

ESEA, Title I, Part C

As amended by No Child Left Behind

(P.L. 107-110)

SEC. 1301. PROGRAM PURPOSE.

It is the purpose of this part to assist States to —

- (1) support high-quality and comprehensive educational programs for migratory children to help reduce the educational disruptions and other problems that result from repeated moves;
- (2) ensure that migratory children who move among the States are not penalized in any manner by disparities among the States in curriculum, graduation requirements, and State academic content and student academic achievement standards;
- (3) ensure that migratory children are provided with appropriate educational services (including supportive services) that address their special needs in a coordinated and efficient manner;
- (4) ensure that migratory children receive full and appropriate opportunities to meet the same challenging State academic content and student academic achievement standards that all children are expected to meet;
- (5) design programs to help migratory children overcome educational disruption, cultural and language barriers, social isolation, various health-related problems, and other factors that inhibit the ability of such children to do well in school, and to prepare such children to make a successful transition to postsecondary education or employment; and
- (6) ensure that migratory children benefit from State and local systemic reforms.

SEC. 1302. PROGRAM AUTHORIZED.

In order to carry out the purpose of this part, the Secretary shall make grants to State educational agencies, or combinations of such agencies, to establish or improve, directly or through local operating agencies, programs of education for migratory children in accordance with this part.

SEC. 1303. STATE ALLOCATIONS.

(a) STATE ALLOCATIONS-

- (1) FISCAL YEAR 2002- For fiscal year 2002, each State (other than the Commonwealth of Puerto Rico) is entitled to receive under this part an amount equal to —
 - (A) the sum of the estimated number of migratory children aged 3 through 21 who reside in the State full time and the full-time equivalent of the estimated number of migratory children aged 3 through 21 who reside in the State part time, as determined in accordance with subsection (e); multiplied by
 - (B) 40 percent of the average per-pupil expenditure in the State, except that the amount determined under this paragraph shall not be less than 32 percent, nor more than 48 percent, of the average per-pupil expenditure in the United States.
- (2) SUBSEQUENT YEARS-
 - (A) BASE AMOUNT-
 - (i) IN GENERAL- Except as provided in subsection (b) and clause (ii), each State (other than the Commonwealth of Puerto Rico) is entitled to receive under this part, for fiscal year 2003 and succeeding fiscal years, an amount equal to —
 - (I) the amount that such State received under this part for fiscal year 2002; plus
 - (II) the amount allocated to the State under subparagraph (B).
 - (ii) NONPARTICIPATING STATES- In the case of a State (other than the Commonwealth of Puerto Rico) that did not receive any funds for fiscal year 2002 under this part, the State shall receive, for fiscal year 2003 and succeeding fiscal years, an amount equal to —
 - (I) the amount that such State would have received under this part for fiscal year 2002 if its application under section 1304 for the year had been approved; plus
 - (II) the amount allocated to the State under subparagraph (B).
 - (B) ALLOCATION OF ADDITIONAL AMOUNT- For fiscal year 2003 and succeeding fiscal years, the amount (if any) by which the funds appropriated to carry out this part for the year exceed such funds for fiscal year 2002 shall be allocated to a State (other than the Commonwealth of Puerto Rico) so that the State receives an amount equal to —
 - (i) the sum of —
 - (I) the number of identified eligible migratory children, aged 3 through 21, residing in the State during the previous year; and

(II) the number of identified eligible migratory children, aged 3 through 21, who received services under this part in summer or intersession programs provided by the State during such year; multiplied by

(ii) 40 percent of the average per-pupil expenditure in the State, except that the amount determined under this clause may not be less than 32 percent, or more than 48 percent, of the average per-pupil expenditure in the United States.

(b) ALLOCATION TO PUERTO RICO-

(1) IN GENERAL- For each fiscal year, the grant which the Commonwealth of Puerto Rico shall be eligible to receive under this part shall be the amount determined by multiplying the number of children who would be counted under subsection (a)(1)(A) if such subsection applied to the Commonwealth of Puerto Rico by the product of —

(A) the percentage which the average per-pupil expenditure in the Commonwealth of Puerto Rico is of the lowest average per-pupil expenditure of any of the 50 States; and

(B) 32 percent of the average per-pupil expenditure in the United States.

(2) MINIMUM PERCENTAGE- The percentage in paragraph (1)(A) shall not be less than —

(A) for fiscal year 2002, 77.5 percent;

(B) for fiscal year 2003, 80.0 percent;

(C) for fiscal year 2004, 82.5 percent; and

(D) for fiscal year 2005 and succeeding fiscal years, 85.0 percent.

(3) LIMITATION- If the application of paragraph (2) for any fiscal year would result in any of the 50 States or the District of Columbia receiving less under this part than it received under this part for the preceding fiscal year, then the percentage described in paragraph (1)(A) that is used for the Commonwealth of Puerto Rico for the fiscal year for which the determination is made shall be the greater of the percentage in paragraph (1)(A) for such fiscal year or the percentage used for the preceding fiscal year.

(c) RATABLE REDUCTIONS; REALLOCATIONS-

(1) IN GENERAL- (A) If, after the Secretary reserves funds under section 1308(c), the amount appropriated to carry out this part for any fiscal year is insufficient to pay in full the amounts for which all States are eligible, the Secretary shall ratably reduce each such amount.

(B) If additional funds become available for making such payments for any fiscal year, the Secretary shall allocate such funds to States in amounts that the Secretary determines will best carry out the purpose of this part.

(2) SPECIAL RULE- (A) The Secretary shall further reduce the amount of any grant to a State under this part for any fiscal year if the Secretary determines, based on available information on the numbers and needs of migratory children in the State and the program proposed by the State to address such needs, that such amount exceeds the amount required under section 1304.

(B) The Secretary shall reallocate such excess funds to other States whose grants under this part would otherwise be insufficient to provide an appropriate level of services to migratory children, in such amounts as the Secretary determines are appropriate.

(d) CONSORTIUM ARRANGEMENTS-

(1) IN GENERAL- In the case of a State that receives a grant of \$1,000,000 or less under this section, the Secretary shall consult with the State educational agency to determine whether consortium arrangements with another State or other appropriate entity would result in delivery of services in a more effective and efficient manner.

(2) PROPOSALS- Any State, regardless of the amount of such State's allocation, may submit a consortium arrangement to the Secretary for approval.

(3) APPROVAL- The Secretary shall approve a consortium arrangement under paragraph (1) or (2) if the proposal demonstrates that the arrangement will —

(A) reduce administrative costs or program function costs for State programs; and

(B) make more funds available for direct services to add substantially to the welfare or educational attainment of children to be served under this part.

(e) DETERMINING NUMBERS OF ELIGIBLE CHILDREN- In order to determine the estimated number of migratory children residing in each State for purposes of this section, the Secretary shall —

(1) use such information as the Secretary finds most accurately reflects the actual number of migratory children;

(2) develop and implement a procedure for more accurately reflecting cost factors for different types of summer and intersession program designs;

(3) adjust the full-time equivalent number of migratory children who reside in each State to take into account —

(A) the special needs of those children participating in special programs provided under this part that operate during the summer and intersession periods; and

(B) the additional costs of operating such programs; and

(4) conduct an analysis of the options for adjusting the formula so as to better direct services to the child whose education has been interrupted.

SEC. 1304. STATE APPLICATIONS; SERVICES.

(a) APPLICATION REQUIRED- Any State desiring to receive a grant under this part for any fiscal year shall submit an application to the Secretary at such time and in such manner as the Secretary may require.

(b) PROGRAM INFORMATION- Each such application shall include—

(1) a description of how, in planning, implementing, and evaluating programs and projects assisted under this part, the State and its local operating agencies will ensure that the special educational needs of migratory children, including preschool migratory children, are identified and addressed through—

(A) the full range of services that are available for migratory children from appropriate local, State, and Federal educational programs;

(B) joint planning among local, State, and Federal educational programs serving migrant children, including language instruction educational programs under part A or B of title III;

(C) the integration of services available under this part with services provided by those other programs; and

(D) measurable program goals and outcomes;

(2) a description of the steps the State is taking to provide all migratory students with the opportunity to meet the same challenging State academic content standards and challenging State student academic achievement standards that all children are expected to meet;

(3) a description of how the State will use funds received under this part to promote interstate and intrastate coordination of services for migratory children, including how, consistent with procedures the Secretary may require, the State will provide for educational continuity through the timely transfer of pertinent school records, including information on health, when children move from one school to another, whether or not such move occurs during the regular school year;

(4) a description of the State's priorities for the use of funds received under this part, and how such priorities relate to the State's assessment of needs for services in the State;

(5) a description of how the State will determine the amount of any subgrants the State will award to local operating agencies, taking into account the numbers and needs of migratory children, the requirements of subsection (d), and the availability of funds from other Federal, State, and local programs;

(6) such budgetary and other information as the Secretary may require; and

(7) a description of how the State will encourage programs and projects assisted under this part to offer family literacy services if the program or project serves a substantial number of migratory children who have parents who do not have a high school diploma or its recognized equivalent or who have low levels of literacy.

(c) ASSURANCES- Each such application shall also include assurances, satisfactory to the Secretary, that

(1) funds received under this part will be used only—

(A) for programs and projects, including the acquisition of equipment, in accordance with section 1306; and

(B) to coordinate such programs and projects with similar programs and projects within the State and in other States, as well as with other Federal programs that can benefit migratory children and their families;

(2) such programs and projects will be carried out in a manner consistent with the objectives of section 1114, subsections (b) and (d) of section 1115, subsections (b) and (c) of section 1120A, and part I;

(3) in the planning and operation of programs and projects at both the State and local agency operating level, there is consultation with parent advisory councils for programs of 1 school year in duration, and that all such programs and projects are carried out—

(A) in a manner that provides for the same parental involvement as is required for programs and projects under section 1118, unless extraordinary circumstances make such provision impractical; and

(B) in a format and language understandable to the parents;

(4) in planning and carrying out such programs and projects, there has been, and will be, adequate provision for addressing the unmet education needs of preschool migratory children;

(5) the effectiveness of such programs and projects will be determined, where feasible, using the same approaches and standards that will be used to assess the performance of students, schools, and local educational agencies under part A;

(6) to the extent feasible, such programs and projects will provide for—

(A) advocacy and outreach activities for migratory children and their families, including informing such children and families of, or helping such children and families gain access to, other education, health, nutrition, and social services;

(B) professional development programs, including mentoring, for teachers and other program personnel;

(C) family literacy programs, including such programs that use models developed under Even Start;

(D) the integration of information technology into educational and related programs; and

(E) programs to facilitate the transition of secondary school students to postsecondary education or employment; and

(7) the State will assist the Secretary in determining the number of migratory children under paragraphs (1)(A) and (2)(B)(i) of section 1303(a), through such procedures as the Secretary may require.

(d) **PRIORITY FOR SERVICES-** In providing services with funds received under this part, each recipient of such funds shall give priority to migratory children who are failing, or most at risk of failing, to meet the State's challenging State academic content standards and challenging State student academic achievement standards, and whose education has been interrupted during the regular school year.

(e) **CONTINUATION OF SERVICES-** Notwithstanding any other provision of this part—

(1) a child who ceases to be a migratory child during a school term shall be eligible for services until the end of such term;

(2) a child who is no longer a migratory child may continue to receive services for 1 additional school year, but only if comparable services are not available through other programs; and

(3) secondary school students who were eligible for services in secondary school may continue to be served through credit accrual programs until graduation.

SEC. 1305. SECRETARIAL APPROVAL; PEER REVIEW.

(a) **SECRETARIAL APPROVAL-** The Secretary shall approve each State application that meets the requirements of this part.

(b) **PEER REVIEW-** The Secretary may review any such application with the assistance and advice of State officials and other individuals with relevant expertise.

SEC. 1306. COMPREHENSIVE NEEDS ASSESSMENT AND SERVICE-DELIVERY PLAN; AUTHORIZED ACTIVITIES.

(a) **COMPREHENSIVE PLAN-**

(1) **IN GENERAL-** Each State that receives assistance under this part shall ensure that the State and its local operating agencies identify and address the special educational needs of migratory children in accordance with a comprehensive State plan that —

(A) is integrated with other programs under this Act or other Acts, as appropriate;

(B) may be submitted as a part of a consolidated application under section 9302, if —

(i) the special needs of migratory children are specifically addressed in the comprehensive State plan;

(ii) the comprehensive State plan is developed in collaboration with parents of migratory children; and

(iii) the comprehensive State plan is not used to supplant State efforts regarding, or administrative funding for, this part;

(C) provides that migratory children will have an opportunity to meet the same challenging State academic content standards and challenging State student academic achievement standards that all children are expected to meet;

(D) specifies measurable program goals and outcomes;

(E) encompasses the full range of services that are available for migratory children from appropriate local, State, and Federal educational programs;

(F) is the product of joint planning among such local, State, and Federal programs, including programs under part A, early childhood programs, and language instruction educational programs under part A or B of title III; and

(G) provides for the integration of services available under this part with services provided by such other programs.

(2) **DURATION OF THE PLAN-** Each such comprehensive State plan shall —

(A) remain in effect for the duration of the State's participation under this part; and

(B) be periodically reviewed and revised by the State, as necessary, to reflect changes in the State's strategies and programs under this part.

(b) **AUTHORIZED ACTIVITIES-**

(1) **FLEXIBILITY-** In implementing the comprehensive plan described in subsection (a), each State educational agency, where applicable through its local educational agencies, shall have the flexibility to determine the activities to be provided with funds made available under this part, except that such funds first shall be used to meet the identified needs of migratory children that result from their migratory lifestyle, and to permit these children to participate effectively in school.

(2) **UNADDRESSED NEEDS-** Funds provided under this part shall be used to address the needs of migratory children that are not addressed by services available from other Federal or non-Federal programs, except that migratory children who are eligible to receive services under part A may receive those services through funds provided under that part, or through funds under this part that remain after the agency addresses the needs described in paragraph (1).

(3) **CONSTRUCTION-** Nothing in this part shall be construed to prohibit a local educational agency from serving migratory children simultaneously with students with similar educational needs in the same educational settings, where appropriate.

(4) **SPECIAL RULE-** Notwithstanding section 1114, a school that receives funds under this part shall continue to address the identified needs described in paragraph (1), and shall meet the special educational needs of migratory children before using funds under this part for schoolwide programs under section 1114.

SEC. 1307. BYPASS.

The Secretary may use all or part of any State's allocation under this part to make arrangements with any public or private nonprofit agency to carry out the purpose of this part in such State if the Secretary determines that —

- (1) the State is unable or unwilling to conduct educational programs for migratory children;
- (2) such arrangements would result in more efficient and economic administration of such programs; or
- (3) such arrangements would add substantially to the welfare or educational attainment of such children.

SEC. 1308. COORDINATION OF MIGRANT EDUCATION ACTIVITIES.

(a) **IMPROVEMENT OF COORDINATION-**

(1) **IN GENERAL-** The Secretary, in consultation with the States, may make grants to, or enter into contracts with, State educational agencies, local educational agencies, institutions of higher education, and other public and private nonprofit entities to improve the interstate and intrastate coordination among such agencies' educational programs, including the establishment or improvement of programs for credit accrual and exchange, available to migratory students.

(2) **DURATION-** Grants under this subsection may be awarded for not more than 5 years.

(b) **STUDENT RECORDS-**

(1) **ASSISTANCE-** The Secretary shall assist States in developing effective methods for the electronic transfer of student records and in determining the number of migratory children in each State.

(2) **INFORMATION SYSTEM-**

(A) **IN GENERAL-** The Secretary, in consultation with the States, shall ensure the linkage of migrant student record systems for the purpose of electronically exchanging, among the States, health and educational information regarding all migratory students. The Secretary shall ensure such linkage occurs in a cost-effective manner, utilizing systems used by the States prior to, or developed after, the date of enactment of the No Child Left Behind Act of 2001, and shall determine the minimum data elements that each State receiving funds under this part shall collect and maintain. Such elements may include —

- (i) immunization records and other health information;
- (ii) elementary and secondary academic history (including partial credit), credit accrual, and results from State assessments required under section 1111(b);
- (iii) other academic information essential to ensuring that migratory children achieve to high standards; and
- (iv) eligibility for services under the Individuals with Disabilities Education Act.

(B) **NOTICE AND COMMENT-** After consulting with the States under subparagraph (A), the Secretary shall publish a notice in the Federal Register seeking public comment on the proposed data elements that each State receiving funds under this part shall be required to collect for purposes of electronic transfer of migratory student information and the requirements that States shall meet for immediate electronic access to such information. Such publication shall occur not later than 120 days after the date of enactment of the No Child Left Behind Act of 2001.

(3) **NO COST FOR CERTAIN TRANSFERS-** A State educational agency or local educational agency receiving assistance under this part shall make student records available to another State educational agency or local educational agency that requests the records at no cost to the requesting agency, if the request is made in order to meet the needs of a migratory child.

(4) **REPORT TO CONGRESS-**

(A) **IN GENERAL-** Not later than April 30, 2003, the Secretary shall report to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives the Secretary's findings and recommendations regarding the maintenance and transfer of health and educational information for migratory students by the States.

(B) **REQUIRED CONTENTS-** The Secretary shall include in such report —

- (i) a review of the progress of States in developing and linking electronic records transfer systems;
- (ii) recommendations for the development and linkage of such systems; and
- (iii) recommendations for measures that may be taken to ensure the continuity of services provided for migratory students.

(c) **AVAILABILITY OF FUNDS-** For the purpose of carrying out this section in any fiscal year, the Secretary shall reserve not more than \$10,000,000 of the amount appropriated to carry out this part for such year.

(d) **INCENTIVE GRANTS-** From the amounts made available to carry out this section for any fiscal year, the Secretary may reserve not more than \$3,000,000 to award grants of not more than \$250,000 on a competitive basis to State educational agencies that propose a consortium arrangement with another State or other appropriate entity that the Secretary determines, pursuant to criteria that the Secretary shall establish, will improve the delivery of services to migratory children whose education is interrupted.

(e) DATA COLLECTION- The Secretary shall direct the National Center for Education Statistics to collect data on migratory children.

SEC. 1309. DEFINITIONS.

As used in this part:

- (1) LOCAL OPERATING AGENCY- The term local operating agency' means —
 - (A) a local educational agency to which a State educational agency makes a subgrant under this part;
 - (B) a public or nonprofit private agency with which a State educational agency or the Secretary makes an arrangement to carry out a project under this part; or
 - (C) a State educational agency, if the State educational agency operates the State's migrant education program or projects directly.
- (2) MIGRATORY CHILD- The term migratory child' means a child who is, or whose parent or spouse is, a migratory agricultural worker, including a migratory dairy worker, or a migratory fisher, and who, in the preceding 36 months, in order to obtain, or accompany such parent or spouse, in order to obtain, temporary or seasonal employment in agricultural or fishing work —
 - (A) has moved from one school district to another;
 - (B) in a State that is comprised of a single school district, has moved from one administrative area to another within such district; or
 - (C) resides in a school district of more than 15,000 square miles, and migrates a distance of 20 miles or more to a temporary residence to engage in a fishing activity.