
- Provide private school teachers with an opportunity to participate in *Title II* activities equivalent to the opportunity provided public school teachers; and
- Offer educational services to private school teachers that are secular, neutral, and non-ideological [*Section 9501(a)(2)*].

J-10. 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 teachers in designing the professional development program for private school teachers. If the professional development needs of the private school teachers are different from those of public school teachers, the LEA, in consultation with private school representatives, should develop a separate program.

J-11. May funds be used to pay stipends to private school teachers participating in a *Title II, Part A* professional development program?

Yes. *Title II, Part A* funds may be used to pay for stipends for private school teachers, as 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 teachers for their participation outside their regular employment hours. Stipends for private school teachers must be available on the same basis as those for public school teachers *and* the stipends must be paid directly to the private school teachers for their own use, and not to the private school.

J-12. May *Title II, Part A* 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.

J-13. May *Title II, Part A* 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 teachers.

J-14. 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 teachers and other educational personnel "off the top" of their allocations. 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 teachers and other personnel.

LEAs and Private Schools

J-15. 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. It is important that attention be given to the timing of the consultation so that decisions that affect the opportunities of eligible private school teachers to participate in *Title II, Part A* program activities are made only after discussions have taken place. The quality of the consultative process will likely have an effect on the quality of services to private school teachers [*Section 9501(c)(3) and (4)*].

J-16. 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 *Title II, Part A* program?

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 teachers to participate in the *Title II, Part A* program, regardless of whether or not those officials have recently indicated any interest in program participation.

J-17. May an LEA require private school representatives to submit an application in order to receive services for the teachers in a private school with *Title II, Part A* funds?

LEAs may request documentation, as needed, from private school officials that can help the LEA identify services that may be appropriate to the needs of private school teachers. However, requiring a formal application may, depending upon its form and content, constitute an administrative barrier that is inconsistent with the LEA's responsibility to ensure equitable participation of private school teachers.

J-18. What kinds of records should an LEA maintain in order to show that it has met its responsibilities for equitable participation of private school teachers?

To meet its general record-keeping responsibility, an LEA should document that: (a) representatives of private schools were informed of the availability of *Title II, Part A* services; (b) the needs of private and public school teachers were identified as part of a district-wide needs assessment; (c) private school officials were consulted and provided an opportunity for input into the planning of the LEA's program activities; and (d) the LEA designed a project that would permit their equitable participation.

The LEA also should maintain records of its efforts to resolve any complaints made by private school representatives that LEAs that should be serving their teachers are not doing so on an equitable basis.

J-19. Must the LEAs administer and retain control over the *Title II, Part A* funds used to serve private school teachers?

Yes. The LEAs must administer and retain control over the funds and, therefore, may not provide program funds directly to private schools. Before determining the amount of funds to be provided for services to private school teachers, an LEA could pay reasonable and necessary administrative costs of providing those services from its *Title II, Part A* allocation.

J-20. May professional development be conducted within private schools?

Yes, professional development activities may be conducted in the private school facilities.

J-21. Does the law require that LEAs provide equitable services with *Title II, Part A* 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 to mean only “nonprofit institutional day or residential school(s)” [Section 9101(18) and (38)].

J-22. Are teachers employed with *Title I* funds who provide services to eligible private school children required to meet the highly qualified requirements?

Yes. If they are hired using *Title I* funds to teach core academic subjects they are held to the same requirements as public school teachers.

J-23. Must an LEA count all the students in participating private schools even if some of the students enrolled in the private schools reside in other districts?

Yes. The LEA must provide equitable services based on the number of students who are enrolled in participating private schools in the geographical area served by the school district.

SEAs, SAHEs, and Private Schools

J-24. Must an SEA provide equitable services to private school teachers if it uses its *Title II, Part A* funds reserved for State activities to provide professional development?

Yes. An SEA must provide equitable services to public and private school teachers and other educational personnel in professional development activities supported by these funds.

J-25. Do the ESEA *Title IX* requirements regarding services to private school teachers apply to activities conducted under the competitive awards made under SAHE-administered partnerships program?

Yes. The SAHE-funded grants to partnerships of IHEs and high-need LEAs must ensure that services are offered on an equitable basis to public and private school teachers since the requirements apply to grants of “financial assistance” provided to an LEA “or another entity” [Section 9501(b)(1)].

Title II-D – Guidance

L. EQUITABLE PARTICIPATION OF PRIVATE SCHOOL STUDENTS AND PERSONNEL

L-1. Do the equitable participation requirements in Subpart 1 of Part E of Title IX of the ESEA apply to the Ed Tech program?

Yes. The equitable participation requirements apply to the program. (See ESEA Section 9501(b)(1).).

L-2. What do the equitable participation provisions require LEAs and eligible local entities to do?

LEAs and eligible local entities 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 and local entities must provide, on an equitable basis, special educational services or other benefits that address the needs under the program of children, teachers, and other educational personnel in private schools in areas served by the LEAs and local entities. Expenditures for educational services and other benefits for private school children, teachers, and other educational personnel must be equal, taking into account the number and educational needs of the children to be served, to the expenditures for participating public school children.

Title III-A

PRIVATE SCHOOL PARTICIPATION IN TITLE III PROGRAMS

AUTHORITIES

No Child Left Behind Act of 2001, Title IX, Part E, Secs. 9501-9506
Education Department General Administrative Regulations (EDGAR), Part 76, Secs. 76.650-76.662

STATUTORY AND REGULATORY REQUIREMENTS

- After timely and meaningful consultation with appropriate private school officials, local education agencies (LEAs) receiving Title III funds must provide educational services to limited English proficient (LEP) children and educational personnel in private schools that are located in the geographic area served by the LEA.
- To ensure timely and meaningful consultation, the LEA must consult with appropriate private school officials during the design and development of the Title III program on issues such as:
 1. How the LEP children's needs will be identified.
 2. What services will be offered.
 3. How, where and by whom the services will be provided.
 4. How the services will be assessed and how the results of the assessment will be used to improve those services.
 5. The size and scope of the services to be provided to the private school children and educational personnel.
 6. The amount of funds available for those services.
 7. How and when the LEA will make decisions about the delivery of services, including a thorough consideration of the views of the private school officials on the provision of contract services through potential third-party providers.
- Title III services provided to children and educational personnel in private schools must be equitable and timely and address their educational needs.
- Funds provided for educational services for private school children and educational personnel must be equal, taking into account the number and educational needs of those children, to the funds provided for participating public school children.
- Title III services provided to private school children and educational personnel must be secular, neutral, and nonideological.

- LEAs may serve private school LEP children and educational personnel either directly or through contracts with public and private agencies, organizations and institutions.
- The control of funds used to provide services and the title to materials and equipment purchased with those funds must be retained by the LEA.
- Services for private school children and educational personnel must be provided by employees of the LEA or through a contract made by the LEA with a third party.
- Providers of services to private school children and educational personnel must be independent of the private school and of any religious organization, and the providers' employment or contract must be under the control and supervision of the LEA.
- Funds used to provide services to private school children and educational personnel must not be commingled with nonfederal funds.

FREQUENTLY ASKED QUESTIONS

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 (1) assesses, addresses and evaluates the needs and progress of public and private school students and educational personnel on a comparable basis; (2) provides, in the aggregate, approximately the same amount of services to students and educational personnel with similar needs; (3) spends an equal amount of funds to serve similar public and private school students and educational personnel; and (4) provides both groups of students and educational personnel equal opportunities to participate in program activities.

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 meets the needs of the students being served and assists those students in attaining English proficiency and meeting the same challenging state academic content and student academic achievement standards as all children are expected to meet. The LEA must assess the needs of private school students and educational personnel in designing a program that meets 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.

What recourse is available if an LEA will not use its Title III funds to provide equitable services to private school children and educational personnel?

Complaints about an LEA's failure to provide equitable services to private school children and educational personnel must first be submitted to the state education agency for resolution. The state's resolution or failure to make a resolution may be appealed to the U.S. Department of Education.

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

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. LEAs, in timely and meaningful consultation with private schools, are responsible for administering an annual English proficiency assessment that is agreed upon by the private school. The state assessments may be used, if they are appropriate, or other assessments, such as those administered by the private school, may be used. In any case the assessments must be comparable to those used for the public school students and aligned with the achievement of the academic content and student academic achievement standards established by the state or by the private school.

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 LEP students, teachers providing Title III services to private school students, whether LEA employees or third-party contract employees, are subject to the requirement that teachers in a Title III program must be fluent in English and any other language used for instruction.

Title IVA Guidance

PRIVATE SCHOOL PARTICIPATION

States and local recipients of SDFSCA are subject to the requirements in Section 9501 regarding participation of private school children and teachers. These requirements extend to discretionary grant programs authorized under Title IV, Part A and to the Community Service Grant Program (a formula program authorized by Section 4126 of the SDFSCA). Generally, the provisions require that children enrolled in private elementary and secondary schools (and their teachers) must be provided equitable educational services or other benefits, compared to services and benefits received by public school children and teachers.

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 students' and teachers' 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 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 Section 9501, Title IX, Part E, Subpart 1 of the ESEA*).

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.

Title VA – Innovative Programs Guidance

F. PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE, NONPROFIT SCHOOLS

F-1. How may private school children receive services under Title V-A?

An LEA must provide Title V-A services to children enrolled in a private, nonprofit school within the LEA if, after consultation with private school officials, the officials of the private school indicate that they wish the children in that school to participate. The LEA must contact the private schools within the LEA annually to determine which schools wish their children 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 children, the types of Title V-A services that will be provided, and how those services will be provided. The LEA provides those services on an equitable basis to those children whether or not the services are the same Title V-A services the LEA provides to the public school children. The expenditures for such services, however, shall be equal (consistent with the number of children served) to Title V-A services provided to public school children. LEAs pay the cost of administering Title V-A services for public and private school students “off the top” of their allocations, before calculating how much of the Title V-A funds are to be made available for services for public and private school students. *[Section 5142(a) and (b)].*

F-2. What administrative requirements apply regarding the provision of services to private school children?

The services, materials, and equipment that an LEA provides for the benefit of participating private school students must be secular, neutral, and nonideological. The control of Title V-A funds and the title to any equipment and materials purchased with those funds must remain in a public agency (usually the LEA). No Title V-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-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-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-A services. Finally, Title V-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-A funds *[Sections 5142(a)(1)(A) and (c)].*

F-3. How may an LEA ensure that Title V-A services are provided in a proper manner for the benefit of private school students and personnel?

LEAs should implement safeguards and procedures to ensure that Title V-A funds are used properly for private school children.

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 nonideological 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-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-A materials, such as library books and computer software, are secular, neutral, and nonideological. 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-A funds so that they are clearly identifiable as Title V-A property of the LEA. The LEA also should maintain an up-to-date inventory of all Title V-A equipment and materials provided for the benefit of private school students. It is also a helpful practice for private schools to maintain logs to document the use of Title V-A equipment and materials located in their schools. The LEA also should perform periodic on-site 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-A services for private school students and ensure that services, materials and equipment provided for these students are secular, neutral, and nonideological. The designated official also should be responsible for receiving and handling any complaints or allegations that Title V-A funds are being used for improper activities for private school students.

Finally, LEAs need to ensure that if any violations occur, they 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.

F-4. May private school children and personnel receive services under any Title V-A innovative program area?

If Title V-A funds are used to provide services for children enrolled in private, nonprofit schools, these services must primarily benefit the children, 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-A programs and activities will be carried out for children and personnel in those schools, LEAs must ensure that the programs and activities are supplemental in nature and will meet the specific needs of the children 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 teachers 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 children 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. Again, under the regulations in EDGAR, the key in determining if particular services may be provided to students in a private school is whether those services will meet specific needs of students enrolled in the school, rather than their general needs or the needs of the school itself. This does not preclude an incidental benefit to 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.

F-5. How does an SEA calculate the amount of funds to be distributed to the LEAs?

The funds allocated to LEAs are based on the relative enrollments of the total of the number of children enrolled in public schools and the number of children enrolled in private, non-profit schools that participated in the program for the fiscal year preceding the fiscal year for which the determination is made. (See question C-1.)

F-6. What are the obligations of LEAs to private schools that did not participate in Title V-A programs in the preceding year?

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

F-7. What happens if an LEA chooses not to participate in the Title V-A program?

If no program is carried out in the LEA, the SEA shall make arrangements, such as through contracts with nonprofit agencies or organizations, under which children in private schools in the LEA are provided with services and materials to the same extent as would have occurred if the LEA had received funds.

F-8. Would it be beneficial for SEAs and LEAs, in working with private school officials in implementing Title V-A, to create Non-Public School Working Groups?

Some SEAs and LEAs have created *Non-Public School Working Groups*, made up of representatives from the full spectrum of private schools, and have found that such groups facilitate consultation between public and private school officials and the effective implementation of programs and services for private school students and teachers. Such groups meet on a regular basis, and smooth the progress of Federal education program implementation for private school students and teachers.