

TITLE III, PART A
English Language Acquisition, Language
Enhancement, and Academic
Achievement
Equitable Services to Private School
Students, Teachers, and Other
Educational Personnel

Non-Regulatory Guidance



U.S. Department of Education
July 2015

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A. INTRODUCTION

Since the initial passage of the *Elementary and Secondary Education Act of 1965, as amended (ESEA)*, private school students, their teachers, and other educational personnel have been eligible to receive services from certain Federal education programs. Services under these programs are provided to private school students, their teachers, and other educational personnel. These services are considered assistance to students and teachers rather than private schools themselves. The guidance in this document pertains to one of the *ESEA* programs that requires equitable participation by private school students, teachers, and other educational personnel: Title III, Part A, *English Language Acquisition, Language Enhancement, and Academic Achievement*. The Title III, Part A program (Title III) is subject to the equitable services requirements in the Title IX Uniform Provisions of the *ESEA* (see Sections 9501-9504 of the *ESEA*). These requirements apply to local educational agencies (LEAs) awarded subgrants under the Title III Language Acquisition State Grants.

In 2009, the U.S. Department of Education (Department) issued Non-Regulatory Guidance (NRG) on the Title IX Uniform Provisions regarding equitable services, which applies to Title III as well as to other programs subject to the Title IX Uniform Provisions. That NRG is available on the Department's website at: <http://www2.ed.gov/policy/elsec/guid/equitableserviceguidance.doc>. This document should be read in conjunction with the Title IX NRG, and provides further guidance specific to Title III and the equitable participation of private school students who are English learners (ELs), their teachers, and other educational personnel.¹

In general, an LEA is responsible for providing equitable services and benefits to eligible private school students, their teachers, and other educational personnel under Title III, in order to meet the language needs of ELs enrolled in private schools. However, SEAs, educational service agencies, consortia of LEAs, other entities, or a contractor receiving Federal financial assistance may be responsible for providing such services and benefits. In this guidance, the term "LEA" is used to refer to any entity responsible for providing equitable services and benefits to eligible private school students, their teachers, and other educational personnel. Accordingly, readers should note that any requirements of an LEA described in this guidance also apply to any other entity that is responsible for providing the services and benefits described in this guidance.

In addition to complying with the applicable requirements of the *ESEA*, an LEA, or any other direct or indirect recipient of Federal financial assistance, must not discriminate on the basis

¹ The majority of Title III funding is used as subgrants to LEAs to provide supplemental services to ELs. Each State educational agency (SEA) must reserve some amount of Title III funds to make at least one subgrant to an LEA to support immigrant children and youth. This guidance generally refers to the Title III subgrants for ELs, and all references to requirements that govern subgrants to serve ELs are applicable to an LEA that receives a subgrant for immigrant children and youth as well. The *ESEA* defines the term "immigrant children and youth" as "individuals who – (A) are aged 3 through 21; (B) were not born in any State; and (C) have not been attending one or more schools in any one or more States for more than 3 full academic years." *ESEA* Section 3301(6).

of race, color, national origin, sex, disability, or age. If a private school's students, their teachers, and other educational personnel receive equitable services under the *ESEA*, the LEA remains responsible for ensuring that there is no discrimination with respect to the Federal education program. For information regarding the civil rights obligations of recipients of Federal funds, visit the Department's Office for Civil Rights (OCR) website at: <http://www2.ed.gov/ocr>.

While the *ESEA* employs the term "limited English proficient (LEP)" (see Section 9101(25) of the *ESEA*), the Department, as reflected in this guidance, uses the terms "English learner" or EL as a synonym for LEP.²

B. PURPOSE OF THE GUIDANCE

This guidance was developed in response to questions received from SEAs, LEAs, and private school officials regarding Title III services for ELs enrolled in private schools. This guidance is intended to assist LEAs receiving Federal financial assistance under Title III in fulfilling their obligations under the Title IX Uniform Provisions to provide equitable services to eligible private school students, their teachers, and other educational personnel. 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 email your comments to: ONPE@ed.gov or write to us at the following address:

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Both public and private school officials are encouraged to use this guidance in conjunction with the applicable statutory requirements of the *ESEA*; applicable regulations (see Education Department General Administrative Regulations (*EDGAR*) at 34 Code of Federal Regulations (CFR) §§ 76.650 through 76.677 and General Provisions for *ESEA* programs at 34 CFR Part 299); and the Title IX Uniform Provisions Equitable Services Guidance at <http://www2.ed.gov/policy/elsec/guid/equitableservicesguidance.doc>. For additional resources and guidance on the equitable participation of private school students, their teachers, and other educational personnel in other programs, visit the Department's website at: <http://www2.ed.gov/about/offices/list/oii/nonpublic/index.html>.

² The *ESEA* defines the term "limited English proficient" in part as students "whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual: (i) the ability to meet the State's proficient level of achievement on State assessments; (ii) the ability to successfully achieve in classrooms where the language of instruction is English; or (iii) the opportunity to participate fully in society." *ESEA* Section 9101(25). The complete definition of "limited English proficient" is available at: www2.ed.gov/policy/elsec/leg/esea02/pg107.html#sec9101.

C. OVERVIEW

An LEA receiving a Title III subgrant must provide supplemental services to ELs to help ensure that these students attain English language proficiency and succeed in the academic content areas. Under the Title IX Uniform Provisions, an LEA that receives Title III funds must provide Title III services to eligible private school students, their teachers, and other educational personnel consistent with the number of eligible students enrolled in private elementary and secondary schools in the geographic area served by the LEA. These services and other benefits must be equitable in comparison to those provided to public school students, their teachers, and other educational personnel participating in the program; and they must be provided in a timely manner.

To ensure equitable participation, an LEA must engage in timely and meaningful consultation with private school officials; assess, address, and evaluate the needs of private school ELs, their teachers, and other educational personnel; spend an amount of funds on a per-pupil basis equal to those funds expended for participating public school students, taking into account the number and educational needs of those students; provide private school students, their teachers, and other educational personnel with opportunities to participate in activities equivalent to the opportunities provided to public school students, their teachers, and other educational personnel; and offer services that are secular, neutral, and non-ideological.

D. CONSULTATION

For additional information on timely and meaningful consultation for programs governed by the Title IX Uniform Provisions, see the Department's Title IX NRG on Equitable Services for Eligible Private School Students and Teachers, March 2009 (Section D. Consultation) located at: <http://www.ed.gov/policy/elsec/guid/equitableseguidance.doc>.

D-1. Is an LEA required to engage in timely and meaningful consultation with private school officials regarding the provision of Title III services to eligible private school ELs, their teachers, and other educational personnel?

Yes. Consultation with private school officials is an essential requirement for an LEA's provision of Title III services for eligible private school ELs, their teachers, and other educational personnel. Under Section 9501(c) of the *ESEA*, an LEA is required to consult in a timely and meaningful manner with private school officials during the design and development of the Title III services. As part of timely and meaningful consultation, the LEA and private school officials should discuss whether the private school wishes to have its eligible ELs, their teachers, and other educational personnel receive Title III services and, if so, how its students will be identified as ELs. As appropriate, the LEA and private school officials should also discuss how the private school teachers and other educational personnel will be identified to receive services.

Specifically, the LEA and private school officials should consult on issues such as:

- How private school students will be identified as ELs;
- How the needs of eligible ELs, their teachers, and other educational personnel will be identified;
- The services that the LEA will provide to meet the language development needs of identified ELs, as well as the professional development needs of their teachers and other educational personnel at the school who work with ELs;
- Whether services will include initial identification of ELs and assessment of their language proficiency, as well as a determination of whether students should exit EL status;
- How, where, and by whom the Title III services will be provided;
- How the Title III services will be assessed, and how the results of those assessments will be used to improve the services;
- The size and scope of the Title III services to be provided;
- The amount of funding available to provide Title III services; and
- How and when the LEA will make decisions about the delivery of Title III services, including a thorough consideration of the views of the private school officials on the provision of contract services through potential third-party providers.

This consultation must take place before the LEA makes any decisions that impact the opportunities of eligible private school ELs, their teachers, and other educational personnel to receive equitable services under Title III.

D-2. What recourse is available to a private school official if an LEA does not engage in timely and meaningful consultation or does not provide Title III equitable services?

If a private school official believes that timely and meaningful consultation has not occurred or that the LEA has not provided Title III services to eligible private school ELs, the private school official should first discuss this matter with the LEA official responsible for coordinating the consultation between the two entities. The private school official may also contact the LEA's Title III director or superintendent to ask for assistance. If the response at the LEA level is not satisfactory, the private school official may contact the SEA official responsible for ensuring that Title III services are provided at the LEA level.

If the problem is not resolved at the LEA level, a private school official may file a formal complaint with the SEA about an LEA's failure to consult with private school officials or provide equitable services to private school students, their teachers, and other educational personnel. The complaint must be in writing and include: a statement that the LEA has violated a requirement of a Federal statute or regulation that applies to Title III 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 CFR § 299.12). The SEA's resolution or failure to resolve the matter in a reasonable period of time may be appealed to the Secretary of Education.

For additional information on filing complaints for programs governed by the Title IX Uniform Provisions, see the Department's Title IX NRG on Equitable Services to Eligible

Private School Students and Teachers, March 2009 (Section H. Complaints and Bypass) located at: <http://www.ed.gov/policy/elsec/guid/equitableservicesguidance.doc>.

D-3. Do the parental notification requirements in Section 3302 of the *ESEA* apply to parents of ELs in private schools?

No. The parental notification requirements in Section 3302 of the *ESEA* do not apply to parents of ELs in private schools.

However, in the consultation process, an LEA is encouraged to discuss with the private school official how parents of the private school ELs will be made aware of the Title III services and how those services will meet their children's needs.

E. ELIGIBILITY AND IDENTIFICATION OF ELs AND IMMIGRANT CHILDREN AND YOUTH IN PRIVATE SCHOOLS

For additional information on eligibility for programs governed by the Title IX Uniform Provisions, see the Department's Title IX NRG on Equitable Services for Eligible Private School Students and Teachers, March 2009 (Section E. Eligibility) located at: <http://www.ed.gov/policy/elsec/guid/equitableservicesguidance.doc>.

E-1. Who is eligible to receive Title III services?

To be eligible for Title III services for ELs, a private school student must be enrolled in a nonprofit private elementary or secondary school in the geographic area served by an LEA that receives a Title III subgrant for ELs and must meet the definition of LEP under Section 9101(25) of the *ESEA*.

To be eligible for Title III services for immigrant children and youth, a private school student must be enrolled in a nonprofit private elementary or secondary school in the geographic area served by an LEA that receives a Title III subgrant for immigrant children and youth and must meet the definition of immigrant children and youth under Section 3301(6) of the *ESEA*.

Private school teachers and other educational personnel who instruct private school ELs may receive professional development under Title III. The extent to which private school teachers and other educational personnel would receive professional development under Title III would be determined during the consultation process.

E-2. What are some examples of how an LEA might identify students in private schools who are eligible for Title III services?

In consultation with private school officials, an LEA must establish objective criteria to determine which private school children are eligible for Title III services. For example, an LEA and a private school official may decide to identify ELs based on: (1) responses to a primary home language other than English (PHLOTE) survey, and (2) scores on English language proficiency (ELP) assessments.

To facilitate the identification of ELs using the PHLOTE survey and ELP assessments, the private school official may provide to the LEA the names and grade levels of the private school children who, based on parent responses to the PHLOTE survey, are potentially ELs. LEA representatives may then work with the private school official to identify a time when LEA staff can administer the ELP assessment to those private school students. Alternately, the LEA may provide training to private school officials and/or teachers so that they may administer the assessment themselves. In either instance, the LEA must indicate which children have been identified as ELs.

An LEA is responsible for ensuring that private school students are appropriately identified as ELs and cannot require a private school to administer an ELP assessment as a condition for a private school's ELs to receive equitable services under Title III.

E-3. Is the citizenship, immigration status, or residency of a student enrolled in a private school relevant to whether that student is eligible to receive Title III services?

No. A student's citizenship, immigration status, and residency are not relevant in determining eligibility for Title III services.

E-4. May an LEA use Title III funds to pay for the initial ELP assessment for private school students?

An LEA may use Title III funds to pay for the initial ELP assessment for private school students in cases where the use of such funds would not supplant State, local, or other Federal funds that would otherwise be used for such purposes. In addition, an LEA may only use Title III funds to pay for the initial ELP assessment where the assessment is supplemental to, but does not supplant, the level of services that would, in the absence of the Title III services, be available to participating students, their teachers, and other educational personnel. Under Section 3115(g) of the *ESEA*, an LEA may not use Title III funds to pay for costs that would be covered by State, local, or other Federal funds in the absence of the Title III grant, and under 34 CFR § 299.8, an LEA may use Title III funds to provide services that supplement, and in no case supplant, the level of services that would, in the absence of the Title III services, be available to participating ELs, their teachers, and other educational personnel in the private school. For example, if State law requires LEAs to assess all potential ELs attending public and private schools in their jurisdiction for purposes of confirming that those students are, in fact, ELs, the use of Title III funds for an ELP assessment for identification of students attending private schools would be prohibited by the non-supplanting requirement. An SEA or LEA that receives Title III funds must ensure that any use of these funds does not violate Title III's non-supplanting requirement or the supplement, not supplant requirement in 34 CFR § 299.8.

Assuming the use of Title III funds for the initial ELP assessment for private school students does not violate the supplanting prohibitions, an LEA may include the costs of administering the ELP assessment, LEA training to private school officials on assessment administration, and analysis of private school student results in the calculation of equal expenditures for educational services and other benefits.

E-5. May a private school develop its own ELP assessment for identifying ELs enrolled in the private school?

Under Title III, an LEA is required to use criteria for identifying ELs that are consistent with the definition of LEP under Section 9101(25) of the *ESEA* (see E-1). While a private school may develop its own ELP assessment for identifying ELs, this assessment must be valid and reliable, and must utilize objective criteria that would be comparable to an ELP assessment used by the State to identify public school ELs. Thus, to the extent a private school has a process for identifying ELs, this process should be discussed during the timely and meaningful consultation process between the LEA and private school officials. As with all decisions regarding the provision of Title III equitable services, the LEA, after timely and meaningful consultation with private school officials, makes the final decision regarding the process for identifying ELs.

E-6. Does Title III require an LEA to administer the State's annual ELP assessment for ELs in private schools?

No. Title III does not require an LEA to administer the State's annual ELP assessment for ELs in private schools. If the LEA and private school official, after the timely and meaningful consultation, decide to administer the State's annual ELP assessment to the private school's ELs, the cost for that assessment may be paid for with Title III funds in cases where the use of such funds would not supplant other Federal, State, or local funds that may be used for such purposes, and where the assessment would be supplemental to the level of services that the private school students would receive in the absence of the Title III services, as noted above.

E-7. Must an SEA include private school ELs in an LEA's Title III annual measurable achievement objectives (AMAO) calculations?

No. An SEA is not required to include private school ELs in an LEA's Title III AMAO calculations.

F. SERVICES FOR PRIVATE SCHOOL STUDENTS, THEIR TEACHERS, AND OTHER EDUCATIONAL PERSONNEL

For additional information on the delivery of equitable services for programs governed by the Title IX Uniform Provisions, see the Department's Title IX NRG on Equitable Services for Eligible Private School Students and Teachers, March 2009 (Section G. Delivery of Equitable Services) located at:

<http://www.ed.gov/policy/elsec/guid/equitableserviceguidance.doc>.

F-1. How does an LEA determine the Title III services it will provide to private school ELs, their teachers, and other educational personnel?

An LEA, in consultation with private school officials, determines the appropriate Title III services based on the needs of the eligible private school students, their teachers, and other educational personnel and the amount of funds available for such services pursuant to the

equal expenditure requirements (see Section 9501(a)(4) of the *ESEA*). The Title III services provided by the LEA for private school ELs should be designed to meet their educational needs and supplement the educational services provided by the private school. Services may be provided directly by employees of the LEA or through contract by the LEA with an individual, association, agency, organization, or other entity. LEAs or contractors that provide such services must not discriminate on the basis of race, color, national origin, sex, disability, or age in providing such services. Title III services or benefits must be secular, neutral, and non-ideological.

F-2. What are some examples of the Title III services that an LEA may provide to private school ELs, their teachers, and other educational personnel?

Some examples of the Title III services that an LEA may provide to private school ELs, their teachers, and other educational personnel include:

- Tutoring for ELs before, during, or after school hours;
- Professional development for private school teachers of ELs;
- Summer school programs to provide English language instruction for ELs;
- Administration of an ELP assessment for identification of ELs and/or for the purpose of evaluating the effectiveness of services, including the provision of test booklets, teacher training, and stipends to teachers to administer assessments; and
- Provision of supplemental instructional materials and supplies. These materials and supplies must be supplemental to what the private school would be required to provide in the absence of the Title III services. These materials and supplies must also be clearly labeled and identified as the LEA's property, and must be secular, neutral, and non-ideological. The LEA is required to maintain oversight of all materials and supplies purchased with Title III funds.

F-3. Must a teacher employed by an LEA to provide Title III services to ELs enrolled in a private school meet the language fluency requirements under Section 3116(c) of the *ESEA*?

Yes. Like teachers serving public school ELs, a teacher who is an LEA employee providing Title III services to private school ELs must be fluent in English and any other language used for instruction, including having written and oral communication skills.

F-4. If an LEA contracts with a third-party to provide Title III services to ELs enrolled in a private school, must a teacher who is employed by this third-party meet the language fluency requirements under Section 3116(c) of the *ESEA*?

No. The Title III teacher language fluency requirement only applies to a teacher who is directly employed by the LEA. If the LEA uses a third-party contract employee to serve private school ELs, the LEA must follow State law in determining the applicable State licensure and certification requirements for its employees and contractors.

G. EXPENDITURES

For additional information on equal expenditures for programs governed by the Title IX Uniform Provisions, see the Department's Title IX NRG on Equitable Services for Eligible Private School Students and Teachers, March 2009 (Section F. Expenditures) located at: <http://www.ed.gov/policy/elsec/guid/equitableserguidance.doc>.

G-1. How does an LEA determine the amount of expenditures for Title III services for private school ELs?

Section 9501(a)(4) of the *ESEA* requires that expenditures for services to private school students, their teachers, and other educational personnel be equal to the expenditures for services to public school students, their teachers, and other educational personnel, taking into account the number and educational needs of the students, their teachers, and other educational personnel to be served. In general, in calculating the per-pupil Title III allocation, the LEA should use the number of students eligible for Title III services (i.e., those students who have been identified as ELs under the *ESEA*). As with other decisions affecting services to private school students, LEAs should consult with private school officials on the method for determining Title III equal expenditures, and the resulting methodology should reasonably reflect the relative number and educational needs of the private school ELs. At all times, the LEA must remain in control of the Title III funds.

G-2. What is the timeline for Title III funding to SEAs and LEAs?

The Department generally announces preliminary Title III allocations in March and actual allocations in May of each year. The timeline for SEA notification to an LEA of its preliminary and actual allocation will vary by State but generally occurs relatively soon after the Department notifies the SEA. The Department generally awards Title III funds to SEAs on July 1 of each year. LEAs complete a local application and submit it for review and approval by the SEA. Upon approval, SEAs generally award Title III funds to their LEAs.

G-3. May an LEA reimburse a private school for providing Title III services or materials to ELs, their teachers, or other educational personnel?

No. An LEA may not reimburse a private school for services or materials purchased by the private school under Title III. However, an LEA may reimburse private school teachers and other educational personnel for pre-approved Title III professional development that is otherwise an allowable use of Federal funds.

H. RESOURCES

For additional information on resources for programs governed by the Title IX Uniform Provisions, see the Department's Title IX NRG on Equitable Services for Eligible Private School Students and Teachers, March 2009 (Section J. Resources) located at: <http://www.ed.gov/policy/elsec/guid/equitableserguidance.doc>.

H-1. What resources are available to assist in the provision of Title III equitable services to private school ELs, their teachers, and other educational personnel?

Other resources available to assist in the provision of Title III equitable services to private school students, their teachers, and other educational personnel include:

- *ESEA*, Title IX, Part E, Uniform Provisions, Subpart 1, Private Schools, Sections 9501-9506: www2.ed.gov/policy/elsec/leg/esea02/pg1111.html.
- CFR, Title 34, Part 299, Subpart E – Services to Private School Students and Teachers: www.ecfr.gov/cgi-bin/text-idx?SID=514569d5be7b7e6e7c7eeced298ba222&node=pt34.1.299&rgn=div5. See also, EDGAR, 34 CFR Part 76, Sections 76.650-76.662 (Participation of Students Enrolled in Private Schools): www.ecfr.gov/cgi-bin/text-idx?SID=393301a7cdccca1ea71f18aae51824e7&node=34:1.1.1.1.23&rgn=div5#sg34.1.76_1600.sg12.
- Department NRG on Title IX, Part E, Uniform Provisions, Subpart 1 – Private Schools: Equitable Services for Eligible Private School Students and Teachers and Other Educational Personnel, (March 2009): www.ed.gov/policy/elsec/guid/equitableseguidance.doc.
- Office of Management and Budget, 2 CFR Chapter 1, Chapter II, Part 200, et al. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards: http://www.ecfr.gov/cgi-bin/text-idx?SID=6214841a79953f26c5c230d72d6b70a1&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl.

