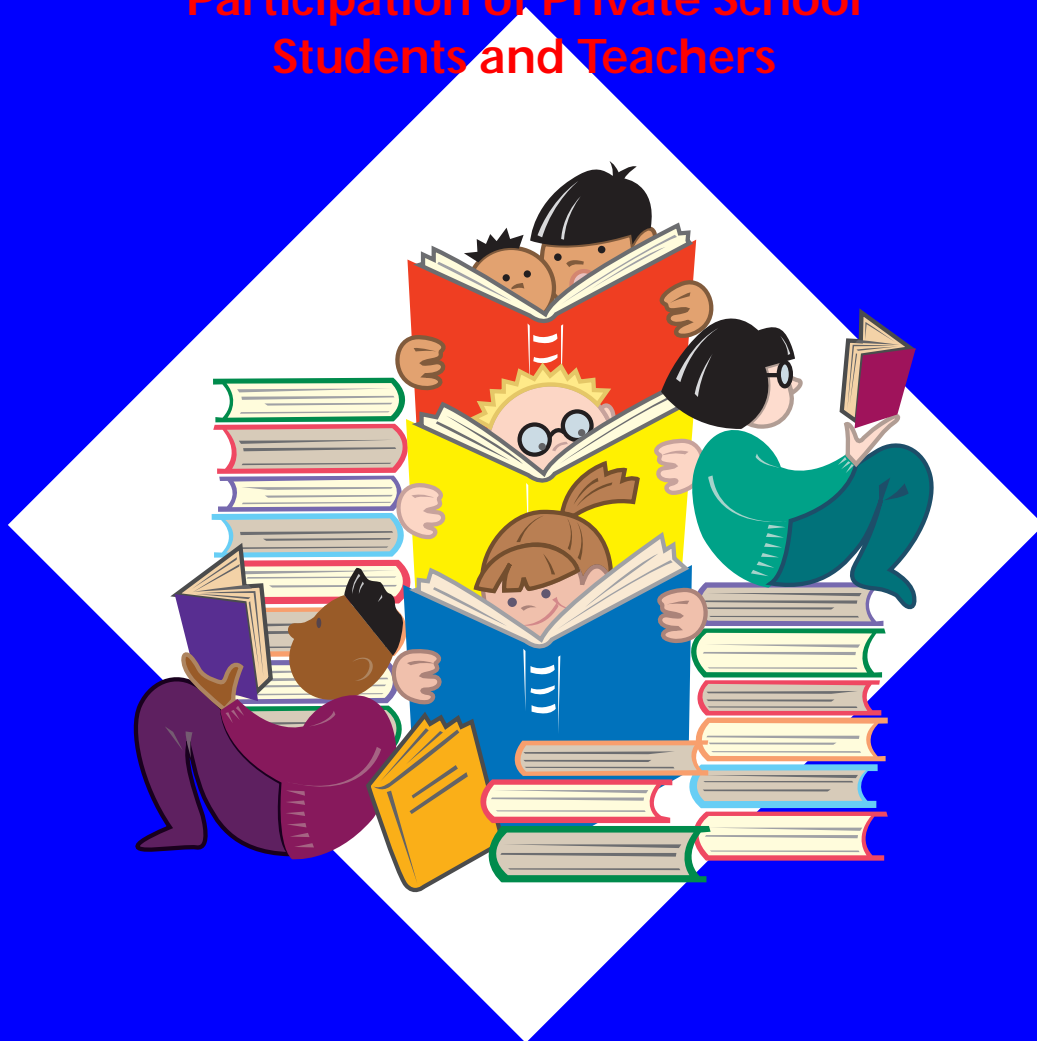


No Child Left Behind Act

Participation of Private School
Students and Teachers



United States Conference of Catholic Bishops
DEPARTMENT OF EDUCATION

NO CHILD LEFT BEHIND ACT

(P.L. 107-110)

Participation of private school students and teachers

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INTRODUCTION

This brochure provides a brief description of the education programs authorized under the No Child Left Behind Act (NCLBA) that allow for the equitable participation of private and religious school students and teachers. The Act, which reauthorizes the Elementary and Secondary Education Act (ESEA), contains ten parts, or “titles,” most of which outline the goals and purposes, funding formulas, and other details of the various educational programs authorized in each title of the Act. The chart at the end of this brochure describes where former ESEA title programs have been relocated within the ten titles of NCLBA.

The General Provisions outlined in Title IX of the Act describe provisions that govern most of the preceding titles. Sections 9501-9506 of Title IX contain “Uniform Provisions” specifically affecting private and religious school students and teachers. Sections 9501-9504 include a list of programs in which private and religious school students and teachers are eligible to participate, as well as the general requirements regarding private and religious school participation in those programs. Specific language referring to private and religious school participation is sometimes also included separately in other titles. Citations for language in each title that pertains to the participation of private and religious school students and teachers are included in brackets in the program descriptions below. When the Uniform Provisions found in Sections 9501-9504 govern participation, they will be referenced simply as “Uniform Provisions”.

The terms “state education agency” and “local educational agency,” often abbreviated as SEA and LEA, refer respectively to the State agency that oversees elementary and secondary education and the local public school district. Since the phrase “private school,” as referenced in the statute, refers to both secular and religious private schools, the use of the phrase private school in the remainder of this document also refers to both secular and religious private schools.

The following web sites provide additional information on the No Child Left Behind Act:

www.ed.gov/nclb

(Statute, program descriptions, news releases)

www.ed.gov/offices/OUS/budnews.html

(State by state program allocations)

www.ed.gov/offices/OIIA/NonPublic

(USDE Office of NonPublic Education)

www.usccb.org/education

(USCCB Department of Education)

ACCOUNTABILITY PROVISIONS

One of the hallmarks of the new legislation is unprecedented accountability provisions throughout the legislation. In particular, States must develop and implement a single, State accountability system that will be effective in ensuring that all local educational agencies, public elementary schools, and public secondary schools make adequate yearly progress. One element of this accountability system is to measure the proficiency of students in grades 3 through 8 in, at a minimum, mathematics and reading or language arts, adding science no later than the 2005-2006 school year. Initially, these tests are administered at least once in grades 3 through 5, grades 6 through 9, and grades 10 through 12. Beginning not later than the 2005-2006 school year, student achievement must be measured annually.

Importantly, these testing requirements apply only to public elementary and secondary schools and to students receiving Title I services and possibly services for limited English proficient students while attending private or religious schools. See Section 1111 for a complete explanation of the accountability provisions. □

These testing requirements apply only to public elementary and secondary schools and to students receiving Title 1 services . . . while attending private or religious schools.

TITLE I: Improving the Academic Achievement of the Disadvantaged

Part A: Improving Basic Programs Operated by Local Educational Agencies

FY02 Appropriation \$10,350,000,000

FY01 Appropriation \$8,762,721,000

ACTIVITIES

Title I, Part A provides services to educationally disadvantaged students in public and private schools to help them meet and exceed the State's challenging academic content and student achievement standards. Title I provides supplementary educational services that support the student's instructional program in the regular classroom. These services can be offered out of the regular classroom for a period of additional instruction, or can be held before or after school. Some Title I programs also operate during the summer months. Title I services for private school students are determined through a consultation process between public and private school officials, and are most often direct services by a Title I teacher to an eligible private school child. They can also consist of computer-assisted instruction alone or in conjunction with teacher services.

Additionally, the LEA must ensure that private school teachers of Title I students participate equitably in Title I professional development activities and that parents of Title I students in private schools participate equitably in parental involvement activities designed to support the learning needs of the private school Title I students. [Section 1120 (a) (1)]

The funds generated through the count of poor private school children are used for instructional costs only.

FUNDING

Funds to serve private school students under Title I are generated on

the basis of economically disadvantaged private school students who reside in Title I attendance areas. To generate Title I funds to serve educationally needy private school children, the LEA may, in consultation with private school officials, use the same source of data as used for counting public school children, or, if not available, may conduct a survey and extrapolate for incomplete results, choose to assume a proportional number of poor private school children when compared to poor public school children, or correlate equated measures of poverty. [Section 1120 (c) (1)] Also, the count may be conducted every two years instead of every year.

The funds generated through the count of poor private school children are used for instructional costs only. Any other costs—such as for mobile instructional units, non-instructional technicians, or escorts for students between the classroom and the Title I classroom—must be taken off-the-top of the LEA's total Title I allocation. In the past, a special fund, Capital Expenses, helped defray the capital costs associated with serving private school students. When this fund is unavailable or insufficient to meet the capital costs, the LEA must pay these costs off-the-top of LEA's Title I allocation.

Educational need is determined in consultation with private school officials and must be based on multiple measures...

SPECIAL REQUIREMENTS

Eligibility

Students who are educationally needy and reside in Title I attendance areas are eligible for Title I services. Educational need is determined in consultation with private school officials and must be based on multiple measures, including age-appropriate measures of educational need. A child's poverty is not a factor in determining if the child is eligible to receive Title I services. If funds are insufficient to serve all eligible children, the most educationally needy are served first. [Section 1120 (a)]

Public school officials must maintain and provide to the SEA a sign-off from the private school official at each private school with a Title I program, indicating that consultation has occurred.

Consultation

Public school officials are required to consult in a timely and meaningful way with private school officials in the design, development, and implementation of the Title I program. This includes identifying the children’s needs, determining how those needs will be met, and assessing the program. [Section 1120 (b)] Consultation must also address how and when the agency will make decisions about the delivery of services, including a thorough analysis of the views of private school officials on the provision of services through a third-party provider and a written explanation if the LEA decides against using a third-party provider. [Section 1120 (b) (1) (G) and (H)]

Public school officials must maintain and provide to the SEA a sign-off from the private school official at each private school with a Title I program, indicating that consultation has occurred. If the LEA does not receive this signature in a timely manner, they must provide the SEA with written information about the consultation process. [Section 1120 (b)(4)]

Supplemental Services

If a Title I public school does not achieve adequate yearly progress for three consecutive years, the LEA will arrange for the provision of supplemental educational services to eligible children in the school from a provider selected by the parents and approved by the SEA. [Section 1116 (e)(1)] The amount of funding that an LEA must provide to each child receiving supplemental services shall be the lesser of the LEA’s per-pupil Title I allocation, or the actual cost of the supplemental services. [Section 1116(e) (6)]

Complaint Procedure

The complaint procedures and reasons for a by-pass are similar to those found under the Uniform Provisions. [Section 1120 (b)(5) and 1120 (e)]

Committee of Practitioners

The State must create a Committee of Practitioners to advise the State in carrying out its responsibilities under Title I. Each Committee must include representatives of private school children. [Section 1903 (b)]

Part B: Student Reading Skills Improvement Grants

Subpart 1: Reading First

FY02 Appropriation \$900,000,000

FY01 Appropriation for Reading Excellence Act \$286,000,000

ACTIVITIES

As required by the Uniform Provisions, private school students and teachers from schools located within a participating LEA and SEA must be offered equitable services under the Reading First program. These services must be designed in consultation with private school officials to meet the educational needs of private school students. Funds under the Reading First program must be used for selecting and administering screening, diagnostic, and classroom-based instructional reading assessments; selecting and implementing a program of instruction; purchasing instructional materials; providing professional development; collecting and reporting data; and promoting reading and literacy programs.

Additionally, funds may be used for family literacy programs, training for reading tutors, and providing assistance to parents to help them support their child's reading. [Section 1202 (c) (7)]

Reading First priority is given to LEAs in which at least 15 percent of the children are from families below the poverty line.

FUNDING

Reading First grants are given to States by formula based on the number of children in the State ages 5 through 17 who are from families with incomes below the poverty line. At least 80 percent of the total

formula grant must be made available on a competitive basis by the States to eligible LEAs in the State. Priority is given to LEAs in which at least 15 percent of the children are from families below the poverty line or 6,500 children are below the poverty line. In distributing the formula funds to the eligible LEAs, the State must ensure that the grant funds are sufficient to enable the LEA to improve reading instruction and provide funds in proportion to the number or percentage of children in kindergarten through grade 3 who are reading below grade level. Targeted assistance grants, for which the States compete, will be awarded beginning with FY04. The States must grant 100 percent of these funds to LEAs. The uses of the funds are the same in both the formula and competitive grant programs. [Section 1202 (b and c) and Section 1204]

Part B: Student Reading Skills Improvement Grants
Subpart 3: William F. Goodling Even Start Family Literacy Program

FY02 Appropriation \$250,000,000

FY01 Appropriation \$250,000,000

ACTIVITIES

The Even Start family literacy program is a grant through the States to eligible partnerships comprised of an LEA and a non-profit community-based organization, another public agency, an institution of higher education (IHE), or a private non-profit organization. [Section 1232 (e)] Even Start family literacy programs serve parents of children ages birth through age 7 who are eligible to participate in adult education and literacy activities under the Adult Education and Family Literacy Act or who are within the State's compulsory school attendance age range. Services under Even Start are targeted to an area that has a high percentage of children and families who need these services as evidenced by high levels of poverty, illiteracy, unemployment, limited English proficiency, high percentages of students eligible for part A of Title I, high number or percentage of parents who have been victims

of domestic violence, or a high percentage of parents who are receiving public assistance. Services can also be targeted to areas designated as empowerment zones or enterprise communities. [Section 1238 (a)] An Even Start family literacy program helps parents become full partners in the education of their children and gives them the ability to assist their children in reaching their full potential as learners.

Eligible entities submitting applications to the State must describe the applicant's collaborative efforts, including collaboration with private elementary schools, as required in the Uniform Provisions. [Section 1237 (c)(1)(D)]

An Even Start family literacy program helps parents become full partners in the education of their children. . .

FUNDING

States must form a consortium of State-level programs to be eligible for funding. Funds to the States are allocated in proportion to their Title I Part A funds. [Section 1232 (d)]

Eligible entities receiving competitive funds from the State must pay an increasing share of the costs of the program. In year one, the federal share cannot exceed 90 percent; in year two, it cannot exceed 80 percent. The federal share continues to decrease each year of the program. [Section 1234 (a) and (b)]

Part C: Education of Migratory Children

FY02 Appropriation \$396,000,000

FY01 Appropriation \$380,000,000

ACTIVITIES

The Migrant Education program supports high-quality and comprehensive educational programs for migratory children to help reduce the educational disruptions and other problems that result from repeated moves and helps ensure that migratory children are not penalized in any manner by disparities among the States in curriculum, graduation requirements, and State academic content and student academic achievement standards. Under the Migrant Education

program, the State carries out functions to help achieve the goals of the program, particularly fulfilling a coordinating and integration function. It may also provide subgrants to LEAs to achieve the goals of the program.

The Uniform Provisions govern the equitable participation of eligible private school students and teachers who attend private schools located in the geographic area served by the Migrant Education program.

FUNDING

A State receives funding for a Migrant Education program on the basis of the number of migrant children ages 3 through 21 who reside in the State on a full-time basis or the full-time equivalent of those who reside in the State on a part-time basis multiplied by 40 percent of the State's per pupil expenditure. [Section 1303 (a)(1)(A) and (B)] □

TITLE II: Preparing, Training, and Recruiting High Quality Teachers and Principals

Part A: Teacher and Principal Training and Recruiting Fund

FY02 appropriation \$2,850,000,000

FY01 appropriation \$2,225,000,000

ACTIVITIES

Teacher quality programs authorized under this fund provide support for a wide range of professional development and teacher recruiting efforts. Private school teachers are eligible for equitable participation to the extent that the LEA uses funds to provide professional development, which at a minimum, must be provided at the same level as services provided to private school teachers in FY01 through the former Eisenhower Professional Development program and the former Class Size Reduction program. [Section 9501 (b)(3)(A) and (B)] This professional development must be designed to meet the learning needs of private school students, and may include training in innovative teaching strategies, improving the knowledge of teachers in the core academic subjects, integrating technology into the curriculum, providing training in how to teach students with different learning styles and special needs (including gifted and talented students), and training to enable teachers to more effectively involve parents.

All entities completing applications for Title II Part A funding must ensure that students and teachers in private schools located within the geographic area served by the grant are provided with equitable benefits as required in the Uniform Provisions. [Section 2112 (b)(12) and Section 2122 (b)(11)]

... professional development must be designed to meet the learning needs of private school students.

FUNDING

States receive funding through a formula based on the number of children ages 5 through 17 who reside in the State (35 percent of the funding) and the number of those children who are from families with incomes below the poverty line (65 percent of the funding). [Section 2111(b) (2)(B)(i)]

States are required to distribute 95 percent of their total allocation as subgrants to LEAs. These subgrants are made through a formula based on the number of children ages 5 through 17 (20 percent of the funds) and the number of those children who are from families with incomes below the poverty line (80 percent of the funds). The remaining 5 percent of State funds support State programs and competitive subgrants to local partnerships. While private school teachers are limited to participating only in professional development programs funded through this title, they must receive, at a minimum, benefits for professional development at the same level as previously received under both the former Eisenhower Professional Development program and the former Class Size Reduction program authorized under ESEA. [Section 9501 (b)(3)(A) and (B)]

Part B: Math and Science Partnerships

FY02 appropriation \$12,500,000 (New program)

ACTIVITIES

Grants are provided through the Part B Math and Science Partnerships program to support partnerships that provide professional development programs designed to improve the academic achievement of students in mathematics and science. Partnerships must include a State, an institution of higher education (IHE), and a high-need LEA, and may also include other entities, such as additional LEAs, IHEs, public and private organizations, and businesses. Teachers in private schools located in LEAs participating in these partnerships, regardless of the entity that receives the grant and whether or not the private school is a member of the partnership, must be offered equitable

participation, including consultation during the design, development, and implementation of the program to ensure it meets the needs of the private school students, as required in the Uniform Provisions.

Programs supported through the partnerships may include summer institutes for mathematics and science teachers with school year follow-up sessions; training in curriculum development and increased subject matter knowledge; opportunities for collaboration with working mathematicians, scientists, and engineers; and stipends or scholarships to obtain alternative certification or advanced course work.

Part D: Enhancing Education through Technology

FY02 Appropriation \$785,000,000

FY01 Appropriation \$729,328,000

ACTIVITIES

The Enhancing Education through Technology program supports activities of SEAs and LEAs to increase student achievement through the integration of technology into the curriculum, and to increase student and teacher access to technology, especially in high-need LEAs. Activities supported by the program include professional development in the use of educational technology; the acquisition of educational hardware, software, and technology supporting access to the Internet, distance learning networks, and other educational networks connecting school communities and families; and other activities that incorporate the use of technology in the curriculum.

Students and teachers attending private schools located in the geographic area served by the grant must be offered equitable participation as required in the Uniform Provisions.

FUNDING

After distributing the FY02 funds to the States to ensure that grants previously authorized can continue, the Secretary will distribute the remaining funds on the basis of the Title I count in the State. The SEA must distribute at least 95 percent of its funds to the LEAs. Fifty percent

is distributed on the basis of the LEAs' Title I counts; the remaining 50 percent will be subgranted to eligible local entities through a State-determined competitive process. [Sections 2411 and 2412]

SPECIAL REQUIREMENTS

Schools that acquire computers or other technology providing access to the Internet through this program must certify that they have in place and are enforcing an Internet safety policy that includes the operation of a technology protection measure on any computer with Internet access. [Section 2441] □

TITLE III: Language Instruction for Limited English Proficient and Immigrant Students

Part A: Language Acquisition, Language Enhancement, and Academic Achievement Act

FY02 Appropriation \$665,000,000

FY01 Appropriation \$446,000,000

ACTIVITIES

The purpose of this program is to help ensure that children who are limited English proficient (LEP) attain English proficiency, develop high levels of academic attainment in English, and meet the same challenging State academic content and student academic achievement standards as all children are expected to meet. Activities supported through the program must include activities to increase English proficiency and provide high quality professional development. Funds may also be used to improve the instruction program, upgrade curricula, provide tutorials, and create community and family participation programs. [Section 3115] Private school students and teachers whose schools are located within an LEA that has received a subgrant from the State are provided with equitable services as required in the Uniform Provisions.

Activities supported through the program must include activities to increase English proficiency and provide high quality professional development.

FUNDING

Funds are granted by formula to the States. Twenty percent of the funds are based on the number of immigrant students in the State; the remaining 80 percent of the funds are granted based on the number of limited English proficient students in the State. States, in turn, subgrant at least 95 percent of their funds to an LEA, or one or more LEAs in

collaboration with an institution of higher education, community-based organization, or SEA. The subgrant is based on the number of limited English proficient students in the geographical area being served by the eligible entity. [Section 3114]

If the funds appropriated for Title III are less than \$650,000,000, only Part B will be in effect. Part B, Improving Language Instruction Educational Programs, is not covered by the Uniform Provisions. However, Subpart 4, Emergency Immigrant Education Act, contains provisions for the equitable participation of private school students. [Section 3245 (a)(7)(A) and Section 3246 (b)] If the funding is \$650,000,000 or more, only Part A is in effect.

SPECIAL REQUIREMENTS

Not later than 30 days after the beginning of the school year, the LEA must notify all parents of students participating in a program for students with limited English proficiency the reasons their child was identified as LEP, the child's level of English proficiency, and the program being used for their child and how it is similar or different from other programs for LEP students. They must also provide in writing the right of the parent to remove their child from the program and the options the parent has to decline a program and choose another program of instruction, if available. [Section 3302 (a)] □

TITLE IV: 21st Century Schools

Part A: Safe and Drug-Free Schools and Communities

FY02 appropriation \$644,000,000

FY01 appropriation \$644,000,000

ACTIVITIES

The Safe and Drug-Free Schools and Communities program provides grants to governors and SEAs to support violence and drug abuse prevention programs. Private school students and teachers of schools located in LEAs that receive grants or otherwise benefit through this program may participate equitably in activities that must be designed to meet the needs of private school students as required in the Uniform Provisions. Such activities may include drug, violence and suicide prevention programs; mentoring programs; professional counseling; security services; and parental involvement programs. [Section 4115 (b)] All programs must be designed in accordance with the Principles of Effectiveness. [Section 4115 (a)] The SEA must provide an assurance in its application that its LEAs will comply with the Uniform Provisions for the equitable participation of private students and teachers. [Section 4113 (a)(7)]

Two competitive grant programs are operated by the U.S. Department of Education under this part. The Hate Crimes Prevention program makes grants to LEAs and community-based organizations to provide assistance to families most affected by hate crimes. The National Coordinator program makes grants to LEAs for hiring drug prevention and school safety coordinators. [Sections 4123 and 4124]

Activities may include drug, violence and suicide prevention programs; mentoring programs; professional counseling; security services; and parental involvement programs.

Finally, an additional formula program, The Community Service Grant program, provides grants to States to carry out programs under which students expelled or suspended from school are required to perform community service. The amount of the grant is based on the State's school-aged population and the amount received the previous year under Title I Part A Concentration Grants. [Section 4126] The Uniform Provisions also apply to these programs.

FUNDING

Not more than 20 percent of the State grant may be reserved by State governors to establish competitive grant programs for LEAs and other entities. SEAs must distribute the remaining funds to LEAs based partly on their Title I population, and partly on their total student population. All entities receiving funds under this program, including the office of the governor, must ensure the equitable participation of private school students and teachers attending private schools within the geographic area served by the grant, as required in the Uniform Provisions.

SPECIAL REQUIREMENTS

To determine the effectiveness of programs funded under Title IV, LEAs must conduct an assessment of objective data regarding the incidence of violence and illegal drug use in the schools and communities to be served through these programs. This assessment should include an objective analysis of the current conditions and consequences regarding violence and illegal drug use, including delinquency and serious discipline problems among students who attend such schools, including private school students who participate in the programs. [Section 4115(a)(1)(A)] The program must undergo periodic evaluation to assess progress in reducing violence and illegal drug use. The results of the evaluation are used to improve and strengthen the program and must be made available to the public upon request. [Section 4115 (a)(2)(A) and (B)]

Part B: 21st Century Community Learning Centers

FY02 Appropriation \$1 billion

FY01 Appropriation \$846,000,000

ACTIVITIES

The 21st Century Community Learning Centers program supports the creation of before- and after-school or summer programs providing academic enrichment and a wide variety of other programs for students and families in high-poverty areas. Such activities may include art and music programs, recreational activities, tutoring services, programs to serve students and families with limited English proficiency, and family literacy programs.

Any entity receiving funding under this grant must provide for the equitable participation of private school students and teachers in private schools located within LEAs or public school attendance areas that are receiving services under the grant, as required in the Uniform Provisions. SEAs are required to make awards only to applicants that will primarily serve students who attend schools serving a high percentage of economically disadvantaged students.

Eligible entities include LEAs, community-based organizations, or other public or private entities, including private and religious schools.

FUNDING

Grants to States are allocated on the basis of Title I student populations; local grants of at least \$50,000 are provided by States to eligible entities on a competitive basis. Eligible entities include LEAs, community-based organizations, or other public or private entities, including private and religious schools. □ □

TITLE V: Promoting Informed Parental Choice and Innovative Programs

Part A: Innovative Programs

FY02 Appropriation \$385,000,000

FY01 Appropriation \$385,000,000

ACTIVITIES

Activities supported through Part A of Title V provide services, materials, and equipment for innovative educational programs. The funds can be used for a wide variety of uses, including professional development, technology activities, purchase of instructional and educational materials such as library materials or computer hardware or software, programs for educationally disadvantaged students or for gifted students, literacy programs for adults, parental and community involvement activities, community service and service learning programs, programs to hire and support school nurses, mental health and counseling programs, consumer education, pre-kindergarten programs, CPR training, alternative education programs for students suspended or expelled, and school safety programs. [Section 5131]

Private school students generate the same per pupil allocation of funds as do their public school counterparts within the LEA.

Children attending private schools and their teachers are eligible to participate equitably in activities supported through this Title. If the programs carried out by the LEA for public school students are not feasible or necessary as determined in consultation between public and private school officials, the LEA must provide other arrangements to assure the equitable participation of private school students in the purposes and benefits of this program. If an LEA does not participate in Innovative programs, the SEA shall make arrangements, such as through a contract, to provide services to private school children. [Section 5142]

FUNDING

States receive funding on the basis of the school-aged population of the State. States must grant at least 85 percent of their FY02 funds to LEAs on the basis of the relative enrollment in public and private schools within the LEAs' jurisdictions. One hundred percent of the funds allocated in subsequent fiscal years in excess of the amounts granted to the States in FY02 must be distributed to the LEAs on the same basis as the 2002 funds. With criteria approved by the Secretary of Education, States are required to adjust the amount they distribute to LEAs on the basis of the number of children living in areas of high concentration of low-income families, the number of children living in poverty, and the number of children living in sparsely populated areas. Private school students generate the same per pupil allocation of funds as do their public school counterparts within the LEA. [Section 5112 (a)]

Part D, Subpart 6: Gifted and Talented Students

FY02 Appropriation \$11,250,000

FY01 Appropriation \$7,500,000

ACTIVITIES

The Gifted and Talented Students program authorizes the Education Department to make grants to or enter into contracts with SEAs, LEAs, institutions of higher education, other public agencies and other private agencies and organizations, including private and religious schools, to carry out projects designed to meet the educational needs of economically disadvantaged gifted and talented students, including the training of educational personnel in the education of gifted and talented students and, where appropriate, in the use of gifted and talented services, materials, and methods for teaching all students. Provision must be made for the equitable participation of students and teachers in private non-profit elementary and secondary schools, including the participation of teachers and other personnel in professional development programs serving such students. [Section 5466 (a)] □

TITLE VI: Flexibility and Accountability

New program; No funding provided

SEAs and LEAs have authority under Title VI to transfer funds among certain ESEA programs. Title VI also grants additional flexibility to some LEAs and SEAs. In all programs that require the equitable participation of private school students and teachers, regardless of whether or not the funds are transferred, the SEA and LEA retain the responsibility to provide equitable services as stipulated in the Uniform Provisions in sections 9501-9504 and the other statutory requirements for equitable services in sections 1120 and 5142.

Part A: Improving Academic Achievement Subpart 2: Funding Transferability for State and Local Educational Agencies

States may transfer not more than 50 percent of the non-administrative funds from the following programs to any other of these programs:

- Section 2113 (a)(3): Teacher and Principal Training and Recruiting
- Section 2412 (a)(1): Enhancing Education Through Technology
- Subsections (a)(1) (with the agreement of the governor) and (c)(1) of section 4112 and section 4202 (c)(3): Safe and Drug-Free Schools and 21st Century Community Learning Centers
- Section 5112(b): Innovative Programs

Subject to the 50 percent limitation, states may also transfer funds from any of the above programs to Title I.

Local educational agencies may transfer not more than 50 percent of the funds from the following programs to any other of these

programs. If the local educational agency is identified for improvement under section 1116 (c) of Title I, it can transfer up to 30 percent of the funds under these programs:

- Section 2121: Teacher and Principal Training and Recruiting
- Section 2412 (a)(2)(A): Enhancing Education Through Technology
- Section 4112 (b)(1): Safe and Drug-Free Schools
- Section 5112 (a): Innovative Programs

Subject to the percentage limitations above, local educational agencies may also transfer funds from any of the above programs to Title I.

Each State or local educational agency that transfers funds under this authority must conduct consultations in accordance with section 9501, if such transfer transfers funds from a program that provides for the equitable participation of private school students, teachers, or other educational personnel.

Subpart 3: State and Local Flexibility Demonstration

Chapter A: State Flexibility Authority

Up to 7 states may be granted flexibility authority under this demonstration project. The states granted flexibility enter into a performance agreement with 4-10 local educational agencies, at least half of which must be high-poverty local educational agencies. The authority is granted for up to 5 years.

Under this flexibility demonstration program, the state may consolidate any administrative and non-administrative funds from the following programs and use them for any purpose authorized under ESEA.

- Section 1004: State administrative funds for Title I, Part A Paragraphs (4) and (5) of section 1202 (d): Reading First
- Section 2113 (a)(3): Teacher and Principal Training and Recruiting
- Section 2412 (a)(1): Enhancing Education Through Technology
- Subsections (a)(1) (with the agreement of the governor) and (c)(1) of section 4112: Safe and Drug-Free Schools

- Paragraphs (2) and (3) of section 4204 (c): 21st Century Community Learning Centers
- Section 5112(b): Innovative Programs

A State educational agency that receives a grant of flexibility authority under this part must ensure that the funds for Innovative Programs are allocated to the local educational agencies in accordance with that program, but may specify how the local educational agencies use those funds.

When entering into a flexibility demonstration project, the state must provide assurances to the Secretary that, in consolidating and using funds under the authority, the state and the local educational agencies participating in the demonstration will provide for the equitable participation of students and professional staff in private schools consistent with section 9501 and that sections 9502, 9503, and 9504 will apply to all services and assistance provided with such funds in the same manner as these sections apply in the absence of the flexibility authority.

Chapter B: Local Flexibility Demonstration

Up to 80 local educational agencies may be selected to participate in this demonstration program. No more than 3 local educational agencies may be chosen in each state that does not have a flexibility authority under Chapter A (above). Local educational agencies cannot enter into a flexibility agreement if its state has applied for flexibility authority under Chapter A or if it has been granted flexibility through a Chapter A state demonstration program. The authority is for not more than 5 years.

Program funds made available to local educational agencies by formula under the following programs may be consolidated and used for any purpose permitted in ESEA:

- Subpart 2 of Part A of Title II:
Teacher and Principal Training and Recruiting Fund
- Subpart 1 of part D of Title II:
Enhancing Education Through Technology

- Subpart 1 of part A of Title IV: Safe and Drug-Free Schools
- Subpart 1 of part A of Title V: Innovative Programs

The local flexibility demonstration agreement must contain an assurance that the local educational agency agrees that in consolidating and using funds under the agreement, it will provide for the equitable participation of students and professional staff in private schools consistent with section 9501 and that sections 9502, 9503, and 9504 will apply to all services and assistance provided with such funds in the same manner as these sections apply in the absence of the flexibility authority.

Part B: Rural Education Initiative

Subpart 1: Small, Rural School Achievement Program

A local educational agency may use the flexibility under this program if it has less than 600 students in average daily attendance or each county in which a school served by the local educational agency is located has a population density of less than 10 persons per square mile.

The local educational agency may use funds under the following programs...

- Subpart 2 and section 2412 (a)(2)(A) of Title II: Enhancing Education Through Technology
- Section 4114: Safe and Drug-Free Schools
- Part A of title V: Innovative Programs

...for activities under...

- Part A of Title I
- Part A or D of Title II: Teacher and Principal Training and Recruiting Fund and Enhancing Education Through Technology
- Title III: Language Instruction for Limited English Proficient and Immigrant Students
- Part A or B of Title IV: Safe and Drug-Free Schools and 21st Century Community Learning Centers
- Part A of title V: Innovative Programs

According to nonregulatory guidance issued by the U.S. Department of Education on the REAP program, the equitable participation of private school students and teachers under REAP is ensured in the following manner:

The LEA must first determine the amount of funds generated by eligible private school students. It can then flex its own funds according to the program requirements. Additionally, in consultation, public and private school officials determine how the funds set aside for private school students will be used. They may be used in any of the authorized programs and do not need to be allocated in the same way that the public school allocated its federal resources.

The REAP guidance is available at: www.ed.gov/offices/OESE/goals/reapguid.html. Question B-11 refers to private school participation.

Section 6212: Grant Program

Qualified local educational agencies may also be granted funds from the Secretary to be used in the following programs:

- Part A of Title I
- Part A or D of Title II: Teacher and Principal Training and Recruiting Fund, and Enhancing Education Through Technology
- Title III: Language Instruction for Limited English Proficient and Immigrant Students
- Part A or B of Title IV: Safe and Drug-Free Schools and 21st Century Community Learning Centers
- Part A of title V: Innovative Programs

Subpart 2: Rural and Low-Income School Program

Local educational agencies are eligible to apply for funds under this program if 20 percent or more of the children ages 5 through 17 are

from families with income below the poverty line and all of the schools served by the local educational agency are designated with a school locale code of 6, 7, or 8.

Funds granted under this program can be used for teacher recruitment and retention, teacher professional development, educational technology, parental involvement activities, activities authorized under Safe and Drug-Free Schools, activities authorized under Part A of Title I, and activities authorized under Title III (Language Instruction for Limited English Proficient and Immigrant Students).

TITLE IX: General Provisions

Part E—Uniform Provisions, Subpart 1—Private Schools, Sections 9501-9504

The Uniform Provisions in Title IX of the Act list the programs that are “covered” by the provisions in Title IX, Subpart 1, Section 9501-9504 relating to consultation, expenditures, provision of services, and complaint procedure. New programs have been added to the list of programs formerly authorized under ESEA that require public school officials to offer equitable services to private school students, determined through timely and meaningful consultation, and to follow the requirements in these sections. Those programs with a “*” indicate new programs for private school student and teacher participation.

Covered programs [Section 9501 (b)]

The following programs listed in this section require the equitable participation of private school students and teachers, as defined in sections 9501-9504:

Title I

- Reading First [Subpart 1 of part B]
- William F. Goodling Even Start Family Literacy Program* [Subpart 3 of part B]
- Education of Migratory Children [Part C]

Title II

- Teacher and Principal Training and Recruiting Fund [Part A] (professional development activities only) [Section 9501 (b)(3)(A) and (B)]
- Math and Science Partnerships [Part B]
- Enhancing Education Through Technology [Part D]

Title III

- English Language Acquisition, Language Enhancement, and Academic Achievement [Part A]

Title IV

- Safe and Drug-Free Schools and Communities [Part A]
- 21st Century Community Learning Centers* [Part B]

Several programs have language within the program title itself pertaining to the equitable participation of private school students and teachers, rather than in the Uniform Provisions. These are:

Title I

- Improving Basic Programs Operated by Local Educational Agencies [Part A, Section 1120]

Title III

- Emergency Immigrant Education Program [Part B, Section 3245 (a)(7)(A) and Section 3246 (b)]

Title V

- Innovative Programs [Part A, Section 5142]
- Gifted and Talented Students* [Part D, Subpart 6, Section 5466 (a)]

Consultation [Section 9501(c)]

Local educational agencies are required to consult with private school officials during the design, development and implementation of programs providing benefits and services to eligible private school students. Timely and meaningful consultation must occur on such issues as:

- How the children's needs will be identified;
- What services will be offered;
- How, where, and by whom the services will be provided;
- How the services will be assessed and how the results of the assessments will be used to improve services;

Local educational agencies are required to consult with private school officials during the design, development and implementation of programs providing benefits and services to eligible private school students.

- The size and scope of the program and the amount of funds available to serve private school students;
- How and when the agency will make decisions about the delivery of services, including a thorough analysis of the views of private school officials on the provision of services through a third-party provider and a written explanation if the LEA decides against using a third-party provider; and
- Whether the agency is using a flexibility authority or an authority to transfer funds among programs and how they will ensure, through consultation, that the requirements for equitable services under the Uniform Provisions or under specific program titles will be followed. [Section 6123(e)(2)]

The requirements to provide equitable services and engage in consultation during the design, development, and implementation of the program apply to any type of entity that is receiving funds under these programs. For example, these requirements apply whether the grantee is an SEA, LEA, institution of higher education, community partnership, community-based organization, or partnership among eligible entities.

Complaint procedure and by-pass determination

[Sections 9503-9504]

Private school officials who believe that their students, teachers, or other educational personnel have not been afforded an equitable program have the right to file a complaint with the SEA. If the response of the State is not acceptable or is not provided in a timely manner, the private school officials have a right to appeal this decision to the Secretary of Education. The Secretary can resolve the issue or can, if he or she believes that the issue cannot be resolved, enact a by-pass, relieving the entity receiving the grant of its responsibility to provide equitable services. Under a by-pass, the U.S. Department of Education provides services through a third-party contractor.

A by-pass can be enacted if, by reason of any provision of law, any entity receiving the grant is prohibited from providing equitable services or if the Secretary determines that the entity has substantially failed or is unwilling to provide equitable services. In determining if a by-pass is justified, the Secretary may consider one or more factors, including quality, size, scope, location, and opportunity of private school students, teachers and other educational personnel to participate. □

The Elementary and Secondary Education Act (ESEA) <i>Where is it now?</i>	
1994: Improving America's Schools Act	2002: No Child Left Behind Act
Title I, Part A: Education for the Disadvantaged	Title I, Part A: Improving Basic Programs
Title I, Part A- <i>specifically</i> : Capital Expenses	Title V, Part D, Subpart 19: Grants for Capital Expenses of Providing Equitable Services for Private School Students
Title I, Part C: Migrant Education	Title I, Part C: Education of Migratory Children
Title II: Eisenhower Professional Development Program	<i>replaced by</i> : Title II, Part A: Teacher and Principal Training and Recruiting Fund (Title II, Part A also replaced Class Size Reduction)
Title II: Reading Excellence Act	<i>replaced by</i> : Title 1, Part B, Subpart 1: Reading First
Title III: Technology Literacy Challenge Fund, Technology Innovation Challenge Grant, Preparing Tomorrow's Teachers to Use Technology	<i>replaced by</i> : Title II, Part D: Enhancing Education Through Technology
Title IV: Safe and Drug-Free Schools and Communities	Title IV, Part A: Safe and Drug-Free Schools and Communities
Title VI: Innovative Education Programs	Title V, Part A: Innovative Programs
Title VI: Class Size Reduction	<i>replaced by</i> : Title II, Part A: Teacher and Principal Training and Recruiting Fund
Title VII: Bilingual Education	<i>replaced by</i> : Title III, Part A: English Language Acquisition, Language Enhancement, and Academic Achievement
Title VII: Emergency Immigrant Education Program	<i>incorporated into</i> Title III, Part B: <i>specifically mentioned</i> in Subpart 4 of Part B. NOTE: Emergency Immigrant Education Program contains specific reference to the equitable participation of private school students. Part B is only in effect if Title III is funded at less than \$650,000,000.
Title X, Part 1: 21st Century Community Learning Centers	Title IV, Part B: 21st Century Community Learning Centers
Title X: Javits Gifted and Talented Program	Title V, Part D, Subpart 6: Gifted and Talented Students
Title XIV: Uniform Provisions for the Participation of Private School Students	Title IX, Part E, Subpart 1: Private Schools

Programs newly available to non-public school students and teachers

Title I, Part B, Subpart 1:

William F. Goodling Even Start Family Literacy Program

Title II, Part B:

Math and Science Partnerships (newly created program)

Title IV, Part B:

21st Century Community Learning Centers

Title VI: Flexibility and Accountability (newly created program)

Programs retaining the same or similar name but with substantial changes

Title III, Part A: English Language Acquisition, Language Enhancement, and Academic Achievement

Previously, Bilingual Education was a competitive grant program to the LEA from the Education Department. Title III, Part A is a formula grant program to the states, who in turn grant funds to an LEA, or one of more LEAs in collaboration with an institution of higher education, community based organization, or State educational agency.

Title IV, Part B: 21st Century Community Learning Centers

Previously, 21st Century was a competitive grant program to LEAs in partnership with other community groups. 21st Century is now a formula grant program to the states, who in turn grant funds to LEAs, community-based organizations, another public or private entity, or a combination of 2 or more of such agencies, organizations or entities.

□

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