

400 MARYLAND AVE., SW, WASHINGTON, DC 20202
www.ed.gov

Vj g'F gr ctwo gpv'qitGf wecv'kppat'o kulkqp'ku'iq'rt qo qvg'iwf gpv'cej kgxgo gpv'c'pf 'rt gr ct c'kpp'iq' i nqdcn'

and evaluated to determine eligibility for special education and related services in a timely manner

¹ For children with disabilities who are found eligible through
² 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

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,⁴ 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 504.⁵ Some students covered by Section 504 may also be eligible to receive FAPE under the IDEA.⁶ Importantly, school districts must provide EL students with disabilities with both the language assistance and disability-related services⁷ 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

Relief (GEER) Fund to address the impact of the COVID-19 pandemic on recently arrived children. Please see the U.S. Department of Education [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.

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

² Under IDEA, assessments and other evaluation materials used to assess a child must be provided and administered in the 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).

³ 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>.

⁴ 29 U.S.C. § 794, 34 C.F.R. part 104.

⁵ See 34 C.F.R. §§ 104.33- 104.36.

⁶ 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* 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.

⁷

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 [Keeping the Promise](#) site, the U.S. Department of Health and Human Services Office of Refugee Resettlement [Afghan Assistance Resources](#), Administration for Community Living

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) and 1119(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 (

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

LEAs for this subgrant (see question A-16 in the 2019 guidance). If an definition is not sufficient to allow at least one LEA to meet the definition and permit at least one immigrant subgrant 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.

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 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 youth. As explained in section A-16 of the 2019 guidance, each SEA

from [the Department SEA, 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

