

Title III, Part A, *English Language Acquisition, Language Enhancement and Academic Achievement and the Participation of Private School Students and Teachers*

Services provided by local educational agencies (LEAs) to private school students and teachers under Title III, Part A, English Language Acquisition, Language Enhancement and Academic Achievement, are subject to the uniform provisions of Title IX, Part E, Section 9501 of the *Elementary and Secondary Education Act (ESEA)* as reauthorized by the *No Child Left Behind Act (NCLB)*, and require LEAs to provide equitable services to private school students and teachers. LEAs are required to consult in a timely and meaningful way with private school officials on a number of issues related to the Title III, Part A program, including: how their students' needs will be identified, the services that the LEA will provide to meet those needs, the amount of funding available to provide services, and how the services will be assessed (see Section 9501(c)). This consultation must take place before the LEA makes any decisions that impact the participation of private school students and teachers in the Title III, Part A program (see Section 9501(c)(3)).

The responsibility under the Title IX uniform provisions for providing Title III, Part A services to LEP students in private schools lies with the LEA and, as a result, the LEA is responsible for assessing the English language proficiency of private school students. In many, if not most school districts, a Home Language Survey is used to identify, among other things, those students who were not born in the United States or who have a native language other than English. A similar process could be followed by private schools in identifying potentially LEP students (see Section 9101(25) and Section 3301 of the *ESEA*). The assessment is critical to ensuring, for example, that a student who has a native language other than English is, in fact, LEP. Details on the kind of assessment and how it will be conducted should be discussed during the consultation process. However, the LEA cannot require a private school to administer an English language proficiency assessment as a condition for equitable participation of the private school students. An LEA may use Title III, Part A funds to pay for initial LEP assessments for **private** schools students in cases where the use of such funds would not supplant other Federal, State and/or local funds that may be used for such purposes.

Under that non-supplanting requirement, an LEA may not use Title III funds to pay for costs that would be covered by State, local, or Federal funds in the absence of the Title III grant. For example, if a State law required LEAs to assess all potentially LEP students attending schools in their jurisdiction, public and private, for purposes of confirming that those students are, in fact, LEP, the use of Title III funds to assess LEP students attending private schools would be prohibited by the non-supplanting requirement. Title III grantees and subgrantees, as is the case with all uses of Title III funds, need to determine that expenditures of Title III funds made in meeting the equitable services requirement for Title III do not violate that statute's non-supplanting requirement.

Title III, Part A does not require LEAs to administer their State’s annual English language proficiency assessments for identified English learners in **private** schools. However, the LEA is required under the Title IX uniform provisions to consult with private school officials about how the Title III, Part A services provided to private school students and teachers will be assessed and how the results of the assessment will be used to improve those services (see Section 9501(c)(1)(D)). The extent of this assessment will depend upon the size and scope of the services provided to private school students. Here again, if an assessment is used, the cost for that assessment may be paid for with Title III, Part A funds in cases where the use of such funds would not supplant other Federal, State and/or local funds that may be used for such purposes, as noted above.