



## UNITED STATES DEPARTMENT OF EDUCATION

January 14, 2022

Dear Chief State School Officer,

I am writing today regarding Operation Allies Welcome, the Federal government's effort to support vulnerable Afghans as they safely resettle in the United States. The U.S. Department of Education recognizes that there is an immediate and urgent need to provide high-quality, culturally responsive education to Afghan newcomers – inclusive of primary, secondary, and English language learning as well as social and emotional learning. Many Afghan allies and their families protected our troops, supported our diplomatic community, and served our country. We welcome them into our nation, as we do with every child who comes to or enters the country regardless of their immigration status, and we are committed to providing them with an equitable and excellent education.

I am writing to provide information about U.S. Department of Education funds and resources available to support Afghan children and their families, as well children and families from other countries, who have arrived in your States and school districts now or may be arriving soon. Additional Federal funds are available, for example, through the U.S. Department of Health and Human Services' Office of Refugee Resettlement, in particular Refugee School Impact Grants described in the Afghan Assistance Resources link below.

As you know, a newcomer who is enrolled in a public school is entitled to an education just like any other enrolled student. Therefore, a local educational agency (LEA) must provide such a student with free public education and determine whether the student is eligible to participate in programs supported with local, State, and Federal funds on the same basis as any other student.

For additional information about LEA obligations in this area, please see the U.S. Department of Education's and the U.S. Department of Justice's School Enrollment Procedures [Dear Colleague Letter](#) and [Questions and Answers](#) document. The Departments also recently issued a fact sheet, [Confronting Discrimination Based on National Origin and Immigration Status](#), reiterating public schools' obligation to enroll all children, regardless of national origin or immigration status, and to provide language assistance services to English learner (EL students). LEAs are also obligated under Federal civil rights laws to take affirmative steps to ensure that students with limited English proficiency can meaningfully participate in their educational programs and services. For additional information about LEA obligations to EL students, please see the [English Learner Students and Limited English Proficient Parents Dear Colleague Letter](#).

Some of your new Afghan students, as well as other recently arrived children, may be children with a disability who are entitled to services under Federal disability laws. Under Part B of the Individuals with Disabilities Education Act (IDEA), State educational agencies (SEAs) and LEAs must ensure that all students who may have a disability (ages 3 through 21) and need services are identified, located,

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and evaluated to determine eligibility for special education and related services in a timely manner through IDEA’s child find process.<sup>1</sup> For children with disabilities who are found eligible through IDEA’s evaluation procedures,<sup>2</sup> a free appropriate public education (FAPE) must be made available through the provision of special education and related services and supplementary aids and services in the least restrictive environment and in conformity with the child’s individualized education program.<sup>3</sup> IDEA also includes, under Part C, the early intervention program that provides services for children with disabilities, ages birth through two, and their families. Under Section 504 of the Rehabilitation Act of 1973 (Section 504), which prohibits discrimination based on disability,<sup>4</sup> LEAs must provide FAPE to qualified students who have a disability and must identify and evaluate students who may be in need of services and supports under Section 504.<sup>5</sup> Some students covered by Section 504 may also be eligible to receive FAPE under the IDEA.<sup>6</sup> Importantly, school districts must provide EL students with disabilities with both the language assistance and disability-related services<sup>7</sup> to which they are entitled under Federal law. It is impermissible under IDEA and Federal civil rights laws to deny or delay evaluations of EL students for special education and related services based on their EL status or to limit EL students to receiving either EL services or special education services.

Concerning Federal education programs, an SEA and its LEAs may use funds under the Elementary and Secondary School Emergency Relief (ESSER) Fund and the Governor’s Emergency Education Relief (GEER) Fund to address the impact of the COVID-19 pandemic on recently arrived children. Please see the U.S. Department of Education’s [Frequently Asked Questions document](#) on ESSER and GEER for additional information. (Sections B and C may be especially helpful.) Furthermore, SEAs and LEAs may be able to leverage these funds to develop culturally and linguistically relevant instructional materials for recently arrived students, as well as materials to assess children in their native language, including assessments used in special education evaluations, if needed as part of the response to the COVID-19 pandemic.

Moreover, Federal education funds from the Elementary and Secondary Education Act of 1965 (ESEA) can be used to support recently arrived children. Enclosed with this letter is a short summary of how funds under Title I, Part A; Title III, Part A; Title IV, Part A; and Title IV, Part B of the ESEA and IDEA can be used by States, school districts, and schools to support recently arrived students.

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<sup>1</sup> For more information, see: <https://sites.ed.gov/idea/files/rts-qa-child-find-part-b-08-24-2021.pdf>.

<sup>2</sup> Under IDEA, assessments and other evaluation materials used to assess a child must be provided and administered in the child’s native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer. See 34 C.F.R. § 300.304(c)(1)(ii).

<sup>3</sup> 20 U.S.C. §§ 1412(a)(1), 1413(a)(1); 34 C.F.R. §§ 300.101-300.102, 300.114-300.118, 300.201, 300.320-300.324. IDEA serves children from birth through age 21, including infants and toddlers with disabilities and their families. For more information on obligations of SEAs and LEAs to serve children ages 3 through 21 under Part B of IDEA, see <https://sites.ed.gov/idea/files/rts-qa-child-find-part-b-08-24-2021.pdf> and <https://sites.ed.gov/idea/files/rts-iep-09-30-2021.pdf>. For more information on obligations of State lead agencies (LAs) to serve children birth to age three under Part C of IDEA, see: <https://sites.ed.gov/idea/files/QA-on-Child-Find-10-29-2021.pdf>.

<sup>4</sup> 29 U.S.C. § 794, 34 C.F.R. part 104.

<sup>5</sup> See 34 C.F.R. §§ 104.33- 104.36.

<sup>6</sup> To learn more about FAPE under Section 504, please see the *Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools* issued by the Department’s Office for Civil Rights, available at <https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf>. The requirements of FAPE under IDEA are specified in 34 C.F.R. § 300.17 and 34 C.F.R. §§ 300.101-300.113.

<sup>7</sup> The term “disability-related services” is intended to encompass either special education and related services provided to children with disabilities who are eligible for services under IDEA and/or regular or special education and related aids and services provided to qualified students with disabilities under Section 504.

We hope you will find the information contained in this letter helpful. In addition, the following Federal government websites may be of assistance: the U.S. Department of Education’s new [Keeping the Promise](#) site, the U.S. Department of Health and Human Services’ Office of Refugee Resettlement’s [Afghan Assistance Resources](#), Administration for Community Living’s [Aging and Disability Networks](#), and the U.S. Surgeon General’s Advisory [Protecting Youth Mental Health](#). Also, two other resources that might be helpful are the U.S. Department of Education’s 2017 [Newcomer Tool Kit](#) (2017) and the Regional Educational Laboratory Program (REL) Northwest’s [Toolkit](#) (2021).<sup>8</sup>

Thank you again for your support for students and families, including recently arrived students. If you have any additional questions, please contact [KeepingthePromise@ed.gov](mailto:KeepingthePromise@ed.gov). Our Afghan allies served us; let us Keep our Promise by educating them.

Sincerely,

/s/

Cindy Marten  
Deputy Secretary

Enclosure

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<sup>8</sup> Please note that the external resources are provided for your convenience as a potential resource. They were not developed by the Department, and we do not control or guarantee the accuracy, relevance, timeliness, or completeness of this information. Furthermore, the inclusion of any hyperlinks and the content presented is not intended to convey their relative importance, nor is it intended to endorse any views expressed or products or services offered.

## **Attachment A. Summary of Existing Federal Formula K-12 Funds that Can be Used to Support Recently Arrived Students**

### *Title I, Part A of the Elementary and Secondary Education Act (ESEA)*

The purpose of Title I, Part A (Title I-A) is to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps. An LEA has flexibility to use Title I funds for various activities that would enhance the academic achievement of Title I students (i.e., all students in a schoolwide program under ESEA section 1114 and low-achieving students in a targeted assistance program under ESEA section 1115). There are aspects of both of these Title I-A programs that an SEA may wish to highlight as it works with LEAs.

In a Title I school that operates a schoolwide program, there are three components that form the core of a schoolwide program: a comprehensive needs assessment, a schoolwide plan, and an annual evaluation of the plan. These components are outlined in detail on pages 3-4 of ED's [Non-Regulatory Guidance: Supporting School Reform by Leveraging Federal Funds in a Schoolwide Program \(September 2016\)](#) (Schoolwide Guidance). Under ESEA section 1114(b), a Title I schoolwide school may use Title I funds for any activity that supports the needs of students in the school as identified through the school's comprehensive needs assessment and described in its schoolwide plan. These activities may include, for example, providing direct instruction, improving school climate, counseling, mentoring, and school-based mental health programs, or providing positive behavioral interventions and supports that would benefit Afghan evacuees enrolled in public schools as well as other newly arrived students. (See pages 4-5 of the Schoolwide Guidance for additional examples of allowable activities in schoolwide programs.)

We note this information because it illustrates how a schoolwide school may adapt its plans based on the needs of its students, which may change during a school year and from one year to the next. It may be helpful for an SEA to emphasize this point because it will enhance a school's capacity to serve all of its students, including students who may be new to the school, specifically, or new to the American educational system more generally. Moreover, a schoolwide program school has the additional flexibility to consolidate Federal, State, and local education funds to better address the needs of its students, concentrate the consolidated funds where the school determines they are most needed, and reduce its record keeping burden. (See pages 9-10 of the Schoolwide Guidance for details on the benefits of consolidation.)

In a Title I school that operates a targeted assistance program, ESEA section 1115(c)(1)(B) requires the school to use Title I funds to help improve the academic achievement of Title I students —i.e., those who the school identified as failing, or most at risk of failing, to meet the State's academic achievement standards under ESEA section 1111(b)(1)(A) based on multiple, educationally related criteria. Just as with a schoolwide program, the school has considerable flexibility to implement activities for its Title I students that reflect their particular academic needs, including additional direct instruction and providing other supports to help Title I students succeed in school. As noted above, all newly arrived students are entitled to participate in Title I on the same basis as any other student. Therefore, a school must not consider a student's immigration status in determining eligibility for Title I services.

Under ESEA section 1115(e)(2), a targeted assistance school may use a portion of its Title I funds to provide comprehensive services, such as health, nutrition, and other social services, if such services are

not otherwise available to eligible students. In doing so, the school must have engaged in a comprehensive needs assessment and established a collaborative partnership with local service providers and determined that no other funds from other sources are reasonably available to provide such services. Among the specific services an LEA may provide under these circumstances, ESEA section 1115(e)(2)(B)(iii) permits an LEA to use Title I funds for family support and engagement services, such as adult literacy activities so that families can better support the education of Title I students.

In providing services using funds under Title I, an LEA should keep in mind that ESEA sections 1118(b)(1)-(2) and 1114(a)(2)(B) require that a Title I school receive the State and local funds necessary to provide services required by law for English learners. Examples of such services include services for English learners required by *Lau v. Nichols*, 414 U.S. 563 (1974) (see <https://www2.ed.gov/about/offices/list/ocr/ell/lau.html>) and the administration of a screener to determine whether a student is English proficient as required under Title VI of the Civil Rights Act of 1964.

### *Title III, Part A of the ESEA*

Title III, Part A (Title III-A) includes two types of subgrants to LEAs: English Language Acquisition formula subgrants (see ESEA section 3111 and 3114(a)) and immigrant children and youth subgrants (ESEA section 3114(d)). For guidance on these two subgrants, see [Non-Regulatory Guidance: English Learners and Title III of the Elementary and Secondary Education Act \(ESEA\), as amended by the Every Student Succeeds Act \(ESSA\)](#), updated January 2, 2019 (2019 guidance).

Many LEAs receive English Language Acquisition subgrants under Title III-A for helping English learners (ELs) attain English proficiency and develop high levels of academic attainment in English. These English Language Acquisition subgrants are used by LEAs to supplement their basic services for ELs. Basic services for ELs are designed to meet the LEA's civil rights obligation to enable ELs to meaningfully participate in the LEA's educational programs. Therefore, in LEAs that receive Title III-A English Language Acquisition subgrants, any immigrant student who meets the definition of EL, as defined in ESEA section 8101(20), is entitled to language services under the civil rights laws and also may receive supplementary services under Title III-A. Please refer to pages 44-46 of the 2019 guidance for more information on procedures for identifying ELs.

Additionally, under the Immigrant Children and Youth Subgrant program, an SEA must reserve not more than 15 percent of the SEA Title III-A allocation for subgrants to LEAs in the State that have experienced a significant increase in the percentage or number of immigrant children and youth who have enrolled in schools in the LEA in the current fiscal year compared to the average of the last two fiscal years. (ESEA section 3114(d)). The term "immigrant children and youth," which is defined in section 3201(5) of the ESEA, refers to individuals who-- (A) are aged 3 through 21; (B) were not born in any State; and (C) have not been attending one or more schools in any one or more States for more than 3 full academic years. Note that immigrant students do not have to meet the definition of EL – that is, they may be fluent English speakers and are still entitled to services under the immigrant subgrants.

For these immigrant subgrants, an SEA must reserve at least enough funds to make one subgrant to an eligible LEA to serve immigrant students that is of sufficient size and scope to carry out a program that is effective in meeting the purposes of Title III-A. (ESEA section 3114(d)). While an SEA may choose

whether to use an increase in the percentage or number of immigrant children and youth in awarding funds to LEAs, we encourage the SEA to consider both increases in the percentage and in the number of immigrant children and youth in order to ensure an equitable allocation of funds across LEAs of various sizes. An SEA may define the “significant increase” criteria used to determine eligibility of LEAs for this subgrant (see question A-16 in the 2019 guidance). If an SEA’s definition is not sufficient to allow at least one LEA to meet the definition and permit at least one immigrant subgrant to be made, the State may change its definition. Defining “significant increase” may provide the SEA the opportunity to award an immigrant subgrant to an LEA that, while it has experienced a significant increase in immigrant students, still does not have enough EL students to qualify for the minimum English Language Acquisition formula subgrant award of \$10,000. (ESEA section 3114(b)).

In awarding these immigrant children and youth subgrants, an SEA must equally consider LEAs that have limited or no experience in serving immigrant children and youth. An SEA must also consider the quality of the local plans that the LEAs submit under section 3116. (ESEA section 3114(d)). In order to make at least one immigrant subgrant, an SEA has discretion with respect to—

1. The size and scope of the award;
2. Whether to make such awards on a discretionary or formula basis;
3. Whether to make awards multi-year or for a single year; and
4. The definition of “significant increase.”

If the total amount of immigrant children and youth subgrants that the SEA has already awarded for fiscal year 2021 are still below 15 percent of the SEA’s total Title III-A funds for fiscal year 2021 and the SEA still has unspent Title III-A funds for the fiscal year, the SEA can consider the current fiscal year’s data to determine whether an LEA has had a “significant increase” in immigrant children and youth. As explained in section A-16 of the 2019 guidance, each SEA determines “what constitutes a ‘significant increase’ and may change that definition from year to year without requesting approval from [the Department].” The SEA may determine the definition of “significant increase,” and this does not need to be approved by the Department. However, the State should allocate funds fairly.

Under the statute, an LEA must use the immigrant subgrant to provide enhanced instructional opportunities for immigrant children and youth (ESEA section 3115(e)). Activities may include:

- Family literacy, parent and family outreach, and training activities designed to assist parents and families to become active participants in the education of their children;
- Recruitment of and support for personnel, including teachers and paraprofessionals who have been specifically trained, or are being trained, to provide services to immigrant children and youth;
- Provision of tutorials, mentoring, and academic or career counseling for immigrant children and youth;
- Identification, development, and acquisition of curricular materials, educational software, and technologies to be used in the program;
- Basic instruction services that are directly attributable to the presence of immigrant children and youth in the LEA, including the payment of costs of providing additional classroom supplies;
- Costs of transportation, or such other costs as are directly attributable to such additional basic instruction services;
- Other instruction services that are designed to assist immigrant children and youth to achieve in elementary and secondary schools in the U.S., such as programs of introduction to the educational system and civics education; and

- Activities, coordinated with community-based organizations, institutions of higher education, private sector entities, or other entities with expertise in working with immigrants, to assist parents and families of immigrant children and youth by offering comprehensive community services.

We strongly encourage an LEA that receives Title III-A immigrant subgrant funds to prioritize activities that will meet the unique needs of the immigrant children and youth enrolled in the LEA, as well as parents and families of these students. Conducting a needs assessment and measuring the impact of activities provided using Title III-A funds may help to ensure that these funds are used meaningfully and that LEAs are able to successfully support immigrant children and youth.

#### *Title IV, Part A of the ESEA*

The Title IV, Part A (Title IV-A) program is intended to help increase the capacity of SEAs, LEAs, schools, and local communities to— A) provide all students with access to a well-rounded education; B) improve school conditions for student learning; and C) improve the use of technology in order to improve the academic achievement and digital literacy of all students. The use of Title IV-A funds must be consistent with one of the purposes of the three content areas in the program (well-rounded education, safe and healthy students, or the effective use of technology) and must not supplant other State or local funds that would otherwise be used in the absence of the Title IV-A program funds.

LEAs have substantial flexibility in how they utilize Title IV-A program funds to provide all students, including recently arrived students, access to a well-rounded education, improve school conditions for student learning (e.g., provide supports to students who are new to the American educational system), and utilize educational technology. Well-rounded activities may include foreign language programs, college counseling, arts programs, and STEM programs. Activities aimed at improving student health and safety include efforts such as promoting mental health initiatives, school security and safety, parent and community engagement, truancy prevention programs, health and nutrition programs, or establishing multi-tiered systems of support and other school climate activities. LEAs may also use funds for technology-related purposes, including professional development, blended learning, and building technological capacity.

As you know, an SEA must reserve at least 95 percent of the Title IV-A program allocation for subgrants to LEAs and may reserve no more than one percent of its allocation for administrative costs. Of the amount left for State use, SEAs may use funds to support LEAs in a variety of activities, including by providing trauma-informed care services.

#### *Title IV, Part B of the ESEA*

The Nita M. Lowey 21<sup>st</sup> Century Community Learning Centers (21<sup>st</sup> CCLC) program, authorized under Title IV, Part B of the ESEA, provides opportunities for communities to establish or expand activities in community learning centers that— A) provide opportunities for academic enrichment, including providing tutoring services; B) offer students, including recently arrived students, a broad array of additional services, programs, and activities; and C) offer families of students served by community learning centers opportunities for active and meaningful engagement in their children's education, including opportunities for literacy and related educational development.



*Individuals with Disabilities Education Act (IDEA)*

The purpose of Part B of the IDEA is to ensure that a free appropriate public education (FAPE) is made available to eligible children with disabilities (ages 3 through 21) and that those children are provided special education and related services, including supplementary aids and services, at no cost to their parents and in conformity with an individualized education program.<sup>9</sup> States may reserve a portion of their Federal IDEA Part B funding for certain State-level activities, which can include providing technical assistance and professional development, assisting LEAs in providing positive behavioral interventions and supports and mental health services for children with disabilities, supporting the use of technology, supporting capacity building activities and improving the delivery of services by LEAs, and other activities authorized under IDEA.<sup>10</sup> SEAs must subgrant and distribute the majority of their IDEA Part B allocations to eligible LEAs, including public charter schools that operate as LEAs.<sup>11</sup> IDEA also includes, under Part C, the family-oriented early intervention program that provides services for children with disabilities (including developmental delays) ages birth through two and their families.

In response to the needs of recently arrived students and their families, LEAs might consider using IDEA Part B funds in the following ways: (1) to invest in the capacity building and development of tools and materials that will allow LEAs to conduct special education evaluations in a linguistically and culturally appropriate manner for recently arrived students; (2) hiring personnel with expertise in serving linguistically and culturally diverse students; (3) using assistive technology to improve communication with recently arrived children with disabilities; and (4) increasing the LEA's capacity to effectively engage with families of eligible children with disabilities who have recently arrived. A child's individualized education program (IEP) will specify the necessary special education and related services and supplementary aids and services to be provided to the child, and program modifications or supports for school personnel, and can include academic, social, emotional, behavioral, and mental health supports and services as determined necessary by the child's IEP Team. Services provided in accordance with a child's IEP might include, but are not limited to, culturally and linguistically appropriate specially designed instruction or trauma-informed mental health services determined necessary by the child's IEP Team to ensure FAPE is made available to the child.

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<sup>9</sup> 20 U.S.C. §§ 1412(a)(1); 34 C.F.R. §§ 300.17, 300.101-300.113, 300.320-300.324.

<sup>10</sup> 20 U.S.C. § 1411(e); 34 C.F.R. § 300.704(b)(4).

<sup>11</sup> 20 U.S.C. §§ 1411(f)(1), 1419(g)(1); 34 C.F.R. §§ 300.705(a), 300.815.