

PRIVATE SCHOOL PARTICIPATION

Under the *Title II, Part A* program, private school teachers, principals, and other educational personnel are eligible to participate to the extent that the LEA uses funds to provide for professional development for teachers and other school personnel.

General Issues

Are private school teachers, principals, and other educational personnel eligible to participate in the *Title II, Part A* program?

Yes. Private school teachers, principals, and other educational personnel are eligible to participate in *Title II, Part A*, to the extent that the LEA uses funds to provide for professional development for teachers and others. Funds awarded to SEAs and LEAs under *Title II, Part A* are subject to the uniform provisions of Section 9501 of the ESEA (*Participation by Private School Children and Teachers*). The statute requires LEAs to provide private school children, their teachers, and other educational personnel with educational services on an equitable basis and in a timely manner.

The requirement for the equitable participation of private school teachers and other educational personnel applies only to the LEA's *Title II, Part A* funds to the extent that the LEA uses these funds for professional development of its teachers and other staff. However, this flexibility is constrained by the requirement [described below in G-4](#).

What is meant by “equitable participation”?

Participation is considered to be equitable if the public and private educational agencies and institutions: (1) assess, address, and evaluate the needs and progress of both groups of teachers in the same manner; (2) provide approximately the same amount of training and, where appropriate, instruction to teachers with similar needs; (3) spend an equal amount of funds per student to serve public and private school teachers; and (4) provide private school teachers with an opportunity to participate in *Title II, Part A* program activities equivalent to the opportunity provided public school teachers.

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. It is also permissible for LEAs to use other factors relating to need and not base equal expenditures only on relative enrollments. For example, an LEA may 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. Also, if it uses poverty as a factor, the LEA would need to identify all the private school students from low-income families and not just those who reside in the district. As with other decisions affecting services to private school students, LEAs are to 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 the purposes of equitable participation, which institutions are considered “private schools”?

For the purposes of equitable participation, a private school is a nonprofit institutional day or residential school that is not under Federal or public supervision or control and that provides elementary and/or secondary education as determined under State law, except that the term does not include any education beyond grade 12.

How does an LEA determine the minimum amount required for equitable services to private school teachers and other educational personnel?

Under *Title II, Part A*, LEAs are required to provide equitable services for private school teachers and other educational personnel only to the extent that they use the funds for professional development. For purposes of determining the amount of *Title II, Part A* funds that an LEA must make available for equitable services to private school teachers and other educational personnel, the statute has the LEA assume that it is spending at least as much for professional development under *Title II, Part A* as it did in FY 2001 under the Eisenhower Professional Development and Class-Size Reduction programs [*Title IX*, Section 9501(b)(3)(B)].

If a school district exercises *Title VI* transferability authority and moves funds from *Title II, Part A* to another covered program, is the district required to provide the “hold harmless” amount for private school teachers’ professional development?

Yes. As noted in question [G-3](#) above, for purposes of determining the amount of *Title II, Part A* funds it must reserve for professional development provided to private school teachers, the LEA must assume that it is spending at least as much *Title II, Part A* funds each year for professional development as it did with FY 2001 funds under the former Eisenhower Professional Development and Class-Size Reduction programs. Hence, the district must provide equitable services based on this minimal amount to private school teachers and other educational personnel even if the LEA transfers some *Title II* funds to other programs.

What are the obligations of the LEA regarding the participation of private school teachers in professional development programs funded under this program?

As part of the application process, LEAs must assure that they will comply with Section 9501 of ESEA (regarding participation by private school children and teachers). LEAs must consult with appropriate private school officials during the design, development, and implementation of the professional development program on such issues as:

- how the needs of children and teachers 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;
- the amount of funds available for those services; and
- how and when the LEA will make decisions about the delivery of services.

Consultation on the delivery of services must also include a thorough consideration and analysis of the views of the private school officials on the provision of contract services through potential third-party providers [Section 9501].

What happens if an LEA chooses not to participate in the *Title II, Part A* program and a private school in that LEA expresses a desire to do so?

There is no authority for allowing non-public schoolteachers to receive services if the LEA elects not to participate in the program, nor does the program statute authorize an SEA to reallocate funds to another LEA for the purpose of allowing participation of teachers at a private school located in a nonparticipating LEA.

Eligible Activities

What are some of the eligible activities under this program in which private school teachers and other educational personnel may participate?

As with any activity that the LEA carries out for public school teachers, activities supported with *Title II, Part A* funds that benefit private school teachers must meet the requirements of the statute. For example, activities to be carried out for private school personnel must be based on a review of scientifically based research and must be expected to improve student academic achievement. Professional development activities may include:

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

Must the expenditures that the LEA provides for professional development for private school teachers be equal on a per-pupil basis?

Title IX, Section 9501 of ESEA requires that *Title II, Part A* services for professional development that are provided to private school teachers and other educational personnel be equitable in comparison to those provided to public school teachers. It also requires that funds provided for professional development for private school teachers be equal on a per-pupil basis.

How does the LEA ensure that it is providing equitable services?

To ensure that it is providing equitable professional development services to private school teachers and other educational personnel, the LEA should consider ways to:

- Assess, address, and evaluate the needs and progress of both public and private school teachers;
- Spend an equal amount of funds per student to serve the needs of public and private school teachers and their students;
- Provide private school teachers with an opportunity to participate in *Title II* activities equivalent to the opportunity provided public school teachers; and
- Offer educational services to private school teachers that are secular, neutral, and non-ideological [Section 9501(a)(2)].

Does the professional development program for private school teachers have to be the same as the professional development program for public school teachers?

No. Consultation and coordination are essential to ensuring high-quality, sustained, intensive, and classroom-focused professional development activities for private school teachers. LEAs must assess the needs of private school teachers in designing the professional development program for private school teachers. If the professional development needs of the private school teachers are different from those of public school teachers, the LEA, in consultation with private school representatives, should develop a separate program.

May *Title II, Part A* funds be used to pay for a private school teacher's attendance at a professional conference sponsored or conducted by a faith-based organization?

Yes. To the extent that the conference is part of a sustained and comprehensive secular professional development plan for the teacher, then *Title II, Part A* funds may be expended to pay for the portion of the costs of the conference that, as determined by the LEA, represent the secular professional development in which the teacher participated. In this case, the LEA would pay or reimburse the teacher for attendance at the conference.

May funds be used to pay stipends to private school teachers participating in a *Title II, Part A* professional development program?

Yes. *Title II, Part A* funds may be used to pay for stipends for private school teachers, as reasonable and necessary. For example, if the professional development activity is conducted during after-school hours or in the summer, stipends may be needed to compensate teachers for their participation outside their regular employment hours. Stipends for private school teachers

must be available on the same basis as those for public school teachers *and* the stipends must be paid directly to the private school teachers for their own use, and not to the private school.

May *Title II, Part A* funds be used to pay any portion of a private school teacher’s salary or benefits?

No. While LEAs must set aside an amount of *Title II, Part A* funds for the equitable participation of private school teachers in professional development activities, funds may not be used to pay or subsidize any portion of a private school teacher’s salary or benefits.

May *Title II, Part A* funds be used to pay for substitute teachers who replace teachers from private schools while they attend professional development activities?

No. The *Title II, Part A* program does not authorize payments to private schools to be used for hiring substitute teachers.

May administrative costs be considered in determining the per-teacher expenditures for private school teachers?

No. LEAs pay the costs of administering professional development programs for public and private school teachers and other educational personnel “off the top” of their allocations. This is calculated before determining how much of the *Title II, Part A* funds are to be made available for professional development of public and private school teachers and other personnel.

When an LEA provides services to private schools through a third-party contractor, is the contractor permitted to charge administrative costs?

No. Administrative costs of providing services to *both* public and private school students come “off the top” of a district’s allocation before the equal expenditures are computed. Since the LEA is reserving its administrative costs “off the top,” then the contract administrative costs (including any fee) must come from that set-aside.

If a private school requires and annually provides, as part of its teacher contract, four days of professional development, may the LEA provide, on these same days, professional development supported by *Title II, Part A* funds?

If the private school is legally bound by contract to provide a certain level of professional development, it would presumably provide those services regardless of whether Federal funds are available, and it would be supplanting to use Federal funds to provide professional development in place of those services. The law requires that all uses of *Title II, Part A* funds supplement non-federal funds that would otherwise be used for activities, and hence, the professional development provided with Federal funds needs to be in addition to, and not in place of, what the private school would otherwise provide.

LEAs and Private Schools

When must an LEA consult with appropriate private school officials?

To ensure timely and meaningful consultation, an LEA must consult with appropriate private school officials during the design and development of the proposed programs. It is important that attention be given to the timing of the consultation so that decisions that affect the opportunities of eligible private school teachers to participate in *Title II, Part A* program activities are made only after discussions have taken place. The quality of the consultative process will likely have an effect on the quality of services to private school teachers [Section 9501(c)(3) and (4)].

Must an LEA contact the officials of all private schools every year, even when there have been no recent indications of a desire to participate in the *Title II, Part A* program?

Yes. The LEA is required to contact appropriate officials of all private schools within the boundaries of the school district *annually* to determine if they want their teachers to participate in the *Title II, Part A* program, regardless of whether or not those officials have recently indicated any interest in program participation.

May an LEA require private school representatives to submit an application in order to receive services for the teachers in a private school with *Title II, Part A* funds?

LEAs may request documentation, as needed, from private school officials that can help the LEA identify services that may be appropriate to the needs of private school teachers. However, requiring a formal application may, depending upon its form and content, constitute an administrative barrier that is inconsistent with the LEA's responsibility to ensure equitable participation of private school teachers.

What kinds of records should an LEA maintain in order to show that it has met its responsibilities for equitable participation of private school teachers?

To meet its general record-keeping responsibility, an LEA should document that: (a) representatives of private schools were informed of the availability of *Title II, Part A* services; (b) the needs of private and public school teachers were identified as part of a district-wide needs assessment; (c) private school officials were consulted and provided an opportunity for input into the planning of the LEA's program activities; and (d) the LEA designed a project that would permit their equitable participation.

The LEA also should maintain records of its efforts to resolve any complaints made by private school representatives that LEAs that should be serving their teachers are not doing so on an equitable basis.

Must the LEAs administer and retain control over the *Title II, Part A* funds used to serve private school teachers?

Yes. The LEAs must administer and retain control over the funds and, therefore, may not provide program funds directly to private schools. Before determining the amount of funds to be provided for services to private school teachers, an LEA could pay reasonable and necessary administrative costs of providing those services from its *Title II, Part A* allocation.

May professional development be conducted within private schools?

Yes, professional development activities may be conducted in the private school facilities.

Does the law require that LEAs provide equitable services with *Title II, Part* funding only to private “nonprofit” schools?

Yes. Section 9501(a) requires LEAs to provide equitable services to teachers and students in “private elementary and secondary schools.” NCLB defines “elementary” and “secondary” schools to mean only “nonprofit institutional day or residential school(s)” [Section 9101(18) and (38)].

Are teachers employed with *Title I* funds who provide services to eligible private school children required to meet the highly qualified requirements?

Yes. If they are hired using *Title I* funds to teach core academic subjects they are held to the same requirements as public school teachers.

Must an LEA count all the students in participating private schools even if some of the students enrolled in the private schools reside in other districts?

Yes. The LEA must provide equitable services based on the number of students who are enrolled in participating private schools in the geographical area served by the school district.

If a public school district does not use *Title II, Part A* funds to support courses leading to degrees or advanced credentials, is the district nevertheless obligated to offer these services to the private schools upon request?

The ESEA confers on each LEA the responsibility for determining, after appropriate consultation with private school officials, what services to provide to private school teachers, and section 9501(a)(3) of the ESEA requires that the district's provision of services to private school teachers must be "equitable in comparison to services and other benefits for public school ... teachers participating in the program...."

Department regulations in 34 CFR 299.7(c) require a district to examine the particular needs of private school teachers and not simply make available to private school teachers the kinds of services it makes available to public school teachers.

In implementing these provisions, each LEA is responsible for determining, on the basis of the consultation process, the kinds of professional development opportunities that private school

teachers will have available. The LEA decision must reflect how private school teachers, consistent with the availability of *Title II, Part A* funds, can best secure the professional development they need to address their own identified teaching needs. How the needs of private school teachers will be assessed is a topic for consultation between the LEA and private school officials, and it may be that through the process of assessing the teaching needs of private school teachers, the needs of private school teachers will not be the same as those of public school teachers. As with services for public school teachers, any *Title II, Part A* expenditures for private school teachers must be reasonable and necessary to carry out the purposes of the program.

In general, we believe that an LEA can (and should), in carrying out its responsibility to provide equitable services to private school teachers, establish policies that, for reasons of effectiveness, quality, cost, and other relevant factors, favor certain kinds of courses or other forms of professional development that the *Title II, Part A* statute authorizes over others. However, we do not believe that 34 CFR 299.7(c) permits a district to establish a blanket rule that forbids any private school teacher from receiving certain forms of professional development that the *Title II, Part A* statute otherwise authorizes and that best meet that teacher's identified teaching needs related to improving student academic achievement.

SEAs, SAHES, and Private Schools

Must an SEA provide equitable services to private school teachers if it uses its *Title II, Part A* funds reserved for State activities to provide professional development?

Yes. An SEA must provide equitable services to public and private school teachers and other educational personnel in professional development activities supported by these funds.