

**TITLE IX, PART E
UNIFORM PROVISIONS
SUBPART 1—PRIVATE SCHOOLS**

*Equitable Services to
Eligible Private School Students, Teachers, and
Other Educational Personnel*

Non-Regulatory Guidance



Office of Non-Public Education
Office of Innovation and Improvement
U.S. Department of Education
August 2005

TABLE OF CONTENTS

A. INTRODUCTION.....	4
B. PURPOSE OF THE GUIDANCE	4
C. PROGRAMS COVERED BY TITLE IX, PART E, SUBPART 1, AND THIS GUIDANCE	5
D. CONSULTATION	5
D-1. Who is responsible for initiating the consultation process?.....	6
D-2. How does an LEA identify which private school officials to contact to begin the consultation process?.....	6
D-3. Who participates in the consultation process?	6
D-4. May a group of private school officials designate a single private school official to represent their interests?.....	6
D-5. When does consultation between public and private school officials occur?	6
D-6. How does an LEA begin the consultation process?	7
D-7. What topics should be discussed during the consultation process between public and private school officials?	7
D-8. Does an offer of services from an LEA meet the requirement of consultation?	7
D-9. May an LEA use a sign-off form with private school officials in order to verify that timely and meaningful consultation has occurred?	7
D-10. May an LEA request that private school officials provide relevant documentation in order to participate in programs?.....	8
D-11. What processes and activities might an LEA document in order to verify that it has met the requirement for timely and meaningful consultation and has provided equitable services?	8
D-12. Should an LEA keep minutes or notes of consultation meetings?.....	8
D-13. What is an “Intent to Participate” form?.....	8
D-14. Should an LEA contact private school officials every year even if the private school officials have declined Federal education benefits and services in the past?.....	9
D-15. What is a “Private School Working Group”?	9
E. ELIGIBILITY	9
E-1. Which private school students are eligible to receive benefits?.....	9
E-2. Does the law require an LEA to provide equitable services to students and teachers in private for-profit schools?	9
E-3. Are children who are schooled at home eligible to receive equitable services under Federal education programs?	9
F. EXPENDITURES.....	10
F-1. How are administrative costs of providing services to public and private school students determined?	10
F-2. Who pays the cost for administering programs for private school students?.....	10
F-3. What are allowable expenditures that an LEA may reserve off the top of the total allocation?.....	10
F-4. May third-party contractors hired by an LEA incur administrative costs?	11
F-5. Who has control of the program funds?	11

F-6. May an LEA reimburse a private school for materials it has purchased or services it has procured to implement a Federal education program?	11
F-7. May an LEA use funds to provide stipends to private school teachers?	11
F-8. What is the timeline for the obligation of funds?	11
F-9. How is the carryover of funds handled in regard to the equitable participation of private school students if an SEA permits carryover?	12
G. DELIVERY OF EQUITABLE SERVICES	12
G-1. Who has the responsibility to implement programs for private school students, teachers, and other educational personnel?	12
G-2. What services are offered if the needs of private school students and teachers are different from those of public school students and teachers?	13
G-3. What are some service delivery mechanisms that an LEA may use to provide equitable services?	13
G-4. May an LEA hire and pay private school teachers to provide Federal supplementary services separate from their contract hours with the private school?	13
G-5. May an LEA use Federal funds to purchase textbooks for private school students' use in their regular classroom?	13
H. COMPLAINTS AND BYPASS.....	14
H-1. What information must a formal written complaint include?	14
H-2. What options are available to private school officials if they file a complaint with the SEA, but the SEA does not answer their complaint in a timely manner or if the SEA's response fails to resolve the problem?	14
H-3. What is a "bypass"?	14
I. OTHER ESEA REQUIREMENTS AND PRIVATE SCHOOLS	15
I-1. Does Title IX, Part E, Subpart 1 contain any protections for private schools?	15
I-2. Are private schools whose students or teachers receive equitable services subject to the ESEA "highly qualified teacher" requirements?	15
I-3. Are private schools whose students or teachers receive equitable services subject to the ESEA requirements relating to State standards, adequate yearly progress (AYP), and annual assessments?	15
I-4. Are private schools whose students or teachers receive equitable services subject to the ESEA military recruiter requirements?	15
I-5. Are private schools whose students or teachers receive equitable services subject to the Family Educational Rights and Privacy Act (FERPA)?	15
J. APPENDICES	17
Appendix A: Resources and Additional Guidance.....	17
Appendix B: Sample Intent to Participate Form.....	19
Appendix C: Superintendent's Nonpublic Schools Workshop Overview.....	21

A. INTRODUCTION

Since the initial passage of the *Elementary and Secondary Education Act of 1965* (ESEA), private school students and teachers have been eligible to participate in certain Federal education programs. ESEA, as reauthorized by *The No Child Left Behind Act of 2001* (NCLB), includes twelve major programs that require equitable services be provided to private school students, teachers, and other educational personnel, and, under some programs, to parents. These services are provided to students and teachers, not to private schools. The guidance in this document pertains to nine of the twelve programs that require equitable participation. These nine programs are subject to the requirements in Title IX, Part E, Subpart 1 of ESEA. The other three programs that require equitable services have their own separate equitable participation requirements; they are not subject to Title IX and are not covered by this guidance. (See Section C below for a list of the nine programs subject to Title IX, and – in a Note -- the three programs with their own separate equitable participation requirements.)

B. PURPOSE OF THE GUIDANCE

This guidance is intended to assist local educational agencies (LEAs) and other entities (such as State educational agencies (SEAs), educational service agencies, consortia of these agencies, non-profit organizations or institutions of higher education) receiving Federal financial assistance in fulfilling their obligations, under Title IX, Part E, Subpart 1 of ESEA, to provide equitable services to eligible private school students, teachers, and other educational personnel, and, under some programs, to parents. This guidance does not impose any requirements beyond those in the law. Both public and private school officials are encouraged to use this guidance for programs covered under Title IX, Part E, Subpart 1, in conjunction with ESEA and applicable regulations. (See Education Department General Administrative Regulations (EDGAR) at 34 CFR 76.650 through 76.677 and General Provisions for ESEA Programs at 34 CFR Part 299.) In addition to complying with the requirements of ESEA addressed in this guidance, an LEA may not discriminate on the basis of race, color, national origin, sex, disability, or age. For information regarding these civil rights obligations, see the U. S. Department of Education's (Department) Web site at www.ed.gov/ocr/know.html. For additional resources and guidance on the equitable participation of private school students, teachers, and other educational personnel in specific programs, see Appendix A.

Note. In general, LEAs are responsible for providing equitable services and benefits to eligible private school students, teachers, and other educational personnel under the programs listed below in Section C. However, SEAs, educational service agencies, consortia of those agencies, other entities, or a bypass contractor receiving Federal financial assistance may be responsible for providing such services and benefits. For purposes of reading ease, we use the term “LEA” to refer to any party responsible for providing equitable services and benefits to eligible private school students, teachers, and other educational personnel. Accordingly, readers should note that any requirements of an LEA described in this guidance also apply to other entities (such as the “partnership” in the Even Start Family Literacy program) that are responsible for providing equitable services to private school students and teachers.

C. PROGRAMS COVERED BY TITLE IX, PART E, SUBPART 1, AND THIS GUIDANCE

The Title IX Uniform Provisions, which include the requirements governing equitable participation of private school students, teachers, and other educational personnel, apply to the following programs authorized under ESEA:

- Title I, Part B, Subpart 1, *Reading First*;
- Title I, Part B, Subpart 3, *Even Start Family Literacy*;
- Title I, Part C, *Education of Migratory Children*;
- Title II, Part A, *Teacher and Principal Training and Recruiting Fund**;
- Title II, Part B, *Mathematics and Science Partnerships*;
- Title II, Part D, *Enhancing Education through Technology*;
- Title III, Part A, *English Language Acquisition, Language Enhancement, and Academic Achievement*;
- Title IV, Part A, *Safe and Drug-Free Schools and Communities*; and
- Title IV, Part B, *21st Century Community Learning Centers*.

Under some of the authorities listed above, there are additional discretionary grants at the Federal level that are also governed by the Title IX Uniform Provisions, including: Title I, Part B, Subpart 3, *Migrant Education Even Start, Indian Tribal Even Start*; Title II, Part A, Subpart 5, *School Leadership*; Title III, Part A, *Native American and Alaska Native Children in School Program, National Professional Development Program*; Title IV, Part A, *Safe and Drug-Free Schools and Communities: Safe Schools/Healthy Students Initiative; Grants to Reduce Alcohol Abuse; Emergency Response and Crisis Management Grants; Mentoring Programs; Grants for School-Based Student Drug-Testing Programs; and Programs for Native Hawaiians*.

* Title IX requirements apply to the Title II, Part A, *Teacher and Principal Training and Recruiting Fund* to the extent that LEAs use the funds for professional development. For purposes of determining the amount of Title II, Part A formula grant funds that an LEA must make available for equitable services to private school teachers and other educational personnel, the statute requires that an LEA spend at least as much for professional development under Title II, Part A as it did in fiscal year (FY) 2001 under the former Eisenhower Professional Development and Class-Size Reduction programs. (See Title IX, Section 9501(b)(3)(B).)

Note: The following three programs, which also require the equitable participation of private school students, teachers, and other educational personnel, contain their own separate equitable participation provisions, are not covered by Title IX, Part E, Subpart 1, and not addressed in this guidance:

- Title I, Part A, *Improving Basic Programs Operated by LEAs*;
- Title V, Part A, *Innovative Programs*; and
- Title V, Part D, Subpart 6, *Gifted and Talented Students*.

For guidance on the equitable participation of private school students, teachers, and other educational personnel under these programs, see Appendix A.

D. CONSULTATION

Consultation involves communication and discussions between LEAs and private school officials on key issues that are relevant to the equitable participation of eligible private school

students, teachers, and other educational personnel in Federal education programs. Meaningful consultation provides a genuine opportunity for all parties to express their views, to have their views seriously considered, and to discuss viable options for ensuring equitable participation of private school students, teachers, and other educational personnel. Successful consultation establishes positive and productive working relationships that make planning effective and serve to ensure that the services provided meet the needs of eligible students.

D-1. Who is responsible for initiating the consultation process?

The obligation to initiate the consultation process lies with the LEA that is responsible for providing equitable services.

D-2. How does an LEA identify which private school officials to contact to begin the consultation process?

An LEA generally contacts and begins consultation with school officials representing all the private schools located within its boundaries but, for some programs, such as the 21st Century Community Learning Centers Program and the Even Start Family Literacy Program, it may be appropriate to consult with private school officials in the area to be served by the program.

D-3. Who participates in the consultation process?

Section 9501(c) of ESEA requires that participants in the consultation process include the LEA and appropriate private school officials during the design and development of the programs. Private school officials can facilitate consultation by providing the LEA the names of the private school officials who should be included in the consultation process along with their roles and levels of authority.

D-4. May a group of private school officials designate a single private school official to represent their interests?

Yes. For example, in some areas, one private school official may represent a group of private school officials in an LEA. In such a situation, the appointed private school official should inform the LEA of his or her intent to represent the group of school officials in the LEA and request that the LEA communicate directly with the appointed official.

D-5. When does consultation between public and private school officials occur?

Section 9501(c)(3) of ESEA requires that consultation between the LEA and private school officials occur before the LEA makes any decision (such as on ordering materials or hiring staff) that affects the opportunities of private school children, teachers, and other educational personnel to participate in programs requiring their equitable participation. Therefore, the LEA must engage in timely and meaningful consultation with private school officials during the design and development of programs (including the process of developing a competitive grant application) as well as throughout the implementation and assessment of programs. In order to ensure timely consultation, LEAs should begin the consultation process early enough to allow for maximum participation of private school students and teachers at the start of each school year.

D-6. How does an LEA begin the consultation process?

An LEA generally begins the consultation process each year by contacting private school officials representing the private schools located within its boundaries. One way to accomplish this is for the LEA to extend an invitation to officials of the private schools and convene a meeting with them during which LEA officials describe the Federal education programs and allowable activities available to private school students and teachers, explain the roles of public and private school officials, address the specific needs of private school students and teachers, and provide opportunities for the private school officials to ask questions and offer suggestions. A consultation process that involves an LEA simply sending a letter to private school officials explaining the purpose of Federal education programs and the LEA's intent to apply for funds is not adequate. Likewise, a letter merely describing the services that an LEA intends to provide for private school students, without any prior consultation, is not sufficient.

D-7. What topics should be discussed during the consultation process between public and private school officials?

Section 9501(c)(1) of ESEA requires that LEAs consult with appropriate private school officials on such issues as:

- how the children's 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 to be provided to the eligible private school children, teachers, and other educational personnel and the amount of funds available for those services; and
- how and when the agency, consortium, or entity 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.

D-8. Does an offer of services from an LEA meet the requirement of consultation?

No. An offer of services by an LEA without an opportunity for timely and meaningful consultation does not meet the requirement of the law. Only after discussing key issues relating to the provision of services, identifying the needs of the students and teachers to be served, and receiving input from the private school officials, does an LEA make its final decisions with respect to the services and benefits it will provide to eligible private school students and teachers.

D-9. May an LEA use a sign-off form with private school officials in order to verify that timely and meaningful consultation has occurred?

Yes. While there is no statutory requirement to do so, some LEAs have developed annual sign-off forms that include a place for signatures of the LEA and private school officials to verify that timely and meaningful consultation has occurred.

D-10. May an LEA request that private school officials provide relevant documentation in order to participate in programs?

Yes. LEAs may request documentation, as needed, from private school officials that enables the LEA to identify students who are eligible under the applicable Federal program and appropriate services that meet the needs of those private school students and their teachers. Such documentation might include data indicating the academic needs of students, as well as the professional development needs of teachers. However, the request for documentation should not constitute an administrative barrier that is inconsistent with the LEA's responsibility to ensure equitable participation of private school students and teachers.

D-11. What processes and activities might an LEA document in order to verify that it has met the requirement for timely and meaningful consultation and has provided equitable services?

An LEA may want to document that it has:

- informed annually the private school officials of the various Federal education programs available to their students and teachers;
- engaged in timely consultation, allowing for meaningful discussion between the LEA and the private school officials regarding services and benefits;
- identified private school students' and teachers' needs;
- allocated a per-pupil amount of funds for services to private school students and teachers that is equal to the per-pupil amount for services to public school students and teachers;
- provided services, programs, materials, and resources;
- evaluated programs and services for effectiveness; and
- addressed adequately problems and formal complaints raised by private school officials.

D-12. Should an LEA keep minutes or notes of consultation meetings?

Meeting notes or minutes are a good way of documenting that timely and meaningful consultation has occurred. Both LEA and private school officials are encouraged to keep notes of consultation meetings that include information about issues addressed and decisions made. These notes may be used for later reference.

D-13. What is an "Intent to Participate" form?

An "Intent to Participate" form is a document that an LEA might send annually to private school officials inquiring as to their interest in having their students and teachers participate in Federal education programs. Such a form can assist the LEA in determining early on those private schools that are interested in participating in Federal education programs and, thus, will be included in the consultation process. The form might include a brief description of the programs requiring equitable participation as well as a list of allowable activities, services, and benefits. An LEA might also request private school data on enrollment, the number of children from low-income families, the number of students with limited English proficiency (LEP), or other information necessary to implement the relevant Federal education programs. Some LEAs send this form by registered mail in order to document receipt of the form at the private schools. (See Appendix B for an example of an Intent to Participate form.)

D-14. Should an LEA contact private school officials every year even if the private school officials have declined Federal education benefits and services in the past?

Yes. On an annual basis, the LEA should contact private school officials and inquire as to whether the private schools' students and teachers will participate in the Federal education programs available to them.

D-15. What is a "Private School Working Group"?

A Private (or Nonpublic) School Working Group is a group made up of representatives from the full spectrum of private schools in a particular State or LEA. In order to facilitate consultation between public and private school officials and effectively implement programs and services for private school students and teachers, SEAs and LEAs are encouraged to create Private School Working Groups. Such groups already exist in some SEAs and LEAs, meet on a regular basis, and smooth the progress of Federal education program implementation for private school students and teachers. (See Appendix C for an example of such a group.)

E. ELIGIBILITY

E-1. Which private school students are eligible to receive benefits?

Private school students who are enrolled in nonprofit private elementary and secondary schools, including those in religiously affiliated schools, in the LEA generally are eligible to receive services. Some Federal education programs restrict eligibility or participation to a particular group of students, such as LEP students, in which case the eligibility or participation of private school students likewise is restricted. See the Department's guidance on individual programs for specific eligibility requirements. (See Appendix A.)

E-2. Does the law require an LEA to provide equitable services to students and teachers in private for-profit schools?

No. Section 9501(a) of ESEA requires an LEA to provide equitable services to teachers and students in "private elementary and secondary schools." Section 9101(18) and (38) of ESEA defines "elementary schools" and "secondary schools" to mean "nonprofit institutional day or residential school[s]" that provide elementary and secondary education, respectively.

E-3. Are children who are schooled at home eligible to receive equitable services under Federal education programs?

Whether or not home-schooled children are eligible to receive equitable services under Federal education programs depends on whether home schools are considered private schools under State law. If home schools are considered private schools, the home-schooled students are eligible to receive benefits and services provided to private school children under the applicable Federal education program.

F. EXPENDITURES

Section 9501(a)(4) of ESEA requires that expenditures for services to private school students, teachers, and other educational personnel be equal to the expenditures for the public school program, taking into account the number and educational needs of the children to be served. Many LEAs calculate equal expenditures strictly on the basis of the relative enrollments of public and private school students, on the assumption that these numbers also accurately reflect the relative needs of students and teachers in public and private schools. However, it is permissible for LEAs to use other factors relating to need and not base equal expenditures only on relative enrollments.

For example, an LEA might choose poverty as an additional factor in determining equal expenditures and consider the relative poverty of the two groups of students. However, it would not be proper to base the determination solely on poverty (or any other factor relating only to educational need), because the statute requires that both the number and the educational needs of the public and private school students be taken into account. As with other decisions affecting services to private school students, LEAs should consult with private school officials on the method for determining equal expenditures, and the resulting methodology should reasonably reflect the relative numbers and educational needs of the public and private school students.

F-1. How are administrative costs of providing services to public and private school students determined?

In some cases, the statute specifies the percentage of a program's total allocation that an LEA may use for administrative costs. When the statute is not explicit regarding the amount of funds an LEA may use for administrative costs, the amount of funds that an LEA may spend for this category of expenses is subject to the cost principles in the Office of Management and Budget (OMB) Cost Circular A-87 -- including the principle that, among other things, all costs must be necessary, reasonable, and allocable to the program. (Institutions of higher education and non-profit organizations should refer to OMB Cost Circulars A-21, and A-122, respectively.)

F-2. Who pays the cost for administering programs for private school students?

Just as an LEA pays the costs for administering programs for public school students, it pays the costs for administering programs for private school students. Administrative costs are reserved from a program's total allocation (off the top) before the LEA determines the allocation for services and benefits for public and private school students and teachers.

F-3. What are allowable expenditures that an LEA may reserve off the top of the total allocation?

An LEA may reserve off the top of a program's total allocation the following:

- Administrative costs (which may be subject to statutory caps) for administering the program for public and private school students and teachers;
- Indirect costs associated with administering the program for public and private school students and teachers (except for the Even Start Family Literacy, Indian Tribal Even Start, and Migrant Education Even Start programs, in which indirect costs are unallowable); and

- Other allowable administrative costs as defined in the statute (e.g., for district-wide programs).

F-4. May third-party contractors hired by an LEA incur administrative costs?

Yes. A third-party contractor hired by an LEA to provide services to private school students and teachers may incur administrative costs. These costs must come off the top of the LEA's program allocation as administrative costs. The LEA may not charge a third-party contractor's administrative costs to the funds allocated for services for private school students and teachers. To facilitate this determination, the parties should identify in the contract the portion of the costs that are administrative, and the LEA should use funds taken off the top of its allocation to pay this portion of the contract.

F-5. Who has control of the program funds?

The LEA must always maintain control of the program funds as well as title to all materials, equipment, and property purchased with Federal funds.

F-6. May an LEA reimburse a private school for materials it has purchased or services it has procured to implement a Federal education program?

No. Only the LEA may obligate and expend Federal funds on behalf of private school students and teachers. Thus, the LEA must purchase materials or procure services on behalf of the private school students and teachers.

F-7. May an LEA use funds to provide stipends to private school teachers?

Yes. As with any other costs, the use of funds for stipends must be allowable under the program and reasonable and necessary for the proper operation of the grant program. For example, if the professional development program is conducted during after-school hours or during the summer, stipends may be needed to compensate teachers for their participation outside their regular employment hours. In addition, stipends for private school teachers must be available on the same basis as for public school teachers, and the stipends must be paid to private school teachers for their own use. The stipends must not be paid to the private school or be for the benefit of the private school.

F-8. What is the timeline for the obligation of funds?

SEAs and LEAs that have been awarded funds under the formula grant programs identified in Part C of this guidance generally have 27 months to obligate those funds from the time the Department has the authority to award Federal funds. In most cases, the Department has the authority to award these funds to States on July 1 of each year; thus, funds that the Department awards on July 1, 2005, must be obligated by September 30, 2007. The timeline for obligating funds under discretionary grant programs will depend on the project period established for the grant. Furthermore, when a grant is a formula grant at the State level and discretionary at the local level, SEAs may define the timeline for obligating funds for the subgrant period, but this deadline may not exceed the 27 month period described above.

F-9. How is the carryover of funds handled in regard to the equitable participation of private school students if an SEA permits carryover?

In general, if an LEA provided equitable services for private school students in any given year, any carryover funds for services to private school students would be considered additional funds for that program for public and private school students in the subsequent year. Those funds then would be used, along with any other carryover funds, for both public and private school students on an equitable basis. This situation might occur, for example, if private school students and teachers did not fully participate in the Federal education program (e.g., private school teachers opted out of a proposed professional development activity), even though an equitable program was planned and offered for those students and teachers.

However, if the LEA did not provide equitable services for private school students in a given year and, as a result, there are funds remaining that should have been expended for private school students, the LEA should use those carryover funds for private school students in the subsequent year. Those funds would be in addition to the funds that the LEA uses for private school students out of the subsequent year's allocation. This situation might occur, for example, if the LEA failed to notify or consult with private school officials about the availability of the Federal program, or if there was a delay in the implementation of an equitable program.

G. DELIVERY OF EQUITABLE SERVICES

Participation of private school students generally is considered to be equitable if the LEA: (1) spends an equal amount of funds to serve similar public and private school students, their teachers, and other educational personnel, taking into account the number and education needs of those students, teachers, and other educational personnel; (2) provides services and benefits that are equitable in comparison to the services and benefits provided to public school students, their teachers, and other educational personnel; (3) addresses and assesses the specific needs and educational progress of public and private school students, their teachers, and educational personnel on a comparable basis; (4) provides, in the aggregate, approximately the same amount of services to students, their teachers, and educational personnel with similar needs; (5) provides both groups of students, their teachers, and other educational personnel equal opportunities to participate in program activities; (6) provides private school students, their teachers, and other personnel with an opportunity to participate that provides reasonable promise of participating private school students meeting challenging academic standards; and (7) provides different benefits and services to private school students, their teachers, and other educational personnel from those provided to public school students, their teachers, and other educational personnel if their needs are different. (See 34 CFR 299.7)

G-1. Who has the responsibility to implement programs for private school students, teachers, and other educational personnel?

Generally, the LEA has this responsibility. However, in cases when the grant recipient is another entity, this responsibility becomes that of the SEA, educational services agency, institution of higher education, consortium of those agencies, or other entity that receives the grant. (See the note in Section B of this guidance.)

If an LEA contracts with a third-party provider to provide services and benefits to eligible private school students and teachers, the LEA remains responsible for ensuring that private school students and teachers receive equitable services and the requirements of the statute are met.

G-2. What services are offered if the needs of private school students and teachers are different from those of public school students and teachers?

The LEA offers services that meet the specific educational needs of the participating private school students and teachers and that show reasonable promise of effectiveness. The services can be different from those provided to public school students and teachers, but must be allowable services under the particular Federal education program. All services and benefits provided must be secular, neutral, and nonideological.

G-3. What are some service delivery mechanisms that an LEA may use to provide equitable services?

An LEA may provide services to private school students and teachers through an employee of the LEA or through a contract with a third-party provider, an individual, an educational institution, or some other agency that, in the provision of those services, is under the control and supervision of the LEA and is otherwise independent of the private school and any religious organization.

G-4. May an LEA hire and pay private school teachers to provide Federal supplementary services separate from their contract hours with the private school?

Yes. An LEA may hire and pay private school teachers to provide Federal supplementary services to private school students, but time spent providing such services must be separate from their contract hours with the private school. During the time they are employed by the LEA, the private school teachers must be independent of the private schools and any religious organizations, and must be under the LEA's direct supervision and control.

G-5. May an LEA use Federal funds to purchase textbooks for private school students' use in their regular classroom?

In general, Federal funds may not be used to purchase textbooks for private school students' use in their regular classroom because materials, programs, and benefits purchased with Federal funds must be supplemental and must not supplant what the private school would otherwise provide in the absence of Federal funds. However, in the case of Reading First, an LEA may use Reading First funds to purchase reading textbooks for the use of private school students in grades K-3 if their current reading program does not meet Reading First requirements (i.e., is not based on scientifically based reading research), to the extent the SEA permits the purchase of textbooks for public school students under Reading First. (Note: For programs not subject to the supplement, not supplant requirement, such as the Even Start Family Literacy, Migrant Education Even Start, Indian Tribal Even Start, and School Leadership, these costs would need to be considered on a case-by-case basis.)

H. COMPLAINTS AND BYPASS

By engaging in timely and meaningful consultation and developing positive relationships with private school officials, an LEA can minimize complaints and problems or, at a minimum, facilitate a cooperative environment for addressing them. If private school officials believe that timely and meaningful consultation has not occurred, they should first discuss this matter with the LEA official responsible for coordinating the consultation between the two entities. Private school officials may also contact the LEA superintendent or program director of the federally funded program to ask for assistance. If the response at the local level is not satisfactory, the private school official may contact the SEA official responsible for ensuring that Federal education programs are implemented at the local level. Often, these steps will resolve the matter. In the event the problem is not resolved, private school officials have the right to file a formal written complaint with the SEA.

H-1. What information must a formal written complaint include?

A formal written complaint must include:

- A statement that the SEA, LEA, or other entity receiving Federal financial assistance has violated a requirement of a Federal statute or regulation that applies to a program requiring equitable participation;
- The facts on which the statement is based and the specific statutory or regulatory requirement allegedly violated; and
- The signature of the complainant. (See 34 CFR 299.12.)

H-2. What options are available to private school officials if they file a complaint with the SEA, but the SEA does not answer their complaint in a timely manner or if the SEA's response fails to resolve the problem?

The SEA is required to resolve the complaint in writing within a reasonable period of time. The SEA's resolution (or its failure to resolve the complaint within a reasonable period of time) may be appealed by the private school officials to the Secretary of the U. S. Department of Education (Secretary). The appeal to the Secretary must be filed no later than 30 days following the SEA's resolution of the complaint (or its failure to resolve the complaint within a reasonable period of time). The Secretary investigates and resolves the appeal not later than 120 days after receipt of the appeal.

H-3. What is a "bypass"?

A "bypass" is a means by which the Secretary directly provides equitable services to private school students and teachers through a third-party provider. Title IX (sections 9502 and 9504) of ESEA mandates specific procedures that must be followed before a bypass is implemented. The Secretary implements a bypass if an SEA or LEA has substantially failed or is unwilling to provide, or is prohibited by law from providing, the required equitable services for private school students.

I. OTHER ESEA REQUIREMENTS AND PRIVATE SCHOOLS

I-1. Does Title IX, Part E, Subpart 1 contain any protections for private schools?

Yes. Title IX, Part E, Subpart 1 has provisions that contain important protections for private schools. For example, Section 9506 of ESEA states that nothing in the law shall be construed to: (a) affect any private school that does not receive funds or services under ESEA; (b) affect a home school; or (c) permit, allow, encourage, or authorize any Federal control over any aspect of any private, religious, or home school.

I-2. Are private schools whose students or teachers receive equitable services subject to the ESEA “highly qualified teacher” requirements?

No. The “highly qualified teacher” requirements do not apply to private schools whose students or teachers receive equitable services, because the highly qualified teacher requirements under Title I of ESEA do not apply to teachers hired by private elementary and secondary schools. (See 34 CFR 200.55(d).)

I-3. Are private schools whose students or teachers receive equitable services subject to the ESEA requirements relating to State standards, adequate yearly progress (AYP), and annual assessments?

No. A State's academic standards and AYP determinations do not apply to private schools. States are not required to include private schools in their State academic assessment system. (See 34 CFR 200.10.)

I-4. Are private schools whose students or teachers receive equitable services subject to the ESEA military recruiter requirements?

No. Private secondary schools whose students or teachers receive equitable services but that do not receive funds under ESEA are not subject to the military recruiter requirements.

Private secondary schools that do receive funds under ESEA are subject to the requirements. However, private schools that maintain a religious objection to service in the Armed Forces that is verifiable through the corporate or other organizational documents or materials of that school are not required to comply with this requirement.

I-5. Are private schools whose students or teachers receive equitable services subject to the Family Educational Rights and Privacy Act (FERPA)?

No. Private schools whose students or teachers receive equitable services are not subject to FERPA unless they otherwise receive Federal funds from a program administered by the U.S. Department of Education.

The requirements of FERPA apply to educational agencies and institutions that receive Federal funds from programs administered by the Department. A private educational institution would be subject to FERPA only if it receives a payment of money from a program administered by the Department. A private school is not made subject to FERPA just because its students and

teachers receive services from an LEA or SEA under a program administered by the Department, unless it otherwise also receives Federal funds from programs administered by the Department. (See 34 CFR 99.1(b).) Most private schools at the elementary and secondary school levels do not receive funding from programs administered by the Department and, thus, are not subject to FERPA's requirements.

J. APPENDICES

Appendix A: RESOURCES AND ADDITIONAL GUIDANCE

The Elementary and Secondary Education Act as reauthorized by the No Child Left Behind Act of 2001: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ110.107.pdf.

Education Department General Administrative Regulations (EDGAR), Parts 74-86 and 97-99 (See Participation of Students Enrolled in Private Schools Sections 76.650 – 76.677): <http://www.ed.gov/policy/fund/reg/edgarReg/edgar.html>.

Code of Federal Regulations (CFR), Title 34, Part 200, Title I, Improving the Academic Achievement of the Disadvantaged: http://www.access.gpo.gov/nara/cfr/waisidx_04/34cfr200_04.html.

Code of Federal Regulations (CFR), Title 34, Part 299, Subpart E--Services to Private School Students and Teachers: <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=34&PART=299&SECTION=6&YEAR=2000&TYPE=TEXT>.

The No Child Left Behind Act of 2001: Benefits to Private School Students and Teachers (Publication): <http://www.ed.gov/nclb/choice/schools/privbenefits/index.html>.

Title I Services to Eligible Private School Students Guidance: <http://www.ed.gov/programs/titleiparta/psguidance.doc>.

Title I, Part B, Reading First Guidance: <http://www.ed.gov/programs/readingfirst/guidance.doc>.

Title I, Part B, Subpart 3, Even Start Family Literacy Program Guidance: <http://www.ed.gov/policy/elsec/guid/evenstartguidance02.doc>.

Title I, Part C, Education of Migratory Children Guidance: <http://www.ed.gov/programs/mep/mepguidance2003.doc>.

Title II, Part Improving Teacher Quality State Grants Guidance: <http://www.ed.gov/programs/teacherqual/guidance.doc>.

Title II, Part D, Enhancing Education Through Technology Program Guidance: <http://www.ed.gov/programs/edtech/guidance.doc>.

Title III, Part A, English Language Acquisition, Language Enhancement and Academic Achievement Program Guidance: <http://www.ed.gov/programs/sfgp/nrgcomp.html>;
Fact Sheet: <http://www.ed.gov/about/offices/list/oii/nonpublic/title3-factsheet.html>.

Title IV, Part A, Safe and Drug-Free Schools and Communities Act Guidance:
<http://www.ed.gov/programs/dvpformula/guidance.doc>.

Title IV, Part B, 21st Century Community Learning Centers Guidance:
<http://www.ed.gov/programs/21stccclc/guidance2003.doc>.

Title V, Part A, State Grants for Innovative Programs Guidance:
<http://www.ed.gov/programs/innovative/titlevguidance2002.pdf>.

Title V, Part D, Subpart 6, Gifted and Talented Students Web site:
<http://www.ed.gov/programs/javits/index.html>.

Transferability Authority Guidance:
<http://www.ed.gov/programs/transferability/finalsummary04.doc>.

State-Flex Authority Guidance: <http://www.ed.gov/programs/stateflex/appl04.doc>.

Local-Flex Authority Guidance: <http://www.ed.gov/programs/localflex/appl04.doc>.

U. S. Department of Education
Office of Innovation and Improvement
Office of Non-Public Education

400 Maryland Avenue, SW
Washington, DC 20202

PH: 202-401-1365

FAX: 202-401-1368

E-mail: OIINon-PublicEducation@ed.gov.

Web site: <http://www.ed.gov/about/offices/list/oii/nonpublic/index.html>.

Appendix B: SAMPLE INTENT TO PARTICIPATE FORM

Sample City Public Schools

Federal Education Programs Intent to Participate Form

School Year

Date: _____

Private School Name: _____ School Code: _____

Address: _____

Phone: _____ Fax: _____ E-mail: _____

Private School Administrator: _____

Federal Education Programs Contact Person: _____

Phone: _____ E-mail: _____

Enrollment: Pre-K _____ K _____ 1 _____ 2 _____ 3 _____ 4 _____ 5 _____ 6 _____ 7 _____

8 _____ 9 _____ 10 _____ 11 _____ 12 _____ Total _____

Administrator's Signature: _____ Date Signed: _____

Please place a check next to all programs in which you would like your students and teachers to participate. (*Private school students and teachers may receive benefits, services, and materials from these programs. Private schools do not receive direct funding from these programs. The LEA always maintains control of the funds.*)

☐ **Title I, Part A – Improving Basic Programs Operated by LEAs**

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 most at risk of failing to meet high academic standards and who live in participating public school attendance areas.

☐ **Title I, Part B – Reading First**

Reading First provides funding to implement comprehensive reading instruction based on scientifically based reading research for children in kindergarten through third grade.

☐ **Title I, Part B, Subpart 3 – Even Start Family Literacy**

Even Start Family Literacy provides funding to partnerships of LEAs and other public and private entities to support family literacy programs that integrate early childhood education, adult education, parenting education, and literacy activities for low-income families and their children from birth through age seven.

___ **Title I, Part C – *Migrant Education***

Migrant Education provides financial assistance to improve education for migrant children.

___ **Title II, Part A – *Preparing, Training and Recruiting High Quality Teachers and Principals***

The Teacher and Principal Training and Recruiting Fund provides assistance for preparing, training, recruiting and retaining high quality teachers. Private school teachers, principals, and other educational personnel are eligible to participate in professional development activities to the extent that the LEA uses funds to provide for professional development, but at least to the FY 2001 levels for private school teachers' professional development.

___ **Title II, Part B – *Mathematics and Science Partnerships***

The Mathematics and Science Partnerships program provides funds to improve mathematics and science teaching through a variety of activities.

___ **Title II, Part D – *Enhancing Education Through Technology***

The Enhancing Education through Technology program provides funds for innovative initiatives to support the integration of education technology into classrooms to improve teaching and learning.

___ **Title III, Part A – *Language Instruction for Limited English Proficient and Immigrant Students***

The Language Instruction for Limited English Proficient (LEP) and Immigrant Students program provides funds for helping LEP students attain English proficiency and meet the same challenging State academic standards required of all students.

___ **Title IV, Part A – *Safe and Drug-Free Schools and Communities***

The Safe and Drug-Free Schools and Communities Act supports programs that foster a safe and drug-free learning environment that supports academic achievement.

___ **Title IV, Part B – *21st Century Community Learning Centers***

The 21st Century Community Learning Centers (21st CCLC) program provides before-and after-school services to children 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

___ **Title V, Part A – *Innovative Programs***

Innovative Programs support education reform and innovative school improvement programs to improve school, student and teacher performance. Private school students, teachers, and other education personnel may receive professional development, library materials, and educational resources and equipment.

___ **Title V, Part D, Subpart 6 – *Gifted and Talented Students***

The Gifted and Talented Students program provides funding for demonstration projects in activities designed to enhance the ability of schools to meet the special education needs of gifted and talented students (including economically disadvantaged individuals, individuals with limited English proficiency, and individuals with disabilities).

Note: Some of the programs listed above are discretionary programs and the school LEA may not necessarily participate in them.

Mail, Fax or E-mail this completed document to:
If you have questions, please contact *Sample Director* at phone #.
This form must be returned by:

Appendix C: SUPERINTENDENT’S NONPUBLIC SCHOOLS WORKGROUP

MARYLAND STATE DEPARTMENT OF EDUCATION

OVERVIEW

BACKGROUND

State Superintendent Nancy Grasmick initiated the Maryland State Department of Education Nonpublic Schools Workgroup in August, 1998, to provide an organized forum for addressing issues of mutual interest to Maryland’s public and nonpublic school communities.

PURPOSE

The purpose of the Nonpublic Schools Workgroup is to facilitate communication between state and local public and nonpublic school officials on such issues as:

- Services provided to nonpublic school students and teachers through federal programs authorized under:
 - the No Child Left Behind Act,
 - the Individuals with Disabilities Education Act, and
 - other federal and state grant programs.
- The administration of the Maryland Nonpublic School Textbook Loan Program
- Nonpublic-school data collection, such as contact information and enrollment statistics
- Other issues of mutual interest identified by group members

The Nonpublic Schools Workgroup also periodically hosts conferences and publishes brochures and other information on the above topics. Information published by the Workgroup will also be available on the Maryland State Department of Education website in the near future.

MEMBERSHIP AND GOVERNANCE

Members of the Nonpublic Schools Workgroup include representatives from each local public school system in Maryland, appointed by their local superintendents, and representatives of the Maryland Council for American Private Education and other nonpublic school associations in Maryland. The Workgroup is coordinated through the Office of the State Superintendent, Division of School and Student Services, and the Division of Certification and Accreditation. A public and nonpublic school representative chosen by the group’s members serve as co-chairs for three-year terms.

MEETINGS

The Nonpublic Schools Workgroup meets three times per year at the Maryland State Department of Education headquarters in Baltimore.

September 2004