**Private School Participation in Title III Programs**

**Authorities**

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

**Statutory/Regulatory Requirements**

* After timely and meaningful consultation with appropriate private school officials, local educational agencies (LEAs) receiving Title III funds must provide educational services to limited English proficient (LEP) children and educational personnel in private schools that are located in the geographic area served by the LEA.
* To ensure timely and meaningful consultation, the LEA must consult with appropriate private school officials during the design and development of the Title III program on issues such as:
1. how the LEP children’s needs will be identified;
2. what services will be offered;
3. how, where, and by whom the services will be provided;
4. how the services will be assessed and how the results of the assessment will be used to improve those services;
5. the size and scope of the services to be provided to the private school children and educational personnel;
6. the amount of funds available for those services;
7. how and when the LEA will make decisions about the delivery of services, including a thorough consideration of the views of the private school officials on the provision of contract services through potential third-party providers.
* Title III services provided to children and educational personnel in private schools must be equitable and timely and address their educational needs.
* Funds provided for educational services for private school children and educational personnel must be equal, taking into account the number and educational needs of those children, to the funds provided for participating public school children.
* Title III services provided to private school children and educational personnel must be secular, neutral, and non-ideological.
* LEAs may serve private school LEP children and educational personnel either directly or through contracts with public and private agencies, organizations, and institutions.
* The control of funds used to provide services and the title to materials and equipment purchased with those funds must be retained by the LEA.
* Services for private school children and educational personnel must be provided by employees of the LEA or through a contract made by the LEA with a third party.
* Providers of services to private school children and educational personnel must be independent of the private school and of any religious organization, and the providers’ employment or contract must be under the control and supervision of the LEA.
* Funds used to provide services to private school children and educational personnel must not be commingled with non-Federal funds.

## Frequently Asked Questions

**What is meant by “equitable” participation by public and private school students and educational personnel in a Title III program?**

Participation is considered to be equitable if the LEA (1) assesses, addresses, and evaluates the needs and progress of public and private school students and educational personnel in the same manner; (2) provides, in the aggregate, approximately the same amount of services to students and educational personnel with similar needs; (3) spends an equal amount of funds to serve similar public and private school students and educational personnel; and (4) provides both groups of students and educational personnel equal opportunities to participate in program activities.

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

Complaints about an LEA’s failure to provide equitable services to private school children and educational personnel must first be submitted to the State educational agency for resolution. The State’s resolution or failure to make a resolution may be appealed to the U.S. Department of Education. If an LEA is prohibited by State law from providing for the participation in Title III programs of eligible children or teachers or other educational personnel from private elementary and secondary schools on an equitable basis, or if the Secretary determines that an LEA has substantially failed or is unwilling to provide for such participation as required by Section 9501, the Secretary waives the requirements of that section and arranges for the provision of services by another entity. In making the determination to bypass an LEA, the Secretary considers one or more factors, including the quality, size, scope, and location of the program and the opportunity of private school children, teachers, and other educational personnel to participate in the program.

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

**Are States required to include participating private school students in the annual assessment of English language proficiency?**

No. States are not required to include participating private school students in the annual assessment of English language proficiency. If an LEA provides services to private school students, the LEA must, through timely consultation with private school officials, determine how those students will be assessed for English language proficiency and how the results will be used to improve services to the participating private school students.

**Do State English language proficiency standards and annual measurable achievement objectives apply to participating private school students?**

No. A State’s English language proficiency standards and annual measurable achievement objectives do not apply to private schools or their students. However, they apply to all public schools and public school students served under Title III.

**Must private schools report the results of English language proficiency assessments to the LEA?**

No. Private schools with children participating in programs funded under Title III are not required to report assessment results. Officials from the LEA and the private school must reach an agreement about how the results of the assessments will be used to improve services to the participating private school students.

**Is a private school required to monitor and report on the academic progress of private school students for two years after the students are no longer receiving services under Title III?**

No. Officials from a private school are not required to monitor or report on the academic progress of private school students who are no longer receiving services under Title III.

**Does the Title III requirement on language qualifications for teachers providing Title III services to public school students apply to teachers providing these services to private school students?**

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