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CHAPTER 8

PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS

8.1.0 General Statement

In 1965, Congress enacted the Elementary and Secondary Education Act, commonly known as ESEA. The largest funded component of this act was Title I, designed to provide financial assistance in order to meet the special educational needs of children who were educationally deprived and who resided in areas having high concentrations of children from low-income families. While Title I ESEA has since been amended, the basic "declaration of policy" remains the same, as most recently stated in the Education Amendments of 1978 (Public Law 95-561):

In recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs, the Congress hereby declares it to be the policy of the United States to provide financial assistance (as set forth in the following parts of this title) to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means (including preschool programs) which contribute particularly to meeting the special educational needs of educationally deprived children.

Each of the key words or phrases in the declaration of policy expresses the intent of Congress.

- **Support of Adequate Educational Programs to Meet Special Educational Needs:** Most financing of local educational agencies (LEAs) comes from local or state revenues. However, LEAs with high concentrations of low-income families may not be able to support adequate educational programs. Hence, financial assistance is provided by the Department of Education to states on the basis of incidence of low-income families and, in turn, to counties, and to LEAs. Applications from LEAs have to be approved by the State Educational Agencies (SEAs). LEAs, however, may not use such title I funds for "general aid."
Rather, these funds must provide for adequate educational programs which meet the particular educational needs of children from areas with concentrations of low-income families. The words "special educational needs" in Title I ESEA should not be confused with the phrase "special education" as it is commonly used to describe the instructional programs available to handicapped students.

- **Expand and Improve**: Title I funds must be used by LEAs to expand and improve educational programs and services for students eligible to be served under Title I ESEA. While LEAs must provide all children with their basic educational program, Title I funds can only be used to provide extra or supplemental services to meet the particular education needs of educationally deprived children who are otherwise eligible. Title I ESEA funds must also be used to improve the quality of educational programs for educationally deprived children through proper planning and program design.

- **Educational Programs**: The supplemental educational programs funded under title I must be designed to meet the specific educational needs of children selected for participation in the program. The programs must be of sufficient size, scope, and quality with stated performance objectives for each project, based upon an assessment of the needs of eligible students. Supportive services may be provided if they are clearly related to the educational needs of children being served and are not available from other funding sources.

- **Educationally Deprived Children...in Areas with Concentrations of Children from Low-Income Families**: The intended beneficiaries of Title I ESEA are educationally deprived children who reside in school attendance areas with high concentrations of children from low-income families. Eligible school attendance areas are identified and ranked on the basis of family income level or directly related information. With a few exceptions, those eligible attendance areas or schools with the highest percentage or numbers of children from low-income families are selected for Title I ESEA funding. Individual children within an eligible attendance area, including those attending private schools, are eligible to receive Title I services if they are educationally deprived. Those with the greatest needs actually participate in the Title I program.

8.2.0 Basic Concepts for Participation of Children Enrolled in Private Schools

In this chapter, a number of basic concepts about children in private schools are covered. The concepts are based on provisions in the current Title I ESEA legislation (P.L. 95-561), Title I regulations, and the Education Division General Administrative Regulations (EDGAR). These concepts and/or definitions are briefly highlighted below as they relate to the preceding General Statement and to the more detailed requirements discussed later in this chapter.
- Rights of Private School Children to Services: Title I ESEA was the first federal aid-to-education program to authorize services for private school children. The law recognizes that all educationally deprived children residing in areas with high concentrations of low-income children do not necessarily attend public schools and specifically requires that educationally deprived private school children who reside in project areas be included in the LEA's title I project. The principle is the "child-benefit theory", by which the funds are targeted on the child rather than the school he or she attends.

- Private School Children Must Have Genuine Opportunities: A number of requirements in the title I regulations reinforce this provision by requiring comparable service delivery, equal expenditures, the involvement of parents of private school children, cooperation between LEA officials and private school officials, and other procedures.

- LEA Control: The LEA has primary responsibility for designing special educational services for eligible educationally deprived children attending private schools. The LEA must also make whatever special arrangements are necessary for those children to participate. While LEAs may contract with private individuals or organizations to provide services to children, the responsibility for administration of the title I program rests with the LEA (EDGAR 100b.651(a)(3)).

- Non-Supplanting: Title I funds for services to private school children must not benefit the private school or supplant funds which the private school would normally commit to the education of its students. In other words, the supplement-not-supplant provision applies to private schools in the same manner as to public schools (Sec. 126(c)).

- The By-Pass: Under certain circumstances, the Secretary of Education is required to make arrangements (called a "bypass") for the provision of services to eligible educationally deprived children enrolled in private schools. The by-pass may be invoked if the Secretary determines that the LEA has substantially failed to provide for the equitable participation of private school children, or when an LEA is prohibited by law from providing for the equitable participation of private school children in special programs (Sec. 130(b)).

8.3.0 General Requirements for Participation of Children Enrolled in Private Schools

Title I funds go to state educational agencies and, through them, to local school districts. They may not go directly to any private school. However, title I requires that children attending private schools be given an opportunity to receive title I services if they meet eligibility requirements.
To be eligible for title I services, a child attending a private school must meet the same requirements as a child attending a public school, that is:

1. Reside in a title I project area.
2. Be educationally deprived.

The LEA must consult with private school officials in planning its overall title I program; this ensures the consideration of the needs of eligible children attending private schools. The number of eligible children from private schools actually participating in the LEA's title I program and the types of services they receive must be comparable to those provided to eligible children in public schools. This does not mean that all children will receive the same services.

In selecting children to receive title I services, an LEA chooses from among the children identified as educationally deprived, including those attending private schools, in project areas with the greatest educational needs. (See Chapter 2.4.2.)

LEAs which do not, or cannot because of state law limitations, provide for title I services to eligible children attending private schools may be by-passed in the provision of such services. The Secretary of Education can then arrange to serve such children through alternative means and deduct the cost of providing the services from the SEA's and LEA's title I grant.

8.4.0 Specific Requirements for Participation of Children Enrolled in Private Schools

8.4.1 Eligibility of Private School Participants

In the title I funding process, the economic formula devised by Congress includes all children from low-income families who reside in a county. No distinction is made as to what schools the children attend. Even in sub-county allocations, all children are taken into consideration, regardless of school
attended. The same holds true when the LEA determines eligible attendance areas, i.e. children from all schools are counted, not just those in public schools.

Once the eligible attendance area(s) is established, there are two basic conditions that identify eligible children:

1. The child must live within the designated attendance area.

2. The child must be educationally deprived according to the criteria established by the state or local educational agency.

If a child meets these two criteria, he may be considered for title I services, no matter where enrolled. However, this does not mean that every child who meets these criteria of residence and educational deprivation will necessarily participate in the title I program. Each LEA is expected to concentrate its services on a limited number of high priority needs and on those children who are most in need of special assistance. This principle of concentration (see Chapter 3.4.1) applies both to private school children and their needs and to public school children and their needs.

The most common method of determining residency is by obtaining information directly from private schools in and near the LEA. In populous areas, there may be an affiliation of private schools, and this group may be designated as the contact point for LEA administrators. In either case, contact with private school officials is necessary.

" Skipping" Schools or Children

In some cases, the LEA may "skip" children or a school attendance area who would otherwise receive title I services because they already get services of the same nature and scope from some other source. (See Chapter 1.4.3 and Chapter 2.4.4.) In most cases, private school children do not receive these other services. Therefore, the LEA must still provide title I services to the eligible private school children who are in the skipped school attendance area (CFR 116a.65(c)(2)).
Children Enrolled in Private Schools in Other LEAs

Some children living in title I project areas may be enrolled in private schools located in another school district. These children are eligible for title I services, and the LEA in which they reside is responsible for ensuring that they receive such services. If it is not practical to conduct a project for these children, the home LEA may make arrangements with the other LEA where the private school is located to serve those children. Where appropriate, the two LEAs may submit a joint project application (116a.81(c)).

Example/Illustration

For example, in two adjacent towns, there is a regional nonpublic school housed in two buildings. The children from both towns in grades K-4 attend classes in the "town one" building and children in grades 5-8 attend school in "town two". There are eligible title I children residing in both towns. Through an agreement between the two LEAs, approved by the SEA, each one serves the children who attend school within its boundaries. Once the agreement was negotiated, it was not necessary for either LEA to treat these children as non-residents. No exchange of funds takes place. The title I director in each town consults with the private school officials, conducts the needs assessment, and plans for/and implements the programs only for the eligible children who attend school within the confines of the appropriate town.

8.4.2 Consultation with Persons Knowledgeable of the Needs of Private School Children

Title I ESEA legislation and regulations emphasize the importance of cooperation with private school officials. The many requirements related to eligibility, needs assessment, program design, and other areas call for cooperation; the LEA cannot operate in a vacuum if it is to assure that eligible private school children receive the title I services to which they are entitled. This consultation must take place before decisions are made which
affect private school children's participation (EDGAR 100b.652(b)). The LEA must give the knowledgeable persons a genuine opportunity to express their views (EDGAR 100b.652(c)).

EDGAR requires consultation on each of the following topics:

1. Selection of children
2. Methods of identifying children's needs
3. Benefits to be provided
4. Means of providing benefits
5. Project evaluation.

Model Procedures

The following procedures have been suggested in an earlier handbook developed by the U.S. Office of Education, now the Department of Education.

During the development of a title I project application, there are several steps and points of contact which are critical to secure the meaningful participation of children from the private schools. These steps include:

1. Identify a staff person in the LEA to be responsible for the participation of private school children in Title I. If at all possible, this person should have a thorough knowledge of private school organization in the district. The private school representatives should be encouraged to establish a counterpart in their schools or central offices.

2. Make sure that children from low-income families attending private schools have been counted in the selection of eligible attendance areas.

3. Identify all the private schools in the project area. In smaller districts this is not a big problem. In large cities it can become a major project. The Department of Education publishes a directory of nonpublic schools, and private school representatives are often well-informed about the existence of other private schools. The emergence of street academies and storefront schools makes this step more complicated. Private school representatives should be encouraged to form some type of loose association for easier communication.

4. Identify all children attending the private schools in the project area who also reside there. Contact and cooperation with private school
representatives is essential. In most instances, the private school representatives will have this information readily available.

5. Identify all the children residing in the project area who attend private schools outside the project area. What at first seems like a mammoth task can be significantly reduced by contacting the private schools close to the project area, and such groups as the local churches within the project area.

6. In terms of the established goals and objectives, assess the needs of these educationally deprived children. Again, consultation with private school representatives is essential. The basis for assessing the needs of these children must be comparable, but not necessarily identical, to criteria used for public school children.

7. On the basis of the needs thus identified, and in consultation with private school representatives, determine and design the type of service to be provided. The evaluation design should be developed concomitantly and also in consultation with private school representatives.

8. Establish a process to ensure a quick and effective response by appropriate officials to complaints involving the participation of private school children in title I activities.

9. Be sure the parents of eligible private school children have an opportunity to be represented on title I advisory councils.

The inclusion of private school representatives on mailing lists and at title I meetings guarantees ongoing and up-to-date coordination in developing the project. Private school representatives will find the participation of their students generally enhanced if they arrange for appropriate personnel to attend meetings and assist public school employees in gathering data necessary for project development and program planning. Private school representatives should be encouraged to publicize title I meetings among their own constituents.

8.4.3 Needs Assessment

There must be a needs assessment of private school children eligible for the title I program. (See Chapter 2.4.1-5.) The goal of the needs assessment is to provide an information base for designing title I services which meet the needs of educationally deprived children rather than the needs of schools or
the student body at large or of children within a specific grade. The LEA is required to determine its needs assessment, number of private school children to participate, and types of title I services on a basis comparable to those used in providing a program for public school children (EDGAR 100b.653).

Relative to needs assessment of private school children, the LEA's application must include:

1. The manner in which the needs of educationally deprived children enrolled in private schools was assessed.

2. The number of private school children who were found to be educationally deprived according to specific criteria.

3. The number of private school children who are expected to participate in each of the services under Title I.

4. The degree and manner of their expected participation (EDGAR 100b.656).

8.4.4 Comparable in Size, Scope, and Quality

The public school district must provide genuine opportunities for private school children to participate equitably in special educational services provided by title I funds (EDGAR 100b.651(a)(1)). These genuine opportunities must be consistent with the number of educationally deprived children (not of the student body at large or the school) and the nature and extent of their educational deprivation (EDGAR 100b.651(a)(2)).

Where the needs of both groups of children (those attending private schools and those attending public schools) are the same, the LEA must ensure equitable opportunities for participation for private school children. Because their needs may differ, the title I program for private school children may likewise differ. However, in all cases, the benefits to participating private school children must be comparable in quality, scope, and opportunity to participate (EDGAR 100b.654).
Examples/Illustrations

For example, a program would not be comparable in quality if it provided private school children with only materials and equipment and no instructional program. A program would not be comparable in scope if private school children received Title I services only in one subject area while public school children received help in more than one subject. A program would not be comparable in opportunity to participate if it was offered during the school day in public schools and only on Saturday mornings in the private schools.

8.4.5 Expenditures Per Pupil

According to H. Rept. 95-1137, participating private school students in Title I ESEA programs were receiving approximately one hour per week of compensatory education, compared with an average of approximately 5 1/2 hours per week for all Title I children. As a means of ensuring that private school children receive "comparable" Title I services, Congress mandated in the 1978 amendments (P.L. 95-561) that average Title I per pupil expenditures for educational services for private school children be equal to those for participating public school children (EDGAR 100b.655).

The intent of this provision is clear from the Committee Report; however, a strict application of the standard could actually result in a decrease in services to private school children. This can occur, for example, where Title I expenditures for public school children are reduced because of the availability of state and local funds for compensatory education. Also, where needs are different, cost may differ. Differing service delivery methods (such as the use of a mobile classroom) may also affect the costs without altering the quality and scope of the program.

The key to LEA administration of this provision is to recognize the intent of the provision as a backup measure for ensuring comparability in quality, scope, and opportunity to participate. EDGAR states, "The subgrantee shall spend a different average amount on program benefits for students enrolled in
private schools if the costs of meeting the needs of students enrolled in private schools are different from the costs of meeting the needs of students enrolled in public schools" (EDGAR 100b.655(b)).

8.4.6 Methods of Service Delivery/Control of Funds

The law cites several examples of ways services may be delivered to private school children (Sec. 130(a)). Serving children on private school premises is allowed, as long as this method is necessary to ensure service delivery on an equitable and comparable basis to the services for public school children. In actual practice, this is the most common method of service delivery.

Title I services should be provided for private school students in the manner that is most effective in the local situation. The examples in the law and the regulations are not meant to be exhaustive of the possibilities available.

One method mentioned in the law is dual enrollment. The private school children, retaining membership in the private school, attend the public school for special educational services on a part-time basis. The major problem in this approach is logistics. Even when the private school is located very close to the public school, there are difficulties in scheduling, space, and safety. As distance increases, additional problems of transportation and loss of instructional time are likely to arise.

Another method involves mobile educational services. The services come to the child. This approach may take many forms, such as: a public school teacher comes onto the private school premises to teach a remedial class; a mobile teaching lab with equipment and a teacher makes regular scheduled stops at a private school; a speech therapist works with private school children at the private school. This type of approach is generally more satisfactory than most others.
Mobile equipment is also cited as a way to provide services for private school children. However, equipment alone does not constitute a program. The equipment must be in support of a title I activity and must remain under the supervision and administrative control of the public agency at all time. (See Chapter 6.4.5, Equipment.) The equipment may be used and housed on private school premises as long as it will be used only for carrying out a title I activity (EDGAR 100b.661(b)).

8.4.7 Limitations on the Administration of Title I Programs for Eligible Private School Children

In addition to allowing service delivery options, EDGAR also mentions several limitations on certain aspects of service delivery. The LEA administrator must abide by these limitations in order to avoid the "entanglement" issue and the issue of aid to non-public schools (EDGAR 100b.657-100b.663).

General Administration

Title I funds may not be used to finance the existing level of instruction in a private school or to otherwise benefit the private school. The funds may only be used to meet the particular needs of title I eligible students enrolled in private schools rather than the needs of a private school or the general needs of students enrolled in a private school (EDGAR 100b.658).

Title I services must always be provided under the LEA's administration and control (EDGAR 100b.661).

Classes may not be segregated according to school enrollment or religion if the classes are at the same site and include both public school and private school children (EDGAR 100b.657).
Personnel

Sec. 116a.61, which permits title I personnel to assume certain non-instructional duties, is not applicable to title I paid personnel when they provide title I services on private school premises.

The use of public school personnel on private school facilities must be limited to the extent necessary to provide special services for those educationally deprived children for whose needs such services were designed and only when such services are not normally provided by the private schools - in short, for title I purposes only (EDGAR 100b.659).

An employee of the private school may not be employed to give title I services with the funds unless the employee performs service outside his or her regular hours of duty. A private school person employed under these conditions must perform services under the supervision and control of the LEA (EDGAR 100b.660).

Equipment and Facilities

The LEA shall keep title to and exercise continuing administrative control of all equipment and supplies that are purchased for use in a private school program (EDGAR 110b.661).

Equipment and supplies may be placed in a private school for a limited period of time and may be used only for the use of the program. They shall be removed from the private school when they are no longer needed for the program or if it is necessary to remove them to avoid use for other than program purposes (EDGAR 100b.661(b-d)).

Equipment which would require remodeling of private school facilities to install or remove may not be purchased.
Title I funds may not be used for the construction of private school facilities (EDGAR 100b.662).

8.4.8 Evaluation

All of the procedures for evaluating the effectiveness of Title I ESEA programs during each three-year period must include the collection and analysis of data relating to private school children who participate as well as public school children. Evaluation data should be used in planning and improving activities in subsequent years. (See Chapter 6.4.5, Evaluation.) As mentioned previously, consultation with representatives of children enrolled in private schools is required (EDGAR 100b.652(a)(5)).

8.4.9 Involvement of Parents of Private School Children

The regulations contain several provisions intended to safeguard the rights of parents of private school children to participate in district advisory councils (DACs) and school advisory councils (SACs). Chapter 4, which addresses parent participation, covers these provisions. Briefly, the regulations require that parents of private school children be afforded an equal opportunity to participate in elections and to serve on district and school advisory councils (116a.153(a)(1)(i)).

Some private school children residing in "skipped" attendance areas do not qualify for assistance under the non-federal program which is the basis for skipping the school. (See Chapters 1.4.3 and 2.4.4.) The regulations require the LEA to establish a school advisory council for that area, because it is still a project area (116a.155(b)). Note that this requirement applies only if there are more than 40 title I participants and at least one full-time equivalent staff member paid with title I funds (116a.155(c)).
8.4.10 Monitoring and Enforcement of Private School Provisions

The state educational agency is charged with responsibility for enforcing and monitoring the title I provisions related to private school participation (EDGAR 100b.651). The SEA must approve the LEA's applications before title I funds are granted. If an LEA's application does not comply with the private school provisions of the title I, then the SEA must not approve the application.

In its state monitoring and enforcement plan (MEP), the SEA must give a description of methods for determining that LEAs are in compliance with the requirements concerning the equitable provision of services to children enrolled in private schools (see Chapter 7.4.5). The regulations call attention to the SEA's responsibility to check the equity of title I services and equality of title I expenditures for the private school children who were selected to participate in the project.

EDGAR requires LEAs to include the following information in the application to the SEA (EDGAR 100b.656):

1. A description of how the applicant will meet the federal requirements for participation of students enrolled in private schools.

2. The number of students enrolled in private schools who have been identified as eligible for benefits under the program.

3. The number of students enrolled in private schools who will receive benefits under the program.

4. The basis used to select the student.

5. The manner and extent to which the LEA consulted with representatives of private school children.

6. The places and times that the students will receive benefits under the program.

7. The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.
8.4.11 The Bypass Provision

The Secretary of Education must make arrangements (called a "bypass") for the provision of equitable title I services to educationally deprived children enrolled in private schools under two circumstances (116a.94). First, the Secretary will bypass an LEA if it is determined that the LEA has substantially failed to provide such services for eligible private school children in its title I programs on an equitable basis with eligible public school children. Secondly, the Secretary will bypass if an LEA is prohibited by law from providing such services. However, the Secretary will not implement a bypass unless the projected number of private school children in the LEA to participate is 10 or more (116a.94(b)).

In circumstances requiring a bypass, the Secretary must design title I programs which satisfy the requirements contained in Section 130a of Title I. Separate programs provided by the Secretary will be paid for out of the LEA's allocation of title I funds and from the SEA's allocation if deemed appropriate by the Secretary (116a.97(c)). The costs of instruction and administration will be included in this amount. Note that the Secretary is authorized to withhold funds to pay these costs, pending final resolution of any investigation or complaint under these provisions (116a.98). (See Chapter 7.4.5).

Before invoking the bypass provision, the Secretary must provide the SEA and LEA with 45 days' written notice of his proposed action and an opportunity to appear before the Secretary to show reasons for the bypass to be invoked (Sec. 130(b)). After a decision is reached, the SEA or LEA has the right to appeal the decision to the circuit court of appeals within 60 days after receiving notice of action taken (116a.96).

It is important to note that in most cases when the bypass is invoked, it is because of substantial failure to provide an equitable title I program, not
solely on the basis of state law. The SEA retains responsibility to oversee the activities of LEAs in which there is no bypass.

8.5.0 Summary of Requirements for Participation of Children Enrolled in Private Schools

Title I ESEA specifically requires that children enrolled in private schools have a chance to receive title I services if they meet eligible requirements. The eligibility requirements are residency in an attendance area with a high concentration of children from low-income families that is selected as a project area by the LEA and identification as educationally deprived; that is, a child not performing up to the level expected for children of that age or grade level.

In selecting the children who will actually receive title I services, an LEA looks at the entire group of children who meet the residency and educational deprivation requirements, regardless of where they attend school. From among these children, the LEA chooses the most in need of help to participate in the title I program.

In identifying eligible children attending private schools and determining their educational needs, LEAs must consult with private school officials. Parents of children attending private schools also have a right to be informed about the title I program, to participate in the program, and to serve on title I advisory councils.

Planning projects which meet the needs of children attending private schools who are selected to receive title I services may involve consideration of several alternatives by an LEA. Whatever methods are used to provide services -- dual enrollment, mobile services, or the provision of services on private school grounds -- the LEA must maintain control of the title I program, including control of all equipment and supplies. The LEA must be sure that the services provided to eligible children attending private schools are comparable in size, scope, and quality to the services provided to participating public
school children. One means of ensuring such comparability is to use the average amount of per pupil expenditures for both groups of students unless the costs of providing services is significantly different.

In instances where an LEA does not or cannot provide comparable services to children in private schools, the Secretary of Education may bypass the LEA, arranging for the provision of such services in some other way and deducting the costs of such arrangements from the LEA's title I grant.