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Office of P-12 Education

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TO: District Superintendents
Superintendents of Public Schools
District Title I Coordinators

FROM: Roberto Reyes, State Title I Director

DATE: October 5, 2010

SUBJECT: Selected Title I Equitable Services Compliance Indicators to be Addressed During the 2010-11 School Year

In response to findings identified by the US Department of Education (ED) during their May 2010 visit to New York State and questions from the field, this memo highlights selected indicators of compliance with equitable services requirements under Title I, Part A of the Elementary and Secondary Education Act (ESEA), as reauthorized by the No Child Left Behind Act of 2001 (NCLB). Local educational agencies (LEAs), or school districts, must review the following guidance to ensure their compliance with funding legislation.

LEAs are responsible for ensuring equitable Title I services for eligible private (nonpublic) school students, their teachers and parents (or others in parental relationship to students). Please carefully review LEA requirements and methods of calculating equitable expenditures on the SED Equitable Services website at http://www.p12.nysed.gov/nclb/programs/titleia/equity . In particular, please note the following requirements:

A. **Restrictions on Funding Paraprofessionals in Private School Title I Programs –** Paraprofessionals who provide instructional support (teaching assistants) in nonpublic Title I programs must work under the *direct* supervision of a highly qualified teacher who is employed by the public LEA, either directly or via contract between the individual and the LEA. In addition to planning lessons and the instructional support activities that the paraprofessional will carry out, direct supervision requires the teacher to be in direct and frequent proximity to the teaching assistant. As a result, an LEA's assignment of a paraprofessional alone to provide Title I services to eligible private school students is never allowable.

B. **Computer Aides and any other Non-instructional Administrative Expenditures Must Be Funded under an Administration Reserve, Not by Student Generated Funds for**

Instructional Services – Teacher aides, such as those providing technical assistance for computers in nonpublic Title I programs, may not provide instructional services. As a result, their funding is considered an administrative, rather than an instructional, expense. Their services, and any other costs of administering nonpublic Title I programs, must be funded as part of the Administration reserve, which is deducted from the pool of Title I funds before the per pupil amount (PPA) for public and private school students is determined. These administrative activities may not be supported by the funds for instructional services that are calculated by multiplying the PPA for each Title I school attendance area by the number of private school students in poverty that reside within it. Please see Item E below regarding administrative costs for Title I programs provided by third party contractors.

C. **Required Private School Proportional Shares of Applicable Reserves and Released Funds Formerly Reserved for SES/Choice and Homeless Education –** In addition to the instructional funds mentioned in Item B above, proportional shares of reserves that were deducted prior to calculating the PPA for public and private school students (often referred to as reserves *taken off the top*), with the exception of those excluded below, must be reserved for nonpublic equitable services. Those that must be shared include the 1% Parental Involvement and the Highly Qualified Teachers (HQT) reserves that may be required (although not used for HQT in private schools, as explained below), and any additional funds reserved off the top for parent involvement, discretionary (non-required) professional development and instructional initiatives other than Prekindergarten.

The nonpublic share of the HQT reserve is to be used specifically, not for teachers to become HQ, but to improve the ability of private school general education teachers to meet the needs of Title I students in their classes.

Excluded reserves include those required only of public Title I schools and LEAs in improvement status for Supplementary Educational Services (SES), School Choice and 10% District in Need of Improvement (DINI) professional development, as well as reserves for services to homeless students and students in facilities for the Neglected or Delinquent. However, proportional shares of portions of reserves for SES, Choice and Homeless Education that are later released because it has been demonstrated that they were not needed, must be reserved for equitable instructional services in nonpublic Title I programs because their original deduction reduced LEA per pupil amounts for Title I attendance areas, thereby reducing funds generated by eligible private school students for instructional services.

Proportional shares for services in each private school are determined by multiplying the percentage of students in poverty residing in Title I attendance areas that attend each private school by the amount for each applicable reserve. Additional assistance in correctly calculating proportional shares of reserves is available at http://www.p12.nysed.gov/nclb/programs/titleia/equity or by contacting the Title I Office. Both a brief and easily grasped calculation method in the Private School Equity PowerPoint, and greater detail in Federal guidance, are also available on this site.

D. **Carryover of Unspent Reserves for Original Purposes** - The LEA must maintain accounting for funds reserved for services to participating private school students, their families and teachers. Unspent reserves for services to Title I students in a private school must be carried forward for services to participating Title I students in the private school at a later date. In order to meet equitable service requirements for families and teachers of participating private school students, funds generated in compliance with sections 1118 (PI) and 1119 (HQT) of the ESEA must be used for professional development activities for private school teachers of participating students and parent involvement activities for families of participants. There is no authority under Title I to use these funds for instruction, or to use funds generated for instruction for private school students for professional development or parental involvement.

E. **Required Annual Evaluation of Title I Programs for Private School Students –** LEAs are required to conduct and document an annual evaluation of the effectiveness of Title I programs for eligible private school students. The annual evaluation, as well as planning and implementation, of the Title I program must take place within the context of meaningful consultation with appropriate private school officials. Just as LEAs are required to consult with private schools on assessment methods used to identify students from Title I attendance areas who are in need of services, they must engage in consultation regarding what constitutes acceptable annual academic progress for the Title I program; the standards and benchmarks against which it will be measured; how progress will be measured, including any assessments to be used for pre and post testing; and how the LEA will use the results of annual assessment and evaluation to improve the academic effectiveness of the program. Not only is this annual evaluation required but it can provide an important source of information when the LEA and private school consult regarding the most effective use of proportional shares of professional development reserves, when applicable, and other strategies for improving student performance.

F. **The LEA Must Maintain Proper Oversight of Contracts, Expenditures and Compliance in the Provision of Nonpublic Services by Third Party Contractors –** LEA oversight must address a number of aspects of third party provision of services, including the following:

   a. **Signed Contracts with Third Party Providers Must Have Sufficient Detail to Determine Compliance with program plans and all statutory and regulatory requirements of Title I and Section 9306 of the ESEA/NCLB.** Services for private school children, family involvement and professional development must be broken out with the specific amount(s) for each type of activity indicated in the contract. Contracts must contain enough detail on how the third-party provider will implement Title I requirements with detail sufficient to enable LEAs to determine that the Title I statutory and regulatory requirements, as well as program plans, will be met.
   b. **Contractor Administrative Costs May Not Be Paid with Private School Instructional Funds** As indicated in Item B above for LEA costs of administering the nonpublic Title I program, third party contractor administrative costs must be assigned to the Administration reserve deducted prior to calculating the LEA's PPA and the instructional funds generated by private school students. The same is true for capital expenses, if any, incurred in providing equitable services, such as: the purchase and lease of real and personal property; insurance and maintenance costs; transportation; and other comparable goods and services, including non-instructional computer technicians. The LEA

must maintain control of Title I funds, and title to any property acquired with them, and must administer those funds and property as required by Title I.

c. **LEAs Must Maintain Oversight of Invoices from Third Party Contractors.** Section 443 of the General Education Provisions Act (GEPA) requires LEAs to keep records that fully disclose the amount and disposition of Federal funds, the total costs of the activity for which the funds are used, and other records to facilitate an effective financial or programmatic audit. Third party contractor invoices must categorize expenditures as instructional, parental involvement, professional development, or administrative and must provide detail sufficient to enable the LEA to determine that the requested invoices are in accordance with Title I requirements and the GEPA. Information could include the name and salary of each teacher, the instructional materials purchased, and the specific administrative costs, such as supervisor's salary, office expenses, travel costs, capital expense type costs, and fees, keeping in mind that any administrative costs in the contract must be supported by the LEA's Administration reserve. LEAs have the authority under the GEPA to require documentation to support requested expenditures.

Should you have any additional questions or concerns regarding these matters, please consult the indicated websites for additional information or call the Title I Office at (518) 473-0295.

c: Ira Schwartz