



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INNOVATION AND IMPROVEMENT

Office of Non-Public Education

July 14, 2003

Mr. Frank Mandley, Director
Grants Administration & Government Programs
Broward County Public Schools
600 SE Third Avenue
Fort Lauderdale, FL 33301

Dear Mr. Mandley:

Thank you for contacting the Office of Non-Public Education to inquire about "the requirements of Section 9534 of the [Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind] Act [(NCLB)] and its relevance to the participation of nonpublic schools in programs authorized by the Act." You also asked whether a local educational agency (LEA) might impose nondiscrimination requirements for the participation of private school students and teachers in the LEA 's federally funded program, in addition to those in the applicable Federal civil rights requirements.

Section 9534 states that "Nothing in this Act shall be construed to permit discrimination on the basis of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, or disability in any program funded under this Act." We have interpreted Section 9534 as a rule of construction that clarifies that nothing in the ESEA disturbs the application of the civil rights laws to programs funded under the ESEA. It does not add to or substantively change Federal civil rights laws that already apply to federally assisted programs.

These laws include Title VI of the Civil Rights Act of 1964, as amended (Title VI) (prohibition of discrimination on the basis of race, color, or national origin); Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) (prohibition of discrimination on the basis of disability); Title IX of the Education Amendments of 1972, as amended (Title IX) (prohibition of sex discrimination); and the Age Discrimination Act of 1975, as amended (prohibition of discrimination on the basis of age). In addition, Title n of the Americans With Disabilities Act of 1990 prohibits discrimination on the basis of disability by public entities, regardless of receipt of Federal funds. The nondiscrimination statutes administered by this Department do not include prohibitions of discrimination on the basis of religion, sexual orientation, or marital status (so long as males and females are treated the same).

400 MARYLAND AVE., S.W., WASHINGTON, D.C. 20202
www.ed.gov

Our mission is to ensure equal access to education and to promote educational excellence throughout the nation.

Our understanding is that the issue you have raised arises in connection with requirements in statutes such as Title I, ESEA and the Individuals with Disabilities Education Act, which provide that students and/or teachers in private schools~ including private religious schools, have an opportunity to participate on an equitable basis in the federal program offered by an LEA. The civil rights requirements noted above generally apply only to recipients of Federal financial assistance. Private schools that are not grant recipients but that have teachers or students who participate in programs administered by an LEA are not recipients and are not directly subject to these Federal civil rights requirements.

However, when an LEA serves students and/or teachers from a private school as part of a federal program, it must administer the program in a nondiscriminatory manner under the federal civil rights laws. LEAs are responsible for ensuring that there is no discriminatory conduct by the private school only if the conduct would limit or deny the access or participation of the private school students or teachers in the federally assisted programs in a manner that would violate federal civil rights laws. In such a case, the LEA may obtain from the private school an assurance of nondiscrimination with respect to access to and participation of the private school students and teachers in the federally assisted programs. For example, if a private school discriminated against applicants for admission to the school based on race, color or national origin that would result in discrimination in the federally funded program, in violation of Title VI.

LEAs should be aware that, even in cases where a private school is a recipient of Federal assistance -- which is not the case here -- and is therefore generally subject to Title IX, Title IX does not cover the admissions policies of private schools. Similarly, even in cases where a private school is a recipient, if it is controlled by a religious organization (or is itself a religious organization) it is exempt from any Title IX provision to the extent that the Title IX provision is inconsistent with the religious tenets of the organization. A private school that wishes to claim such an exemption may submit a request to the Assistant Secretary for Civil Rights. It follows that an LEA would not violate Title IX by providing services under the Department's federally assisted programs to students and teachers in a private school that is not a recipient of Federal assistance if consistent with these standards and other applicable provisions of the Title IX regulation.

Further, under Section 504, a private school that is a recipient of Federal aid would be required to accept students with disabilities only if it can provide them an appropriate education with minor adjustments to the existing program and, if there is a substantial increase in cost related to educating that student, the cost can be passed on to the student's parents. It follows that an LEA would not violate Section 504 by providing services under the Department's federally assisted programs to students and teachers in private schools that are not recipients if consistent with these standards and other applicable provisions of the Section 504 regulation.

You also inquired about an LEA imposing on private schools civil rights policies that go beyond Federal civil rights requirements as a condition to providing services funded by Federal programs to students and teachers in those private schools. Federal program statutes such as Titles I, V, VI, and IX of ESEA and the Individuals with Disabilities Education Act (IDEA) stipulate the requirements for an LEA serving students and teachers in private schools, and provide that an LEA must serve private school students on an equitable basis. As a condition to the receipt of Federal funds under these programs, LEAs agree to make these services available to private school students and teachers on an equitable basis consistent with the requirements in the Federal program statutes. It would be inconsistent with these requirements for an LEA to exclude services to private school students and teachers if the private school did not agree to additional LEA civil rights policies that go beyond the Federal law. Section 9534 of ESE A does not change this result in any way.

I trust this will be helpful. Please do not hesitate to contact me if I can be of further assistance. My e-mail address is iack.klenk@ed.gov and my telephone number is 202- 401-0375.

Sincerely,

Jack Klenk, Acting Director
Office of Non-Public Education
U.S. Department of Education

cc: Rhonda Weiss, Office for Civil Rights
Steve Winnick, Office of the General Counsel
John Porter, Center for Faith-Based and Community Initiatives
Chuck O'Malley, Office of the Deputy Secretary