

Title V, Part A—Innovative Programs
Guidance – 8/2002
Excerpts – *Participation of Children Enrolled in Private,*
Nonprofit Schools

[FOR A COMPLETE COPY OF THE GUIDANCE ON TITLE V, PART A – INNOVATIVE PROGRAMS, GO TO <http://www.ed.gov/offices/OESE/SIP/titlevguidance2002.pdf>.]

**F. PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE,
NONPROFIT SCHOOLS**

F-1. How may private school children receive services under Title V-A?

An LEA must provide Title V-A services to children enrolled in a private, nonprofit school within the LEA if, after consultation with private school officials, the officials of the private school indicate that they wish the children in that school to participate. The LEA must contact the private schools within the LEA annually to determine which schools wish their children to participate. The LEA must consult with the officials of interested private schools in a timely and meaningful manner to determine the needs of the children, the types of Title V-A services that will be provided, and how those services will be provided. The LEA provides those services on an equitable basis to those children whether or not the services are the same Title V-A services the LEA provides to the public school children. The expenditures for such services, however, shall be equal (consistent with the number of children served) to Title V-A services provided to public school children. LEAs pay the cost of administering Title V-A services for public and private school students “off the top” of their allocations, before calculating how much of the Title V-A funds are to be made available for services for public and private school students. [Section 5142(a) and (b)].

F-2. What administrative requirements apply regarding the provision of services to private school children?

The services, materials, and equipment that an LEA provides for the benefit of participating private school students must be secular, neutral, and nonideological. The control of Title V-A funds and the title to any equipment and materials purchased with those funds must remain in a public agency (usually the LEA). No Title V-A funds may be paid to any private school, and the title to equipment and materials may not be transferred to any private school. Title V-A services must be provided by a public agency either directly or through a contractor. Any contractor must be a person or an association, agency, or corporation who or that, in the provision of the Title V-A services, is independent of the private school and any

religious organization. A public agency must supervise and have ultimate control over any contractor hired to provide Title V-A services. Finally, Title V-A services for private school students must supplement, and in no case supplant, the level of services that would be available to participating students and educational personnel in the private schools in the absence of the Title V-A funds [Sections 5142(a)(1)(A) and (c)].

F-3. How may an LEA ensure that Title V-A services are provided in a proper manner for the benefit of private school students and personnel?

LEAs should implement safeguards and procedures to ensure that Title V-A funds are used properly for private school children.

First, private school officials should be fully informed of and agree to the limitations on the use of any equipment and materials located in the private school. LEAs should obtain from the appropriate private school official a written assurance that any equipment and materials placed in the private school will be used only for secular, neutral, and nonideological purposes; that private school personnel will be informed as to these limitations; and that the equipment and materials will supplement, and in no case supplant, the equipment and materials that, in the absence of the Title V-A program, would have been made available for the participating students.

Second, the LEA is responsible for ensuring that any equipment and materials placed in the private school are used only for proper purposes. The LEA should determine that any Title V-A materials, such as library books and computer software, are secular, neutral, and nonideological. A good benchmark for this review is that the equipment and materials would be appropriate for use in public schools. The LEA should mark all equipment and materials purchased with Title V-A funds so that they are clearly identifiable as Title V-A property of the LEA. The LEA also should maintain an up-to-date inventory of all Title V-A equipment and materials provided for the benefit of private school students. It is also a helpful practice for private schools to maintain logs to document the use of Title V-A equipment and materials located in their schools. The LEA also should perform periodic on-site monitoring of the use of the equipment and materials. The monitoring could include on-the-spot checks of the use of the equipment and materials, discussions with private school officials, and a review of any logs maintained.

Third, the LEA should designate one public school official to oversee Title V-A services for private school students and ensure that services, materials and equipment provided for these students are secular, neutral, and nonideological. The designated official also should be responsible for receiving and handling any complaints or allegations that Title V-A funds are being used for improper activities for private school students.

Finally, LEAs need to ensure that if any violations occur, they are corrected at once. An LEA must remove materials and equipment from a private school immediately if removal is needed to avoid an unauthorized use.

F-4. May private school children and personnel receive services under any Title V-A innovative program area?

If Title V-A funds are used to provide services for children enrolled in private, nonprofit schools, these services must primarily benefit the children, not the private schools. This means that the funds must be used to meet specific needs of students enrolled in the private schools, rather than the needs of the private schools themselves or the general needs of the students enrolled in the private schools. (See section 76.658 of the Education Department General Administrative Regulations (EDGAR)).

In working with private schools to decide what Title V-A programs and activities will be carried out for children and personnel in those schools, LEAs must ensure that the programs and activities are supplemental in nature and will meet the specific needs of the children enrolled in the schools. For example, LEAs may not use funds for class-size reduction purposes in a private school [*Section 5131(a)(1)*]. This use of funds, which would involve hiring teachers for private school classrooms, would meet the needs of the private schools themselves, as well as the general needs of the students enrolled in the schools, rather than the specific needs of those students. However, LEAs may use funds to provide professional development activities for teachers in private schools [*Section 5131(a)(2)*].

There are several innovative assistance programs that, by their nature, cannot be carried out in a private school. These include (1) the planning, design, and initial implementation of charter schools [*Section 5131(a)(8)*]; (2) activities to promote, implement, or expand public school choice [*Section 5131(a)(12)*]; and (3) programs to implement the unsafe school choice policy in section 9532 [*Section 5131(a)(25)*].

For all other innovative assistance programs, particularly those involving education reform or school improvement activities, LEAs must evaluate closely whether the activities proposed to be carried out in a private school will primarily benefit the children enrolled in the school or the school itself. If the latter, then the LEA may not permit that activity or program to be implemented in the private school. In some instances, a program or activity that primarily benefits the private school's students (because it addresses specific, rather than general, needs of the students) will also incidentally benefit the school. The LEA may permit a program or activity of this type to be carried out in the private school. Again, under the regulations in EDGAR, the key in determining if particular services may be provided to students in a private school is whether those services will meet specific needs of students enrolled in the school, rather than their general needs or the needs of the school itself. This does not preclude an incidental benefit to the private school. However,

LEAs must be careful in this determination and may not authorize any services whose purpose is to benefit the general needs of the private school or its students.

F-5. How does an SEA calculate the amount of funds to be distributed to the LEAs?

The funds allocated to LEAs are based on the relative enrollments of the total of the number of children enrolled in public schools and the number of children enrolled in private, non-profit schools that participated in the program for the fiscal year preceding the fiscal year for which the determination is made. (See question C-1.)

F-6. What are the obligations of LEAs to private schools that did not participate in Title V-A programs in the preceding year?

The LEA has the obligation to contact, on an annual basis, appropriate officials from private, nonprofit schools within the LEA to determine whether such schools desire that their students participate in Title V-A programs. This must be done for schools that did and did not participate in the program during the previous year. Once a school agrees on behalf of its students to participate, the enrollment of those students is considered in the calculation of relative enrollment for the LEA for the following year. The method for calculating funds does not diminish the responsibilities of the LEA under section 5142.

F-7. What happens if an LEA chooses not to participate in the Title V-A program?

If no program is carried out in the LEA, the SEA shall make arrangements, such as through contracts with nonprofit agencies or organizations, under which children in private schools in the LEA are provided with services and materials to the same extent as would have occurred if the LEA had received funds.

F-8. Would it be beneficial for SEAs and LEAs, in working with private school officials in implementing Title V-A, to create Non-Public School Working Groups?

Some SEAs and LEAs have created *Non-Public School Working Groups*, made up of representatives from the full spectrum of private schools, and have found that such groups facilitate consultation between public and private school officials and the effective implementation of programs and services for private school students and teachers. Such groups meet on a regular basis, and smooth the progress of Federal education program implementation for private school students and teachers.