

**Title I**  
**Services to Eligible**  
**Private School Children**

*Non-Regulatory Guidance*

October 17, 2003

# PROVIDING SERVICES TO ELIGIBLE PRIVATE SCHOOL CHILDREN

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# **PROVIDING SERVICES TO ELIGIBLE PRIVATE SCHOOL CHILDREN**

A significant amount of input from the field helped us develop this guidance. It is intended to be used in conjunction with the authorizing statute and applicable regulations by both public and private school officials. This guidance is nonbinding, but compliance with it will be deemed by the Department, including the Inspector General, as compliance with the applicable Federal statute and regulations.

This guidance is divided into sections. Each section begins with a short explanation of the Title I requirements for that section, followed by questions and answers related to the explanation.

This guidance relates specifically to Title I, Part A services for private school children. Under a number of other Department programs, private school students are entitled to receive equitable services. For information regarding these other programs, see the Department's web site at [www.ed.gov/about/offices/list/oii/nonpublic](http://www.ed.gov/about/offices/list/oii/nonpublic).

## **INTRODUCTION**

The Title I program provides supplemental educational services so that all children have a fair, equal, and significant opportunity to obtain a high-quality education. Generally, to qualify for assistance under Title I, a student must reside within the attendance area of a participating public school located in a low-income area and be failing, or at risk of failing, to meet student academic achievement standards.

Under Title I, local educational agencies (LEAs) are required to provide services for eligible private school students, as well as eligible public school students. In particular, §1120 of Title I, Part A of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act (NCLB), requires a participating LEA to provide eligible children attending private elementary and secondary schools, their teachers, and their families with Title I services or other benefits that are equitable to those provided to eligible public school children, their teachers, and their families.

The Title I services for private school students must be developed in consultation with officials of the private schools. The NCLB strengthened these requirements by, among other things, requiring meetings with private school officials and a written affirmation signed by private school officials that the required consultation has occurred.

The amount of Title I funds allocated to each participating public school attendance area is determined mainly on the basis of the total number of low-income students—both public and private-- residing in each area. Expenditures for private school students in each area generally are determined based on the proportion of students from low-income families residing in that area who attend private school.

The Title I services provided by the LEA for private school participants are designed to meet their educational needs and supplement the educational services provided by the private school. These

services may be provided by the LEA, or by a contractor who is independent of the private school and any religious organization. Title I services or benefits must be secular, neutral, and nonideological.

## **A. CONSULTATION**

The requirements for consultation are in §1120(b) of the Title I statute and §200.63 of the Title I regulations.

Consultation with officials from private schools is an essential requirement in the implementation by an LEA of an effective Title I program for eligible private school children, their teachers, and their families.

### **A-1. What is consultation?**

Consultation involves discussions between public and private school officials on key issues that affect the ability of eligible private school students to participate equitably in Title I programs. Effective consultation provides a genuine opportunity for all parties to express their views and to have those views considered. Successful consultation establishes positive and productive working relationships that make planning easier and ensure that the Title I services provided meet the needs of eligible students.

A unilateral offer of services by an LEA with no opportunity for discussion is not adequate consultation. Only after discussing key issues relating to the provision of Title I services should the LEA make its final decisions with respect to the Title I services to be provided to eligible private school children, their teachers, and their families.

### **A-2. How do LEAs begin the consultation process?**

Annually an LEA must contact officials of private schools with children who reside in the LEA regardless of whether the private school they attend is located in the LEA. 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 at which LEA officials explain the intent of Title I and the roles of public and private school officials and provide opportunities for the private school officials to ask questions. It is not adequate consultation merely to send a letter to officials of the private schools explaining the intent of Title I.

### **A-3. When does an LEA consult with private school officials?**

Consultation by an LEA must include meetings between the LEA and appropriate private school officials and must occur before the LEA makes any decision that affects the opportunity for eligible private school children, their teachers, and their families to participate in Title I programs. For example, if the LEA signs teacher contracts or orders supplies and equipment for the Title I program in the spring, the LEA must consult with the appropriate private school officials before signing those teacher contracts with Title I teachers or ordering supplies and equipment to provide Title I services for private school students.

#### **A-4. Who participates in the consultation process?**

Consultation includes appropriate public school officials and representatives of private schools and their central administrative offices, if appropriate. Private school officials can facilitate consultation by informing the LEA of which private school officials should be included in the consultation process and their roles and authority.

#### **A-5. How long does consultation continue?**

An LEA must meet with appropriate private school officials throughout the implementation and assessment of Title I services. This consultation must include early discussions to prepare for the next school year so that there is a timely start of the Title I program at the beginning of each school year, and throughout its implementation and assessment of services.

#### **A-6. What are the regulatory requirements for consultation?**

Under §200.63 of the Title I regulations consultation must, at a minimum, address the following issues:

- How the LEA will identify the needs of eligible private school children.
- What services the LEA will offer to eligible private school children.
- How and when the LEA will make decisions about the delivery of services.
- How, where, and by whom the LEA will provide services to eligible private school children.
- How the LEA will assess academically the services to private school children in accordance with §200.10 of the Title I regulations, and how the LEA will use the results of that assessment to improve Title I services.
- The size and scope of the equitable services that the LEA will provide to eligible private school children and, consistent with §200.64 of the Title I regulations, the proportion of its Title I funds that the LEA will allocate for these services and the amount of funds that the LEA reserves from its Title I allocation for the purposes listed in §200.77 of the Title I regulations.
- The method, or the sources of data, that the LEA will use (under §200.78 of the Title I regulations) to determine the number of private school children from low-income families residing in participating public school attendance areas, including whether the LEA will extrapolate data if a survey is used.
- The services the LEA will provide to teachers and families of participating private school children.

Consultation must also include – –

- Discussion of service delivery mechanisms the LEA will use to provide services; and

- Thorough consideration and analysis of the views of the private school officials on whether the LEA should contract with a third-party provider. If the LEA disagrees with the views of the private school officials on that issue, the LEA must provide in writing to those officials the reasons why the LEA has chosen not to use a third-party contractor.

**A-7. What records on consultation must an LEA maintain?**

Each LEA must maintain and provide to the State educational agency (SEA) a written affirmation, signed by officials of each private school with participating children or appropriate representatives of the private school officials, that the required consultation has occurred. (An example of an affirmation form may be found in Appendix I).

**A-8. Because consultation is an on-going process, when should private school officials or their representative(s) sign the required written affirmation that appropriate consultation has taken place?**

The affirmation should be signed when consultation on the planning and design of the next year's program has been completed. The exact timing of signing the affirmation should be a consultation topic. The SEA has the flexibility to require LEAs to submit the written affirmations during the annual Title I application process or at another time. After the affirmation is obtained, consultation continues through the implementation and assessment of services.

**A-9. What should an SEA do when an LEA has not provided it with written affirmations from private school officials?**

When an LEA has not obtained a written affirmation signed by private school officials, an SEA may request that the LEA provide a reason for the lack of affirmation. In some cases, the reason may be that the private school officials did not want Title I services. However, if the reason is that there is a disagreement between the LEA and private school officials, the SEA may facilitate resolution of their differences.

**A-10. Do private school officials have the right to complain?**

Private school officials have the right to complain to the SEA if they believe that an LEA did not engage in timely and meaningful consultation or did not consider their views.

**A-11. Must an LEA provide a copy of its Title I application if a private school official requests it?**

Yes. An LEA must provide a copy of its Title I application when a private school official requests it.

**B. DETERMINING EQUITABLE SERVICES**

An LEA must, after timely and meaningful consultation with appropriate private school officials, provide Title I educational services to private school children who live in participating public school attendance areas and are identified by the LEA as at risk of failing. These services must be



equitable in comparison to services and benefits provided to public school participants (§1120(a) of the Title I statute).

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## **ALLOCATING FUNDS FOR EQUITABLE SERVICES FOR PRIVATE SCHOOL STUDENTS**

Under §1113(a) of the Title I statute and §200.78 of the regulations, an LEA must allocate Title I funds to public school attendance areas, identified as eligible and selected to participate, in rank order on the basis of the total number of children from low-income families residing in each area.

### **B-1. How does an LEA determine participating public school attendance areas?**

A public school attendance area is generally eligible to participate in Title I if its percentage of children from low-income families is at least as high as the percentage of children from low-income families in the LEA as a whole or if it has a 35 percent poverty rate. An LEA first annually ranks its public school attendance areas by poverty and then selects, in rank order, those areas that the LEA will serve. For areas that exceed 75 percent poverty, the LEA must serve those areas in rank order without regard to grade-span; thus high-poverty middle and high schools must be served, along with high-poverty elementary schools. After an LEA has funded all schools with a poverty rate above 75 percent poverty, it may serve schools ranked lower than 75 percent poverty either by grade-span groupings or by the district as a whole. An LEA has the flexibility, for example, to decide to serve only elementary schools or a combination of elementary and middle schools, but not high schools.

### **B-2. What data does an LEA use when determining eligible attendance areas?**

In identifying and ranking eligible public school attendance areas, an LEA must use one (or a combination) of four sources of poverty data: census; free and reduced price lunch; Temporary Assistance for Needy Families; and Medicaid assistance. The LEA generally should, if possible, take into consideration data on the number of children from low-income families who reside in each attendance area and attend either public or private schools. For an LEA to include numbers of private school children, however, an LEA would have to have available for each public school attendance area the total number and the poverty data for all private school children residing in each attendance area. Because obtaining these poverty data for every private school child residing in the entire LEA may be difficult, an LEA may, if necessary, identify and rank its eligible school attendance areas on the basis of the number of children from low-income families attending public schools only.

### **B-3. Once the participating public school attendance areas have been established, how does an LEA allocate funds for Title I services under §1113(c) of the Title I statute?**

Once the participating public school attendance areas have been established, under §1113(c) of Title I, an LEA calculates the per-pupil allocation (PPA) for each participating public school attendance area. Then, based on the total number of children from low-income families residing in each attendance area attending either public or private schools, the LEA calculates the total amount of

funds for each area. From this amount, the LEA reserves an amount of funds for the private school children (equal to the PPA multiplied by the number of low-income private school students in the area) to provide equitable services to eligible private school participants.

Thus, an LEA, in consultation with private school officials, must obtain the best available poverty data on private school children residing in participating public school attendance areas. Because private school officials may have access to poverty information not easily accessible to public school officials, it is important that public and private school officials consult and cooperate in this effort.

Public school attendance area	Column A Per pupil allocation (PPA) by attendance area	Column B Number of public school low-income children by attendance area	Column C Number of private school low-income children by attendance area	Column D Total allocation for each public school [Col. A X Col. B]	Column E Amount available for Title I services to private school children (Col. A X Col. C)
A	\$800	500	130	\$400,000	\$104,000
B	\$700	300	8	\$210,000	\$ 5,600
C	\$600	200	3	\$120,000	\$ 1,800
D	\$500	400	17	\$200,000	\$ 8,500

In this example, eligible public school attendance areas are identified and ranked on the basis of the number of children from low-income families attending public schools.

#### **B-4. How does an LEA collect poverty data on private school children?**

Section 1120(c)(1) of the Title I statute and §200.78(2) of the regulations allow an LEA to calculate the number of children who are from low-income families and attend private schools in several ways:

1. Using the same measure of poverty. *If available, an LEA should use the same measure of poverty used to count public school children, e.g., free and reduced price lunch data.*
2. Using comparable poverty data from a survey and allowing such survey results to be extrapolated if complete actual data are unavailable.
  - a. *In order to obtain the number of private school children from low-income families, an LEA may use a survey to obtain poverty data comparable to those used for public school students. To the extent possible, the survey must protect the identity of families of private school students. The only information necessary for an LEA to collect in such a survey of private school children is- -*
    - (1) geographic information verifying residence in a participating public school attendance area;
    - (2) grade level of each child; and
    - (3) income level of parents.

An LEA should not require that the private school officials give the names of low-income families.

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#### **EXAMPLES OF GOOD SURVEY PRACTICES:**

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Surveys yielding good data have some common characteristics. The survey itself should be simple and understood by parents, including parents with limited knowledge of English. Letters of explanation are sent to principals, and meetings are held with them to explain the necessity and importance of the survey. Principals are encouraged to meet with the parents and then distribute the surveys. After a period of time has lapsed, during which the surveys should have been received, the principals begin to follow up with those parents who have not returned the surveys. Parents are assured to the extent possible that the completed individual survey forms will be kept in confidence at the private school.

One school district finds that sensitive data, such as income level, are most easily collected when the families providing the data feel that their privacy is being protected. For this reason they use only a numbering system to identify the families and do not require any names on the form. Each principal is given a copy of the form and instructed to number the forms and keep a log. Parents are informed that their names will only be matched to the numbers if they do not return the form (i.e., in order to contact them). Printed at the bottom of the form is "This form has been numbered to protect your privacy. Once we receive the information requested, any linking of this number to your family's name will be kept in strict confidence."

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(Examples of survey and reporting forms may be found in Appendices II and III)

- b. *After obtaining income data from a representative sample of families with children in private school, an LEA may extrapolate those data to the entire private school student population if complete actual data are unavailable. The LEA should take care to ensure that the data are truly representative of the private school students in the district.*

**EXAMPLES OF REPRESENTATIVE SAMPLE AND EXTRAPOLATION:**

Column 1	Column 2	Column 3	Column 4	Column 5
Public school attendance area	# of resident private school children	# of private school children submitting surveys	# of low-income private school children from survey	extrapolated # of low-income private school children
A	150	115	100	130
B	20	10	4	8

Key:

Column 1. public school attendance area

Column 2. number (#) of resident private school children

Column 3. number of private school children submitting surveys

Column 4. number of low-income private school children on returned surveys

Column 5. extrapolated number of low-income private school children.

**CALCULATIONS:**

Col. 5 (extrapolated number of low-income children) =

Col. 4 (# of low-income on survey) multiplied by Col. 2 (# resident private school children)

Col. 3 (total submitted surveys)

Or  $\frac{100}{115} \text{ times } 150 = 130$

$\frac{4}{10} \text{ times } 20 = 8$

3. Using comparable poverty data from a different source. *If data from the same source used for public school children are not available, an LEA may use poverty data for private school children that are from a different source than the data it uses for public school children so long as the income threshold in both sources is generally the same.*

For example, an LEA uses free and reduced price lunch data but private school children do not participate in the free lunch program; however, private school officials are able to provide an LEA with a count of children who are from low-income families using other sources of poverty data such as Temporary Assistance to Needy Families (TANF) or tuition scholarship programs. If the different sources use different definitions of low-income, an LEA would need to adjust the results accordingly.

4. Using proportionality. An LEA may apply the low-income percentage of each participating public school attendance area to the number of private school children who reside in that school attendance area. To do this, an LEA will need the addresses and grade levels of those students attending private schools.

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**EXAMPLE OF PROPORTIONALITY CALCULATIONS:**

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An LEA calculates the percent of poverty of a public school attendance area to be 60 percent. The LEA then applies the poverty percentage of the public school attendance area to the number of private school children residing in that public school attendance area. For example, if the number of private school children residing in the public school attendance area is 50, then 60 percent of 50 children or 30 children are considered to be from low-income families. The LEA calculates the per-pupil amount on this number (30 children).

5. Using an equated measure. *An LEA may use an equated measure of low-income by correlating sources of data—that is, determining the proportional relationship between two sources of data on public school children and applying that ratio to a known source of data on private school children.* For example, an LEA uses free and reduced-price lunch data, but those data are not available for private school students. However, if TANF data are available, the LEA could determine an equated measure of poor students in private schools based on free and reduced-price lunch data by correlating the two sets of data as follows: TANF in the public school is to free and reduced price-lunch as TANF in private schools is to “X.”

$$\frac{\text{TANF (public)}}{\text{Free \& reduced price lunch (public)}} = \frac{\text{TANF (private)}}{\text{X (private)}}$$

In this example, the LEA may then use the equated number of private school students based on free and reduced-price lunch data (“X”) as the number of poor private school students.

**B-5. How does an LEA determine if it should collect the poverty data annually versus biennially (every two years) and must the collection of poverty data be uniform across the district?**

Section 1120(a)(4) of the Title I statute permits an LEA to determine the number of children from low-income families who attend private schools "each year or every 2 years." This provision was included to reduce the burden of annually collecting poverty data from private schools, particularly if those private schools do not otherwise maintain poverty data and so have to obtain those data through a survey. An LEA should consult with appropriate private school officials about the

availability of poverty data on private school students and by this process determine whether it would be more feasible to collect annually or biennially. It is not necessary that an LEA adopt a uniform procedure with regard to all private schools. For example, if some private schools have free and reduced price lunch data available, the LEA could collect those data annually. For other private schools that rely on a survey, the LEA could collect data biennially. If data are collected from different years, the LEA should ensure that the data for the district, taken as a whole, appropriately and consistently represent concentrations of low-income students.

**B-6. If an LEA does not collect the names of low-income families, how do LEA officials or auditors determine that the poverty numbers provided by the private school officials are accurate?**

Private school officials should maintain the poverty data in their files. If LEA officials or auditors wish to review the poverty data, they may review the data at the private schools.

**B-7. Is there a preferred method for collecting poverty data?**

If the same data source is available for public and private schools, then that is the preferred method for determining the number of public and private school children from low-income families because of comparable data. However, if the data used for public school children are not available for the private school children, then, after consultation with the appropriate private school officials, the other methods described on pages 11-13 of this guidance may be used to collect poverty data for private school students.

**B-8. May an LEA use more than one method of collecting poverty data?**

Yes. Since some private schools within an LEA do not participate in the free and reduced price lunch program, it may be necessary for an LEA, after consultation with appropriate private school officials, to use more than one method of collecting data on children living in poverty. However, the LEA must ensure that there are no duplicate counts and the methods used have comparable income levels.

**B-9. May an LEA reserve funds off the top of its Title I allocation before it allocates funds to participating public school attendance areas?**

Yes. The provisions for allocating Title I funds are in §200.77 of the Title I regulations. Before allocating Title I funds to participating public school attendance areas, an LEA must reserve a portion of its Title I allocation off the top, as needed, for specific purposes. These purposes may be to provide services for neglected children in local institutions or for homeless children, carry out parental involvement and professional development activities, pay for choice-related transportation and supplemental educational services, or administer Title I programs for public and private school children, including paying any special capital expenses. The LEA may also reserve funds off the top for other authorized activities, such as school improvement activities or district-wide instructional programs.

**B-10. What are the requirements if an LEA reserves Title I funds off the top for district-wide instructional programs for public elementary and secondary schools?**

If an LEA reserves funds off the top of its Title I allocation for district-wide instructional programs for public elementary and secondary school students, the equitable services requirement applies. Section 200.64(a)(2)(i)(A) of the Title I regulations requires that, if an LEA reserves funds for instructional and related activities for public elementary or secondary school students at the district level, the LEA must also provide from these funds, as applicable, equitable services to eligible private school children. The amount of funds available to provide equitable services from the applicable reserved funds must be proportional to the number of private school children from low-income families residing in participating public school attendance areas.

**EXAMPLE OF EQUITABLE CALCULATIONS FOR DISTRICT – WIDE ACTIVITIES:**

An LEA reserves \$500,000 for a district-wide reading initiative. The number of public and private school children from low-income families residing in participating Title I attendance areas is 25,000. Five percent of the 25,000 children from low-income families attend private schools; thus five percent of the \$500,000 reservation, or \$25,000, is available for equitable services for private school participants. Thus, the LEA has \$475,000 for its public school district-wide reading initiative and \$25,000 for Title I services to private school participants. The Title I program funded with this \$25,000 must meet the needs of the private school participants but does not have to be identical to the district-wide reading initiative. The LEA must consult with appropriate private school officials to determine how these funds will be used to benefit private school participants.

**B-11. Are private school children who receive Title I services eligible to receive supplemental educational services?**

No. Only children from low-income families attending public schools identified for improvement, corrective action, and restructuring—not all children participating in Title I—are eligible to receive supplemental educational services.

**B-12. Does the equitable services requirement in §1120(a) of the Title I statute apply to LEA set-asides for preschool programs?**

The equitable services requirement applies only to children who attend private elementary and secondary schools and does not apply to children attending private preschool programs, unless the State considers preschool to be part of elementary education.

**B-13. Does the equitable services requirement in §1120(a) apply if the LEA takes funds off the top of its Title I allocation for summer school programs?**

Since a Title I summer school program provides instructional services, §200.64(a)(2)(i)(A) of the Title I regulations would apply and would require the LEA to provide equitable services to eligible private school children. The LEA must base equitable services supported with the reserved funds on the proportion of private school children from low-income families residing in participating public school attendance areas.

**B-14. If funds are transferred into the Title I program from other ESEA programs under the transferability authority, do the requirements relating to the equitable participation of private school students apply to these funds?**

Yes. With respect to any funds transferred into the Title I program, the LEA must provide equitable services for private school students.

**B-15. May an LEA transfer funds into the Title I program solely to provide services for private school students?**

No. The LEA may not transfer to the Title I program only the portion of funds available for services for private school students from one or more of the programs whose funds may be transferred. Rather, before it transfers any funds, the LEA must engage in timely and meaningful consultation with appropriate private school officials. Assuming the LEA decides to transfer funds, it provides services to public and private school students and teachers under the program(s) to which the funds are transferred.

**B-16. What are the options available for using funds for instructional services to private school participants?**

In consultation, the LEA and private school officials may choose one or both of the following options for using the funds reserved for instructional services for eligible private school children.

- (1) On a School-by-School Basis: Provide equitable services to eligible children in each private school with the funds allocated for the children who reside in participating public school attendance areas and attend that private school.
- (2) Pooling Option: Combine funds allocated for private school children in all participating areas to create a pool of funds from which the LEA provides equitable services to eligible private school children who are in the greatest educational need of those services and reside in participating public school attendance areas. If it pursues this option, the LEA, in consultation with officials from the private schools, must establish criteria to determine the eligible private school students in greatest educational need who should receive services. Under this option, the services provided to eligible children attending a particular private school do not depend on the amount of funds allocated for children in that school. (See example in Appendix IV)

**B-17. If an LEA, in consultation with private school officials, decides to pool funds allocated for private school children and, later, eligible low-achieving children in some schools choose not to participate in the Title I programs, do the funds allocated for children in these private schools remain in the pool?**

Yes. An LEA allocates Title I funds to participating public school attendance areas using data on the number of low-income children, both public and private, who reside in that public school attendance area. Once funds are allocated, if a particular private school with eligible low-achieving children does not wish to have its students participate in the Title I program, any funds allocated for children in that private school remain in the pool.



**B-18. If there are no children from low-income families attending a private school, and so no funds are allocated for Title I services, may the private school children who meet the educational criteria obtain Title I services?**

If there are no children from low-income families to warrant the allocation of instructional funds and the LEA is not pooling the funds, then children in that private school who meet the educational criteria will not receive Title I services because there are no funds available to provide services. If the LEA is pooling funds, then eligible low-achieving children who meet the educational criteria and attend private schools with no children from low-income families may receive Title I services.

**B-19. When an LEA elects not to serve an eligible public school attendance area, as permitted under §1113(b)(1)(D) of the Title I statute, what are the procedures for serving the private school children who reside in that attendance area?**

An LEA may elect not to serve ("skip") an eligible public school attendance area or school that has a higher percentage of children from low-income families than other schools it elects to serve if (1) the school meets the comparability requirements, (2) the school is receiving supplemental funds from other State or local sources that are spent according to the requirements of either §§1114 or 1115, and (3) the funds expended from such other sources equal or exceed the amount that would be provided under Part A. Eligible private school children who reside in a "skipped" attendance area, however, must be provided Title I services even though the public school attendance area is skipped.

In implementing this provision, therefore, an LEA must determine which school attendance areas would have received Title I funds absent any skipping and what the per-pupil allocations for those areas would have been. The LEA must then determine the amount of funds that would have been allocated for private school children residing in those school attendance areas. This amount is included in the funds available for serving eligible private school children residing in the LEA. If the LEA skips one or more of its higher-ranked school attendance areas, enabling the LEA to use Title I funds to serve additional lower-ranked areas, low-income private school children residing in those additional areas would not warrant the allocation of funds.

**B-20. How are private school children to be identified as residing in a participating public school attendance area if an LEA is operating under an open enrollment, desegregation, or magnet plan?**

If an LEA identifies a public school as eligible on the basis of enrollment, rather than serving an eligible school attendance area, the LEA must, in consultation with private school officials, determine an equitable way to identify eligible private school children. For example, the LEA may assign a private school child to the public school attendance area in which the child resides or to the public school that the child would have attended if not enrolled in a private school.

## **ELIGIBLE CHILDREN**

### **B-21. What private school students are eligible for Title I services**

To be eligible for Title I services, a private school child must reside in a participating public school attendance area and must meet the requirements in §1115(b) of Title I, which requires the LEA to use multiple, educationally related, objective criteria in selecting children to participate in the Title I program. Under that section, certain children may be identified as eligible solely by virtue of their status: for example, homeless children and children who in the preceding two years had participated in Head Start, Even Start, Early Reading First, a Title I preschool program, or a Title I, Part C (Migrant Education) program.

### **B-22. What are the criteria for selecting private school children from preschool through grade 2?**

Children from preschool through grade 2 are selected solely on the basis of such criteria as teacher judgment, interviews with parents, and developmentally appropriate measures.

### **B-23. Are private school children from low-income families automatically eligible for Title I services?**

No. Student eligibility for Title I services for private school children is determined by (1) residence in a participating public school attendance area, and (2) educational need. Poverty is not a criterion.

### **B-24. How are the criteria determined?**

In consultation with private school officials, an LEA must establish multiple, educationally related, objective criteria to determine which private school children are eligible for Title I services, and, within the eligible group, which children will be served. To the extent appropriate, the LEA must select private school children who are failing, or most at risk of failing, to meet high student academic achievement standards

### **B-25. What are some of the educationally related criteria that an LEA may use to identify the at-risk private school children for Title I services?**

The criteria may include- -

- Achievement tests;
- Teacher referrals and recommendations based on objective, educationally related criteria; and
- Grades

**EXAMPLE OF THE STEPS AN LEA USES TO SELECT PARTICIPANTS:**

LEA and private school officials decide that the criteria for private school students are (1) test scores on a national norm-referenced test given annually by the private school and (2) teacher referral. The criteria should provide accurate and unduplicated information. The private school principal provides the names, addresses, and grades of the private school children meeting the agreed upon criteria. The LEA checks the addresses of the children on the list to determine those who live in participating public school attendance areas. Based on established educational criteria, the LEA then selects, from among those who are eligible and live in participating public school attendance areas, those private school children who are failing, or those who are most at risk of failing, to meet high achievement standards.

**B-26. May Title I funds be used to identify eligible private school students?**

Title I funds may not be used to identify private school children who are eligible to participate. Title I funds, however, may be used to select participants from among those who are eligible and to determine the specific educational needs of those children.

**B-27. May an LEA require private school officials to verify that students attending their school reside in a Title I public school attendance area?**

It is an LEA's responsibility to verify that the eligible private school children reside in participating public school attendance areas. The officials of the private school may help with this determination if they wish. However, the LEA cannot require private school officials to do this verification.

**B-28. Once participants are selected, how does an LEA determine what Title I services are to be provided?**

An LEA, in consultation with appropriate private school officials, determines the appropriate Title I services based on the needs of the private school students. Title I services may be provided in subject areas or at grade levels that are different from those provided public school students, as long as these services are provided in the same grade-span as the services provided to public school children. These services must hold reasonable promise that the academic performance of private school participants will improve.

**B-29. Must the number of private school children served be equal to the number of private school students from low-income families?**

No. The needs of eligible private school children and the amount of funds available determine who is served and what those services are.

**B-30. If a school in the attendance area in which private school students reside is operating a schoolwide program, may private school students be offered a schoolwide program also?**

No. Since private schools are not eligible for Title I services, schoolwide programs may not be operated in private schools. However, eligible private school children residing in an area served by a schoolwide public school program must be offered equitable services.

**B-31. If after receiving an offer of equitable services, the private school officials or parents choose to have the children participate in only some of the services, may the LEA provide only those services?**

Yes. The statute requires that an LEA offer equitable services to private school children, but not that private school children accept or participate in all those services. An LEA meets its responsibility to provide services even if the services are wholly or partially refused by private school officials or parents. The LEA must continue to offer equitable services each year and cannot presume to reduce the services offered based on what was offered or accepted in the past.

**B-32. When a child who is most at risk of failing resides in a Title I attendance area in one LEA and attends a private school in another LEA, which LEA is responsible for serving the child?**

Section 200.62(b)(1)(i) of the Title I regulations defines Title I eligible private school children as those who reside in participating public school attendance areas of the LEA, regardless of whether the private school they attend is located in the LEA. Thus, the LEA in which the child resides is responsible for providing services to the child, but it may arrange to have services provided by another LEA and reimburse that LEA for costs.

**B-33. May an LEA establish a minimum number of private school children selected for the program in order to establish a Title I program in the private school? If so, what is the LEA's responsibility to serve children attending private schools with fewer than that minimum number?**

Section 1120(a) of Title I requires that LEAs provide for the participation, on an equitable basis, of eligible children enrolled in private schools. The requirement applies regardless of the number of children attending a private school; there is no minimum number. However, when the number of eligible children at one location is very small, the cost of establishing certain types of programs to serve them may be prohibitive, especially when these children may be from different grades or have different educational needs. In this case, the LEAs should consider other options. If feasible and equitable, they might adopt methods that are cost-effective for serving small numbers, such as take-home computer programs, individual tutoring programs, professional development activities with the classroom teachers of Title I participants, or other strategies.

**B-34. If the funds allocated for private school children are not sufficient to provide instructional services, may the funds be used to provide other services, such as professional development or counseling?**

Yes. After consultation with private school officials, an LEA may provide Title I services other than direct instruction if the provision of services, such as counseling, staff development, and parental involvement is appropriate to assist those children identified as failing or most at risk of failing to meet high student academic achievement standards. The LEA must measure the effect of the services on the academic achievement of participating children.

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## **DELIVERY OF INSTRUCTIONAL SERVICES**

### **B-35. Who is responsible for planning and designing the Title I program?**

After consultation with appropriate private school officials, the LEA must design a Title I program that meets the needs of private school participants. The LEA is responsible for planning, designing, and implementing the Title I program and may not delegate that responsibility to the private schools or their officials.

### **B-36. How does an LEA design a Title I program?**

Consistent with §1115(c) of the Title I statute, the LEA provides a Title I program to private school children, employing methods and instructional strategies for improving academic achievement that have been shown to be effective through scientifically based research. The LEA must also give primary consideration to providing extended learning time and a high-quality curriculum.

Based on the needs of the children to be served, the LEA must provide an instructional program that not only supplements but also is well coordinated with the instruction that the private school children are receiving in their regular classrooms. This program should complement classroom instruction and should not be a separate instructional program.

### **B-37. What types of services are available for private school participants?**

Services for participating private school children include, but are not limited to, the following:

- Instructional services provided by public school employees or third-party contractors.
- Extended-day services.
- Family literacy programs.
- Counseling programs.
- Computer-assisted instruction (CAI).
- Home tutoring.
- Instruction using take-home computers.

**B-38. For Title I services, may an LEA just provide a private school with instructional materials and supplies paid with Title I funds?**

Simply providing the private school with instructional materials and supplies is NOT an option available to the LEA because it is neither a proper Title I program implemented by the LEA nor meets the equitability requirement.

**B-39. When should Title I services for private school participants start?**

Under the equitable services provision of the Title I statute, the Title I program for private school participants must begin at the same time as the Title I program for public school participants. Therefore, the required consultation should begin early enough so that Title I teachers can be hired and materials ordered in order for the Title I program to start at the beginning of each school year.

**B-40. What are the obligations of an LEA that does not start the Title I program for private school participants at the same time it starts the Title I program for public school students?**

An LEA is obligated to provide Title I services on an equitable basis, and the expectation is that Title I services start at the beginning of each school year. If the LEA begins the Title I program late in the school year, in order to comply with applicable requirements, the LEA should provide additional services during the remainder of the year and carry over any unspent funds that should have been used to provide equitable services for private school students and add them to the instructional funds for the private school participants for the next school year.

**B-41. May private school officials order or purchase materials and supplies needed for the Title I program and be reimbursed by an LEA?**

No. Private school officials have no authority to obligate or receive Title I funds. The statute clearly states that the LEA must maintain control of Title I funds, materials, equipment, and property. No Title I funds may be paid to a private school.

**B-42. Where may Title I services take place?**

Title I services for private school participants may be provided at various locations, including the private school, neutral sites, or public schools. LEA officials must consult with private school officials before any decision is made about the location of Title I services. If appropriate space is available, the least disruptive and least expensive location will be the private school that the participating children attend.

**B-43. May Title I services be provided in religiously affiliated private schools?**

In the 1997 case of Agostini v. Felton, the U.S. Supreme Court decided that Title I instructional services may be provided by public school employees in religiously affiliated private schools without violating the Establishment Clause of the United States Constitution.

**B-44. What were the circumstances under which the Court in Agostini approved Title I instruction in private schools?**

The Court was reviewing the constitutionality of New York City's Title I program as it existed prior to 1985 and concluded that providing Title I services in private schools was constitutional under the facts that existed under that program. Although the Court did not say that any particular facts were required, it considered the program's characteristics in ruling that Title I instructional services could be provided in private schools without violating the Establishment Clause. For example, in New York City's pre-1985 Title I program, only public employees could serve as Title I instructors and counselors, and assignment of public school personnel to private schools was made without regard to the religious affiliation of the employee. Additionally, all religious symbols were removed from classrooms used for Title I services, personnel were instructed to limit their consultations with the regular classroom teacher to discussions concerning mutual concerns regarding the students' education, and a publicly employed field supervisor made one unannounced visit to each teacher's classroom each month.

Title I personnel were also given a detailed set of instructions emphasizing the secular purpose of Title I and setting out rules to be followed to ensure that this purpose was not compromised. These instructions noted that Title I personnel were public employees and accountable only to their public school supervisors; that they could teach only students determined to be eligible by public school officials; that their materials and equipment could only be used in the Title I program; that they could not engage in team teaching or other cooperative instructional activities with private school personnel; and that they could not introduce any religious matter into their teaching or become involved in the religious activities of the private school.

**B-45. Must a program mirror the program described in Agostini in order to be constitutional?**

In its decision in Agostini, in ruling that Title I services can be provided in private religious schools, the Supreme Court considered the various characteristics of New York City's pre-1985 program. The Court did not specifically indicate whether any particular factor was required, but rather said a federally funded program should contain "safeguards such as those present here." In other words, the factors in the New York program were sufficient to create a constitutional program, and other programs with similar levels or types of safeguards should likewise be constitutional, but the Court did not say that each and every factor was necessary to the program's constitutionality.

**B-46. Must an LEA require the removal of religious symbols in private school classrooms in which Title I services are provided?**

No, the Department believes that the constitutionality of Title I instructional services provided in a private school will depend on consideration of the program's safeguards viewed as a whole, not of any one factor, such as whether or not there are religious symbols in the space used for that instruction. The Department does believe, however, that a valid program must contain safeguards to ensure that public employees do not promote religion in the course of carrying out their Title I duties.

**B-47. May space used for Title I instruction in a private school be used for non-Title I purposes at other times?**

Yes. The LEA should have the exclusive use and control of the Title I space during the time when Title I services are being conducted, but the space may be used for other purposes at other times.

**B-48. Are private schools required to make space available in their schools for Title I services?**

No. If space is not available in a private school, or if the private school chooses not to make its facilities available to the LEA for this purpose, Title I services must be provided in another location. The LEA still has the responsibility of providing equitable Title I services for private school children under these circumstances, although the services would be at a location outside the private school. The extra costs of providing services at a location outside the private school would be taken “off-the-top” of the LEA’s Title I allocation before funds are allocated for instructional services for public and private school children.

**B-49. How does the LEA establish good communications and program coordination?**

To facilitate the delivery of well-coordinated and high-quality services, Title I teachers, teachers of private school participants, private school officials and LEA staff members should meet and discuss the design and development of the Title I program. These meetings should be one-on-one between the Title I teachers and the private school teachers of Title I participants to ensure that the Title I program supplements and is coordinated with the regular classroom instruction received by the private school participants.

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**EXAMPLES OF COMMUNICATION WITH THE REGULAR CLASSROOM TEACHER:**

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In one program, each Friday afternoon, the private school classroom teacher provides the Title I teacher with a copy of the regular classroom teacher’s weekly lesson plan for the next week in those subjects that the Title I teacher instructs, so that the Title I teacher can adapt the Title I instruction to support the instruction occurring in the regular private school classroom.

In another program, a regular classroom teacher provides the Title I teacher, on a weekly basis, with a simple form that is used to inform the Title I teacher of a child’s individual needs as well as the content and skills being taught in the regular classroom. The Title I teacher then adjusts the Title I services to meet the child’s needs and to supplement the instruction provided.

**B-50. May the Title I teacher use the same textbooks as those used by the private school students in their regular classroom?**

Yes. The Title I teacher may use the same textbooks and materials as those used in the regular private school classroom so long as the textbooks and materials are secular, neutral, and nonideological, and the instructional services supplement and do not replace the instructional program in the participants’ regular classrooms.

**B-51. Who provides the Title I services to private school participants?**

Section 1120(d)(2) of the statute requires that Title I services be provided by either an employee of a public agency (LEA) or through a contract by the public agency (LEA) with an individual,



association, agency, or organization. These employees, individuals, associations, agencies, or organizations must be independent of the private school and any religious organization in the provision of those services and such employment or contract must be under the control and supervision of the public agency (LEA).

**B-52. Must teachers and paraprofessionals hired by an LEA to provide Title I services to private school participants meet the teacher and paraprofessional qualification requirements in §1119?**

Yes. Such teachers and paraprofessionals who provide Title I services to private school participants and are employees of an LEA must meet the qualification requirements within the timeframes specified in §1119 of the statute.

**B-53. After consultation with the appropriate private school officials, may an LEA employ a third-party contractor to provide Title I services to private school participants?**

Yes. An LEA may provide Title I services directly or indirectly through contracts with public and private agencies, organizations, and institutions so long as those entities are independent of the private school and of any religious organization in the provision of those services. The services may be provided in a private school under the same conditions, and subject to the same limitations, as if the LEA provided the services.

**B-54. If an LEA contracts with a third-party provider, must the third-party provider employ Title I teachers and paraprofessionals that meet the qualification requirements in §1119 of Title I?**

No. The highly qualified personnel requirements only apply to those teachers and paraprofessionals who are directly employed by the LEA.

**B-55. May an LEA hire a private school teacher to provide Title I services to private school participants?**

Yes, as long as the private school teacher meets the highly qualified teacher standards required in §1119 of the Title I statute and is independent of the private school in the provision of Title I services. The private school teacher can only be employed for Title I purposes outside of the time he or she is employed by the private school and the private school teacher must be under the direct supervision of the LEA with respect to all Title I activities.

**B-56. How does the requirement in §1119 of the Title I statute that paraprofessionals employed by an LEA work under the direct supervision of a public school teacher apply to the Title I program for private school participants?**

Paraprofessionals providing instructional support must work under the direct supervision of a public school teacher (see §1119(g)(2)(G) and (g)(3)(A) of Title I). A paraprofessional works under the direct supervision of a teacher if (1) the teacher prepares the lessons and plans the instructional support activities that the paraprofessional carries out, and (2) the paraprofessional works in close and frequent proximity to the teacher. As a result, a Title I program for private school participants staffed entirely by paraprofessionals is not permitted.

Moreover, Title I-paid paraprofessionals may not work under the supervision of private school teachers.

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## **ADMINISTRATIVE COSTS**

### **B-57. May an LEA reserve funds for administering programs for private school children?**

Yes. An LEA may reserve an amount that is reasonable and necessary to administer Title I programs for both public and private school children, including special capital expense costs. This reservation for administration, including funds needed to administer Title I programs for private school students, is taken "off-the-top" of the LEA's allocation and not from the funds allocated for Title I services for private school children. Funds for instructional services are allocated after administrative and other "off-the-top" costs are determined.

### **B-58. May third-party contractors incur administrative costs?**

A third-party contractor hired by an LEA to provide services to private school participants may incur administrative costs. These costs must come off the top of the LEA's Title I allocation as administrative costs. The LEA may not charge a third-party contractor's administrative costs to the funds allocated for private school children for instructional services. 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.

### **B-59. May Title I funds be used to purchase furniture for a Title I classroom?**

Yes. Title I funds may be used to purchase furniture for a Title I classroom if that cost is reasonable and necessary for the operation of the Title I program; however, the cost of the furniture must be charged to administrative costs. If an LEA purchases furniture with Title I funds, only Title I participants may use it.

### **B-60. What are special capital expenses?**

Special capital expenses refer to expenditures for noninstructional goods and services that were or are still being incurred as a result of implementing alternative delivery systems such as the following:

- Purchase or lease of real and personal property (including mobile educational units and neutral sites).
- Insurance and maintenance costs.
- Transportation between a private school and another site.

- Buy-out leases for mobile vans or neutral space or other costs relating to terminating arrangements for providing Title I services to private school children outside of their private school.
- Other comparable goods and services, which include costs to escort children to and from instructional areas and, in the case of computer-assisted instruction, costs to install equipment and pay for noninstructional computer technicians. (Note: Technicians perform non-instructional duties, such as operating and maintaining computer equipment and keeping order in a Title I CAI classroom. Whether employees should be considered Title I instructional personnel or noninstructional technicians depends on the functions performed by the employees in addition to their job titles or classifications.).

Under §200.77(f) of the Title I regulations, these special capital expenses costs must be considered administrative costs and taken off the top of the LEA's total Title I allocation.

**B-61. May Title I funds be used to renovate the private school site?**

No.

**B-62. Are the costs of computer equipment and software considered to be special capital expenses?**

No. Costs for computers and software are considered to be instructional costs and are paid from the funds allocated for instructional services for private school children.

**B-63. Who is responsible for providing transportation for private school children from the private school to another site to be served by the Title I program?**

If private school children eligible to receive equitable Title I services need to be transported from their private school to another site, the LEA, as the provider of equitable services, has the responsibility of providing that transportation. It is not the responsibility of the private school officials or the participants' parents to provide the necessary transportation. The cost of such transportation is an administrative cost and should not be charged to the instructional funds allocated for private school children.

**C. PARENTAL INVOLVEMENT**

Title I places considerable emphasis on parental involvement. Section 1118 of the Title I statute contains many provisions concerning an LEA's responsibilities for carrying out parental involvement activities. Research shows that parent involvement in the education of their children is a critical factor in improving academic achievement. If students are to attain and maintain grade-level proficiency and achieve high academic standards, parents must support their children's learning.

**C-1. How does an LEA determine the amount of funds to be used for parental involvement activities for parents of participating private school students?**

Section 1118 of Title I requires an LEA to reserve funds off the top of its Title I allocation to carry out required Title I parental involvement activities. Section 200.65 of the regulations requires the LEA to calculate the amount of funds available for parental involvement activities from the reserved funds based on the proportion of private school children from low-income families residing in participating public school attendance areas.

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**EXAMPLE OF EQUITABLE SERVICES FOR FAMILIES:**

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An LEA reserves one percent (\$60,000) of its Title I allocation of \$6,000,000 for parental involvement activities. The number of public and private school children from low-income families residing in participating Title I attendance areas is 25,000. Five percent of the 25,000 children attend private schools; thus five percent of the \$60,000 reservation, or \$3,000, is available for equitable services for parents of private school participants. The parent involvement program funded by Title I must meet the needs of the parents of private school participants. After consultation with the appropriate private school officials, the LEA may conduct these activities independently or in conjunction with the LEA's regular parent involvement activities.

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## **C-2. How does an LEA provide equitable services for parents of private school students participating in the Title I program?**

An LEA must provide equitable services to parents of private school participants from the funds set aside for this purpose. Activities for the parents of private school participants must be planned and implemented after meaningful consultation with private school officials and parents. Activities that LEAs can provide parents that will assist private school students in achieving high academic standards include a written agreement between the LEA and parents of private school participants regarding the responsibilities of the LEA and parents in the Title I program, parent meetings, communication between the Title I teachers and parents on students' academic progress, parent-teacher conferences, and parent education.

### **EXAMPLES OF PARENT INVOLVEMENT ACTIVITIES:**

During the consultation process, the LEA, private school officials and parents discuss a number of options for parental involvement in the Title I program, including parent meetings, parent compacts, parent-teacher conferences, parent training activities, and reasonable access to Title I staff. After considering the needs of the private school parents and the views of the private school officials and parents, the LEA conducts an annual meeting with parents, initiates written compacts between the LEA and parents outlining their shared responsibilities in the Title I program and provides workshops for parents on how to work at home with their children in reading and math. The LEA also provides parents of each private school participant an individual student report on the performance of that participant on the State assessment or on an appropriate alternative assessment and informs parents about how their children are achieving in the Title I program through monthly reports to parents.

One LEA encourages and enhances parental involvement through hands-on workshops and individual meetings to provide parents with strategies and techniques for improving their children's learning. For example, a joint compact between the Title I teachers and the parents of participating students outlines their shared responsibilities for improved student achievement under Title I using books and tapes in a read-aloud program. In addition, parents use a variety of teacher-made and commercially prepared activity kits, resource books, and guides to enhance their involvement in their children's education. Progress reports are distributed to parents twice a year, and a parent representative from each private school community is invited to the District-wide Private School Steering Committee to share ideas and recommendations regarding services to be implemented for private school participants, their teachers, and their families.

## **D. PROFESSIONAL DEVELOPMENT**

Professional development is another major emphasis in Title I. Professional development activities should enrich teacher knowledge and provide opportunities for both the Title I teachers and private school teachers of Title I participants to increase their skills and knowledge regarding providing instruction to Title I children.

**D-1. How does an LEA meet the equitability requirement for professional development?**

If an LEA reserves funds under §1119 off the top of its Title I allocation for carrying out Title I professional development activities, the LEA must provide equitable services to teachers of private school participants from this set-aside. As required under §200.65 of the regulations, an LEA calculates these equitable services from the reserved funds in the proportion to the number of private school children from low-income families residing in participating public school attendance areas. Activities for the teachers of private school participants must be planned and implemented with meaningful consultation with private school officials and teachers.

**EXAMPLE OF ALLOCATING FUNDS FOR EQUITABLE SERVICES FOR PRIVATE SCHOOL TEACHERS:**

An LEA reserves six percent (\$360,000) of its Title I allocation of \$6 million for professional development as required under §1119. The number of public and private school children from low-income families residing in participating Title I attendance areas is 25,000. Five percent of the 25,000 children attend private schools; thus five percent of the \$360,000 reservation (\$18,000) is available for equitable services for the teachers of private school participants. The professional development activities funded by Title I must meet the needs of the teachers of private school participants. After consultation with the appropriate private school officials, the LEA may conduct these activities independently or in conjunction with the LEA's professional development activities.

**D-2. How does an LEA provide professional development activities to the Title I teachers who are employees of the LEA?**

The LEA is required to provide professional development activities for Title I teachers who are employees of the LEA. The costs of this training should be paid from the funds reserved for the professional development of the LEA's teachers and not from the funds required to provide equitable services to teachers of private school participants.

**D-3. How may the funds reserved for professional development for teachers of private school participants be used?**

The professional development activities for private school teachers should address how those teachers can serve Title I students better, such as by providing information on research-based reading and mathematics instruction. It is inappropriate to use these funds to upgrade the instructional program in the regular classroom of the private school.

**D-4. May the private school officials arrange for professional development services for teachers of Title I participants and submit the invoice to the LEA for payment?**

No. Private school officials are not authorized to obligate or receive Title I funds. The statute

clearly states that the LEA must maintain control of Title I funds. No Title I funds may be paid to the private school.

**D-5. May Title I funds be used to pay stipends to private school teachers of Title I participants who participate in a Title I professional development program?**

Yes. Title I funds may be used to pay for stipends for private school teachers, if 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.

**D-6. May Title I funds be used to pay for substitute teachers who replace private school teachers in their regular classroom while they attend Title I professional development activities?**

No. Title I funds may not be used to hire substitute private school teachers. After consultation, the LEA should offer professional development activities at a time and place that is convenient for the teachers of private school participants.

**E. STANDARDS, ASSESSMENT, AND PROGRAM MODIFICATION**

Public school students who participate in Title I programs must be held to the same challenging content and student achievement standards that a State expects all public school students to meet. Private school students who participate in Title I programs must also be held to high standards. In some instances, however, it may not be appropriate to expect private school children to meet the State's standards, if, for example, those standards are not aligned with the curriculum of the private school.

If the LEA, in consultation with private school officials, determines that it would be inappropriate to measure the achievement of participating private school children in relation to the State's standards, the LEA must use alternative standards that reasonably promise that the services provided will enable the private school participants to achieve the high levels called for by the State's student achievement standards

An LEA must annually assess the progress of the Title I program toward enabling private school Title I participants to meet the agreed-upon standards. The LEA may use the State's assessment system (under §1111(b)(3) of Title I) or other assessment measures that more accurately reflect the progress of the private school participating students toward meeting the standards that the LEA, in consultation with private school officials, has determined is appropriate. Every year the LEA and private school officials must consult on what constitutes annual progress for the Title I program. In measuring annual progress, the LEA has the flexibility to group children in a manner that will provide the most accurate information about their progress. For example, the LEA may decide to group children by instructional method, grade level, school, or other appropriate basis. If the Title I program for the private school participants does not make the expected annual progress, the LEA must annually make modifications to the Title I program.

While LEAs are required to assess progress of Title I students annually, they should also consult with private school officials/teachers regularly about the progress the Title I private school participants are making in their regular classrooms.

**E-1. In what subjects does an LEA assess private school children?**

An LEA normally would assess private school children in the subjects in which the LEA provides Title I services to those children.

**E-2. May Title I funds be used to assess private school children?**

Yes. Title I funds may be used to assess private school children if the assessment is used only for Title I purposes. To the extent, however, that an assessment is conducted for other purposes, it may not be paid for from Title I funds. If private school children, in general, are included in the State assessment, Title I funds may not be used to pay for the assessment of those private school children participating in Title I.

**E-3. May an LEA use the private school's assessment data to determine progress of the LEA's Title I program?**

Yes. Officials of the private schools may provide the LEA with the assessment data on Title I participants that the private school has collected as part of its testing program. However, private school officials are not obligated to do this, and refusal by private school officials to provide these data does not release the LEA from its obligation to provide services and assess the progress of the private school participants in the Title I program.

**E-4. May an LEA pay a private school for the assessment data of Title I participants?**

No.

**F. BYPASS**

If an LEA is prohibited by State law from providing for the equitable participation in Title I programs of eligible children enrolled in private elementary and secondary schools, or if the Secretary determines that an LEA has substantially failed or is unwilling to provide for such participation as required by §1120 of the Title I statute, the Secretary waives the requirements that the LEA serve private school children and arranges for the provision of such services by another entity. In making the determination to bypass an LEA, the Secretary considers one or more factors, including the quality, size, scope, and location of the program and the opportunity of private school children to participate in the program.

To implement a bypass, the Department generally enters into a contract with a third party, awarded in accordance with the Federal Acquisition Regulations (FAR) and deducts funds from the SEA's Title I allocation in the State where the bypassed LEAs are located. Accordingly, the SEA then reduces the allocations of the bypassed LEAs. The Department administers any bypass contract in accordance with the FAR.



**APPENDIX I: AFFIRMATION OF CONSULTATION  
WITH PRIVATE SCHOOL OFFICIALS**

SAMPLE FORM for USE by LEAs \*

Section 1120(b) of the No Child Left Behind Act and §200.63 of the Title I regulations require that timely and meaningful consultation occur between the local education agency (LEA) and private school officials prior to any decision that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate in programs under this Act, and shall continue throughout the implementation and assessment of activities under this section.

**The following topics must be discussed during the ongoing consultation process:**

- How the LEA will identify the needs of eligible private school children.
- What services the LEA will offer to eligible private school children.
- How and when the LEA will make decisions about the delivery of services.
- How, where and by whom the LEA will provide services to eligible private school children, including a thorough consideration and analysis of the views of the private school officials on the provision of services through a contract with a third-party provider.
- How the LEA will assess academically the services to eligible private school children in accordance with §200.10 and how the LEA will use the results of that assessment to improve Title I services.
- The size and scope of the equitable services that the LEA will provide to eligible private school children and, consistent with §200.64, the proportion of funds that will be allocated to provide these services.
- The method or sources of data that the LEA will use under §200.78 to determine the number of private school children from low income families residing in participating public school attendance areas, including whether the LEA will extrapolate data, if a survey is used.
- The equitable services the LEA will provide to teachers and families of participating private school children.
- If the LEA disagrees with the views of the private school officials on the provisions of services through a contract, the LEA must provide the private schools the reasons in writing why the LEA chooses not to use a contractor.

**We agree that timely and meaningful consultation occurred before the LEA made any decision that affected the participation of eligible private school children in the Title I, Part A program.**

\_\_\_\_\_

Public School Official

\_\_\_\_\_

Date

\_\_\_\_\_

Private School Representative

\_\_\_\_\_

Date

\_\_\_\_\_

School District

\_\_\_\_\_

Name of Private School Agency or School

The LEA must maintain a copy of this form in its records and provide a copy to the SEA.

**\*This is not an official Department of Education document. It is provided only as an example.**

## APPENDIX II: SURVEY FORM

### LEA SAMPLE FORM for Use by Private School Officials\*

The purpose of this survey is to collect data that will be used to determine the amount of funds available for the public school district to provide Title I services to eligible students in our school. Determining the number of our students, by public school district of residence, who would qualify for free and reduced-price lunches, accomplishes this. The information requested below is confidential. It is not necessary to provide family names.

**A.** Find your family size and look at the annual gross income level listed beside it on the chart printed below.

Family Size	Annual Gross Income For 2002-2003
One	\$15,244
Two	\$20,461
Three	\$25,678
Four	\$30,895
Five	\$36,112
Six	\$41,329
Seven	\$46,546
Eight	\$51,763

- For each additional family member over eight, add \$5,032 to your Annual Gross Income.
- If you are paid on a weekly or monthly basis, please multiply that amount by the number of weeks or months actually worked each year to determine your “Annual Gross Income.”

**B.** Is your family income less than the amount on the chart on the line beside your family size? \_\_\_\_\_yes  
\_\_\_\_\_no

**C.** Is your family eligible for food stamps? \_\_\_\_\_yes  
\_\_\_\_\_no

**D.** Are you receiving Temporary Assistance to Needy Families (TANF) Assistance? \_\_\_\_\_yes  
\_\_\_\_\_no  
(Formerly AFDC or Public Assistance)

**E.** Please provide the following information:

Address: \_\_\_\_\_  
\_\_\_\_\_

Public school district in which you reside: \_\_\_\_\_

Grade levels of your children: \_\_\_\_\_

**\*This is not an official Department of Education document. It is provided only as an example.**

## APPENDIX III: INCOME ELIGIBILITY FORM

SAMPLE FORM for Private School Officials to Submit to LEAs\*

### Private School Students Living in Poverty

Please use one form for each public school district. Duplicate as necessary.

Name of Non-Public School \_\_\_\_\_

Public School District \_\_\_\_\_

Please provide below the grades and geographic information verifying residence in a participating public school attendance area of those families that meet the poverty criteria of \_\_\_\_\_ [insert here the poverty criteria used—e.g., U.S. Department of Agriculture for the free and reduced price lunch program]. Do not provide the names of the families or students.

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<i>Grades</i>	<i>Geographic Information</i>

\* This is not an official Department of Education document. It is provided only as an example.

## **APPENDIX IV: EXAMPLE OF HOW AN LEA ALLOCATES FUNDS FOR TITLE I SERVICES FOR ELIGIBLE PRIVATE SCHOOL CHILDREN**

There are five public school attendance areas. Three public school attendance areas participate in Title I, and two public school attendance areas do not participate.

There are two private schools that have students from low-income families residing in all five public school attendance areas. This example demonstrates how an LEA determines the per-pupil allocation (PPA) for the Title I program for eligible private school children.

Step 1: Determine the number of private school children from low-income families in each public school attendance area. In this example, Private School #1 has 20 children from low-income families residing in Attendance Area A; 20 children residing in Attendance Area B; and two children residing in Attendance Area D. Private School #2 has 13 children in Attendance Area C and 4 children in Attendance Area E. The determinations are made on where each child resides and not on the address of the private school.

Number of private school children from low-income families by public school attendance areas

	Title I Attendance Area A	Title I Attendance Area B	Title I Attendance Area C	Non-Title I Attendance Area D	Non-Title I Attendance Area E
Private School #1	20	20	0	2	0
Private School #2	0	0	13	0	4

Step 2. Multiply the number of low-income children by the per pupil allocation (PPA) for each public school attendance area in which the private school children reside. In this example, in Attendance Area A with a PPA of \$400, the 20 private school children from low-income families necessitates an allocation of \$8,000 to be used for Title I services, Attendance Area B's PPA is \$200 which necessitates an allocation of \$4,000; and Attendance Area C's PPA is \$200 which necessitates an allocation of \$2,600. The private school children from low-income families in Attendance Areas D and E do not necessitate an allocation of any funds for Title I services because these areas are not participating Title I attendance areas (and, therefore, their PPAs are \$0).

Amount of Title I funds available to serve eligible private school students

	Title I Attendance Area A	Title I Attendance Area B	Title I Attendance Area C	Non-Title I Attendance Area D	Non-Title I Attendance Area E	Total Funds Generated
Private School #1	20 x \$400 = \$8,000	20 x \$200 = \$4,000	0	2 x \$0 = \$0	0	\$12,000
Private School #2	0	0	13 x \$200 = \$2,600	0	4 x \$0 = \$0	\$2,600

Step 3: After consultation with private school officials, the LEA determines which option it will use to fund the Title I programs for eligible private school children.

Option 1. **On School-by-School Basis:** Use funds allocated for eligible private school children to provide Title I services on a school-by-school basis to eligible private school children residing in participating public school attendance areas.

Private School #1

20 Low Income Residing in A = \$8,000  
 20 Low Income Residing in B = \$4,000  
02 Low Income Residing in D = \$0,000

Total for services to eligible children attending private school #1 = \$12,000

Private School #2

13 Low Income Residing in C = \$2,600  
04 Low Income Residing in E = \$0,000

Total for services to eligible children attending private school #2 = \$2,600

Option 2: **Pooling:** Combine (pool) funds allocated for all eligible private school children to be used to provide Title I services to eligible children who reside in participating public school attendance areas and attend any private school.

Private School #1 = \$12,000  
 Private School #2 = \$ 2,600

Total for services to the eligible children in any private school = \$14,600