



Texas  
Education  
Agency

Texas Education Agency

**NCLB Program Coordination**



Cory Green, Senior Director



**No Child Left Behind**

**Public Law 107-110**



GUIDANCE FOR THE IMPLEMENTATION  
OF  
**TITLE I, PART A**  
IMPROVING BASIC PROGRAMS  
OPERATED BY LOCAL EDUCATION AGENCIES

Additional USDE Guidance on Uses of Funds  
Available at [http://www.tea.state.tx.us/index4.aspx?id=4478&menu\\_id=798](http://www.tea.state.tx.us/index4.aspx?id=4478&menu_id=798)

DIVISION OF NCLB PROGRAM COORDINATION  
TEXAS EDUCATION AGENCY

REVISED FEBRUARY 1, 2010

BASED ON STATUTE, REGULATIONS, AND USDE GUIDANCE DOCUMENTS

## Participation of Eligible Children In Private Nonprofit Schools

Under Title I, Part A, LEAs are required to provide services for eligible private school students, as well as eligible public school students. In particular, Public Law 107-110, Section 1120 NCLB requires a participating LEA to provide eligible children attending private nonprofit elementary and secondary schools, their teachers, and their families with Title I services or other benefits that are equitable to those provided to eligible public school children, their teachers, and their families.

The Title I services for private school students must be developed in consultation with officials of the private nonprofit schools. The NCLB strengthened these requirements by, among other things, requiring meetings with private school officials and a written affirmation signed by private school officials that the required consultation has occurred.

The amount of Title I funds allocated to each participating public school attendance area is determined mainly on the basis of the total number of low-income students—both public and private--residing in each area. Expenditures for private school students in each area generally are determined based on the proportion of students from low-income families residing in that area who attend private school.

The Title I services provided by the LEA for private school participants are designed to meet their educational needs and supplement the educational services provided by the private school. These services may be provided by the LEA, or by a contractor who is independent of the private school and any religious organization. Title I services or benefits must be secular, neutral, and nonideological.

Note: All references in this guidance to Title I services to “private school” students are specifically only allowable for serving private nonprofit schools.

### Question 83: Which private school children are eligible for Title I, Part A services?

Eligible private school children are children who—

- reside in participating public school attendance areas of the LEA, regardless of whether the private nonprofit school they attend is located in the LEA; and
- are identified as failing, or most at risk of failing, to meet the state’s student academic achievement standards on the basis of multiple, educationally related, objective criteria established by the LEA. As with Targeted Assistance campuses, children from preschool through grade 2 must be selected solely on the basis of such criteria as teacher judgment, interviews with parents, and developmentally appropriate measures. Certain children would be eligible by virtue of their status: for example, homeless children and children who in the preceding two years participated in Head Start; Even Start; Title I, Part A preschool services; or Title I, Part C services. However, the criterion that a student is failing, or most at risk of failing, to meet the identified academic achievement standards is, for the majority of private school children, likely to be the criterion by which eligibility for Title I, Part A services will be determined.

NOTE: If an LEA elects to “skip” a public school campus, the LEA is still required to provide the eligible private school children who reside within the boundaries of the “Skipped” campus’s attendance area the opportunity to receive Title I, Part A services.

In consultation with private school officials, an LEA must establish criteria to determine which private school children are eligible and, within the eligible group, which children will be served. To the extent appropriate, the LEA must select private school children who are failing, or most at risk of failing, to meet the identified academic achievement standards that are comparable to those required by the state's academic content and student academic achievement standards.

After students are selected, the LEA, in consultation with private school officials, determines what Title I, Part A services are to be provided. The private school students' needs will determine what Title I, Part A services are appropriate, and services may be provided in subject areas or grade levels that are different from those provided to public school students. The type of services provided must give reasonable promise that the students will make adequate progress toward achieving the identified academic achievement standards.

**Question 84: Must the private school have nonprofit status in order for the students to be considered for Title I, Part A services?**

Yes. The private school must have official nonprofit status in order for students to be considered for Title I, Part A services. The school will have a tax-exempt identification number if it has been granted nonprofit status. The LEA may verify a school's nonprofit status by telephoning the Internal Revenue Service at 1-800-829-1040 and asking for verification of the school's tax-exempt identification number.

**Question 85: Is a home school considered a private school?**

Yes. A home school is considered a private school. However, in order for its students to be considered for Title I, Part A services, the home school must have official nonprofit status (i.e., have a tax-exempt identification number).

**Question 86: What documentation must the LEA maintain with regard to private schools?**

LEAs must maintain in its records, and provide to the Texas Education Agency on request, a written affirmation, signed by officials of each private school with participating children that the required consultation has occurred.

If a private school declines Title I, Part A services for its eligible students, the LEA must maintain documentation that the LEA offered the opportunity to participate in a timely manner.

The LEA must also maintain documentation to demonstrate how the number of low-income children attending the private school was determined and that the Title I, Part A services offered to eligible children were equitable.

**Question 113: What is consultation?**

The requirements for consultation are in §1120(b) of the Title I statute and §200.63 of the Title I regulations. Consultation involves discussions between public and private school officials on key issues that affect the ability of eligible private school students to participate equitably in Title I programs. Effective consultation provides a genuine opportunity for all parties to express their views and to have those views considered. Successful consultation establishes positive and productive working

relationships that make planning easier and ensure that the Title I services provided meet the needs of eligible students.

A unilateral offer of services by an LEA with no opportunity for discussion is not adequate consultation. Only after discussing key issues relating to the provision of Title I services should the LEA make its final decisions with respect to the Title I services to be provided to eligible private school children, their teachers, and their families.

**Question 114: How do LEAs begin the consultation process?**

Annually an LEA must contact officials of private nonprofit schools with children who reside in the LEA regardless of whether the private nonprofit school they attend is located in the LEA. 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 at which LEA officials explain the intent of Title I and the roles of public and private school officials and provide opportunities for the private school officials to ask questions. It is not adequate consultation merely to send a letter to officials of the private schools explaining the intent of Title I.

**Question 115: When does an LEA consult with private school officials?**

Consultation by an LEA must include meetings between the LEA and appropriate private school officials and must occur before the LEA makes any decision that affects the opportunity for eligible private school children, their teachers, and their families to participate in Title I programs. For example, if the LEA signs teacher contracts or orders supplies and equipment for the Title I program in the spring, the LEA must consult with the appropriate private school officials before signing those teacher contracts with Title I teachers or ordering supplies and equipment to provide Title I services for private school students.

**Question 116: Who participates in the consultation process?**

Consultation includes appropriate public school officials and representatives of private schools and their central administrative offices, if appropriate. Private school officials can facilitate consultation by informing the LEA of which private school officials should be included in the consultation process and their roles and authority.

**Question 117: How long does consultation continue?**

An LEA must meet with appropriate private school officials throughout the implementation and assessment of Title I services. This consultation must include early discussions to prepare for the next school year so that there is a timely start of the Title I program at the beginning of each school year, and throughout its implementation and assessment of services.

**Question 118: What are the requirements for consultation?**

Under §200.63 of the Title I regulations consultation must, at a minimum, address the following issues:

- How the LEA will identify the needs of eligible private school children.
- What services the LEA will offer to eligible private school children.
- How and when the LEA will make decisions about the delivery of services.
- How, where, and by whom the LEA will provide services to eligible private school children.

- How the LEA will assess academically the services to private school children in accordance with §200.10 of the Title I regulations, and how the LEA will use the results of that assessment to improve Title I services.
- The size and scope of the equitable services that the LEA will provide to eligible private school children and, consistent with §200.64 of the Title I regulations, the proportion of its Title I funds that the LEA will allocate for these services and the amount of funds that the LEA reserves from its Title I allocation for the purposes listed in §200.77 of the Title I regulations.
- The method, or the sources of data, that the LEA will use (under §200.78 of the Title I regulations) to determine the number of private school children from low-income families residing in participating public school attendance areas, including whether the LEA will extrapolate data if a survey is used.
- The services the LEA will provide to teachers and families of participating private school children.

Consultation must also include –

- Discussion of service delivery mechanisms the LEA will use to provide services; and
- Thorough consideration and analysis of the views of the private school officials on whether the LEA should contract with a third-party provider. If the LEA disagrees with the views of the private school officials on that issue, the LEA must provide in writing to those officials the reasons why the LEA has chosen not to use a third-party contractor.

**Question 119: What records on consultation must an LEA maintain?**

Each LEA must maintain and provide to the TEA upon request a written affirmation, signed by officials of each private school with participating children or appropriate representatives of the private school officials, that the required consultation has occurred.

**Question 120: Because consultation is an on-going process, when should private school officials or their representative(s) sign the required written affirmation that appropriate consultation has taken place?**

The affirmation should be signed when consultation on the planning and design of the next year's program has been completed. The exact timing of signing the affirmation should be a consultation topic. After the affirmation is obtained, consultation continues through the implementation and assessment of services.

**Question 121: Do private school officials have the right to complain?**

Private school officials have the right to complain to the TEA if they believe that an LEA did not engage in timely and meaningful consultation or did not consider their views.

**Question 122: Must an LEA provide a copy of its Title I application if a private school official requests it?**

Yes. An LEA must provide a copy of its Title I sections of the NCLB Consolidated application when a private school official requests it.

**Question 123: Once the participating public school attendance areas have been established, how does an LEA allocate funds for Title I services under §1113(c) of the Title I statute for participating private school students?**

Once the participating public school attendance areas have been established, under §1113(c) of Title I, an LEA calculates the per-pupil allocation (PPA) for each participating public school attendance area. Then, based on the total number of children from low-income families residing in each attendance area attending either public or private schools, the LEA calculates the total amount of funds for each area. From this amount, the LEA reserves an amount of funds for the private school children (equal to the PPA multiplied by the number of low-income private school students in the area) to provide equitable services to eligible private school participants.

Thus, an LEA, in consultation with private school officials, must obtain the best available poverty data on private school children residing in participating public school attendance areas. Because private school officials may have access to poverty information not easily accessible to public school officials, it is important that public and private school officials consult and cooperate in this effort.

Public school attendance area	<u>Column A</u> Per pupil allocation (PPA) by attendance area	<u>Column B</u> Number of public school low-income children by attendance area	<u>Column C</u> Number of private school low-income children by attendance area	<u>Column D</u> Total allocation for each public school [Col. A multiplied by Col. B]	<u>Column E</u> Amount available for Title I services to private school children [Col. A multiplied by Col. C]
A	\$800	500	130	\$400,000	\$104,000
B	\$700	300	8	\$210,000	\$ 5,600
C	\$600	200	3	\$120,000	\$ 1,800
D	\$500	400	17	\$200,000	\$ 8,500

In this example, eligible public school attendance areas are identified and ranked on the basis of the number of children from low-income families attending public schools.

**Question 124: How does an LEA collect poverty data on private school children?**

Section 1120(c)(1) of the Title I statute and §200.78(2) of the regulations allow an LEA to calculate the number of children who are from low-income families and attend private schools in several ways:

1. Using the same measure of poverty. If available, an LEA should use the same measure of poverty used to count public school children, e.g., free and reduced price lunch data.
2. Using comparable poverty data from a survey and allowing such survey results to be extrapolated when complete actual data are unavailable.
  - a. In order to obtain the number of private school children from low-income families, an LEA may use a survey to obtain poverty data comparable to those used for public school students. To the extent possible, the survey must protect the identity of families of private school students. The only information necessary for an LEA to collect in such a survey of private school children is- -
    - (1) geographic information verifying residence in a participating public school attendance area;
    - (2) grade level of each child; and
    - (3) income level of parents.

An LEA should never require that the private school officials give the names of low-income families.
  - b. After obtaining income data from a representative sample of families with children in private school, an LEA may extrapolate those data to the entire private school student population if complete actual data are unavailable. The LEA should take care to ensure that the data are truly representative of the private school students in the district.

**EXAMPLES OF REPRESENTATIVE SAMPLE AND EXTRAPOLATION:**

Column 1	Column 2	Column 3	Column 4	Column 5
Public school attendance area	# of resident private school children	# of private school children submitting surveys	# of low-income private school children from survey	extrapolated # of low-income private school children
A	150	115	100	130
B	20	10	4	8

CALCULATIONS:

Col. 5 (extrapolated number of low-income children) =

$$\frac{\text{Col. 4 (\# of low-income on survey)} \times \text{Col. 2 (\# resident private school children)}}{\text{Col. 3 (total submitted surveys)}}$$

Or  $\frac{100 \text{ times } 150}{115} = 130$

$$\frac{4 \text{ times } 20}{10} = 8$$

3. Using comparable poverty data from a different source. If data from the same source used for public school children are not available, an LEA may use poverty data for private school children that are from a different source than the data it uses for public school children so long as the income threshold in both sources is generally the same.

For example, an LEA uses free and reduced price lunch data but private school children do not participate in the free lunch program; however, private school officials are able to provide an LEA with a count of children who are from low-income families using other sources of poverty data such as Temporary Assistance to Needy Families (TANF) or tuition scholarship programs. If the different sources use different definitions of low-income, an LEA would need to adjust the results accordingly.

4. Using proportionality. An LEA may apply the low-income percentage of each participating public school attendance area to the number of private school children who reside in that school attendance area. To do this, an LEA will need the addresses and grade levels of those students attending private schools.

---

#### EXAMPLE OF PROPORTIONALITY CALCULATIONS:

---

An LEA calculates the percent of poverty of a public school attendance area to be 60 percent. The LEA then applies the poverty percentage of the public school attendance area to the number of private school children residing in that public school attendance area. For example, if the number of private school children residing in the public school attendance area is 50, then 60 percent of 50 children or 30 children are considered to be from low-income families. The LEA calculates the per-pupil amount on this number (30 children).

5. Using an equated measure. An LEA may use an equated measure of low-income by correlating sources of data—that is, determining the proportional relationship between two sources of data on public school children and applying that ratio to a known source of data on private school children. For example, an LEA uses free and reduced-price lunch data, but those data are not available for private school students. However, if TANF data are available, the LEA could determine an equated measure of poor students in private schools based on free and reduced-price lunch data by correlating the two sets of data as follows: TANF in the public school is to free and reduced price-lunch as TANF in private schools is to "X."

$$\frac{\text{TANF (public)}}{\text{Free \& reduced price lunch (public)}} = \frac{\text{TANF (private)}}{\text{X (private)}}$$

In this example, the LEA may then use the equated number of private school students based on free and reduced-price lunch data ("X") as the number of poor private school students.



**Question 125: How does an LEA determine if it should collect the poverty data annually versus biennially (every two years) and must the collection of poverty data be uniform across the district?**

Section 1120(a)(4) of the Title I statute permits an LEA to determine the number of children from low-income families who attend private schools "each year or every 2 years."

This provision was included to reduce the burden of annually collecting poverty data from private schools, particularly if those private schools do not otherwise maintain poverty data and so have to obtain those data through a survey. An LEA should consult with appropriate private school officials about the availability of poverty data on private school students and by this process determine whether it would be more feasible to collect annually or biennially. It is not necessary that an LEA adopt a uniform procedure with regard to all private schools. For example, if some private schools have free and reduced price lunch data available, the LEA could collect those data annually. For other private schools that rely on a survey, the LEA could collect data biennially. If data are collected from different years, the LEA should ensure that the data for the district, taken as a whole, appropriately and consistently represent concentrations of low-income students.

**Question 126: If an LEA does not collect the names of low-income families, how do LEA officials or auditors determine that the poverty numbers provided by the private school officials are accurate?**

Private school officials should maintain the poverty data in their files. If LEA officials or auditors wish to review the poverty data, they may review the data at the private schools.

**Question 127: Is there a preferred method for collecting poverty data?**

If the same data source is available for public and private schools, then that is the preferred method for determining the number of public and private school children from low-income families because of comparable data. However, if the data used for public school children are not available for the private school children, then, after consultation with the appropriate private school officials, the other methods described above may be used to collect poverty data for private school students.

**Question 128: May an LEA use more than one method of collecting poverty data?**

Yes. Since some private schools within an LEA do not participate in the free and reduced price lunch program, it may be necessary for an LEA, after consultation with appropriate private school officials, to use more than one method of collecting data on children living in poverty. However, the LEA must ensure that there are no duplicate counts and the methods used have comparable income levels.

**Question 129: May an LEA reserve funds off the top of its Title I allocation before it allocates funds to participating public school attendance areas?**

Yes. The provisions for allocating Title I funds are in §200.77 of the Title I regulations. Before allocating Title I funds to participating public school attendance areas, an LEA must reserve a portion of its Title I allocation off the top, as needed, to administer Title I programs for public and private school children, including paying any special capital expenses.

**Question 130: What are the requirements if an LEA reserves Title I funds off the top for district-wide instructional programs for public elementary and secondary schools?**

If an LEA reserves funds off the top of its Title I allocation for district-wide instructional programs for public elementary and secondary school students, the LEA must also provide from these funds, as applicable, equitable services to eligible private school children. The amount of funds available to provide equitable services from the applicable reserved funds must be proportional to the number of private school children from low-income families residing in participating public school attendance areas.

**EXAMPLE OF EQUITABLE CALCULATIONS FOR DISTRICT-WIDE ACTIVITIES:**

An LEA reserves \$500,000 for a district-wide reading initiative. The number of public and private school children from low-income families residing in participating Title I attendance areas is 25,000. Five percent of the 25,000 children from low-income families attend private schools; thus five percent of the \$500,000 reservation, or \$25,000, is available for equitable services for private school participants. Thus, the LEA has \$475,000 for its public school district-wide reading initiative and \$25,000 for Title I services to private school participants. The Title I program funded with this \$25,000 must meet the needs of the private school participants but does not have to be identical to the district-wide reading initiative. The LEA must consult with appropriate private school officials to determine how these funds will be used to benefit private school participants.

**Question 131: How does the LEA determine equal expenditures?**

Expenditures for educational services and other benefits to eligible private school children shall be equal to the proportion of funds allocated to participating school attendance areas based on the number of children from low-income families who attend private schools, which the local educational agency may determine each year or every 2 years.

In the aggregate, funds reserved by an LEA under Title I, Part A for services to eligible private school children must be equal to the amount of funds generated by private school children from low-income families. In reserving funds off the top of its allocation, if the LEA reserves funds for instructional activities for public elementary or secondary school students at the district level, the LEA must provide equitable services to eligible private school children. The LEA must base equitable services from these reserved funds on the proportion of private school children from low-income families residing in participating public school attendance areas.

**Question 132: How does the LEA determine services on an equitable basis?**

The services that an LEA provides to eligible private school children must be equitable in comparison to the services and other benefits that the LEA provides to public school children participating Title I, Part A.

Services are equitable if the LEA—

- Addresses and assesses the specific needs and educational progress of eligible private school children on a comparable basis as public school children;
- Meets the equal expenditure requirements; and

- Provides private school children with an opportunity to participate that—
  - Is equitable to the opportunity provided to public school children; and
  - Provides reasonable promise of the private school children achieving the high levels called for by the State's student academic achievement standards.

The LEA must provide services to eligible private school children either directly or through arrangements with another LEA or a third-party provider.

The LEA makes the final decision with respect to the services it will provide to eligible private school children.

**Question 133: Does the equitable services requirement in §1120(a) of the Title I statute apply to LEA set-asides for preschool programs?**

The equitable services requirement applies only to children who attend private elementary and secondary schools and does not apply to children attending private preschool programs.

**Question 134: Does the equitable services requirement in §1120(a) apply if the LEA takes funds off the top of its Title I allocation for summer school programs?**

Since a Title I summer school program provides instructional services, §200.64(a)(2)(i)(A) of the Title I regulations would apply and would require the LEA to provide equitable services to eligible private school children. The LEA must base equitable services supported with the reserved funds on the proportion of private school children from low-income families residing in participating public school attendance areas.

**Question 135: If funds are transferred into the Title I program from other ESEA programs under the transferability or REAP authority, do the requirements relating to the equitable participation of private school students apply to these funds?**

Yes. With respect to any funds transferred into the Title I program, the LEA must provide equitable services for private school students.

**Question 136: May an LEA transfer funds into the Title I program solely to provide services for private school students?**

No. The LEA may not transfer to the Title I program only the portion of funds available for services for private school students from one or more of the programs whose funds may be transferred. Rather, before it transfers any funds, the LEA must engage in timely and meaningful consultation with appropriate private school officials. Assuming the LEA decides to transfer funds, it provides services to public and private school students and teachers under the program(s) to which the funds are transferred.

**Question 137: What are the options available for using funds for instructional services to private school participants?**

In consultation, the LEA and private school officials may choose one or both of the following options for using the funds reserved for instructional services for eligible private school children.

- (1) On a School-by-School Basis: Provide equitable services to eligible children in each private school with the funds allocated for the children who reside in participating public school attendance areas and attend that private school.
- (2) Pooling Option: Combine funds allocated for private school children in all participating areas to create a pool of funds from which the LEA provides equitable services to eligible private school children who are in the greatest educational need of those services and reside in participating public school attendance areas. If it pursues this option, the LEA, in consultation with officials from the private schools, must establish criteria to determine the eligible private school students in greatest educational need who should receive services. Under this option, the services provided to eligible children attending a particular private school do not depend on the amount of funds allocated for children in that school.

**Question 138: If an LEA, in consultation with private school officials, decides to pool funds allocated for private school children and, later, eligible low-achieving children in some schools choose not to participate in the Title I programs, do the funds allocated for children in these private schools remain in the pool?**

Yes. An LEA allocates Title I funds to participating public school attendance areas using data on the number of low-income children, both public and private, who reside in that public school attendance area. Once funds are allocated, if a particular private school with eligible low-achieving children does not wish to have its students participate in the Title I program, any funds allocated for children in that private school remain in the pool.

**Question 139: If there are no children from low-income families attending a private school, and so no funds are allocated for Title I services, do the private school children who meet the educational criteria obtain Title I services?**

No, since there are no children from low-income families to warrant the allocation of instructional funds and the LEA is not pooling the funds, then children in that private school do not receive Title I services because there are no funds available to provide services.

If the LEA were pooling funds, then eligible low-achieving children who meet the educational criteria and attend private schools with no children from low-income families may receive Title I services.

**Question 140: When an LEA elects not to serve an eligible public school attendance area, as permitted under §1113(b)(1)(D) of the Title I statute, what are the procedures for serving the private school children who reside in that attendance area?**

An LEA may elect not to serve ("skip") an eligible public school attendance area or school that has a higher percentage of children from low-income families than other schools it elects to serve if:

- (1) the school meets the comparability requirements,
- (2) the school is receiving supplemental funds from other State or local sources that are spent according to the requirements of either §§1114 or 1115, and
- (3) the funds expended from such other sources equal or exceed the amount that would be provided under Part A.

Eligible private school children who reside in a “skipped” attendance area, however, must be provided Title I services even though the public school attendance area is skipped.

In implementing this provision, therefore, an LEA must determine which school attendance areas would have received Title I funds absent any skipping and what the per-pupil allocations for those areas would have been. The LEA must then determine the amount of funds that would have been allocated for private school children residing in those school attendance areas. This amount is included in the funds available for serving eligible private school children residing in the LEA. If the LEA skips one or more of its higher-ranked school attendance areas, enabling the LEA to use Title I funds to serve additional lower-ranked areas, low-income private school children residing in those additional areas would not warrant the allocation of funds.

**Question 141: How are private school children to be identified as residing in a participating public school attendance area if an LEA is operating under an open enrollment, desegregation, or magnet plan?**

If an LEA identifies a public school as eligible on the basis of enrollment, rather than serving an eligible school attendance area, the LEA must, in consultation with private school officials, determine an equitable way to identify eligible private school children. For example, the LEA may assign a private school child to the public school attendance area in which the child resides or to the public school that the child would have attended if not enrolled in a private school.

**Question 142: What private school students are eligible for Title I services**

To be eligible for Title I services, a private school child must reside in a participating public school attendance area and must meet the requirements in §1115(b) of Title I, which requires the LEA to use multiple, educationally related, objective criteria in selecting children to participate in the Title I program. Under that section, certain children may be identified as eligible solely by virtue of their status: for example, homeless children and children who in the preceding two years had participated in Head Start, Even Start, Early Reading First, a Title I preschool program, or a Title I, Part C (Migrant Education) program. (See question 110 above.)

**Question 143: What are the criteria for selecting private school children from preschool through grade 2?**

Children from preschool through grade 2 are selected solely on the basis of such criteria as teacher judgment, interviews with parents, and developmentally appropriate measures.

**Question 144: Are private school children from low-income families automatically eligible for Title I services?**

No. Student eligibility for Title I services for private school children is determined by (1) residence in a participating public school attendance area, and (2) educational need. Poverty is not a criterion.

**Question 145: How are the criteria determined?**

In consultation with private school officials, an LEA must establish multiple, educationally related, objective criteria to determine which private school children are eligible for Title I services, and, within

the eligible group, which children will be served. To the extent appropriate, the LEA must select private school children who are failing, or most at risk of failing, to meet high student academic achievement standards

**Question 146: May Title I funds be used to identify eligible private school students?**

Title I funds may not be used to identify private school children who are eligible to participate. Title I funds, however, may be used to select participants from among those who are eligible and to determine the specific educational needs of those children.

**Question 147: May an LEA require private school officials to verify that students attending their school reside in a Title I public school attendance area?**

It is an LEA's responsibility to verify that the eligible private school children reside in participating public school attendance areas. The officials of the private school may help with this determination if they wish. However, the LEA cannot require private school officials to do this verification.

**Question 148: Once participants are selected, how does an LEA determine what Title I services are to be provided?**

An LEA, in consultation with appropriate private school officials, determines the appropriate Title I services based on the needs of the private school students. Title I services may be provided in subject areas or at grade levels that are different from those provided public school students, as long as these services are provided in the same grade-span as the services provided to public school children. These services must hold reasonable promise that the academic performance of private school participants will improve.

**Question 149: Must the number of private school children served be equal to the number of private school students from low-income families?**

No. The needs of eligible private school children and the amount of funds available determine who is served and what services are provided.

**Question 150: If a school in the attendance area in which private school students reside is operating a schoolwide program, may private school students be offered a schoolwide program also?**

No. Since private schools are not eligible for Title I services, schoolwide programs may not be operated in private schools. However, eligible private school children residing in an area served by a schoolwide public school program must be offered equitable services.

**Question 151: If after receiving an offer of equitable services, the private school officials or parents choose to have the children participate in only some of the services, may the LEA provide only those services?**

Yes. The statute requires that an LEA offer equitable services to private school children, but not that private school children accept or participate in all those services. An LEA meets its responsibility to provide services even if the services are wholly or partially refused by private school officials or parents.

The LEA must continue to offer equitable services each year and cannot presume to reduce the services offered based on what was offered or accepted in the past.

**Question 152: When a child who is most at risk of failing resides in a Title I attendance area in one LEA and attends a private school in another LEA, which LEA is responsible for serving the child?**

The LEA in which the child resides is responsible for providing services to the child, but it may arrange to have services provided by another LEA and reimburse that LEA for costs.

**Question 153: May an LEA establish a minimum number of private school children selected for the program in order to establish a Title I program in the private school? If so, what is the LEA's responsibility to serve children attending private schools with fewer than that minimum number?**

Section 1120(a) of Title I requires that LEAs provide for the participation, on an equitable basis, of eligible children enrolled in private schools. The requirement applies regardless of the number of children attending a private school; there is no minimum number.

However, when the number of eligible children at one location is very small, the cost of establishing certain types of programs to serve them may be prohibitive, especially when these children may be from different grades or have different educational needs. In this case, the LEAs should consider other options. If feasible and equitable, they might adopt methods that are cost-effective for serving small numbers, such as take-home computer programs, individual tutoring programs, professional development activities with the classroom teachers of Title I participants, or other strategies.

**Question 154: If the funds allocated for private school children are not sufficient to provide instructional services, may the funds be used to provide other services, such as professional development or counseling?**

Yes. After consultation with private school officials, an LEA may provide Title I services other than direct instruction if the provision of services, such as counseling, staff development, and parental involvement is appropriate to assist those children identified as failing or most at risk of failing to meet high student academic achievement standards. The LEA must measure the effect of the services on the academic achievement of participating children.

Note: Simply providing the private school with instructional materials and supplies is NOT an option available to the LEA because it is neither a proper Title I program implemented by the LEA nor meets the equitability requirement.

**Question 155: Who is responsible for planning and designing the Title I program?**

After consultation with appropriate private school officials, the LEA must design a Title I program that meets the needs of private school participants. The LEA is responsible for planning, designing, and implementing the Title I program and may not delegate that responsibility to the private schools or their officials.

**Question 156: How does an LEA design a Title I program?**

Consistent with §1115(c) of the Title I statute, the LEA provides a Title I program to private school children, employing methods and instructional strategies for improving academic achievement that have been shown to be effective through scientifically based research. The LEA must also give primary consideration to providing extended learning time and a high-quality curriculum.

Based on the needs of the children to be served, the LEA must provide an instructional program that not only supplements but also is well coordinated with the instruction that the private school children are receiving in their regular classrooms. This program should complement classroom instruction and should not be a separate instructional program.

**Question 157: What types of services are available for private school participants?**

Services for participating private school children include, but are not limited to, the following:

- Instructional services provided by public school employees or third-party contractors.
- Extended-day services.
- Family literacy programs.
- Counseling programs.
- Computer-assisted instruction (CAI).
- Home tutoring.
- Instruction using take-home computers.

**Question 158: For Title I services, may an LEA just provide a private school with instructional materials and supplies paid with Title I funds?**

No. Simply providing the private school with instructional materials and supplies is NOT an option available to the LEA because it is neither a proper Title I program implemented by the LEA nor meets the equitability requirement.

**Question 159: May private school officials order or purchase materials and supplies needed for the Title I program and be reimbursed by an LEA?**

No. Private school officials have no authority to obligate or receive Title I funds. The statute clearly states that the LEA must maintain control of Title I funds, materials, equipment, and property. No Title I funds may be paid to a private school.

**Question 160: When should Title I services for private school participants begin?**

Under the equitable services provision of the Title I statute, the Title I program for private school participants must begin at the same time as the Title I program for public school participants. Therefore, the required consultation should begin early enough so that Title I teachers can be hired and materials ordered in order for the Title I program to start at the beginning of each school year.



**Question 161: What are the obligations of an LEA that does not start the Title I program for private school participants at the same time it starts the Title I program for public school students?**

An LEA is obligated to provide Title I services on an equitable basis, and the expectation is that Title I services start at the beginning of each school year. If the LEA begins the Title I program late in the school year, in order to comply with applicable requirements, the LEA should provide additional services during the remainder of the year and carry over any unspent funds that should have been used to provide equitable services for private school students and add them to the instructional funds for the private school participants for the next school year.

**Question 162: Where may Title I services take place?**

Title I services for private school participants may be provided at various locations, including the private school, neutral sites, or public schools. LEA officials must consult with private school officials before any decision is made about the location of Title I services. If appropriate space is available, the least disruptive and least expensive location will be the private school that the participating children attend.

**Question 163: Title I services be provided in religiously affiliated private schools?**

Yes. In the 1997 case of Agostini v. Felton, the U.S. Supreme Court decided that Title I instructional services may be provided by public school employees in religiously affiliated private schools without violating the Establishment Clause of the United States Constitution.

**Question 164: Must an LEA require the removal of religious symbols in private school classrooms in which Title I services are provided?**

No, the USDE believes that the constitutionality of Title I instructional services provided in a private school will depend on consideration of the program's safeguards viewed as a whole, not of any one factor, such as whether or not there are religious symbols in the space used for that instruction. The USDE does believe, however, that a valid program must contain safeguards to ensure that public employees do not promote religion in the course of carrying out their Title I duties.

**Question 165: May space used for Title I instruction in a private school be used for non-Title I purposes at other times?**

Yes. The LEA should have the exclusive use and control of the Title I space during the time when Title I services are being conducted, but the space may be used for other purposes at other times.

**Question 166: Are private schools required to make space available in their schools for Title I services?**

No. If space is not available in a private school, or if the private school chooses not to make its facilities available to the LEA for this purpose, Title I services must be provided in another location. The LEA still has the responsibility of providing equitable Title I services for private school children under these circumstances, although the services would be at a location outside the private school. The extra costs of providing services at a location outside the private school would be taken "off-the-top" of the LEA's

Title I allocation before funds are allocated for instructional services for public and private school children.

**Question 167: May the Title I teacher use the same textbooks as those used by the private school students in their regular classroom?**

Yes. The Title I teacher may use the same textbooks and materials as those used in the regular private school classroom so long as the textbooks and materials are secular, neutral, and nonideological, and the instructional services supplement and do not replace the instructional program in the participants' regular classrooms.

**Question 168: Who provides the Title I services to private school participants?**

Section 1120(d)(2) of the statute requires that Title I services be provided by either an employee of a public agency (LEA) or through a contract by the public agency (LEA) with an individual, association, agency, or organization. These employees, individuals, associations, agencies, or organizations must be independent of the private school and any religious organization in the provision of those services and such employment or contract must be under the control and supervision of the public agency (LEA).

**Question 169: Must teachers and paraprofessionals hired by an LEA to provide Title I services to private school participants meet the teacher and paraprofessional qualification requirements in §1119?**

Yes. Such teachers and paraprofessionals who provide Title I services to private school participants and are employees of an LEA must meet the qualification requirements within the timeframes specified in §1119 of the statute.

**Question 170: After consultation with the appropriate private school officials, may an LEA employ a third-party contractor to provide Title I services to private school participants?**

Yes. An LEA may provide Title I services directly or indirectly through contracts with public and private agencies, organizations, and institutions so long as those entities are independent of the private school and of any religious organization in the provision of those services. The services may be provided in a private school under the same conditions, and subject to the same limitations, as if the LEA provided the services. It is the LEA's decision who provides the equitable services to the eligible private school students.

**Question 171: If an LEA contracts with a third-party provider, must the third-party provider employ Title I teachers and paraprofessionals that meet the qualification requirements in §1119 of Title I?**

No. The highly qualified personnel requirements only apply to those teachers and paraprofessionals who are directly employed by the LEA.

**Question 172: May an LEA hire a private school teacher to provide Title I services to private school participants?**

Yes, as long as the private school teacher meets the highly qualified teacher standards required in §1119 of the Title I statute and is independent of the private school in the provision of Title I services. The private school teacher can only be employed for Title I purposes outside of the time he or she is employed by the private school and the private school teacher must be under the direct supervision of the LEA with respect to all Title I activities.

**Question 173: How does the requirement in §1119 of the Title I statute that paraprofessionals employed by an LEA work under the direct supervision of a public school teacher apply to the Title I program for private school participants?**

Paraprofessionals providing instructional support must work under the direct supervision of a public school teacher. A paraprofessional works under the direct supervision of a teacher if (1) the teacher prepares the lessons and plans the instructional support activities that the paraprofessional carries out, and (2) the paraprofessional works in close and frequent proximity to the teacher. As a result, a Title I program for private school participants staffed entirely by paraprofessionals is not permitted.

Moreover, Title I-paid paraprofessionals may not work under the supervision of private school teachers.

**Question 174: May an LEA reserve funds for administering programs for private school children?**

Yes. An LEA may reserve an amount that is reasonable and necessary to administer Title I programs for both public and private school children, including special capital expense costs. This reservation for administration, including funds needed to administer Title I programs for private school students, is taken "off-the-top" of the LEA's allocation and not from the funds allocated for Title I services for private school children. Funds for instructional services are allocated after administrative and other "off-the-top" costs are determined.

**Question 175: May third-party contractors incur administrative costs?**

A third-party contractor hired by an LEA to provide services to private school participants may incur administrative costs. These costs must come off the top of the LEA's Title I allocation as administrative costs. The LEA may not charge a third-party contractor's administrative costs to the funds allocated for private school children for instructional services. 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 allocation to pay this portion of the contract.

**Question 176: May Title I funds be used to purchase furniture for a Title I classroom?**

Yes. Title I funds may be used to purchase furniture for a Title I classroom if that cost is reasonable and necessary for the operation of the Title I program; however, the cost of the furniture must be charged to administrative costs. If an LEA purchases furniture with Title I funds, only Title I participants may use it.

**Question 177: What are special capital expenses?**

Special capital expenses refer to expenditures for noninstructional goods and services that were or are still being incurred as a result of implementing alternative delivery systems such as the following:

- Purchase or lease of real and personal property (including mobile educational units and neutral sites).
- Insurance and maintenance costs.
- Transportation between a private school and another site.
- Buy-out leases for mobile vans or neutral space or other costs relating to terminating arrangements for providing Title I services to private school children outside of their private school.
- Other comparable goods and services, which include costs to escort children to and from instructional areas and, in the case of computer-assisted instruction, costs to install equipment and pay for noninstructional computer technicians. (Note: Technicians perform non-instructional duties, such as operating and maintaining computer equipment and keeping order in a Title I CAI classroom. Whether employees should be considered Title I instructional personnel or noninstructional technicians depends on the functions performed by the employees in addition to their job titles or classifications.)

Under §200.77(f) of the Title I regulations, these special capital expenses costs must be considered administrative costs and taken off the top of the LEA's total Title I allocation.

**Question 178: May Title I funds be used to renovate the private school site?**

No.

**Question 179: Are the costs of computer equipment and software considered to be special capital expenses?**

No. Costs for computers and software are considered to be instructional costs and are paid from the funds allocated for instructional services for private school children.

**Question 180: Who is responsible for providing transportation for private school children from the private school to another site to be served by the Title I program?**

If private school children eligible to receive equitable Title I services need to be transported from their private school to another site, the LEA, as the provider of equitable services, has the responsibility of providing that transportation. It is not the responsibility of the private school officials or the participants' parents to provide the necessary transportation. The cost of such transportation is an administrative cost and should not be charged to the instructional funds allocated for private school children.

**Question 181: How does an LEA determine the amount of funds to be used for parental involvement activities for parents of participating private school students?**

Section 1118 of Title I requires an LEA to reserve funds off the top of its Title I allocation to carry out required Title I parental involvement activities. Section 200.65 of the regulations requires the LEA to calculate the amount of funds available for parental involvement activities from the reserved funds based on the proportion of private school children from low-income families residing in participating public school attendance areas.

---

**EXAMPLE OF EQUITABLE SERVICES FOR FAMILIES:**

---

An LEA reserves one percent (\$60,000) of its Title I allocation of \$6,000,000 for parental involvement activities. The number of public and private school children from low-income families residing in participating Title I attendance areas is 25,000. Five percent of the 25,000 children attend private schools; thus five percent of the \$60,000 reservation, or \$3,000, is available for equitable services for parents of private school participants. The parent involvement program funded by Title I must meet the needs of the parents of private school participants. After consultation with the appropriate private school officials, the LEA may conduct these activities independently or in conjunction with the LEA's regular parent involvement activities.

---

**Question 182: How does an LEA provide equitable services for parents of private school students participating in the Title I program?**

An LEA must provide equitable services to parents of private school participants from the funds set aside for this purpose. Activities for the parents of private school participants must be planned and implemented after meaningful consultation with private school officials and parents. Activities that LEAs can provide parents that will assist private school students in achieving high academic standards include a written agreement between the LEA and parents of private school participants regarding the responsibilities of the LEA and parents in the Title I program, parent meetings, communication between the Title I teachers and parents on students' academic progress, parent-teacher conferences, and parent education.

**Question 183: How does an LEA meet the equity requirement for professional development?**

If an LEA reserves funds under §1119 off the top of its Title I allocation for carrying out Title I professional development activities, the LEA must provide equitable services to teachers of private school participants from this set-aside. As required under §200.65 of the regulations, an LEA calculates these equitable services from the reserved funds in the proportion to the number of private school children from low-income families residing in participating public school attendance areas. Activities for the teachers of private school participants must be planned and implemented with meaningful consultation with private school officials and teachers.

---

**EXAMPLE OF ALLOCATING FUNDS FOR EQUITABLE SERVICES FOR PRIVATE SCHOOL TEACHERS:**

---

An LEA reserves six percent (\$360,000) of its Title I allocation of \$6 million for professional development as required under §1119. The number of public and private school children from low-income families residing in participating Title I attendance areas is 25,000. Five percent of the 25,000 children attend private schools; thus five percent of the \$360,000 reservation (\$18,000) is available for equitable services for the teachers of private school participants. The professional development activities funded by Title I must meet the needs of the teachers of private school participants. After consultation with the appropriate private school officials, the LEA may conduct these activities independently or in conjunction with the LEA's professional development activities.

**Question 184: How may the funds reserved for professional development for teachers of private school participants be used?**

The professional development activities for private school teachers should address how those teachers can serve Title I students better, such as by providing information on research-based reading and mathematics instruction. It is inappropriate to use these funds to upgrade the instructional program in the regular classroom of the private school.

**Question 185: May the private school officials arrange for professional development services for teachers of Title I participants and submit the invoice to the LEA for payment?**

No. Private school officials are not authorized to obligate or receive Title I funds. The statute clearly states that the LEA must maintain control of Title I funds. No Title I funds may be paid to the private school.

**Question 186: May Title I funds be used to pay stipends to private school teachers of Title I participants who participate in a Title I professional development program?**

Yes. Title I funds may be used to pay for stipends for private school teachers, if 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.

**Question 187: May Title I funds be used to pay for substitute teachers who replace private school teachers in their regular classroom while they attend Title I professional development activities?**

No. Title I funds may not be used to hire substitute private school teachers. After consultation, the LEA should offer professional development activities at a time and place that is convenient for the teachers of private school participants.

**Question 188: How is the LEA required to assess private school students receiving Title I services?**

Public school students who participate in Title I programs must be held to the same challenging content and student achievement standards that a State expects all public school students to meet. Private school students who participate in Title I programs must also be held to high standards. In some

instances, however, it may not be appropriate to expect private school children to meet the State's TAKS standards, if, for example, those standards are not aligned with the curriculum of the private school.

If the LEA, in consultation with private school officials, determines that it would be inappropriate to measure the achievement of participating private school children in relation to the State's TAKS standards, the LEA must use alternative standards that reasonably promise that the services provided will enable the private school participants to achieve the high levels called for by the State's student achievement standards

An LEA must annually assess the progress of the Title I program toward enabling private school Title I participants to meet the agreed-upon standards. The LEA may use the State's TAKS assessment system (under §1111(b)(3) of Title I) or other assessment measures that more accurately reflect the progress of the private school participating students toward meeting the standards that the LEA, in consultation with private school officials, has determined is appropriate. Every year the LEA and private school officials must consult on what constitutes annual progress for the Title I program. In measuring annual progress, the LEA has the flexibility to group children in a manner that will provide the most accurate information about their progress. For example, the LEA may decide to group children by instructional method, grade level, school, or other appropriate basis. If the Title I program for the private school participants does not make the expected annual progress, the LEA must annually make modifications to the Title I program.

While LEAs are required to assess progress of Title I students annually, they should also consult with private school officials/teachers regularly about the progress the Title I private school participants are making in their regular classrooms.

**Question 189: In what subjects does an LEA assess private school children?**

An LEA normally would assess private school children in the subjects in which the LEA provides Title I services to those children.

**Question 190: May Title I funds be used to assess private school children?**

Yes. Title I funds may be used to assess private school children if the assessment is used only for Title I purposes. To the extent, however, that an assessment is conducted for other purposes, it may not be paid for from Title I funds. If private school children, in general, are included in the State assessment, Title I funds may not be used to pay for the assessment of those private school children participating in Title I.

**Question 191: May an LEA use the private school's assessment data to determine progress of the LEA's Title I program?**

Yes. Officials of the private schools may provide the LEA with the assessment data on Title I participants that the private school has collected as part of its testing program. However, private school officials are not obligated to do this, and refusal by private school officials to provide these data does not release the LEA from its obligation to provide services and assess the progress of the private school participants in the Title I program.

**Question 192: May an LEA pay a private school for the assessment data of Title I participants?**

No.

**Question 193: May Title I, Part A instructional services be provided in private nonprofit schools before and after regular school hours and during the summer?**

Yes. These are additional, permissible options for providing services for private school children so long as the equitability and consultation requirements are met. These options may be useful particularly in situations where there is no space available in the private nonprofit school during the regular school day.

**Question 194: May Title I, Part A services be provided in the regular private school classrooms through aides or joint teaching efforts?**

The USDE recommends that LEAs not provide these types of services. In holding that Title I, Part A instruction may be provided in private nonprofit schools, the Supreme Court in *Agostini* emphasized that the Title I, Part A program was totally separate from the private nonprofit school's educational program and under the sole control of the LEA. Providing Title I, Part A instruction as a part of private school classes raises significantly different issues that increase the risk that the services would be held unconstitutional.

**Question 195: Is it permissible for Title I, Part A teachers to use private nonprofit school facilities other than the Title I, Part A classroom, such as the restroom, teachers' lounge, cafeteria, or parking lot?**

Yes. There is no prohibition against reasonable use of private nonprofit school facilities by a Title I, Part A teacher or other Title I, Part A personnel.

**Question 196: May Title I, Part A teachers and other public school personnel meet or have discussions with private school teachers and administrators?**

Yes. Consultation and communication are essential to implementing an effective Title I, Part A program. Therefore, Title I, Part A personnel may have necessary discussions or meetings with private school officials concerning the design and development of the Title I, Part A program, as well as communications concerning the needs and progress of individual children.

**Question 197: Are the costs of technicians to assist in Title I, Part A Computer-Assisted Instruction (CAI) part of an LEA's reservation of funds?**

Yes. The cost of technicians who perform non-instructional duties such as operating and maintaining CAI equipment and keeping order in the Title I, Part A CAI classroom are considered administrative costs. In light of the Court's decision, however, Title I, Part A personnel now may provide instruction in conjunction with CAI in the private nonprofit schools. The costs of these instructional personnel are program costs, not administrative, and would therefore not come from reserved Title I, Part A administrative funds. Whether employees should be considered instructional personnel or non-instructional technicians depends on the functions performed by the employees, in addition to their job titles, job description, or classifications.



**Question 198: Does the Supreme Court's decision in *Agostini* apply to other federal education programs?**

The Supreme Court's decision directly dealt with the issue of the constitutionality of providing instructional services under the Title I, Part A program in private nonprofit schools. However, the implication of the Court's ruling is that there is no constitutional bar to public school employees providing educational services in private nonprofit schools under other federal programs under similar circumstances.