
EQUITABLE SERVICES TO NONPUBLIC SCHOOL STUDENTS

No Child Left Behind Regulations



Colorado Department of Education

Office of Federal Program Administration

2009

Contents

Introduction	3
Title I, Part A	4
Title I, Part A Scenarios	11
Title II, Part A	14
Title V, Part A	15
Title IX, Part E, Subpart 1 (Uniform Provisions)	17
Appendix A: Title I, Part A: Sample Timetable	20
Appendix B: Title II, Part A: Sample Formula to Determine Amount for Equitable Services ..	21
Appendix C: Equitable Participation Chart	22
Appendix D: Resources	23

Equitable Services to Nonpublic School¹ Students

NCLB Regulations

Note: It is recommended that the reader access the United States Department of Education (USDE) documents that are referenced in Appendix D, Resources. This booklet is not intended to replace or supplant any USDE regulation or requirement.

The Elementary and Secondary Education Act (ESEA), as reauthorized by the No Child Left Behind Act of 2001 (NCLB), requires equitable services for nonpublic school students, teachers and other education personnel (including those in religiously affiliated schools) in some of its major programs. These services are considered assistance to students and teachers rather than private schools themselves.

The participation of private school students, teachers and other education personnel in the ESEA programs is governed by the Uniform Provisions (Title IX, Part E, Subpart 1) for nine of the twelve programs that require equitable participation. The other three programs have their own separate equitable participation requirements and are not subject to Title IX. These are: Title I, Part A, *Improving the Academic Achievement of the Disadvantaged*; Title V, Part A, *Innovative Programs*; and Title V, Part D, Subpart 6, *Gifted and Talented Students*. This document provides an explanation of the equitable participation requirements for Title I, Part A, Title II, Part A and Title V, Part A, as well as a brief overview of the Uniform Provisions.

Child Benefit Theory

The U.S. Constitution prohibits the use of Federal funding to benefit nonpublic schools. In response to this prohibition, the *Child Benefit Theory* was developed to ensure that all students have equitable access to educational services. Provisions of the *Child Benefit Theory* include

- Services will benefit the individual child, not the nonpublic school
- Services are provided by the Local Education Agency (LEA), not the nonpublic school



¹ Nonpublic school refers to elementary and secondary schools that are nonprofit institutional day or residential schools.

Title I, Part A

LOCAL EDUCATION AGENCY RESPONSIBILITIES

Under Title I, Part A Local Education Agencies (LEAs) are required to provide services for eligible nonpublic school students. In particular, Section 1120 of the ESEA requires a participating LEA to provide eligible children attending nonpublic 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.

Consultation

One of the most important responsibilities of the LEA is to engage in timely and meaningful consultation with all of the nonpublic schools located in the LEA. Each LEA must be able to demonstrate that the nonpublic schools were contacted and afforded the opportunity to participate in Title I, Part A. The LEA should clearly document that good faith efforts were made to contact all eligible schools (e.g., through use of certified mail). These nonpublic schools must be invited to a meeting at which they can learn about Title I, Part A eligibility.

An LEA may choose to send an "Intent to Participate" letter to all nonpublic schools to provide an early determination of interest; however, response to such a letter does not absolve the LEA from conducting a face-to-face meeting concerning the use of Title I, Part A funds with each nonpublic school that responds to the consultation invitation.

LEAs must conduct face-to-face meetings with all nonpublic schools.

Consultation must begin before any decisions are made that could affect the ability of nonpublic school students to equitably participate in the Title I, Part A program and must begin early enough to allow for the participation of nonpublic school students by the

beginning of the school year. Consultation must occur during the design, development and implementation of the Title I, Part A program and provide genuine opportunity for nonpublic school officials to express their views on all topics. LEA and nonpublic school representatives must consult on the core Title I, Part A instructional program as well as funds reserved at the district level for professional development, parental involvement, and special district-wide instructional programs.

A unilateral offer of services, without consultation about their scope and character, does not constitute equitable services.

As part of the consultation process, an LEA must 1) develop a timeline, including the topics of discussion, for when consultation will occur and 2) maintain signed documentation from the nonpublic school officials for each meeting to document that all required topics were discussed.

Required topics to be addressed during consultation:

- Identification of children's needs
- Services offered
- Delivery of services
- Evaluation and improvement of services
- Size and scope of services
- Proportion of funds allocated
- Method for determining poverty data
- Equitable services to teachers and parents of participants

Nonpublic school officials must sign a written affirmation that consultation took place on all required topics.

In addition to these required topics, an LEA may also address:

- Number of nonpublic school students from low-income families
- Public school attendance areas
- Per-pupil allocation (Scenario #1)
- Whether or not to “pool” funds (Scenario #8)
- Funds available for professional development and parental involvement (Scenarios #2 & #3)
- Criteria to identify eligible nonpublic school children and to select participants
- Coordination of the Title I, Part A program with instruction in the classroom
- Academic content and achievement standards that incorporate the curriculum standards of the nonpublic school
- Appropriate assessment tools
- LEA monitoring of the Title I, Part A program at the nonpublic school

Identifying Services

Collecting Poverty Data

The first step for determining services for non-public school students, teachers and other personnel is to collect poverty data on students attending nonpublic schools. This is done by determining the number of students in the nonpublic school who reside in a Title I, Part A attendance area and who meet the poverty criteria². The LEA is also responsible for the collection of poverty data for LEA-resident students attending nonpublic schools in other LEAs³.

In collecting poverty data, the LEA should take the following factors into consideration:

- An LEA should try to use the same measure of poverty used to count public school students.
- An LEA may use comparable poverty data from a different source if data from the same source used for public school students are not available, so long as the income threshold in both sources is the same. (Scenario #9)

- An LEA may do one of the following if actual data are unavailable:

- Use comparable poverty data from a survey.
 - When all surveys collecting poverty data are returned, LEA officials must extrapolate the data received to the total number of surveys distributed.
- Use proportionality by applying the low-income percentage of each participating public school attendance area to the number of nonpublic school students who reside in that school attendance area.
- Use an equated measure of low-income by correlating sources of data. The proportional relationship between two sources of data on public school students can then be applied as a ratio to a known source of data on nonpublic school students.

Note: Collection of poverty data only has to be done every two years. All the nonpublic schools within an LEA do not have to use the same collection method (Scenario #9).

Identifying Eligible Students

The next step in this process is identifying nonpublic school student eligibility for services under Title I, Part A. Only nonpublic school students who reside in a Title I, Part A school attendance area AND are identified as failing, or most at risk of failing, to meet the State’s academic achievement standards may receive Title I, Part A services (Scenario #1). While it is the low-income nonpublic school students who draw resources for the Title I, Part A program, it is the level of academic risk of any nonpublic school student who resides in a Title I, Part A attendance area that establishes eligibility.

Title I, Part A Eligibility = Title I, Part A
School Attendance Area + Academic Risk

²Children who reside in attendance areas that the LEA has skipped (i.e., LEA is using other funds, such as State or local, to provide similar services) and who meet the poverty criteria are also to be counted. These children will also draw Title I, Part A funds for services.

³The state recognizes that this is not as easily accomplished as collection of data for nonpublic schools located within the LEA’s attendance area.

Appropriate criteria that may be used to determine eligibility include:

- Achievement tests
- Teacher referral and recommendation based on objective educationally-related criteria
- Academic performance in the regular classroom

Children from preschool through grade two must be selected solely on the basis of teacher judgment, interviews with parents, and/or developmentally appropriate measures. Children in grades three and above must be selected on multiple, educationally related, objective criteria.

Instructional Services

Instructional Service Providers

There are several options for providing Title I, Part A services to eligible students. Providers of instructional services may be:

- 1) An employee of the LEA
 - Teachers must meet the NCLB highly qualified teacher requirements
 - Paraprofessionals must meet the NCLB highly qualified paraprofessional requirements and be under the direct supervision of, and in close and frequent proximity to, a highly qualified public school teacher
- 2) An employee of a third-party under contract with the LEA
 - Can be an individual, an educational institution or some other agency that is under the control and supervision of the LEA
 - Must be independent of the private school and any religious organization
- 3) An employee of the nonpublic school (Scenario #4)
 - During the hours involved, the teacher must be independent of the nonpublic school and any religious organization
 - The teacher must be under the LEA's direct supervision and control

- Compensation for services provided is paid by the LEA
- The time spent providing services must be separate from the contract hours with the nonpublic school (e.g., before or after school, summer or weekend school)
- Must meet NCLB highly qualified teacher and paraprofessional requirements

The Title I, Part A program for nonpublic school students may not be staffed entirely by paraprofessionals because of the lack of direct supervision by a public school teacher.

Location of Instructional Services

Two options exist for the location of instructional services to eligible nonpublic school students.

- 1) Title I, Part A instructional services may be provided on-site at the nonpublic school, including religious affiliated schools. The LEA has exclusive use of the space when providing Title I, Part A services.
- 2) If space is not available at the nonpublic school, the LEA is required to find other appropriate space. Transportation of students is also the responsibility of the LEA as an administrative cost and separate from the per pupil allocation.

Instructional Program Design

The instructional program should be designed to meet the needs of the students at the nonpublic school. The LEA must provide a program that supplements and coordinates with the instruction received at the nonpublic school. The instructional program must be:

- A targeted assistance program, not a school wide program
- A pull-out model (not cooperative learning or a team teaching model) that occurs through at least one of the following designs:
 - During the school day

- After or before school
- Saturday or Sunday
- Summer school
- Combination of the above

The instructional model may include, but is not limited to, the following:

- Direct Instruction
- Computer-assisted instruction
- Tutoring
- Counseling⁴
- Family literacy
- Early childhood programs

The Title I, Part A program for students in the nonpublic school must begin at the same time in the school year as the Title I, Part A program in the public school. If the program for students at a nonpublic school does not begin at the same time as for students in the public school, then the LEA must provide additional services to students at the nonpublic school to catch up.

Subject/Grade Span

The needs of the qualifying students at the nonpublic school determine the services provided (i.e., reading and/or math). However, the Title I, Part A services must be in the same “grade span” (e.g., K–5; K–6) as those for the public school (Scenario #5).

Evaluation

The LEA must annually assess the effectiveness of the Title I, Part A program for nonpublic school students. This evaluation includes evaluation of staff providing the Title I services and analysis of student academic growth. In addition, the LEA must conduct two monitoring visits at each facility each month, one of which is unannounced.

⁴When counseling services are provided, children must still be selected based on the academic criteria mentioned above.

All Title I, Part A students must be assessed annually through the use of State standards, if appropriate, or alternative standards that are aligned with the curriculum of the nonpublic school. In consultation with nonpublic school officials, the LEA must determine what constitutes acceptable annual progress for the Title I program. If progress is not made, the LEA must review the program and determine what modification will be made.

LEA must conduct two monitoring visits per month at each facility. One visit must be unannounced

Control of the Program

The LEA maintains control of the Title I, Part A program for nonpublic school students, teachers and other education personnel. Only LEA officials can

- Sign timesheets of the Title I, Part A staff
- Supervise the Title I, Part A staff
- Monitor and evaluate the Title I, Part A program and staff

The plan, design, and implementation of Title I, Part A programs in nonpublic schools belong to the LEA. The LEA maintains control of all Title I, Part A materials:

- All orders are placed by the LEA
- All materials are sent to the LEA
- All materials and supplies are labeled as property of the LEA
- Only LEA employees or hired third-parties may use the Title I, Part A materials and only with Title I, Part A eligible nonpublic school students
- Title I, Part A materials and supplies kept at the nonpublic school must be in a dedicated space

Fiscal Responsibilities

The funds available for eligible nonpublic school students, teachers and other education personnel must be proportional to the number of nonpublic school students from low-income families residing in participating public school attendance areas.

Instruction

To determine the amount of funds available to provide equitable instructional services, the LEA must look to the applicable funds used in their public schools (Scenarios #1 and #9). The Title I, Part A program for eligible nonpublic school students operates as a Targeted Assistance program. As such, funds may be used to pay for:

- The salary and benefits of the LEA employee working at a nonpublic school with Title I, Part A students
- Contracts with third-party providers
 - Contracts with a third-party provider must provide specific information as to the service provided and the detailed amounts for each service
 - Invoices must include monthly expended costs for administrative and instructional activities
- The salary and benefits of a nonpublic school teacher who provides Title I, Part A services outside of his/her contract time at the nonpublic school
- Instructional materials that Title I funded personnel will use with only Title I, Part A students at the nonpublic school

If the LEA reserves Title I, Part A funds for after school and/or summer school programs, the LEA must calculate equitable services on these funds as well. These funds must be added to the instructional services amount for nonpublic schools. These funds are not required to be used for summer school or after school services, and the LEA must consult with private school officials as to how these funds will be used. They may be used to:

- Provide additional time to Title I students during the school year
- Provide services on weekends or during the summer to Title I students
- Provide services to children who are eligible but not served because there were not enough funds

Materials and supplies purchased with Title I, Part A funds to support the Targeted Assistance program must be labeled as belonging to the LEA. Title I, Part A materials and supplies can be stored in the nonpublic school as long as they are used only by the Title I, Part A provider of services and only with Title I, Part A students.

Parent Involvement

When the total LEA Title I, Part A allocation is greater than \$500,000, the LEA is required to reserve at least one percent to carry out parent involvement activities. It is not unusual for districts with an allocation less than \$500,000 to also set aside funds for parent involvement activities. Regardless of the amount set aside for parent involvement, the LEA must reserve an equitable portion for parents of nonpublic school Title I students.

The LEA, in its consultation with nonpublic schools, determines whether any parent involvement needs exist. If it is determined that there are parent involvement needs, the LEA is obligated to support activities related to those needs. If no needs are identified, these funds revert back to the pool of resources available for Title I, Part A schools.

Funding for equitable services for parents of nonpublic school Title I students is calculated by dividing the total number of nonpublic school students from low-income families who reside in Title I participating attendance areas by the total number of public school students from low-income families who reside in Title I participating attendance areas, times the total amount of the LEA's reservation for parental involvement activities (the proportion, not the number, of nonpublic school students) (Scenario #2).

Title I, Part A funds may only be used to assist the parents of Title I, Part A students in meeting the identified Title I, Part A needs of their children. These funds may not be used to meet the general needs of those parents or the needs of all other parents from the nonpublic school.

Professional Development

LEAs that reserve Title I, Part A funds to assist teachers in meeting the “highly qualified” requirement or who reserve funds to provide professional development to staff from all their Title I, Part A schools must calculate equitable services for nonpublic school teachers of identified Title I, Part A students. As with parent involvement, the LEA must consult with the nonpublic school regarding professional development needs of staff. If needs are identified, the funding for equitable services for staff of nonpublic school identified Title I students is calculated by dividing the total number of nonpublic school students from low-income families who reside in Title I participating attendance areas by the total number of students from low-income families who reside in Title I participating attendance areas, times the total amount of the LEA’s reservation for professional development activities (the proportion, not the number, of nonpublic school students) (Scenario #3).

Activities for teachers of identified Title I, Part A students in the nonpublic school must meet the requirements of the federal definition of high quality professional



development (section 9101 (34)) and must provide nonpublic school teachers with activities to help them better meet the needs of the Title I children in their classrooms. As with the funds for parent involvement, Title I funds may not be used to meet the general professional development needs of the nonpublic school.

If the LEA does not set aside funds for professional development, then equitable funds for professional development for nonpublic school staff are not required. Equitable services do not apply to funds that an LEA who is identified for improvement is required to reserve.

Stipends for nonpublic school teachers are allowable for professional development conducted during after-school hours or during the summer (Scenario #6). These must be available to nonpublic school teachers of identified Title I, Part A students on the same basis as public school teachers and *must be paid to the teacher, not to the nonpublic school*.

Control of Funds

The LEA controls all of the Title I, Part A funds. If an LEA transfers funds into the Title I, Part A program, the LEA must consult with nonpublic school officials prior to transferring funds. Funds may not be transferred for the sole purpose of meeting the needs of the nonpublic school students.

Generally, carryover funds are part of the total resources that an LEA uses in the next school year. If the nonpublic school Targeted Assistance program does not need all of the funds allocated for it, the funds become part of the LEA’s overall funds to be used in the following year (for public and non-public school students). However, if equitable services were *not* provided, the LEA must carryover the unspent funds that had been designated for services to nonpublic school participants to the next year’s program for nonpublic school participants.

An LEA may allocate carryover funds to schools with the highest concentrations of poverty in the LEA, thus providing a higher per-pupil amount to those schools, but must ensure equitable participation of nonpublic school students (Scenario #7).

Pooling

A group of nonpublic schools may request an LEA to combine (pool) funds in order to provide equitable services for eligible nonpublic school students and teachers (Scenario #8).

Supplement Not Supplant

Title I, Part A services must be in addition to and cannot replace or supplant services that would be provided by nonpublic schools to their students.

NONPUBLIC SCHOOL RESPONSIBILITIES

Nonpublic schools have responsibilities relative to participation in Title I, Part A programs. One of the first responsibilities of nonpublic school personnel is participation in the consultation with the LEA. This consultation provides the nonpublic school with the opportunity to identify needs relative to parent involvement and professional development and to plan and design the Title I, Part A program for students at the nonpublic school.⁵

Once a nonpublic school agrees to participate in a Title I, Part A Targeted Assistance program, it must provide appropriate poverty data to the LEA. This poverty data must meet the following criteria:

- Use the same measure of poverty used to count public school students
- If data from the same source used for public school students are not available, use comparable poverty data from a different source.
- If actual data are unavailable, use
 - Comparable poverty data from a survey
 - Proportionality by applying the low-income percentage of each participating public school attendance area to the number of nonpublic school students who reside in that school attendance area
 - An equated measure of low-income by correlating sources of data. The proportional relationship between two sources of data on public school students can then be applied as a ratio to a known source of data on nonpublic school students

Title I, Part A must supplement the nonpublic school's program, not supplant services the children should already be receiving from the nonpublic school.

The nonpublic school must also provide lists of eligible children to the LEA. Nonpublic school students must reside within the participating public school attendance area to be eligible for Title I, Part A services.

Determination of the need for Title I, Part A service must be based on these eligible students who are failing or most at risk of failing to meet the State's academic achievement standards (or other standards if State standards are not applicable). Appropriate criteria that may be used to determine eligibility include:

- Achievement tests
- Teacher referral and recommendation based on objective, educationally-related criteria
- Academic performance in the regular classroom

The nonpublic school may suggest program designs and modifications. The school should also provide a dedicated space for Title I, Part A services, if possible.

STATE EDUCATION AGENCY RESPONSIBILITIES

It is the responsibility of the State Education Agency (SEA) to ensure nonpublic school students have access to equitable services as provided in NCLB legislation. The SEA must also monitor LEA compliance with regulations.

⁵Nonpublic school officials have the right to file a complaint with the SEA if the LEA does not engage in timely and meaningful consultation or give adequate consideration to the views of the nonpublic school officials.

Title I, Part A Scenarios

SCENARIO 1: Determination of funds for nonpublic schools

An LEA has two public elementary schools, Elementary X and Elementary Z, and two nonpublic schools, School M and School N.

One hundred eighty students from low-income families reside within the attendance boundaries of Elementary X. Nonpublic school students who reside within the attendance boundaries of Elementary X are eligible to receive Title I, Part A services, regardless of which nonpublic school they attend.

Public School Attendance Area	# of Low Income Public School Students	# of Low Income Nonpublic School Students	Total # of Low Income Students	Per Pupil Allocation	Total Funds Available for Attendance Area
Elementary X	167	13	180	\$400	\$72,000

The amount of funds available for this service is based on the number of students who reside within the attendance area of Elementary X and are from low-income families attending each nonpublic school. School M has 10 students that meet these requirements. The proportion of low-income students at School M to Elementary X is **10/180** or 5.5%

Therefore, the funding amount available for Title I, Part A services to qualifying students at School M is equal to 5.5 % of the Title I, Part A allocation to Elementary X.

The same calculations are made to determine the percent of allocation available for the students at School N based on the school's number of low-income students who reside within the attendance area of Elementary X. For example, of the 180 students from low-income families at Elementary X, 3 of those students attend School N. The proportion of low-income students at School N to Elementary X is **3/180** or 1.6%.

Nonpublic School	# of Low Income Students	Proportion of Low Income Students	Funds Available for Services to Nonpublic School Students
School M	10	10/180 = 5.5%	\$72,000 x 5.5% = \$4000
School N	3	3/180 = 1.6%	\$72,000 x 1.6% = \$1200

Elementary Z does not receive Title I, Part A funds. Therefore, the nonpublic school students who reside within the boundaries of Elementary Z do not generate Title I, Part A funds for the nonpublic school and are not eligible to receive Title I, Part A services.

SCENARIO 2: Equitable services for parent involvement

An LEA has three Title I, Part A schools funded through the count of students from low-income families within the school district attendance boundaries. The LEA reserves Title I, Part A funds for parental involvement. A proportion of the reserved funds are available for services to the parents of identified Title I, Part A students at nonpublic schools attended by qualified students from within the attendance boundaries of the three participating public schools. An example of calculations of the proportion and the resulting amount of funds can be found in the chart below.

# of Low Income Nonpublic School Students	Total # of Low Income Students	Proportion of Low Income Students	LEA Reservation for Parental Involvement	Amount Available for Parental Involvement at Nonpublic Schools
50	1000	$50/1000 = .05$ (5%)	\$6,000	$.05 \times \$6,000 = \300

SCENARIO 3: Equitable services funding for professional development

An LEA has three Title I, Part A schools funded through the count of students from low-income families within the school district attendance boundaries. The LEA reserves Title I, Part A funds for professional development. A proportion of the reserved funds are available for services to the teachers of identified Title I, Part A students at nonpublic schools attended by qualified students from within the attendance boundaries of the three participating public schools. An example of calculations of the proportion and the resulting amount of funds can be found in the chart below.

# of Low Income Nonpublic School Students	Total # of Low Income Students	Proportion of Low Income Students	LEA Reservation for Professional Development	Amount Available for Professional Development at Nonpublic Schools
50	1000	$50/1000 = .05$ (5%)	\$36,000	$.05 \times \$36,000 = \$1,800$

SCENARIO 4: Title I, Part A Services Provided by Nonpublic School Employee

A half-time teacher at Nonpublic School M works only during the mornings. For two hours each afternoon, this teacher provides Title I, Part A services to qualifying students at Nonpublic School M. The teacher, who is under the direct supervision of the LEA in the afternoons, is not allowed to encourage or participate in any religious activity at the nonpublic school while in the employment of the LEA. The teacher also provides Title I, Part A services at Nonpublic School M during a special summer session for struggling students. The same guidelines apply during the summer as during the school-year afternoons.

SCENARIO 5: Grade Span Determination

Private School M has low-income families who reside within the attendance area of Elementary X, which participates in Title I, Part A. As a result, Title I, Part A services can be provided to identified at-risk students at Nonpublic School M. Although Elementary X has a grade span of kindergarten through sixth grade, it limits its Schoolwide Program for Title I, Part A services to grade levels kindergarten, one and two, providing only an early intervention model. Nonpublic School M has a grade span of kindergarten through eighth grade. Because the nonpublic school must provide a targeted assistance program and follow the grade span of the public school, Nonpublic School M can only serve students in rank order of need in kindergarten through sixth grade.

SCENARIO 6: Stipend for Nonpublic School Teachers

An LEA has four out of six nonpublic schools that have students who are eligible to receive equitable services under Title I, Part A. The LEA has scheduled a professional development activity during the summer for its teachers, and the teachers will be paid a stipend for attending. The teachers of identified Title I, Part A students from the four nonpublic schools are eligible to attend this professional development opportunity and to be paid the same stipend as the public school teachers. Checks for the stipends should be mailed directly to the homes of the nonpublic school teachers who choose to use the stipend funds in whatever manner desired.

SCENARIO 7: Concentration of Carryover

An LEA has carryover from the 2008 fiscal year. For fiscal year 2009, they want to concentrate the carryover funds at the two highest poverty public schools in the district. The LEA may concentrate the carryover funds at these two schools, but the district must allocate the correct proportional amounts from the carryover to provide services to students at nonpublic schools that have students who reside within the attendance areas of either of these two public schools.

SCENARIO 8: Pooling of Funds

An LEA has three nonpublic schools (Private School A, Private School B, and Private School C) that have students from low-income families in both of the LEA's two Title I, Part A schools' attendance areas (Elementary P and Elementary Q). Private School A and Private School B receive an equitable proportion of funds based on the per pupil allocation (PPA) at both Elementary P and Q. Private School C only receives funds from Elementary Q whose PPA is much lower than that of Elementary P, leaving Private School C with a very small Title I, Part A allocation. Following consultation between the three nonpublic schools and the LEA, the decision is made to pool, or combine, the allocated funds for all of the eligible nonpublic school students at the three nonpublic schools. In this way, all of the eligible nonpublic students receive comparable Title I, Part A services.

SCENARIO 9: Nonpublic School Responsibilities

National School District identifies two (2) nonpublic schools that will participate in the district's Title I, Part A program. In order to determine the allocation for the two programs, the district must collect comparable poverty data for the students living in a Title I attendance area. Nonpublic school X has a lunch program and already collects the free and reduced lunch information that the district uses with its schools. Nonpublic school P, however, does not collect this poverty data. The district must work with Nonpublic school P to identify a comparable source of poverty data. The state currently recommends the Family Economic Survey, which is considered a comparable source of poverty data to free and reduced lunch criteria.

Title II, Part A

The participation of nonpublic school teachers and other education personnel in Title II, Part A is governed by the Uniform Provisions (Title IX, Part E, Subpart 1). However, these requirements only apply to Title II, Part A to the extent that LEAs use the funds for professional development.

Fiscal Requirements

Under Title II, Part A, LEAs are required to provide equitable services for nonpublic school teachers and other educational personnel only to the extent that they use the funds for professional development. For purposes of determining the amount of Title II, Part A funds that an LEA must make available for equitable services to nonpublic 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 Appendix B).

The LEA must assume that it is spending at least as much Title II, Part A funds each year for professional development as it did with FY 2001 funds. Hence, the district must provide equitable services based on this minimal amount to nonpublic school teachers and other educational personnel, even if the LEA transfers some Title II funds to other programs or uses its Title II, Part A funds for purposes other than professional development.



Eligible Activities

As with any activity that the LEA carries out for public school teachers, activities supported with Title II, Part A funds that benefit nonpublic school teachers must meet the requirements of the statute. For example, activities must be based on a review of scientifically based research and must be expected to improve student academic achievement. > Professional development activities must meet the definition of high-quality professional development (Section 9101 (34)) and may include:

- Improving the knowledge of teachers, principals, and other educational personnel in one or more of the core academic subjects and in effective instructional strategies
- Training in effectively integrating technology into curricula and instruction
- Training in how to teach students with different needs
- Training in methods of improving student behavior, identifying early and appropriate interventions, and involving parents more effectively in their children's education
- Leadership development and management training to improve the quality of principals and superintendents
- Training in the use of data and assessments

The professional development program for nonpublic school teachers does not have to be the same as the professional development program for public school teachers. Consultation and coordination are essential to ensuring high-quality professional development activities for nonpublic school teachers. LEAs must assess the needs of nonpublic school teachers in designing the professional development program for nonpublic school teachers. If the professional development needs of the nonpublic school teachers are different from those of public school teachers, the LEA, in consultation with nonpublic school representatives, should develop a separate program.

Title V, Part A

LOCAL EDUCATION AGENCY RESPONSIBILITIES

Consultation

Every year, the LEA must be able to demonstrate that it has engaged in timely and meaningful consultation with all nonpublic schools within the boundaries of the LEA. During consultation, the LEA and the nonpublic schools must determine the following:

- The needs of the nonpublic school students
- The types of Title V, Part A services that will be provided
- How those services will be provided

Additionally, the LEA must maintain documentation of the topics of discussion and the decisions made at each consultation/meeting. The nonpublic school official(s) should initial or sign these documents as evidence of consultation.

Equitable Service

The program supported with Title V, Part A funds must meet the specific needs of students enrolled in the nonpublic school rather than the general needs of the school. In other words, the funds are intended to benefit the students, not the school. Services provided to nonpublic school students must be supplemental to the regular services provided by the nonpublic school.

The LEA may approve a plan that addresses any of the innovative assistance areas of Title V, Part A **except:**

- Planning, designing and initial implementation of charter schools
- Activities to promote, implement, or expand public school choice
- Programs to implement the unsafe school choice policy in section 9532

The funds are intended to benefit the students, not the nonpublic school.

Any services to nonpublic school students must be provided by either a public agency (such as the LEA) or a third party contractor.

Evaluation of the Title V, Part A program for nonpublic school students must be completed by the LEA. The LEA should designate one public school official to oversee the Title V, Part A services at the nonpublic school and to ensure that all requirements are met.

Materials and Equipment

Title V, Part A funds can be used to purchase materials and equipment to be used at the nonpublic school. The LEA must have an assurance from the nonpublic school that the materials and equipment will only be used for secular, neutral or non-ideological purposes and that all personnel at the nonpublic school will be informed about the limitations placed on the use of these materials and equipment.

The following additional requirements must also be met with regard to the purchase of materials and equipment with Title V, Part A funds:

- All orders must be placed by the LEA
- All materials must be sent to the LEA
- All materials and supplies must be labeled as property of the LEA
- The LEA must maintain an up-to-date inventory of all Title V, Part A equipment and materials located in nonpublic schools

The LEA program official should conduct periodic on-site monitoring of the use of the equipment and materials to ensure compliance with program requirements. This program official should be the point person for any complaints or allegations of misuse of Title V, Part A funded equipment or materials. The LEA may remove materials and equipment from a nonpublic school in order to avoid an unauthorized use.

Fiscal Requirements

The LEA must control and administer all Title V, Part A funds. The LEA pays the cost of administering the Title V, Part A services for public and nonpublic school students. Administrative costs should be deducted before calculating how much of the Title V, Part A funds are available for services for public and nonpublic school students.

Expenditures for nonpublic school students must be equal to expenditures for students enrolled in the LEA as determined by per pupil allocation. Title V, Part A funds must be in addition to and cannot replace or supplant funds that would normally be provided by nonpublic schools to students and educational personnel.

NONPUBLIC SCHOOL RESPONSIBILITIES

In order to participate in the use of Title V, Part A funding, nonpublic school officials must take an active role in several areas pertaining to the service for nonpublic school students.

Nonpublic school officials must agree to take part in timely and meaningful consultation with the LEA concerning the use of Title V, Part A funds and to sign and keep copies of documents outlining discussions and decisions related to the use of such funds.

Nonpublic school officials must provide an annual written assurance to the LEA that all materials and/or equipment paid for with Title V, Part A funds will be used only for secular, neutral, and non-ideological purposes. The written assurance must stipulate that all nonpublic school personnel will be informed of the above requirements and that this policy will be strictly enforced. Additionally, the use of Title V, Part A-funded materials and equipment must be documented in a log kept by the nonpublic school.

STATE EDUCATION AGENCY RESPONSIBILITIES

It is the responsibility of the SEA to ensure nonpublic school students have access to equitable services as provided in NCLB legislation. It is also the responsibility of the SEA to monitor the LEA for compliance with these regulations.

If an LEA turns down Title V, Part A funds, the SEA shall make arrangements, such as through a contract with third-party providers, to provide nonpublic school students with services and materials to the same extent as would have occurred if the LEA had accepted funds.



Title IX, Part E, Subpart 1 (Uniform Provisions)

Covering Title II, Part A; Title II, Part B; Title II, Part D; Title III, Part A; Title IV, Part A

LOCAL EDUCATION AGENCY RESPONSIBILITIES

Under the Uniform Provisions, LEAs are required to provide services to eligible nonpublic school students, teachers and other personnel. These services and other benefits must be comparable to those provided to public school students and teachers participating in the program, and they must be provided in a timely manner.

To ensure equitable participation, the LEA must: 1) identify the needs of nonpublic school students and teachers; 2) spend an equal amount of funds per student to provide services; 3) provide nonpublic school students and teachers with an opportunity to participate in activities equivalent to the opportunity provided public school students and teachers; and 4) offer services that are secular, neutral and non-ideological.

Consultation

The Uniform Provisions contain requirements for timely and meaningful consultation between the LEA and nonpublic school officials. This consultation must occur before the LEA makes any decision that affects the opportunities of nonpublic school children, teachers, and other educational personnel to participate in applicable 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 nonpublic school students, teachers, and other educational personnel.

The LEA must engage in consultation with nonpublic school officials during the design and implementation of the programs and throughout the implementation and evaluation of activities. The goal of the consultation process is to design and implement a program that will provide equitable services and meet the needs of eligible nonpublic school students, teachers, and other education personnel.

An LEA may send an “Intent to Participate” letter to all nonpublic schools to provide an early determination of interest in participating in the programs covered by this section. However, an LEA sending a letter to nonpublic school officials explaining the purpose of Federal education programs and offering services is not adequate consultation.

During the consultation process, the design and development of the applicable program(s) should be discussed. In addition, the following topics must be addressed:

- How the needs of students, teachers, and/or other educational personnel will be identified
- What services will be offered
- How, where and by whom the services will be provided
- How the services will be assessed and how the results of the assessments will be used to improve those services
- The size and scope of the equitable services to be provided to the eligible nonpublic school students, teachers, and other educational personnel
- The amount of funds available for those services
- How and when the LEA will make decisions about the delivery of services, including the use of third-party providers

To establish compliance with the various requirements of the consultation process, the LEA should keep documentation to show that it accomplished all of the following:

- Annually informed the nonpublic 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 nonpublic school officials regarding services and benefits

- Notified nonpublic school officials regarding services and benefits
- Allocated a per-pupil amount of funds for services to nonpublic 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
- Adequately addressed problems and formal complaints raised by nonpublic school officials

Delivery of Service

There are eight general requirements that the LEA must fulfill in the delivery of equitable services to nonpublic school students.

- 1) The LEA must spend an equal amount of funds to serve similar public and nonpublic school students, teachers, and other educational personnel, taking into account the total number of students, teachers, and other personnel in the nonpublic school.
- 2) The LEA must provide services and benefits that are equitable in comparison to the services and benefits provided to public school students.
- 3) The LEA must address and assess the educational needs and progress of public and nonpublic school students, their teachers, and educational personnel on a comparable basis.
- 4) The LEA must provide, in the aggregate, approximately the same number of services to students, their teachers, and educational personnel with similar needs.
- 5) The LEA must provide groups of students, their teachers, and other educational personnel equal opportunities to participate in program activities.
- 6) The LEA must provide reasonable promise of participating nonpublic school students meeting challenging academic standards.
- 7) The LEA must provide different benefits and services to nonpublic 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.

- Services must be allowable under the particular Federal education program.
 - All services and benefits must be secular, neutral, and nonideological.
- 8) The LEA must make the final decision regarding the benefits and services for nonpublic school students, teachers, and other educational personnel.

Control of program

All ESEA funds are controlled by the LEA. Materials, equipment, and property purchased with Federal funds must be labeled as property of the LEA. At no time may funds flow directly to the nonpublic school.

Eligibility

All students enrolled in a nonprofit, nonpublic school within the boundaries of the LEA are eligible to receive services under this part. The following groups are **not** eligible:

- Students enrolled in for-profit, nonpublic schools.
- Home-schooled students (home schools are not considered to be nonpublic schools).

Services

Services may be provided by:

- An employee of the LEA
- An employee of the nonpublic school
 - The time spent providing service must be separate from the contract hours with the nonpublic school.
 - During the hours involved, the employee must be independent of the nonpublic school and any religious organization.
 - Must be under the LEA's direct supervision and control.
- An employee of a third-party under contract with the LEA.
 - A third-party can be an individual, an educational institution or some other agency that is under the control and supervision of the LEA and is independent of the nonpublic school and any religious organization.

- Contracts with a third-party provider must include specific information as to the services being provided and the detailed costs for each service.
- Invoices from third-party providers must include monthly expended costs for administrative and instructional activities.

Fiscal Requirements

Section 9501(a)(4) of ESEA requires that expenditures for services to nonpublic school students, teachers, and other educational personnel be equal to the expenditures for the public school program, taking into account both the number and educational needs of the children to be served.

Stipends

- Funds may be used to provide stipends to nonpublic school teachers for such events as after-hours professional development
- Stipends must be paid directly to nonpublic school teachers, not to the nonpublic school.

Administrative costs

- The LEA pays administrative costs for the Federal programs at nonpublic schools. Administrative costs are reserved from the program's total allocation (off the top) before any determinations regarding allocations to public and nonpublic schools are made.
- Third-party providers are allowed to expense administrative costs. These are deducted before the allocation for services is made to the nonpublic school.

Carryover funds

- If an LEA provided equitable service for nonpublic school students, any carryover funds would be considered additional funds for that program for public and nonpublic school students in the subsequent year.
- If an LEA did not provide equitable service for nonpublic school students, teachers, and/or other educational personnel in the first year, then the carryover of those funds must be added to funding for the second year of service to students, teachers, and/or other educational personnel in the nonpublic school.

Supplement not supplant

- Services must be in addition to and cannot replace or supplant services that would normally be provided by nonpublic schools to their students, teachers, and/or other educational personnel.

Pooling

- A group of nonpublic schools may request that an LEA combine, or pool, funds in order to provide equitable services for eligible nonpublic school students and teachers.

NONPUBLIC SCHOOL RESPONSIBILITIES

Nonpublic schools must participate in timely and meaningful consultation with the LEA and sign and keep documentation of these discussions and decisions. Nonpublic schools have the right to complain to the SEA if the LEA does not engage in timely and meaningful consultation or give adequate consideration to the views of the nonpublic school officials.

The nonpublic school is responsible for providing the LEA with data concerning the educational needs of its students, teachers, and other educational personnel. Nonpublic schools must provide a written assurance that any equipment or materials placed in the nonpublic school will be used only for secular, neutral, and non-ideological purposes.

The State's academic standards and AYP do not apply to nonpublic schools, nor do the highly qualified teacher requirement.

STATE EDUCATION AGENCY RESPONSIBILITIES

It is the responsibility of the SEA to ensure nonpublic school students have access to equitable services as provided in ESEA legislation. The SEA is required to monitor LEA compliance with these regulations.

Appendix A

Title I, Part A: Sample Timetable

Current School Year Program Tasks	Timeline	Next School Year Program Planning
Begin Services	September	
Review current program with nonpublic school representatives and discuss needed changes	November–December	<ul style="list-style-type: none"> • Compile list of nonpublic schools • Develop consultation calendar with nonpublic school representatives • Review timeline and process • Determine procedure for collecting poverty data
Review current program with nonpublic school representatives and discuss needed changes	December–March	<ul style="list-style-type: none"> • Collect poverty data
	February–March	<ul style="list-style-type: none"> • Match addresses of low-income students to Title I, Part A attendance areas • Estimate funds available • Consult with nonpublic school representatives on poverty data & estimated costs • Determine if pooling funds
	March–April	<ul style="list-style-type: none"> • Determine criteria for educational need in consultation with nonpublic school representatives • Obtain list of children who meet educational criteria, their address, and grade levels • Select children most at risk and discuss with nonpublic school representatives • Design services (grade levels, location, curriculum, staff) in consultation with nonpublic school representatives • Determine benchmarks for progress, annual goals, and assessment
Assess program	May	<ul style="list-style-type: none"> • Finalize program design using assessment data as appropriate
	April–June	<ul style="list-style-type: none"> • Consult with nonpublic school representatives on professional development and parental involvement • Design professional development and parental involvement • Inform nonpublic school representatives of funding, costs, location, service delivery • Generate final list of student participants in instructional program • Request signatures on written affirmation • Complete paperwork, orders, contacts, etc. to ensure on-time start
	August	<ul style="list-style-type: none"> • Report on readiness of program

Appendix B

Title II, Part A: Sample Formula to Determine Amount for Equitable Services

A. Number of Students	Example A	Example B																
A1 District Student Enrollment 10/1/07	304,763	9,800																
A2 Participating Private School Enrollment 10/1/07	4,516	464																
A3 Total Number of Students (A1 + A2)	309,279	10,264																
B. Title II Part A FY07 Allocation To Be Used for Professional Development																		
B1 FY07 Allocation	\$10,195,474	\$306,141																
B2 Indirect + Administration for Public and Private School Programs + Class Size Reduction + Recruitment Activities + Transfers from Title II Part A to another program	<table border="0"> <tr> <td>CSR</td> <td>\$306,622</td> <td>CSR</td> <td>\$292,302</td> </tr> <tr> <td>Indirect</td> <td>\$2,520,135</td> <td>Indirect</td> <td>\$9,492</td> </tr> <tr> <td>Transfers</td> <td>\$1,251,393</td> <td></td> <td></td> </tr> <tr> <td>Total</td> <td>\$4,078,150</td> <td>Total</td> <td>\$301,794</td> </tr> </table>	CSR	\$306,622	CSR	\$292,302	Indirect	\$2,520,135	Indirect	\$9,492	Transfers	\$1,251,393			Total	\$4,078,150	Total	\$301,794	
CSR	\$306,622	CSR	\$292,302															
Indirect	\$2,520,135	Indirect	\$9,492															
Transfers	\$1,251,393																	
Total	\$4,078,150	Total	\$301,794															
B3 Title II Part A allocation amount district is using for Professional development activities (B1-B2)	\$6,117,324	\$4,347																
C. Hold Harmless Amount																		
C1 This is based on FY2001 Eisenhower Professional Development + Title VI (Federal Class Size Reduction) used for professional Development	\$1,529,321	\$39,310																
D. Per Pupil Rate																		
D1 Use either B3 or C1— whichever is larger (divide by A3)	\$19.78	\$3.82																
E. Equitable Services																		
E1 Amount district must reserve for Equitable Services for Participating Private Schools (A2 x D1) For more than one private school multiply the per pupil rate by the individual school enrollment from A2.	\$88,500.00	\$1,772																

Appendix C

Equitable Participation Chart LEA Requirements by Program

	Title I, Part A	Title II, Part A	Title II, Part D	Title III, Part A	Title IV, Part A	Title V, Part A
Yearly face-to-face consultation	X	X	X	X	X	X
Collect poverty data on nonpublic school students	X					
All students in the nonpublic school are eligible to receive service					X	X
Maintain fiscal control of program	X	X	X	X	X	X
Determine needs of nonpublic school students and/or teachers	X	X	X	X	X	X
Provide equitable service to students at nonpublic schools outside the LEA boundaries	X					
Services may be conducted within the nonpublic school	X	X	X	X	X	X

Appendix D

Resources

General

United States Department of Education—Office of Non-Public Education
<http://www.ed.gov/about/offices/list/oii/nonpublic/index.html>

Title I, Part A

Ensuring Equitable Services To Private School Children: A Title I Resource Tool Kit—USDE Publication # ED002962C
<http://edpubs.ed.gov/>

Legislation: Title I, Part A—Improving basic programs operated by local education agencies
<http://www.ed.gov/policy/elsec/leg/esea02/pg2.html>

Regulation: Title I—Improving the academic achievement of the disadvantaged; Final Rule
<http://www.ed.gov/legislation/FedRegister/finrule/2002-4/120202a.html>

Non-regulatory Guidance: Title I Services to eligible private school children
<http://www.ed.gov/programs/titleiparta/psguidance.doc>

Title V, Part A

Legislation: Section 5142—Participation of children enrolled in private schools
<http://www.ed.gov/policy/elsec/leg/esea02/pg61.html#sec5142>

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

Regulations: Education Department General Administrative Regulations
<http://www.ed.gov/policy/fund/reg/edgarReg/edlite-part76a.html>

Title II, Part A; Title II, Part B; Title II, Part D; Title III, Part A; Title IV, Part A

Regulations: CFR, Title 34, Part 200, Title I
http://www.access.gpo.gov/nara/cfr/waisidx_04/34cfr200_04.html

Regulations: EDGAR Section 76.650—Section 76.677
<http://www.ed.gov/policy/fund/reg/edgarReg/edlite-part76f.html>

Legislation: Title IX, Part E, Subpart 1—Uniform Provisions
<http://www.ed.gov/policy/elsec/leg/esea02/pg111.html>

Non-regulatory Guidance: Title IX, Part E, Subpart 1
<http://www.ed.gov/policy/elsec/guid/equitableserguidance.doc>

Non-regulatory Guidance: Title II, Part A
<http://www.ed.gov/programs/teacherqual/guidance.doc#PrivateSchoolParticipation>

The development and printing of the *Equitable Services to Nonpublic School Students* booklet was paid for in full with federal funds.



The Colorado Department of Education does not discriminate on the basis of disability, race, color, religion, sex, national origin, or age, in access to, employment in, or provision of any of CDE's programs, benefits, or activities.

The following persons have been designated to handle inquiries regarding this policy:

Please contact either:

*Arti Winston
Colorado Department of Education
201 East Colfax Avenue
Denver, CO 80203
Phone: 303-866-6905
E-mail: winston_a@cde.state.co.us*

*Wendi Kispert
Colorado Department of Education
201 East Colfax Avenue
Denver, CO 80203
Phone: 303-866-6815
E-mail: kispert_w@cde.state.co.us*

Colorado State Board of Education—2009

Bob Schaffer, *Chairman*, Ft. Collins, Fourth Congressional District

Randy DeHoff, *Vice-Chairman*, Littleton, Sixth Congressional District

Elaine Gantz Berman, Denver, First Congressional District

Jane Goff, Arvada, Seventh Congressional District

Peggy Littleton, Colorado Springs, Fifth Congressional District

Marcia Neal, Grand Junction, Third Congressional District

Angelika Schroeder, Boulder, Second Congressional District

Dwight D. Jones—*Commissioner of Education*



Colorado Department of Education

201 East Colfax Avenue
Denver, Colorado 80203

For more information, please contact:
Kathryn Smukler
Office of Federal Program Administration
303-866-6842
smukler_k@cde.state.co.us