



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

March 4, 2009

The Honorable Wayne Sanstead
State Superintendent of Education
North Dakota Department of Public Instruction
600 East Boulevard Avenue
Department 201
Bismarck, ND 58505



Dear Superintendent Sanstead:

As many of you know, the fiscal year (FY) 2007 funds that States and local educational agencies (LEAs) previously received under Title V, Part A (Title V-A) of the Elementary and Secondary Education Act on July 1, 2007 remain available for obligation through September 30, 2009. After that time, unless Congress makes an additional appropriation, there will be no funding available for Title V-A and no flexibility to transfer funds to that program.

Over the past several months the U.S. Department of Education (ED) has received questions from the field about what LEAs should do with the materials and equipment purchased with Title V-A funds that are housed in non-public schools because there is no FY 2009 funding and the LEAs' Title V-A programs are about to be discontinued. This letter is intended to provide guidance to State educational agencies (SEAs) to assist LEAs regarding the disposition of equipment in non-public schools.

Under the Title V-A program, LEAs are responsible for providing equitable services for the benefit of non-public school students. The program statute and the Education Department General Administrative Regulations (EDGAR) require that the LEA maintain title to, and administrative control over, any materials and equipment acquired with program funds for the purpose of providing Title V-A services to non-public school students. (20 U.S.C. § 7217a(c)(1); 34 CFR § 76.661) ED has identified two options that LEAs may utilize concerning the materials and equipment purchased with Title V-A funds that are housed in private schools for use by private school students and teachers. Both of the options described below are consistent with all applicable statutory and regulatory requirements governing the program. Prior to selecting an option, LEAs must engage in timely and meaningful consultation with private school officials in order to ensure that the needs of private school students and teachers have been adequately addressed.

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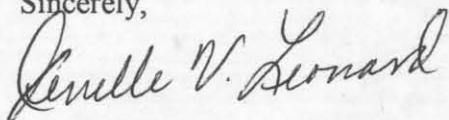
Under the first option, the LEA may allow materials and equipment to remain in a non-public school for the benefit of the school's students under a continuing activity authorized by Title V-A (even though that activity will no longer be funded under Title V-A). Under those circumstances, the materials and equipment must be used for the current Title V-A purposes. If there is no continuing Title V-A activity, then the equipment may be used for other activities currently or previously supported by the Federal Government that the LEA is implementing for the benefit of the non-public school students. Please note that ED programs should be given priority in the latter instance (34 CFR § 80.32(c)). LEAs must understand that if materials and equipment remain in a non-public school under either of the above instances, the LEAs retain the responsibility to keep title to, and maintain administrative control over, the materials and equipment (despite the absence of Title V-A funds); therefore, LEAs must keep the materials and equipment on their inventories and monitor their use. LEAs should obtain from the appropriate private school official a written assurance that equipment and materials placed in the private school will be used only for secular, neutral, and non-ideological purposes; that private school personnel 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.

Under the second option, LEAs may dispose of the equipment placed in non-public schools. Under EDGAR (34 CFR § 80.32(e)), if the equipment is no longer needed for the current project or another Federal program and its per-unit fair market value is less than \$5,000.00, the LEAs may retain, sell, or otherwise dispose of the equipment. EDGAR at 34 CFR § 80.32(e) also provides instructions on what to do if the fair market value is more than \$5,000.00. Please note that under this option, an LEA could sell some or all of the materials or equipment to a non-public school for its fair market value. As a result, the LEA would no longer have the responsibility for administrative control and proper use requirements over the materials and equipment. If, in consultation with the private school officials, the LEA chooses this option, it must develop a method for determining fair market value.

Before making any final decisions regarding the use or disposal of equipment that has been placed in private schools under the Title V-A program, the LEA must consult with private school officials.

We hope that this letter assists you in advising LEAs. If you have any questions about this matter, please do not hesitate to contact Valerie Rogers of my staff at 202-260-2543 or email her at Valerie.Rogers@ed.gov.

Sincerely,



Jenelle V. Leonard
Director
School Support and Technology Programs