



THE SECRETARY OF EDUCATION  
WASHINGTON, DC 20202

September 6, 2023

Dear Chief State School Officers:

As a nation predominantly of immigrants, America has benefited from the vitality, resolve, and enthusiasm of those seeking the American dream. Our history is enriched by people from all over the world who have brought their culture, language, and religion to our great nation. Immigrant students, including those seeking asylum, contribute to the very fabric of our country, and schools play a significant role in helping immigrant students adapt and thrive in their new communities. I write to you today to affirm school districts' responsibilities to serve immigrant students, announce our recently updated 2023 Newcomer Toolkit, and share federal resources that may support such students.

As you know, the Supreme Court of the United States held more than 40 years ago in the case of *Plyler v. Doe*, 457 U.S. 202 (1982) that all children in the United States have an equal right to enroll and participate in public elementary and secondary schools without regard to their or their parents' or guardians' immigration status.<sup>1</sup> Public school districts may not deny access to an education to any child based on immigration status. It is a violation of federal law for districts to prohibit or discourage children from enrolling in public schools because the children or their parents or guardians are not U.S. citizens or do not have immigration documentation. Therefore, a local educational agency (LEA) must provide such a student with equal access to a public elementary and secondary education, regardless of their or their parent's actual or perceived national origin, citizenship, or immigration status, and determine whether the student is eligible, on the same basis as any other student, to participate in programs supported with local, State, and federal funds.

Recently, the Department of Education (Department) re-released the [Newcomer Toolkit](#), originally published in September 2016. This toolkit is a resource for State, local, and school leaders in supporting multilingual learners and general education educators who directly serve immigrant and refugee students. Each chapter includes (1) discussion of topics relevant to understanding, supporting, and engaging newcomer students and their families or guardians; (2) tools, research-based strategies, and examples of classroom and schoolwide practices in action;

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<sup>1</sup> For more information, see U.S. Department of Justice & U.S. Department of Education, *Dear Colleague Letter to School Districts to Ensure Equal Access for All Children to Public Schools Regardless of Immigration Status*, May 2014, available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf>; U.S. Department of Justice & U.S. Department of Education, *Confronting Discrimination Based on National Origin and Immigration Status*, August 2021, available at <https://www2.ed.gov/about/offices/list/ocr/docs/confronting-discrimination-national-origin-immigration-status>; U.S. Department of Justice & U.S. Department of Education, *Protecting Access to Education for Migratory Children*, June 2023, available at [www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-migratory-children-202306.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-migratory-children-202306.pdf); U.S. Department of Justice & U.S. Department of Education, *Protecting Access to Education for Unaccompanied Children*, June 2023, available at [www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-unaccompanied-children-202306.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-unaccompanied-children-202306.pdf).

(3) professional learning activities for use in staff meetings or professional learning communities; and (4) resources for further information and assistance. In addition, the toolkit encourages asset-based and trauma-informed approaches and a focus on equity, inclusivity, and features the Dual Capacity Framework for building school-family partnerships. Additionally, the [English Learner toolkit](#) reminds educators of the civil rights of families of newcomer students.

The Department administers several programs, described below, that provide funds that may be used to support immigrant students, including programs for students who are identified as English learners. Each program can be used to provide services for immigrant students and/or English learners. Each has specific requirements and eligibility criteria, and we encourage you to review each program to understand how the program may be used to support these groups of students from pre-kindergarten to 12<sup>th</sup> grade and beyond.

As the end of the period of availability for the COVID-19 relief funding nears, we remind State educational agencies (SEAs) and their LEAs that they 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 immigrant students. These funds may be used to provide professional development, assist with teacher recruitment, and support additional credentialing for educators, such as a bilingual endorsement. SEAs and LEAs may use these funds to provide for translation and interpretation services and to develop culturally and linguistically relevant instructional materials for recently arrived students and develop 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, including to address learning loss. For example, Central Falls School District in Rhode Island used its American Rescue Plan (ARP) ESSER and ARP State administrative funds to implement afterschool language learning academies across all five of the LEA’s K-12 campuses, adding two hours of English learning to the daily schedule. Funds under the Coronavirus Response and Relief Supplemental Appropriations Act must be obligated no later than September 30, 2023, whereas funds under the ARP Act must be obligated no later than September 30, 2024.

Additionally, the American Rescue Plan Elementary and Secondary School Emergency Relief – Homeless Children and Youth (ARP-HCY) funds provide \$800 million for SEAs and LEAs to identify and support students experiencing homelessness, including immigrant, refugee, and asylee students (if identified as homeless by a homeless liaison or designee). These funds may be used by States to address urgent needs of children and youth experiencing homelessness—including academic, social, emotional, and mental health needs. The funds must be obligated by September 30, 2024. Of this funding, up to 25 percent may be reserved by the SEA for State activities, which could include serving the unique needs of immigrant students who are experiencing homelessness. For more information on allowability, see this [letter](#); for additional information on serving immigrant, asylum and evacuee students under the McKinney-Vento Homeless Assistance Act please see this [letter](#).

The Elementary and Secondary Education Act of 1965 (ESEA) and the Individuals with Disabilities Education Act (IDEA) also establish a number of programs under which funds may be used to provide supports and services to immigrant students, including those also identified as students with disabilities. Additionally, Title II of the Workforce Innovation and Opportunity Act

(WIOA) provides federal funding for adult education and literacy activities, including English language acquisition and integrated English literacy and civics education.<sup>2</sup> For more information about how some of the Department’s largest grant programs can be used to support the needs of immigrant children, please see the Department’s January 2022 [letter](#) regarding serving students who are Afghan evacuees. While the guidance in this letter was focused on Afghan evacuees, the information provided is applicable to supporting all immigrant students.

Select programs that may support immigrant students include:

- **Title I, Part A of the ESEA.** Under Title I, Part A (Title I) SEAs award subgrant to LEAs to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps. All immigrant students, including 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 (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).

Under ESEA section 1115(e)(2), a Title I school that operates a targeted assistance program 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.

- **English Language Acquisition Program (Title III, Part A of the ESEA).** Under Title III, Part A, SEAs award subgrants to LEAs to provide supplemental services to English learners, which may include immigrant students.<sup>3</sup> Among other activities, Title III, Part A funds can be used to supplement language instruction educational programs (LIEPs) and activities that increase the knowledge and skills of teachers who serve English learners. In addition, each SEA is required to reserve funds (up to fifteen percent of its Title III allocation) to make at least one subgrant to an LEA that experienced a significant

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<sup>2</sup> An individual is eligible for services under Title II of WIOA if they are at least 16 years of age; are not enrolled or required to be enrolled in secondary school under State law; and are basic skills deficient, do not have a secondary school diploma or its recognized equivalent, or are an English language learner. Section 203(4) of WIOA.

<sup>3</sup> English learner – The term “English learner,” when used with respect to an individual, means an individual — (A) who is aged 3 through 21; (B) who is enrolled or preparing to enroll in an elementary school or secondary school; (C)(i) who was not born in the United States or whose native language is a language other than English; (ii)(I) who is a Native American or Alaska Native, or a native resident of the outlying areas; and (II) who comes from an environment where a language other than English has had a significant impact on the individual’s level of English language proficiency; or (iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and (D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual — (i) the ability to meet the challenging State academic standards; (ii) the ability to successfully achieve in classrooms where the language of instruction is English; or (iii) the opportunity to participate fully in society. (ESEA section 8101(20)). English learners with disabilities – The phrase “English learners with disabilities” refers to English learners who are also “children with disabilities” under the IDEA, as defined in section 602(3) of that Act and 34 C.F.R. § 300.8.

increase in the percentage or number of immigrant children and youth (ESEA section 3114(d)).<sup>4</sup> These subgrants help support immigrant children and youth to attain English proficiency and develop high levels of academic achievement in English. SEAs have flexibility in determining what constitutes a “significant increase” in immigrant children and youth.

- **Education for Homeless Children and Youth (EHCY).** The Education for Homeless Children and Youth (EHCY) program is authorized under Title VII-B of the McKinney-Vento Homeless Assistance Act (McKinney-Vento Act). The purpose of the EHCY program is to ensure that children and youth experiencing homelessness have equal access to the same free, appropriate public education, including a public preschool education, as other children and youth. Under the McKinney-Vento Act, children and youth are considered to be experiencing homelessness—and therefore eligible for McKinney-Vento services—if they “lack a fixed, regular, and adequate nighttime residence,” which includes children and youth who are sharing the housing of others due to loss of housing, economic hardship, or a similar reason; living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; living in emergency or transitional shelters; or living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings. (McKinney Vento Act section 725(2)). Immigrant, refugee, and asylee students who meet this definition may be served under EHCY subgrant awards. Some allowable uses of funds include: (1) defraying the excess cost of school of origin transportation, including for school-sponsored extracurricular and family engagement activities; (2) tutoring, counseling, and management of referrals to health care and other necessary services; and (3) the provision of other extraordinary or emergency assistance needed to enable children and youth experiencing homelessness to attend school and participate fully in school activities, which can include items such as hygiene products, school supplies, and clothing. (McKinney-Vento Act section 723(d)). Additionally, each SEA can reserve up to 25 percent of its McKinney-Vento funds each year for State-level activities, which the State may use to support targeted programs that address the needs of immigrant children experiencing homelessness.
- **Student Support and Academic Enrichment Program (Title IV-A of the ESEA).** The Title IV-A program is intended to improve students’ academic achievement by increasing the capacity of States, LEAs, schools, and local communities to (1) provide all students with access to a well-rounded education, (2) improve school conditions for student learning, and (3) improve the use of technology in order to improve the academic achievement and digital literacy of all students. LEAs may use Title IV-A funds to support immigrant students depending on activity type.
- **Discretionary Grants.** The Department has a number of competitive grant programs that support activities that can serve immigrant children. These include programs that fund full-service community schools, mental health professionals in schools, and

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<sup>4</sup> Section 3201(5) of the ESEA defines “immigrant children and youth” as 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 “State” is defined in section 3201(13) of the ESEA to include the 50 States, the District of Columbia, and Puerto Rico.

comprehensive services. LEAs and other eligible entities can apply for these programs and provide services to immigrant students with the funding they are awarded. For example, the [National Professional Development](#) (NPD) grants program under Title III of the ESEA supports professional development activities that are designed to improve classroom instruction for students who are English learners and assist educational personnel working with such children to meet high professional standards, including standards for certification and licensure as teachers who work in LIEPs or serve students who are ELs. These grants may be used to help train teachers and school leaders on how to best serve immigrant children who are English learners.

- **Workforce Innovation and Opportunity Act.** Title II of WIOA, the Adult Education and Family Literacy Act, funds adult education and literacy activities, including adult basic and secondary education, English language acquisition, and integrated English literacy and civics education. Immigrants are eligible regardless of immigration status or employment authorization, unless restricted by the State, provided they meet the law's eligibility requirements.

SEAs and LEAs are also encouraged to coordinate efforts with State and local agencies for additional funding and housing, health, and child welfare services that may be available to support immigrant students. Furthermore, LEAs are encouraged to provide whole child supports for students, including mental health supports for students who may have experienced trauma.

Thank you for your work to advance the educational needs of our students. We are eager to continue to partner with you as you address the needs of your school communities, including recently arrived immigrant students and their families.

Sincerely,

A handwritten signature in blue ink that reads "Miguel A. Cardona". The signature is fluid and cursive, with a long horizontal stroke at the end.

Miguel A. Cardona, Ed.D.  
U.S. Secretary of Education