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

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

Non-Regulatory Guidance

Office of Non-Public Education
Office of Innovation and Improvement
U.S. Department of Education
Revised March 2009

TABLE OF CONTENTS

A. INTRODUCTION 1

B. PURPOSE OF THE GUIDANCE 1

C. PROGRAMS COVERED BY TITLE IX, PART E, SUBPART 1, AND THIS GUIDANCE 2

C-1. What programs are covered by Title IX, Part E, Subpart 1? 2

C-2. What is the difference between a formula grant and a discretionary (competitive) grant? 3

D. CONSULTATION 3

D-1. Who is responsible for initiating the consultation process? 3

D-2. How does an LEA identify which private school officials to contact to begin the consultation process? 4

D-3. Who participates in the consultation process? 4

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

D-5. When does consultation between public and private school officials occur? 4

D-6. How does an LEA begin the consultation process? 4

D-7. What topics should be discussed during the consultation process between public and private school officials? 5

D-8. Does an offer of services from an LEA meet the requirement of consultation? 5

D-9. May an LEA use a sign-off form with private school officials in order to verify that timely and meaningful consultation has occurred? 5

D-10. May an LEA request that private school officials provide relevant documentation in order to participate in programs? 6

D-11. What processes and activities might an LEA document in order to verify that it has met the requirement for timely and meaningful consultation and has provided equitable services? 6

D-12. Should an LEA keep minutes or notes of consultation meetings? 6

D-13. What is an "Intent to Participate" form? 6

D-14. Should an LEA contact private school officials every year even if the private school officials have declined *ESEA* benefits and services in the past? 7

D-15. What is a "private school working group"? 7

D-16. In designing and developing programs for private school students and teachers, how should the needs of private school students and teachers be assessed? 7

D-17. What is meant by "timely and meaningful" consultation? 7

D-18. Should consultation between the LEA and private school officials be ongoing? 7

D-19. May an LEA develop a yearly timeline for consultation? 8
D-20. Who is a "private school official" or "representative of private school students"? 8
D-21. Are there requirements for private school officials in the consultation process? 8
D-22. What administrative tasks and paperwork are required of private school officials whose students and teachers participate in *ESEA* programs? 8
D-23. May an LEA set deadlines for submission of requests from private school officials for services and materials? 9
D-24. If a private school official requests that certain services be delivered through a third party and the LEA chooses not to do so, what should the LEA include in the written explanation as to the reasons why it chose not to grant that request? 9
D-25. What resources are available to assist LEAs and private school officials with learning more about *ESEA* programs, particularly the consultation process and the provision of equitable services? 9
D-26. Should an LEA or SEA provide a copy of its consolidated grant application or individual program application if a private school official requests it? 9
D-27. Are LEAs required to provide the amount of funds available for services for private school students and teachers? 9

E. ELIGIBILITY 10

E-1. Which private school students are eligible to receive benefits? 10
E-2. Does the law require an LEA to provide equitable services to students and teachers in private for-profit schools? 10
E-3. Are children who are schooled at home eligible to receive equitable services under *ESEA* programs? 10
E-4. Is the residency of a private school student a factor that must be considered when determining whether a student is eligible to receive benefits from programs governed by the Title IX uniform provisions? 10
E-5. Are students with disabilities who are publicly placed in private schools by their LEA of residence in order to provide them a free appropriate public education (FAPE) under the *IDEA* eligible to receive equitable services under *ESEA*? 10

F. EXPENDITURES 11

F-1. How are administrative costs of providing services to public and private school students determined? 11
F-2. Who pays the cost for administering programs for private school students? 11
F-3. What are allowable expenditures that an LEA may reserve off the top of the total allocation? 11
F-4. May a third party under contract with an LEA incur administrative costs? 12
F-5. Who has control of the program funds? 12

F-6. May an LEA reimburse a private school for materials it has purchased or services it has procured to implement an *ESEA* program? 12

F-7. May an LEA use funds to provide stipends to private school teachers? 12

F-8. What is the timeline for the obligation of funds? 12

F-9. How is the carryover of funds handled in regard to the equitable participation of private school students if an SEA permits carryover? 13

F-10. What options are available to LEAs for expending funds for equitable services for private school students and teachers? 13

F-11. If an LEA, in consultation with private school officials, decides to pool *ESEA* funds allocated for private school students and teachers and, later, students and teachers in some schools choose not to participate, should the funds allocated for such students and teachers remain in the pool? 14

F-12. May an LEA require private school officials to complete purchase orders? 14

G. DELIVERY OF EQUITABLE SERVICES 14

G-1. Who has the responsibility to implement programs for private school students, teachers, and other education personnel? 15

G-2. What services are offered if the needs of private school students and teachers are different from those of public school students and teachers? 15

G-3. What are some service delivery mechanisms that an LEA may use to provide equitable services? 15

G-4. May an LEA hire and pay private school teachers to provide federal supplementary services separate from their contract hours with the private school? 15

G-5. May an LEA use federal funds to purchase textbooks for private school students' use in their regular classroom? 16

G-6. May an LEA hire a private school teacher to provide *ESEA* services to eligible private school students in her or his own private school? 16

G-7. May an LEA provide equitable services for private school students and teachers beyond the school year and during the summer? 16

G-8. Must private school students and teachers participate in the same programs that an LEA provides for public school students and teachers? 16

G-9. May an LEA establish a blanket rule that precludes private school students or teachers from receiving certain services authorized by *ESEA*? 16

G-10. What responsibilities does an SEA have for ensuring that LEAs provide equitable services to private school students and teachers? 17

H. COMPLAINTS AND BYPASS 17

H-1. What information must a formal written complaint include? 17

H-2. What options are available to private school officials if they file a complaint with an SEA, but the SEA does not answer their complaint in a timely manner or if the SEA's response fails to resolve the problem? 18

H-3. What is a "bypass"? 18

I. OTHER *ESEA* REQUIREMENTS AND PRIVATE SCHOOLS....18

I-1. Does Title IX, Part E, Subpart 1 contain any protections for private schools?....18

I-2. Are private schools whose students or teachers receive equitable services subject to the *ESEA* "highly qualified teacher" requirements?....18

I-3. Are private schools whose students or teachers receive equitable services subject to the *ESEA* requirements relating to state standards, adequate yearly progress (AYP), and annual assessments?....18

I-4. Are private schools whose students or teachers receive equitable services subject to the military recruiter requirements in section 9528 of *ESEA*?....19

I-5. Are private schools whose students or teachers receive equitable services subject to the *Family Educational Rights and Privacy Act* (*FERPA*)?....19

J. RESOURCES 20

J-1. Federal Resources and Guidance 20

J-2. Before Getting Started To Provide Equitable Services....22

J-3. Sample General Consultation Timeline 24

J-4. Sample Consultation Timeline....25

J-5. Sample Consultation Checklist For Local Education Agencies 26

J-6. Sample Consultation Meeting Attendance Sign-in Sheet 27

J-7. Sample Private School Consultation Meeting Agenda 28

J-8. Sample Needs Assessment and Program Development Plan....29

J-9. Sample Private School Consultation Meeting Log 31

J-10. Sample Private School Consultation Planning Sheet....34

J-11. Sample Intent to Participate Form....35

J-12. Superintendent's Nonpublic Schools Workgroup....37

J-13. Sample Consultation Checklist for Private School Officials 38

J-14. Sample Funding Allocations for Services Notification Form....39

J-15. State and Local Education Agencies Web Sites 40

J-16. Sample ESEA Programs Complaint Procedures for Private Schools 41

A. INTRODUCTION

Since the initial passage of the *Elementary and Secondary Education Act of 1965* (*ESEA*), private school students and teachers have been eligible to participate in certain federal education programs. *ESEA*, as reauthorized by the *No Child Left Behind Act of 2001* (NCLB), includes 12 major programs that require equitable services be provided to private school students, teachers, and other educational personnel, and, in some cases, families. These services are provided to students and teachers, not to private schools. The guidance in this document pertains to nine of the 12 programs that require equitable participation. These nine programs are subject to the requirements in Title IX, Part E, Subpart 1 of *ESEA*. The other three programs that require equitable services have their own separate equitable participation requirements; they are **not** subject to Title IX and are not covered by this guidance. (See Section C below for a list of the nine programs subject to Title IX. Three programs with their own separate equitable participation requirements are listed in the note in that section.)

B. PURPOSE OF THE GUIDANCE

This guidance is intended to assist local education agencies (LEAs) and other entities [such as state education agencies (SEAs), educational service agencies, consortia of these agencies, non-profit organizations or institutions of higher education] receiving federal financial assistance to fulfill their obligations, under Title IX, Part E, Subpart 1 of *ESEA*, to provide equitable services to eligible private school students, teachers, and other educational personnel, and, under some programs, to parents. This guidance does not create for or confer on any person any rights or impose any requirements beyond those set forth under applicable laws and regulations. If you are interested in commenting on this guidance, please e-mail your comments to: OIINon-PublicEducation@ed.gov or write to us at the following address:

Office of Innovation and Improvement
Office of Non-Public Education
U.S. Department of Education
400 Maryland Ave. S.W.
Washington, DC 20202-5940

Both public and private school officials are encouraged to use this guidance for programs covered under Title IX, Part E, Subpart 1, in conjunction with *ESEA* and applicable regulations. (See Education Department General Administrative Regulations (EDGAR) at 34 C.F.R. §§76.650 through 76.677 and General Provisions for *ESEA* Programs at 34 C.F.R. Part 299.) In addition to complying with the requirements of *ESEA* addressed in this guidance, an LEA may not discriminate on the basis of race, color, national origin, sex, disability, or age. For information regarding these civil rights obligations, visit the U. S. Department of Education's (Department) Web site at www.ed.gov/ocr/know.html. For additional resources and guidance on the equitable participation of private school students, teachers, and other educational personnel in specific programs, see J-1: *Federal Resources and Guidance*.

Note. In general, LEAs are responsible for providing equitable services and benefits to eligible private school students, teachers, and other educational personnel under the programs listed below in Section C. However, SEAs, educational service agencies, consortia of those agencies, other entities, or a bypass contractor receiving federal financial assistance may be responsible for providing such services and benefits. For purposes of reading ease, we use the term "LEA" to refer to any entity

responsible for providing equitable services and benefits to eligible private school students, teachers, and other educational personnel. Accordingly, readers should note that any requirements of an LEA described in this guidance also apply to other entities (such as the "partnership" in the Even Start Family Literacy program) that are responsible for providing equitable services to private school students and teachers.

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

C-1. What programs are covered by Title IX, Part E, Subpart 1?

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

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

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

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

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

- Title I, Part A, ***Improving Basic Programs Operated by LEAs*** *(*section 1120 of *ESEA);*
- Title V, Part A, ***Innovative Programs*** (section 5142 of *ESEA*); and
- Title V, Part D, Subpart 6, ***Gifted and Talented Students*** (section 5466 of *ESEA*).

For guidance on the equitable participation of private school students, teachers, other educational personnel and, in some cases, families, under these programs, see J-1: *Federal Resources and Guidance*.

C-2. What is the difference between a formula grant and a discretionary (competitive) grant?

A formula grant is an award that the Department makes based on a predetermined formula and in a non-competitive manner. These grants are administered by various program offices within the Department. Most of the Department's formula grants are awarded to state agencies that administer various kinds of assistance, mostly to LEAs. Although these grants are not competitive, an entity—such as an SEA—must comply with applicable statutory and regulatory requirements in order to receive an award.

Unlike under a formula grant, the Department generally makes discretionary grants competitively. The Department reviews applications for a discretionary grant through a formal process in accordance with the legislative and regulatory requirements and published selection criteria established for the program. The review process gives the Department discretion to determine which applications most effectively address the program requirements and are, therefore, worthy of funding.

D. CONSULTATION

Consultation involves communication and discussions between LEAs and private school officials on key issues that are relevant to the equitable participation of eligible private school students, teachers, and other education personnel in *ESEA* programs. Meaningful consultation provides a genuine opportunity for all parties to express their views, to have their views seriously considered, and to discuss viable options for ensuring equitable participation of private school students, teachers, and other education personnel. Adequate notice of such consultation is critical in ensuring meaningful consultation and the likelihood that those involved will be well prepared with the necessary information and data for decision-making. Successful consultation establishes positive and productive working relationships, makes planning effective, and serves to ensure that the services provided meet the needs of eligible students. Some LEAs enhance consultation with private school officials through the use of a Web site specifically designed to facilitate ongoing communication with private school officials regarding equitable services. For examples, see J-15: *State and Local Education Agencies Web Sites*.

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

The obligation to initiate the consultation process lies with the LEA that is responsible for providing equitable services. In most cases, the LEA contacts officials of private schools located within its jurisdiction to begin the consultation process on key issues that are relevant to the equitable participation of private school students, teachers and, in some cases, parents in *ESEA* programs. If this does not occur, private school officials should contact the LEA in which their school is located and ask to speak to the individual(s) responsible for administering *ESEA* programs. For additional ideas for LEAs about how to initiate the consultation process, see J-2: *Before Getting Started to Provide Equitable Services.*

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

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

D-3. Who participates in the consultation process?

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

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

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

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

Section 9501(c)(3) of *ESEA* requires that consultation between the LEA and private school officials occur **before** the LEA makes any decision (such as ordering materials or hiring staff) that affects the opportunities of private school children, teachers, and other educational personnel to participate in programs requiring their equitable participation. In order to ensure timely consultation, LEAs should begin the consultation process early enough in the decision-making process to allow for participation of private school students and teachers at the start of each school year. Therefore, the LEA should engage in a process of timely and meaningful consultation with private school officials and provide them with information related to the projected and/or final funding amounts for programs and services, including on the process the LEA will use in preparing its competitive grant application. The LEA should also develop a process for determining mutual expectations for implementation and assessment of programs. In order to meet the requirements for timely and meaningful consultation, many LEAs begin consultation for the following school year in mid- to late-winter of the school year prior to the year covered by the plan. For samples of timelines, see J-3: *Sample General Consultation Timeline*; and J-4: *Sample Consultation Timeline*.

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

An LEA generally begins the consultation process each year by contacting private school officials representing the private schools located within its boundaries. One way to accomplish this is for the LEA to extend an invitation to officials of the private schools and convene a meeting with them during which LEA officials describe the *ESEA* programs and allowable activities available to private school students and teachers, explain the roles of public and private school officials, address the specific needs of private school students and teachers, and provide opportunities for the private school officials to ask questions and offer suggestions. A consultation process that involves an LEA simply

sending a letter to private school officials explaining the purpose of federal education programs and the LEA's intent to apply for funds is **not** adequate consultation. Likewise, a letter describing the services that an LEA intends to provide for private school students, without any prior consultation, is **not** sufficient to meet the consultation requirement. For a list of suggested activities, see J-5: *Sample Consultation Checklist for Local Education Agencies*.

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

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

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

See J-6: *Sample Consultation Meeting Attendance Sign-in Sheet*; see J-7: *Sample Private School Consultation Meeting Agenda*; and see J-10: *Sample Private School Consultation Planning Sheet*.

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

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

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

Yes. While there is no statutory requirement to do so, some LEAs have developed annual sign-off forms that include a place for signatures of the LEA and private school officials to verify that timely and meaningful consultation has occurred. However, these forms should be specific about the required consultation topics that were covered under each specific Title covered by Title IX.

Note: Under Title I of the *ESEA*, an affirmation form that the required consultation has occurred is required (see 34 C.F.R. §200.63(e) of the Title I regulations).

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

Yes. LEAs may request documentation, as needed, from private school officials that enables the LEA to identify students who are eligible under the applicable *ESEA* program and the appropriate services that meet the needs of those private school students and their teachers. Such documentation might include, but not be limited to, data indicating the academic needs of students, as well as the professional development needs of teachers. However, the request for documentation should not constitute an administrative barrier that is inconsistent with the LEA's responsibility to ensure equitable participation of private school students and teachers. For an example of documentation, see J-8: *Sample Needs Assessment and Program Development Plan.*

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

An LEA may want to document that it has:

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

For an example of a documentation form, see J-9: *Sample Private School Consultation Meeting Log*.

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

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

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

An "Intent to Participate" form is a document that an LEA might send annually to private school officials inquiring as to their interest in having their students and teachers participate in *ESEA* programs. Such a form can assist the LEA in determining early those private school officials that are interested in *ESEA* programs and, thus, will be included in the consultation process. The form might include a brief description of the programs requiring equitable participation as well as a list of allowable activities, services, and benefits. An LEA might also request private school data on enrollment, the number of children from low-income families, the number of students with limited English proficiency (LEP), or other information necessary to implement the relevant *ESEA* programs. Some LEAs send this form by registered mail in order to document receipt of the form by the private schools. For an example, see J-11: *Sample Intent to Participate Form.*

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

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

D-15. What is a "private school working group"?

A private (or nonpublic) school working group is a group made up of representatives from the full spectrum of private schools in a particular state or LEA. In order to facilitate consultation between public and private school officials and effectively implement programs and services for private school students and teachers, SEAs and LEAs are encouraged to create private school working groups. Such groups already exist in some SEAs and LEAs and meet on a regular basis to provide an organized forum for addressing issues of mutual interest to public and nonpublic school communities, and smooth the progress of *ESEA* program implementation for private school students and teachers. For an example of such a group, see J-12: *Superintendent's Nonpublic Schools Workgroup*.

At the state level, consultation between SEA officials and representatives of private schools may also occur to facilitate statewide planning and delivery of programs and services that are provided under state-level activities and require the equitable participation of private school students and teachers.

D-16. In designing and developing programs for private school students and teachers, how should the needs of private school students and teachers be assessed?

The needs of the private school students and teachers to be served are the foundation for designing programs to serve such students and teachers, within the parameters of the particular program statute and regulations. During the consultation process, the LEA must discuss with private school officials the needs of their students and teachers as well as how best to meet those needs. For an example of a needs assessment form, see J-8: *Sample Needs Assessment and Program Development Plan.*

D-17. What is meant by "timely and meaningful" consultation?

Timely and meaningful consultation is required in order to ensure the equitable participation of private school students, teachers, and, in some programs, parents. Timely consultation begins early enough for the entire process of program design and development to be completed, for exploring the option of third-party providers, and for services to begin by the start of the school year. Timely consultation requires that LEAs provide advance notice of consultation meetings to private school officials. Meaningful consultation covers all required topics (see question D-7) and affords private school officials a genuine opportunity to express their views. Effective consultation is ongoing, two-way communication and discussion of the best ways to meet the needs of private school students and teachers under the provisions of the particular program. Consultation is significantly enhanced when public school officials provide an agenda of consultation topics, along with information about the amount of funds available for services, in advance of any consultation meeting, in order for private school officials to have the opportunity to adequately prepare for discussions.

D-18. Should consultation between the LEA and private school officials be ongoing?

Yes. In order to help ensure effective design, development, and implementation of programs, consultation between the LEA and private school officials should be ongoing throughout the school

year. Issues often arise concerning service delivery and implementation, and ongoing consultation provides the means for adequately addressing them in a timely and efficient fashion.

D-19. May an LEA develop a yearly timeline for consultation?

Yes. To ensure timely consultation, LEAs in consultation with private school officials may develop yearly consultation timelines listing the date and location of each meeting along with specific agenda topics. For examples of consultation timelines, see J-3: *Sample General Consultation Timeline*; and J-4: *Sample Consultation Timeline*.

D-20. Who is a "private school official" or "representative of private school students"?

Most often, the principal or headmaster of the private school serves as the official or representative of the students and teachers in the school. At times, the principal or headmaster may designate someone else to participate in the consultation process on behalf of the students and teachers at the school.

In the case where a group of private school officials seeks to be represented by a central office administrator, that administrator should inform in writing the LEA superintendent that she/he will serve as the designated primary contact for such schools, and that any communication and correspondence regarding *ESEA* programs and the participation of those private school students and teachers should be directed to her/his attention. In addition, the administrator should provide a list of the private schools that she/he represents.

D-21. Are there requirements for private school officials in the consultation process?

Although the *ESEA* does not include any requirements for private school officials, the only way to ensure that consultation is timely and meaningful is for the private school officials to participate actively in the consultation meetings. By participating, the private school officials will have an opportunity to: provide input in the development of a timeline for consultation; provide data and information about the needs of their students and teachers; offer suggestions regarding program design, implementation, and evaluation; inquire about participation in any discretionary grant programs; address the use of third-party providers, if appropriate; and complete any appropriate forms needed by the LEA to ensure the delivery of equitable services. For additional suggestions on what private school officials can do, see J-13: *Sample Consultation Checklist for Private School Officials*.

D-22. What administrative tasks and paperwork are required of private school officials whose students and teachers participate in *ESEA* programs?

The *ESEA* does not impose any administrative or paperwork requirements on private school officials. However, LEAs may request information from private school officials in order to provide services that meet the needs of their students and teachers. Therefore, there may be some paperwork that private school officials will be asked to complete to assist the LEA in administering the program on behalf of private school students and teachers. However, such paperwork should not pose an administrative burden on the private school official and should not include completing purchase orders or signing contracts.

D-23. May an LEA set deadlines for submission of requests from private school officials for services and materials?

Yes. Assuming that the LEA has provided clear and sufficient notice of the deadlines, identified potential consequences for not meeting the deadlines, and given adequate time for private school officials to gather the data and respond, LEAs may set a time limit for submission of requests for services and materials by private school officials.

D-24. If a private school official requests that certain services be delivered through a third party and the LEA chooses not to do so, what should the LEA include in the written explanation as to the reasons why it chose not to grant that request?

Section 9501(c)(2) of the *ESEA* requires an LEA to provide a "written explanation of the reasons" why it chose not to use a third party for services. An adequate explanation would address concerns expressed by private school officials about the LEA's direct services and fully explain the reasons why the LEA chose not to use a third party, such as any financial, administrative, regulatory, or statutory impediments, or the ability of the LEA to provide the services directly. The written explanation should not simply reiterate the LEA's decision but also provide reasons for the decision.

D-25. What resources are available to assist LEAs and private school officials with learning more about *ESEA* programs, particularly the consultation process and the provision of equitable services?

LEAs and private school officials will find a number of resources in Section J – *Resources* including: links to statutory, regulatory, and guidance documents on the U.S. Department of Education Web site; sample consultation checklists; needs assessment forms; consultation timelines; and a list of state department of education and local public school district Web sites that host *ESEA* program pages specific to private schools.

D-26. Should an LEA or SEA provide a copy of its consolidated grant application or individual program application if a private school official requests it?

Yes. The LEA or SEA should provide, in a timely manner, a copy of the consolidated application or individual program applications to those private school officials who participate in the ongoing consultation process when they request them. Such applications are a matter of public record and, therefore, generally are accessible for public review. An application can provide private school representatives with information that enhances consultation and helps them understand the scope of program activities within the LEA and the equitable participation of private school students in programs authorized under *ESEA.*

D-27. Are LEAs required to provide the amount of funds available for services for private school students and teachers?

Yes. LEAs must provide private school officials with the amount of funding available for services for private school students and teachers under the various *ESEA* programs requiring equitable participation. While LEAs generally address this topic during consultation discussions, some LEAs also provide such information through their Web sites or in written form. For an example, see J-14: *Sample Funding Allocations for Services Notification Form.*

E. ELIGIBILITY

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

Private school students who are enrolled in nonprofit private elementary and secondary schools, including those in religiously affiliated schools, located in the LEA generally are eligible to receive services. Some *ESEA* programs restrict eligibility or participation to a particular group of students, such as LEP students, in which case the eligibility or participation of private school students likewise is restricted. See the Department's guidance on individual programs for specific eligibility requirements. See also J-1: *Federal Resources and Guidance*.

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

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

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

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

E-4. Is the residency of a private school student a factor that must be considered when determining whether a student is eligible to receive benefits from programs governed by the Title IX uniform provisions?

Students who are enrolled in private nonprofit elementary and secondary schools that are located in areas served by an LEA are eligible to receive services. A student's residency is not a factor, even if a student resides in a state that is different from the state in which the private school is located.

E-5. Are students with disabilities who are publicly placed in private schools by their LEA of residence in order to provide them a free appropriate public education (FAPE) under the *IDEA* eligible to receive equitable services under *ESEA*?

Yes. *Publicly* placed students with disabilities who are enrolled in private (nonprofit) schools by their LEA of residence in order to receive FAPE under the *IDEA* are eligible to receive services under the equitable services provisions of *ESEA* (see Section 9501 of *ESEA*). The LEA in which the private school is located is responsible for providing equitable services for those programs requiring equitable participation.

F. EXPENDITURES

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

For example, an LEA might choose poverty as an additional factor in determining equal expenditures and consider the relative poverty of the two groups of students. However, it would not be proper to base the determination solely on poverty (or any other factor relating only to educational need), because the statute requires that both the number and the educational needs of the public and private school students be taken into account. As with other decisions affecting services to private school students, LEAs should consult with private school officials on the method for determining equal expenditures, and the resulting methodology should reasonably reflect the relative numbers and educational needs of the public and private school students. For an example of how an LEA may provide private school officials with information about funding allocations for services and per pupil expenditures, see J-14: *Sample Funding Allocations for Services Notification Form*.

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

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

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

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

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

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

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

- Other allowable administrative costs as defined in the statute (e.g., for district-wide programs); and
- A third party provider's fee or profit.

(See 34 C.F.R. §§74.27; and 80.22; and OMB Cost Circular A-87)

F-4. May a third party under contract with an LEA incur administrative costs?

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

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

Under section 9501(d) of *ESEA*, the LEA must always maintain control of the program funds as well as title to all materials, equipment, and property purchased with federal funds.

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

No. Only the LEA may obligate and expend federal funds on behalf of private school students and teachers. Thus, the LEA must purchase materials or procure services on behalf of the private school students and teachers. However, an LEA may use federal funds to reimburse an individual private school teacher, administrator, or other educational personnel for professional development that the LEA has pre-approved and that meets the reasonable and necessary cost principles of the Office of Management and Budget (OMB) Circular A-87.

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

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

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

SEAs and LEAs that have been awarded funds under the formula grant programs identified in Part C of this guidance generally have 27 months to obligate those funds from the time the Department has the authority to award federal funds. In most cases, the Department has the authority to award these funds to states on July 1 of each year; thus, funds that the Department awards on July 1, 2008, must be obligated by September 30, 2010. The timeline for obligating funds under discretionary grant programs will depend on the project period established for the approved grant. Furthermore, when a grant is a formula grant at the state level and a discretionary grant at the local level, SEAs may define

the timeline for obligating funds for the subgrant period, but this deadline generally does not exceed the 27-month period of availability as described above.

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

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

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

F-10. What options are available to LEAs for expending funds for equitable services for private school students and teachers?

In consultation with private school officials, the LEA may choose one or both of the following options for expending the funds reserved for equitable services for private school students and teachers.

1. Individual School-by-School Option: Provide equitable services to private school students and teachers based on the number of children enrolled in the school.

   Example:
   - Chapman Friends Schools has a K – 12 enrollment of 800 students. The per-pupil allocation (PPA) for services under Title IV, Part A, Safe and Drug-Free Schools and Communities, is $10. Thus, the LEA has $8,000 to provide services for students and teachers in the school.
   - St. Columba School has a K – 8 enrollment of 300 students. Applying the same PPA, the LEA has $3,000 to provide services for students and teachers in the school.
   - Bellehaven Academy has a K – 5 enrollment of 150 students. Applying the same PPA, the LEA has $1,500 to provide services for students and teachers in the school.

2. Pooling Option: Combine funds allocated for private school students and teachers for the two or more private schools interested in participating in this option to create a pool of funds from which the LEA provides equitable services to private school students and teachers in some or all of these schools. However, an LEA may not pool funds across multiple *ESEA* programs for this purpose. If the LEA pursues this option, the LEA, in consultation with private school officials, establishes criteria to determine how services will be allocated among the private school students and teachers in different schools. Under this option, the services provided to

private school students and teachers in any particular school are not dependent on the amount of funds generated by students and teachers in that school, but rather by the amount of funds generated in total and the criteria developed for allocating services among the private school students and teachers.

Example:

- The LEA combines the total amount of funds generated for services for students and teachers in Chapman Friends School ($8,000), St. Columba School ($3,000), and Bellehaven Academy ($1,500). The LEA has $12,500 to spend on Title IV, Part A, Safe and Drug-Free Schools and Communities, services for all 1,250 students. In consultation with private school officials, the LEA then decides how the funding will be allocated for services to meet the various needs of the students and teachers. Under this option, the services provided to students and teachers in a particular private school are not dependent upon the amount of funding generated for services by the students in that school.

F-11. If an LEA, in consultation with private school officials, decides to pool *ESEA* funds allocated for private school students and teachers and, later, students and teachers in some schools choose not to participate, should the funds allocated for such students and teachers remain in the pool?

Yes. Once funds are allocated, if a particular private school does not wish to have its students and teachers participate, such funds should remain in the pool to use for services for the private school students and teachers in the other private schools that were in the original agreement.

F-12. May an LEA require private school officials to complete purchase orders?

No. An LEA may not require private school officials to complete purchase orders or prepare other financial requests, such as budgets, as private school officials have no authority under the equitable services provisions to obligate federal funds. Tasks related to administering services and programs funded by federal funds, such as purchasing materials for private school students and teachers, are the responsibility of the LEA. However, there may be some paperwork that private school officials will be asked to complete that is necessary in order for the LEA to administer the program. For example, private school officials may be asked to provide written recommendations on the services, programs, and materials they would like the LEA to consider purchasing and/or providing.

G. DELIVERY OF EQUITABLE SERVICES

Participation of private school students generally is considered to be equitable if the LEA: (1) spends an equal amount of funds to serve similar public and private school students, their teachers, and other educational personnel, taking into account the number and education needs of those students, teachers, and other educational personnel; (2) provides services and benefits to private school students, their teachers, and other personnel that are equitable in comparison to the services and benefits provided to public school students, their teachers, and other educational personnel; (3) addresses and assesses the specific needs and educational progress of public and private school students, their teachers, and educational personnel on a comparable basis; (4) provides, in the aggregate, approximately the same amount of services to public school students, their teachers, and educational personnel as it provides to private school students, their teachers, and educational personnel with similar needs; (5) provides

both groups of students, their teachers, and other educational personnel equal opportunities to participate in program activities; (6) provides private school students, their teachers, and other personnel with an opportunity to participate that provides reasonable promise of participating private school students meeting challenging academic standards; and (7) provides different benefits and services to private school students, their teachers, and other educational personnel from those provided to public school students, their teachers, and other educational personnel if their needs are different. (See 34 C.F.R. §299.7)

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

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

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

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

The LEA offers services that meet the specific educational needs of the participating private school students and teachers and that show reasonable promise of effectiveness. The services can be different from those provided to public school students and teachers, but must be allowable services under the particular *ESEA* program. In addition, all services and benefits provided must be secular, neutral, and nonideological. (See section 9501(a)(1)--(2) of *ESEA*).

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

An LEA may provide services to private school students and teachers through an employee of the LEA or through a contract with a third-party provider, an individual, an education institution, or some other agency that, in the provision of those services, is under the control and supervision of the LEA and is otherwise independent of the private school and any religious organization. (See section 9501(d)(2) of *ESEA*.)

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

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

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

In general, federal funds may not be used to purchase textbooks for use by private school students in their regular classroom because materials, programs, and benefits purchased with federal funds must be supplemental and must not supplant what the private school would otherwise provide in the absence of federal funds. (Note: For programs not subject to the supplement, not supplant requirement, such as the Even Start Family Literacy, Migrant Education Even Start, Indian Tribal Even Start, and School Leadership, these costs would need to be considered on a case-by-case basis.)

G-6. May an LEA hire a private school teacher to provide *ESEA* services to eligible private school students in her or his own private school?

Yes. An LEA may hire a private school teacher to provide *ESEA* services to eligible private school students in his or her own private school, so long as the teacher is independent of the private school and under the supervision of the LEA during the time he or she is providing such services.

G-7. May an LEA provide equitable services for private school students and teachers beyond the school year and during the summer?

Yes. In most cases, an LEA has the authority to provide services both during and beyond the school year. To the extent that private school officials have requested some services in the summer in order to better meet the needs of students and teachers, an LEA should consider accommodating such a request.

G-8. Must private school students and teachers participate in the same programs that an LEA provides for public school students and teachers?

No. Within the parameters of each *ESEA* program, the needs of private school students and teachers and the amount of funding available for services determine the services and programs that an LEA will offer. To the extent that the services an LEA is providing to public school students and teachers meet the needs of the private school students and teachers, an LEA could decide to provide the same services after consulting with private school officials. The needs of the private school students and teachers to be served, not the preferences of the LEA or private school officials, determine the services to be provided.

G-9. May an LEA establish a blanket rule that precludes private school students or teachers from receiving certain services authorized by *ESEA*?

No. In carrying out its responsibility to provide equitable services to private school students and teachers, an LEA may establish policies that, for reasons of effectiveness, quality, cost, or other relevant factors, favor certain kinds of services and programs that the particular program statute authorizes and that meet the needs of private school students and teachers. However, an LEA may not establish a blanket rule that precludes certain services and programs that the statute otherwise authorizes and that meet the needs of private school students and teachers.

G-10. What responsibilities does an SEA have for ensuring that LEAs provide equitable services to private school students and teachers?

An SEA is responsible for ensuring that its subgrantees, in most cases LEAs, comply with the statutory and regulatory requirements related to providing equitable services to private school students and teachers. One way SEAs can help to ensure that their subgrantees are in compliance is to develop policies and procedures that assist them in administering and implementing programs for eligible private school students and teachers. SEAs can also provide additional guidance and other resources, such as those listed in J-1: *Federal Resources and Guidance*, to aid in this effort. Such assistance also serves to ensure uniformity in program administration throughout the state.

States are required to monitor LEAs for compliance with the provisions of equitable services to private school students and teachers and must develop a process for the filing of complaints by private school officials. Some SEAs provide workshops on equitable services under *ESEA* to which they invite both LEA officials who are *ESEA* program directors and private school officials in order to ensure that all participants involved in the consultation process receive the same information and technical assistance. Some SEAs have also developed nonpublic school pages on their state department of education Web sites with helpful information and resources for LEAs and private school officials to access. For examples of these Web pages, see J-15: *State and Local Education Agencies Web Sites*.

H. COMPLAINTS AND BYPASS

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

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

A formal written complaint must include:

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

For sample complaint procedures, see J-16: *Sample ESEA Programs Complaint Procedures for Private Schools*.

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

An SEA is required to resolve the complaint in writing within a reasonable period of time. An SEA's resolution (or its failure to resolve the complaint within a reasonable period of time) may be appealed by private school officials to the secretary of the U. S. Department of Education (secretary). The appeal to the secretary must be filed no later than 30 days following the SEA's resolution of the complaint (or its failure to resolve the complaint within a reasonable period of time). The secretary investigates and resolves the appeal not later than 120 days after receipt of the appeal. (See section 9503 of *ESEA*.)

H-3. What is a "bypass"?

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

I. OTHER *ESEA* REQUIREMENTS AND PRIVATE SCHOOLS

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

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

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

No. The "highly qualified teacher" requirements do not apply to private schools whose students or teachers receive equitable services because the highly qualified teacher requirements under Title I of *ESEA* do not apply to teachers hired by private elementary and secondary schools. (See 34 C.F.R. §200.55(d).)

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

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

I-4. Are private schools whose students or teachers receive equitable services subject to the military recruiter requirements in section 9528 of *ESEA*?

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

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

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

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

The requirements of *FERPA* apply to education agencies and institutions that receive federal funds from programs administered by the Department. A private education institution would be subject to *FERPA* only if it receives a payment of money from a program administered by the Department. A private school is not made subject to *FERPA* just because its students and teachers receive services from an LEA or SEA under a program administered by the Department, unless it otherwise also receives federal funds from programs administered by the Department. (See 34 C.F.R. §99.1(b).) Most private schools at the elementary and secondary school levels do not receive funding from programs administered by the Department and, thus, are not subject to *FERPA's* requirements.

J. RESOURCES

J-1. Federal Resources and Guidance

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

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

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

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

Office of Non-Public Education General Issues Frequently Asked Questions Related to Nonpublic Schools: http://www.ed.gov/about/offices/list/oii/nonpublic/faqgeneral.html?src=preview#9

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

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

Ensuring Equitable Services to Private School Children: A Title I Resource Tool Kit http://www.ed.gov/programs/titleiparta/ps/titleitoolkit.pdf.

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

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

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

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

Note: All Web sites on this page were last accessed on March 25, 2009.

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

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

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

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

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

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

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

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

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

Office of Management and Budget (OMB) Circular A-87 (Cost Principles for State, Local, and Indian Tribal Governments): http://www.whitehouse.gov/omb/circulars/a087/a087-all.html.

U. S. Department of Education
Office of Innovation and Improvement
Office of Non-Public Education
400 Maryland Ave. S.W.
Washington, DC 20202
PH: 202-401-1365
FAX: 202-401-1368
E-mail: OIINon-PublicEducation@ed.gov.
Web site: http://www.ed.gov/about/offices/list/oii/nonpublic/index.html.

Note: All Web sites on this page were last accessed on March 25, 2009.

J-2. Before Getting Started To Provide Equitable Services

BEFORE GETTING STARTED TO PROVIDE EQUITABLE SERVICES

To make sure things run smoothly as you begin the process of consultation and program implementation for private school students and teachers, it is important to lay some groundwork both within your district and with the private school officials. Below are some suggestions for things to do, people to contact, and procedures to consider as you begin this process.

Preparing the District

Because procedures and requirements for providing services with federal funds to private school students and teachers differ in some ways from those used with district programs, it is important to make sure everyone who might be involved with the programs is aware of these requirements and works out necessary procedures to support these services. To make sure your district is prepared:

- ✓ Identify NCLB programs available in the district for which private school students and teachers are eligible; include potential competitive grant funding services.
- ✓ Identify district contacts for various federal programs available to private school students and teachers.
- ✓ Review requirements for serving private school students and teachers with district program consultants.
- ✓ Determine what procedures will be used and who will be involved in the consultation process.
- ✓ Discuss approval processes for services (contracts, conferences, etc.) for private school students and teachers with cabinet representatives.
- ✓ Meet with business services staff to review procedures for payments, reimbursements, and contracts as they apply to services for private school students and teachers. Make sure they understand the prohibition on providing funding (reimbursement) directly to private schools.
- ✓ Identify any potential roadblocks in the district system (i.e., fiscal procedures for reimbursing private school teachers for professional development, paying for consultant services, approval process for contracts, etc.).
- ✓ Establish procedures to ensure all expenditures related to programs for private school students and teachers are made in a legal and appropriate manner.
- ✓ Determine administrative needs and associated costs required to implement and monitor services (clerical, administrative time required for consultation, documentation, budget oversight, review/approval of requests, etc.) and budget for these costs.

continued

Note: This is not an official U.S. Department of Education document. Adapted with permission from *NCLB Private School Services, Local Education Agency Resource Guide, A Handbook for District Administrators,* Orange County, Calif., Department of Education, 2006.

BEFORE GETTING STARTED TO PROVIDE EQUITABLE SERVICES

Continued from previous page

Preparing the Private School Officials

It is important to keep in mind that private school officials may not be familiar with many of the processes, procedures and protocols that public school staff "live with" and take for granted. They may not be used to working with systems such as school boards, administrative processes or public school business practices. Also, they may not be familiar with the planning and evaluation processes generally associated with program development and implementation of programs in most public schools. Although private school officials may be very familiar with what programs are available to private school students and teachers through federal programs, the specific legal requirements that fall upon districts may not be as clear to them. To help prepare private school officials to support effective program implementation:

- ✓ Utilize the initial consultation meeting as an opportunity to assist private school officials in understanding the purposes and requirements for various programs and determine whether or not the intent of each program matches their program goals.
- ✓ Work with private school officials to develop plans that are based on student needs and meet the intent of the law. Provide sample plans and plan development assistance as part of the consultation process.
- ✓ Inform private school officials that services must benefit eligible children, not the needs of the private school.
- ✓ Inform private school officials of fiscal requirements for federal programs (public control of funds, provision of "services" vs. funding, equipment control, purchasing).
- ✓ Inform private schools of funding cycle (Spring — rough estimates based on current year allocations; Summer/Fall — estimated allocation based on federal number/prior to state adjustments; January-final allocations/adjustments on Consolidated Application).
- ✓ Provide training and information regarding accountability and use of data in designing programs and developing evaluation procedures.
- ✓ Work with private school staff to develop evaluation questions and methods for collecting data for program evaluation and improvement.
- ✓ Provide specific information regarding procedures for approval and processing of contracts, purchase requests, etc.
- ✓ Provide information regarding district procedures, timelines, and contacts (i.e., items needing board approval, timelines for such approval, list of program contacts).
- ✓ Establish procedures and ground rules regarding how the district will monitor federal programs.

J-3. Sample General Consultation Timeline

Sample Timeline for Local Education Agency (LEA) Consultation With Private School Officials	
Month	**LEA Activity**
September	▪ Begin programs and services. ▪ Consult with private school officials about *current* programs and services implementation and modify as necessary.
October	▪ Continue consultation about *current* programs and services implementation.
November-December	▪ Consult with private school officials about the status of *current* programs and services. ▪ Obtain complete list of all private schools with appropriate contact names for later use in mailing "Intent to Participate in Federal Education Programs" forms.
January	▪ Continue consultation with private school officials about the status of *current* programs and services. ▪ Send "Intent to Participate" forms to all private schools in the LEA with a February deadline for returning the forms.
February - March	▪ Continue consultation with private school officials about the status of *current* programs and services. ▪ Conduct a district-wide consultation meeting with all private school officials and provide a general overview of programs that will be available to their students and teachers in the *next* school year. ▪ Provide private school officials with planning document* to prepare them for consultation about *next* year's programs and services. ▪ Consult with private school officials to identify students' and teachers' needs, discuss services and estimated funding figures, design programs, and establish priorities for the *next* school year.
April-May	▪ Evaluate programs and services for the *current* school year and make suggestions for modifying programs that will be implemented again in the *next* school year. ▪ Continue consultation and planning for programs and services for *next* school year. ▪ Complete plans for programs and services and set dates for when they will begin in the *next* school year. ▪ Develop consultation timeline for the next school year.
June	▪ Finalize actions related to programs and services.
July-August	▪ Inform private school officials about the readiness of programs and services for the *upcoming* school year. ▪ Provide program funding figures to private school officials for upcoming school year.

* See J-8: *Sample Needs Assessment and Program Development Plan* form.

Note: This is not an official U.S. Department of Education document. It is provided for sample purposes only and should not be considered as a required document when administering *ESEA* programs.

J-4. Sample Consultation Timeline

Date	Programs	Activity
July 2008	All Titles	-Services begin for 2008-2009 school year (Consultations held in 2007-2008 school year)
July 9, 2008	Work Group	-NCLB Private School Work Group Meeting 10:00 a.m., Suite 107 Beaudry Building
July- Dec 2008	All Titles	-On going consultation with participating private schools/consortiums
August 20, 2008	Collaborative	-NCLB Collaborative Meeting-(Program Update)
October 22, 2008	Work Group	-NCLB Private School Work Group Meeting
October 2008	All Private Schools	-Private schools complete the affidavit and submit to California Department of Education (CDE) for 2009-2010 eligibility
December 3, 2008	Collaborative	- NCLB Collaborative Meeting
January 2009	All Titles	- Continuing consultation for 2008-2009 services - Evaluate 2008-2009 services - Begin planning for 2009-2010 services
February 23, 2009	NCLB Private Schools Support office	- Send *Annual Notification of Participation for 2009-2010* to non-profit private schools
March 2009	Work Group	- NCLB Private School Work Group Meeting
March 1, 2009	NCLB Private Schools Support office	- Final date to submit requests for 2009-10 (start date - July 1, 2009 or later) to the NCLB Private School Support office
March 12, 2009	Collaborative	- NCLB Collaborative Meeting
March 25, 2009	All Title and NCLB Private Schools Support office	- General Consultation Meeting to explain available services to private school students and teachers, Time and location to be determined
March 26, 2009	NCLB Private Schools Support office	- Send *Intent to Participate Form* for 2009-2010 to private schools that did not attend the March 2009 General Consultation Meeting
April 24, 2009	Non-Profit Private Schools	- NCLB Participation Surveys due to NCLB Private School Support office
May 6 & 21, 2009	All Titles	- Individual Consultation Meetings with private schools/consortiums, Location to be announced - Begin consultation for 2009-2010 programs based on review of services provided during 2008-2009 school year - Obtain and file private school officials' written affirmation of appropriate consultation for planning, implementation, and evaluation
June 2009	All Titles	- Continue ongoing consultation with participating schools/consortiums - Continue contract processing
July 2009	All Titles	- Services begin for 2009-2010 school year

Note: This is not an official U.S. Department of Education Official document. Adapted with permission from the Los Angeles Unified School District Web Site at: http://sfpc.lausd.k12.ca.us/nclb/default.asp (last accessed March 27, 2009).

J-5. Sample Consultation Checklist For Local Education Agencies

- ☐ Send notice about *ESEA* programs (*Intent to Participate* form) to private school administrators asking if they are interested in having their students and teachers participate in *ESEA* programs.
- ☐ Schedule a consultation meeting with private school officials and provide information about the *ESEA* education programs (including competitive grants the LEA will apply for) available to eligible private school students and teachers, allowable activities, and the appropriate roles of public and private school officials.
- ☐ Obtain from private schools a list of names, roles and level of authority of private school officials who should be included in the consultation process.
- ☐ In consultation with private school officials, develop a timeline for periodic consultation meetings throughout the implementation of programs and services.
- ☐ Discuss how the needs of eligible private school students and teachers will be assessed.
- ☐ Discuss the type of services that are available.
- ☐ Discuss how, where, and by whom the services will be provided.
- ☐ Address the size and scope of the services to be provided.
- ☐ Discuss how much funding is available for programs/services and how it was determined.
- ☐ Discuss program/services assessment and how results will be used to improve services.
- ☐ Discuss the use of a third-party provider and thoroughly consider the views of private school officials. If a request by private school officials for a third-party provider is declined, provide a written explanation as to the reasons why a contractor was not chosen.
- ☐ Inform private school officials about how and when the LEA will make decisions about the delivery of services and how and the LEA will inform them of such decisions.
- ☐ Discuss that all materials, equipment, programs and services must be supplemental and not supplant what otherwise would be made available absent the Federal funds.
- ☐ Request, if required by the district or State, a sign-off on the consultation process.
- ☐ Inform private school officials about policies, procedures and forms related to programs, services, equipment and materials for their students and teachers.
- ☐ Provide contact information to the private school officials.

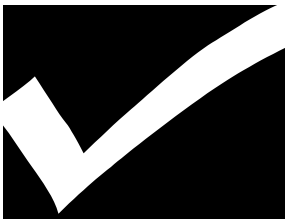
Note: This is not an official U.S. Department of Education document. Adapted with permission from *NCLB Private School Services, Local Education Agency Resource Guide, A Handbook for District Administrators,* Orange County, Calif., Department of Education, 2006.

J-6. Sample Consultation Meeting Attendance Sign-in Sheet

CONSULTATION MEETING ATTENDANCE SIGN-IN SHEET *Insert Date* *Insert Location*				
NAME	**TITLE**	**SCHOOL NAME AND ADDRESS**	**PHONE #**	**E-MAIL**

Note: This is not an official U.S. Department of Education document. It is provided for sample purposes only and should not be considered as a required document when administering *ESEA* programs.

J-7. Sample Private School Consultation Meeting Agenda



Private School Consultation Meeting

Date
Time
Location

Meeting called by: **Type of meeting:**

Attendees: (*Attach attendance sign-in sheet*)

----- Agenda -----

Topics	Speaker	Time Allotment
Welcome		
Resources for Non-Public Schools		
Title I, Part B		
Title II, Part A		
Title II, Part D		
Title III		
Title IV		
Title V		
Consultation Procedures		
Questions	All Staff	

Other Information

Resource persons:

Special notes:

Note: This is not an official U.S. Department of Education document. Adapted with permission from *NCLB Private School Services, Local Education Agency Resource Guide, A Handbook for District Administrators,* Orange County, Calif., Department of Education, 2006.

J-8. Sample Needs Assessment and Program Development Plan

Private School Students and Teachers
[*insert year*] **School Year**

School:

Address:

Enrollment:

Private School Official/Primary Contact:

Phone Number:

E-mail Address:

Title Program: (check appropriate program/s)

Title II, A – Teacher and Principal Training and Recruiting Fund
Title II, D – Enhancing Education through Technology
Title III, A – English Language Acquisition, Language Enhancement, & Academic Achievement
Title IV, A – Safe and Drug-Free Schools and Communities
Title IV, B – 21st Century Community Learning Centers
Title V, A – Innovative Programs

Needs Assessment:
Identify your students' academic needs and provide appropriate data for support. Prioritize needs, with most significant as #1.

Identify your teachers' professional development needs as related to improving you students' academic achievement.

(continued)

(continued from previous page)

Programs and Services:
Describe the program, services or other activities you would like the school district to implement to address these identified needs. To the extent possible, include estimated cost of programs and services. Prioritize programs and services as related to meeting the needs noted above.

Describe how these services and programs will contribute to improving student academic achievement.

Goal Setting:
Write a suggested performance goal for your identified need and planned activities. (EXAMPLE: For an identified need of reading would be, "By May 2009, students participating in planned activities will increase their reading scores by _____%"; or, for an identified need to enhance instruction in differentiated learning, "All teachers participating in the professional development will include differentiated learning practices in their daily instruction."

Evaluation Plan: Describe the formalized plan for determining the extent to which the goal was achieved.

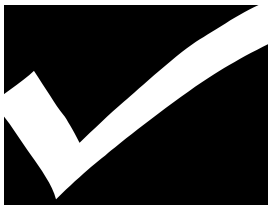
Private School Official: _____

Date: _____

Please complete and submit this Needs Assessment and Program Development Plan by [insert date] and email/send to: [Insert LEA contact and address, including phone number]

Note: This is not an official U.S. Department of Education document. The form is for sample purposes only and should not be considered as a required document when administering ESEA programs.

J-9. Sample Private School Consultation Meeting Log



Private School Consultation Meeting Log

Date
Time
Location

Meeting called by: **Type of meeting:**

Attendees: (*Attach attendance sign-in sheet*)

---------- Agenda Topics ----------

Welcome *[*Insert *Name]* *[*Insert *time allocation]*

Discussion:

Conclusions:

Action items:	Person responsible:	Deadline:

Resources for Non-Public Schools *[*Insert *Name]* *[*Insert *time allocation]*

Discussion:

Conclusions:

Action items:	Person responsible:	Deadline:

(continued)

(continued from previous page)

[Insert *Title Program*]	*[*Insert *Name]*	*[*Insert *time allocation]*
Discussion:		
Conclusions:		
Action items:	Person responsible:	Deadline:

[Insert *Title Program*]	*[*Insert *Name]*	*[*Insert *time allocation]*
Discussion:		
Conclusions:		
Action items:	Person responsible:	Deadline:

[Insert *Title Program*]	*[*Insert *Name]*	*[*Insert *time allocation]*
Discussion:		
Conclusions:		
Action items:	Person responsible:	Deadline:

(continued)

(continued from previous page)

	*[*Insert *Name]*	*[*Insert *time allocation]*
Consultation Procedures		
Discussion:		
Conclusions:		
Action items:	Person responsible:	Deadline:
Questions	All Staff	*[*Insert *time allocation]*
Discussion:		
Conclusions:		
Action items:	Person responsible:	Deadline:

Other Information

Resource persons:	
Special notes:	

Note: This is not an official U.S. Department of Education document. Adapted with permission from *NCLB Private School Services, Local Education Agency Resource Guide, A Handbook for District Administrators*, Orange County, Calif., Department of Education, 2006.

J-10. Sample Private School Consultation Planning Sheet

200_ - 200_ School Year

School: _____
(Please Type or Print)

Private School Official: _____
(Please Type or Print)

Funding Source	[Insert *Title Program* requiring equitable participation of private school students and/or teachers.]
Description	
Summary of Private School Students' and Teachers' Needs	
Services Requested for Students	
Professional Development Requested for Teachers/Staff	
Materials Requested	
How will the Services be Evaluated for Effectiveness	
Approval by District Coordinator	

☐ **Both parties agree on the program planning described**

☐ **Modifications to this plan will include:**

_____

Signed:

_____ _____
LEA Director, *ESEA* Programs **Private School Official**

_____ _____
Date **Date**

Note: This is not an official U.S. Department of Education document. Adapted with permission from *NCLB Private School Services, Local Education Agency Resource Guide, A Handbook for District Administrators*, Orange County, Calif., Department of Education, 2006.

J-11. Sample Intent to Participate Form

Sample City **Public Schools**

ESEA **Program Intent to Participate Form**

School Year

Date: _____

Private School Name: _____School Code: _____

Address: _____

Phone: _____ Fax: _____ E-mail: _____

Private School Administrator: _____

ESEA **Programs Contact Person: _____**

Phone: _____ E-mail: _____

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

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

Administrator's Signature: _____Date Signed: _____

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

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

Title I, Part A, provides supplementary instruction by public school teachers or through a third-party contractor to students who are educationally disadvantaged and failing or most at risk of failing to meet high academic standards and who live in Title I participating public school attendance areas.

___Title I, Part B – ***Reading First***

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

(continued)

(continued from previous page)

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

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

___Title I, Part C – *Migrant Education*

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

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

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

___Title II, Part B – *Mathematics and Science Partnerships*

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

___Title II, Part D – *Enhancing Education Through Technology*

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

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

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

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

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

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

The 21st Century Community Learning Centers (21st CCLC) program provides before-and after-school services to children and their families that include academic enrichment activities, particularly for students who attend low-performing schools, to help them meet State and local student performance standards in core academic subjects.

___Title V, Part A – *Innovative Programs*

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

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

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

* Some programs listed above are discretionary programs and the LEA may not necessarily participate in them.

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

Note: This is not an official U.S. Department of Education document. The form is for sample purposes only and should not be considered as a required document when administering *ESEA* programs.

J-12. Superintendent's Nonpublic Schools Workgroup

MARYLAND STATE DEPARTMENT OF EDUCATION

OVERVIEW

BACKGROUND

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

PURPOSE

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

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

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

MEMBERSHIP AND GOVERNANCE

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

MEETINGS

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

September 2004

Note: Used with permission from the Maryland State Department of Education.

J-13. Sample Consultation Checklist for Private School Officials

- ☐ I have a general understanding of the *ESEA* programs available to my students and teachers.
- ☐ I have discussed with LEA officials how my students' needs will be identified.
- ☐ The LEA official has explained what services can be offered.
- ☐ I have been given a genuine opportunity to present the needs of my students and teachers.
- ☐ I have been given the opportunity to explain how my students' needs can best be met through this program.
- ☐ I participated in a discussion of how, where, and by whom the services will be provided.
- ☐ I have had an opportunity to genuinely express my views on the use of a third-party provider.
- ☐ If a third-party provider was requested, there was a thorough consideration and analysis of this proposal.
- ☐ If a third-party was requested and not granted, a written explanation has been provided as to the reasons why the LEA has chosen not to use a third-party provider.
- ☐ Student and program assessment were discussed and I understand how the results of the assessment can be used to improve the services to my students and teachers.
- ☐ I have been told how much funding is available for services and how the funding was determined.
- ☐ I know how and when the LEA will make the final decision about services and how and when I will be informed about the services.
- ☐ Together, the LEA and I have set dates for periodic meetings throughout the implementation of the program so that we can discuss the progress of the program or make modifications, if needed, to improve effectiveness.
- ☐ I have provided (if required by the district or State) a sign-off on the consultation process and the program services to be provided to my students and teachers.
- ☐ I am aware of deadlines for submitting requests and providing necessary information.
- ☐ I have been given a genuine opportunity to have my views heard and considered.
- ☐ I know whom to contact if I have questions or concerns.

Note: This is not an official U.S. Department of Education document. The form is for sample purposes only and should not be considered as a required document when administering *ESEA* programs.

J-14. Sample Funding Allocations for Services Notification Form

_____School District
Special Programs Department

No Child Left Behind (NCLB) — Non-Public Education

Tentative Funding Allocations for Services for 200_- 200_

Name of Public School District	
Name of District Contact Person with Private Schools	
District Contact Phone Number	
Name of School	
Name of School Contact	
School Phone Number	
School Enrollment on Consolidated Application for Funding Categorical Aid Programs - Part I	

The following is the *tentative* per pupil allocation for the 200_-200_ school year. You will be informed of actual allocations in the fall when the Consolidated Application for Funding Categorical Aid Programs – Part II is released. You may access funding for staff development and instructional materials and equipment beginning immediately.

SCHOOL SUBMITTED INTENT TO PARTICIPATE	TITLE OF PROGRAM	PROGRAM NAME	TENTATIVE 200_-200_ PER PUPIL ALLOCATION	EXTENTION BASED ON YOUR CONSOLIDATED APPLICATION ENROLLMENT
	Title, I, Part B	Reading First		
	Title II, Part A	Teacher and Principal Training and Recruitment Fund		
	Title II, Part D	Enhancing Education through Technology		
	Title III	Language Acquisition, Language Enhancement, and Academic Achievement		
	Title IV, Part A	Safe and Drug-Free Schools and Communities		
	Title V, Part A	Innovative Programs		
		Total		

Note: This is not an official U.S. Department of Education document. Adapted with permission from *NCLB Private School Services, Local Education Agency Resource Guide, A Handbook for District Administrators,* Orange County, Calif., Department of Education, 2006.

J-15. State and Local Education Agencies Web Sites

California Department of Education – Private School Provisions in NCLB Act of 2001 Web Site: http://www.cde.ca.gov/sp/ps/cd/nclbequitprov.asp.

Colorado Department of Education – Private Schools and *ESEA* Programs Web Site: http://www.cde.state.co.us/choice/nonpublic_programs.htm.

Los Angeles Unified School District Web site for Specially Funded Programs Division/No Child Left Behind Act of 2001 (NCLB)/Private Schools Support: http://sfpc.lausd.k12.ca.us/nclb/default.asp.

Milwaukee Public Schools Web site for Milwaukee Non-public School Title Program Home: http://www2.milwaukee.k12.wi.us/title_i/Web_Pages/non-public.html

Minnesota Department of Education Web Site for No Child Left Behind Programs Serving Nonpublic Schools: http://education.state.mn.us/MDE/Accountability_Programs/No_Child_Left_Behind_Programs/Serving_Nonpublics/index.html

Pennsylvania Department of Education – Nonpublic and Private School Services Web Site: http://www.pde.state.pa.us/non%5Fpublic/site/default.asp.

Seattle Public Schools – Office of Grant Services – Private Schools Web Site: http://www.seattleschools.org/area/grants/private.htm.

Washington Office of State Superintendent of Public Instruction – Elementary and Secondary Education Act – Private Schools: http://www.k12.wa.us/ESEA/PrivateSchools.aspx.

Note: All Web sites on this page were last accessed on March 25, 2009.

J-16. Sample ESEA Programs Complaint Procedures for Private Schools

The Elementary and Secondary Education Act (*ESEA*), as reauthorized by the No Child Left Behind Act of 2001 (NCLB), requires school districts to provide equitable services to eligible private school students, teachers, educational personnel, and parents (in some programs). Under *Title IX, Part E – Uniform Provisions, Subpart 1 – Private Schools*, public school district staff are required to conduct timely and meaningful consultation with private school staff to determine the educational needs of the private school students. The information gathered provides direction for the services that are then provided to the private school students and the teaching staff. Through the consultation process, school districts build positive relationships with their private schools, which increases communication and minimizes any problems that may arise. http://www.ed.gov/policy/elsec/guid/equitableserguidance.doc.

The *ESEA* Programs office at the Office of Superintendent of Public Instruction (OSPI) always encourages private school officials and school districts to work together to try to resolve disagreements that affect the services provided. When private school officials and districts are not able to resolve differences through direct communication, there is a formal process available. (*NCLB, Section 9503*)

WAC 392-168, Special Service Programs – Citizen Complaint Procedure for Certain Categorical Federal Programs, applies to federal programs authorized under *ESEA* and administered by OSPI. Any individual or organization may file a signed, written complaint if it believes the state, a local school district, an educational service district, or other sub-grantee has violated one or more requirements of federal statutes or regulations or state regulations that apply to an *ESEA* program.
http://apps.leg.wa.gov/WAC/default.aspx?cite=392-168.

If private school officials believe that timely and meaningful consultation has not occurred or that the district did not give due consideration to their views, they should first contact the *ESEA* Programs representative or superintendent at the school district to discuss their concerns. If the concern is not satisfactorily resolved, the private school has the right to contact the *ESEA* Programs office at OSPI for resolution. In the event the concern is not resolved, the private school has the right to file a formal written complaint with OSPI.

The formal written complaint should include:

- A statement that the district, other educational agency, or in some cases OSPI, has violated a requirement of a Federal statue or regulation that applies to a program requiring equitable participation;
- The specific requirement alleged to have been violated;

(continued)

(continued from previous page)

- The facts on which the complaint is based;
- The name and address of the complainant;
- The expected resolution of the alleged violation; and
- The signature of the complainant.

A complaint should be sent directly to:

Office of Superintendent of Public Instruction
Attn: Federal Programs Office
P O Box 47200
Olympia, WA 98504-7200

Receipt of a complaint activates a time limit not to exceed sixty (60) calendar days. After a complaint is received by OSPI, a copy of the complaint, along with any accompanying documentation, is sent to the school district, and the district is asked to respond to the allegations. A copy of the district's response is sent to the complainant and he or she is given an opportunity to reply to the district's response. After review of all information, OSPI will make an independent determination as to whether the district is in violation of any federal program requirement as authorized under NCLB or WAC 392-182.

OSPI will issue a written decision to the complainant that addresses each allegation and may provide technical assistance activities or negotiations and corrective measures necessary to resolve the complaint. All actions shall be instituted no later than thirty (30) calendar days following the date of the decision. The written decision by OSPI is the final decision in the matter. A complaint is considered resolved when the superintendent has issued a written decision and corrective measures, if warranted, have been completed. Appeals to OSPI decisions can be made to the United States Department of Education. (*NCLB, Section 9503(b))*

Federal Programs staff members are available to answer questions from districts and private schools regarding private school consultation and services. Other information regarding equitable participation for private schools is available on the Consolidated Federal Programs website at: http://www.k12.wa.us/ESEA/PrivateSchools.aspx, or by calling (360) 725-6100, or TTY (360) 664-3631.

Note: This is not an official U.S. Department of Education official document. Adapted with permission from *Federal Programs, Complaint Procedures for Private Schools*, Office of Superintendent for Public Instruction, Seattle, Washington, 2009 (available at: http://www.k12.wa.us/ESEA/pubdocs/ComplaintProceduresFINAL7-16-07.pdf; last accessed on March 25, 2009). Please be aware that this complaint procedure does not apply to complaints from private school officials about an LEA's implementation of the Title I equitable services requirements. Private school officials must file their complaints regarding Title I to the SEA. The SEA is responsible for resolving the complaint (See Section 1120(b)(5) and (c)(2)).