

Sections 101(b), 102, 106, and 107 of Title IV of Division B of Public Law 109-148, Dec. 30, 2005; 119 Stat. 2680

Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006

**[new text:** Showing operational modifications described in Division B, Subdivision 1, Title VIII of P.L. 115-123, the "Bipartisan Budget Act of 2018", enacted on February 9, 2018; 132 Stat. 64, 95 – 97, and in Division H, Title III of P.L. 115-141, the "Consolidated Appropriations Act", enacted on March 23, 2018. **NOTE:** The two statutes enacted in 2018 did not amend P.L. 109-148; rather, they provide that the statutory terms and conditions from P.L. 109-148 are to be applied, with specified updates, with respect to Hurricanes Harvey, Irma, and Maria, and the wildfires of 2017 for which a major disaster or emergency has been declared. This redline is intended to capture those updates so as to reflect the intent of Congress in a single document, but it is NOT legal authority. This document also contains updated section references to the Elementary and Secondary Education Act of 1965, to reflect the re-numbering of those sections by P.L. 114-95, the Every Student Succeeds Act.]

## **DIVISION B**

[This division may be cited as the "Emergency Supplemental Appropriations Act to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza, 2006"; see p. 21.]

### **EMERGENCY SUPPLEMENTAL APPROPRIATIONS TO ADDRESS HURRICANES IN THE GULF OF MEXICO AND PANDEMIC INFLUENZA, 2006**

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to address hurricanes in the Gulf of Mexico and pandemic influenza for the fiscal year ending September 30, 2006, and for other purposes, namely:

#### **TITLE IV – HURRICANE EDUCATION RECOVERY ACT**

##### **Subtitle A – Elementary and Secondary Education Hurricane Relief**

###### **SEC. 101. FINDINGS; DEFINITIONS.**

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(b) Definitions. Unless otherwise specified in this subtitle, the terms used in this subtitle have the meanings given the terms in section **[old text: 9101] [new text: 8101]** of the Elementary and Secondary Education Act of 1965 **[new text: (20 U.S.C. 7801)]**.

###### **SEC. 102. IMMEDIATE AID TO RESTART SCHOOL OPERATIONS.**

(a) Purpose. It is the purpose of this section—

(1) to provide immediate services or assistance to local educational agencies and non-public schools in **[old text: Louisiana, Mississippi, Alabama, and Texas] [new text: the**

States or territories affected by a covered disaster or emergency<sup>1</sup>] that serve an area in which a **[old text: major disaster has been declared in accordance with section 401] [new text: major disaster or emergency declared by the President in accordance with section 401 or 501, respectively,]** of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170 **[new text:, 5191]**), related to **[old text: Hurricane Katrina or Hurricane Rita] [new text: a covered disaster or emergency];** and

(2) to assist school administrators and personnel of such agencies or non-public schools with expenses related to the restart of operations in, the re-opening of, and the re-enrollment of students in, elementary schools <sup>2</sup>and secondary schools in such areas.

(b) Payments Authorized. From amounts appropriated to carry out this subtitle, the Secretary of Education is authorized to make payments, on such basis as the Secretary determines appropriate, taking into consideration the number of students who were enrolled, during the **[old text: 2004-2005] [new text: 2016-2017]** school year, in elementary schools and secondary schools that were closed **[old text: on September 12, 2005, as a result of Hurricane Katrina or on October 7, 2005, as a result of Hurricane Rita] [new text: as a result of a covered disaster or emergency,]** to State educational agencies **[old text: in Louisiana, Mississippi, Alabama, and Texas] [new text: that serve the States or territories affected by a covered disaster or emergency]** to enable such agencies to provide services or assistance to local educational agencies or non-public schools serving an area in which a **[old text: major disaster has been declared in accordance with section 401] [new text: major disaster or emergency declared by the President in accordance with section 401 or 501, respectively,]** of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170 **[new text:, 5191]**), related to **[old text: Hurricane Katrina or Hurricane Rita] [new text: a covered disaster or emergency]**.

(c) Eligibility, Consideration, and Equity.

(1) Eligibility and consideration. From the payment provided by the Secretary of Education under subsection (b), the State educational agency shall provide services and assistance to local educational agencies and non-public schools, consistent with the provisions of this section. In determining the amount to be provided for services or assistance under this section, the State educational agency shall consider the following:

(A) The number of school-aged children served by the local educational agency or non-public school in the academic year preceding the academic year for which the services or assistance are provided.

(B) The severity of the impact of **[old text: Hurricane Katrina or Hurricane Rita] [new text: a covered disaster or emergency]** on the local educational agency or non-public school and the extent of the needs in each local educational agency or non-public school **[old text: in Louisiana, Mississippi, Alabama, and Texas that is in an area in which a major disaster has been declared in accordance with section 401] [new text: in a State or**

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<sup>1</sup> The term “covered disaster or emergency” refers to Hurricanes Harvey, Irma, and Maria, or wildfires in 2017 for which a major disaster or emergency has been declared under section 401 or 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170 and 5190). See 132 Stat. 95.

<sup>2</sup> Each reference to a public elementary school may include, as determined by the local educational agency, a publicly-funded preschool program that enrolls children below the age of kindergarten entry and is part of an elementary school. See par. (2)(J) at 132 Stat. 97.

territory affected by a covered major disaster or emergency declared by the President in accordance with section 401 or 501, respectively,] of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170 [new text: , 5191]), related to [old text: Hurricane Katrina or Hurricane Rita] [new text: a covered disaster or emergency].

(2) Equity. Educational services and assistance provided for eligible non-public school students under paragraph (1) shall be equitable in comparison to the educational services and other benefits provided for public school students under this section, and shall be provided in a timely manner.

(d) Applications. Each local educational agency or non-public school desiring services or assistance under this section shall submit an application to the State educational agency at such time, in such manner, and accompanied by such information as the State educational agency may reasonably require to ensure expedited and timely provision of services or assistance to the local educational agency or non-public school.

(e) Uses of Funds.

(1) In general. A local educational agency or non-public school receiving services or assistance from the State educational agency under this section shall use such services or assistance for—

(A) recovery of student and personnel data, and other electronic information;

(B) replacement of school district information systems, including hardware and software;

(C) financial operations;

(D) reasonable transportation costs;

(E) rental of mobile educational units and leasing of neutral sites or spaces;

(F) initial replacement of instructional materials and equipment, including textbooks;

(G) redeveloping instructional plans, including curriculum development;

(H) initiating and maintaining education and support services; and

(I) such other activities related to the purpose of this section that are approved by the Secretary.

(2) Use with other available funds. A local educational agency or non-public school receiving services or assistance under this section may use such services or assistance in coordination with other Federal, State, or local funds available for the activities described in paragraph (1).

(3) Special rules.

(A) Prohibition. Services or assistance provided under this section shall not be used for construction or major renovation of schools.

(B) Secular, neutral, and nonideological services or assistance. Services or assistance provided under this section, including equipment and materials, shall be secular, neutral, and nonideological.

(f) Supplement Not Supplant.

(1) In general. Except as provided in paragraph (2), services or assistance made available under this section shall be used to supplement, not supplant, any funds made available through the Federal Emergency Management Agency or through a State.

(2) Exception. Paragraph (1) shall not prohibit the provision of Federal assistance under this section to an eligible State educational agency, local educational agency, or non-public school that is or may be entitled to receive, from another source, benefits for the same purposes as under this section if—

(A) such State educational agency, local educational agency, or school has not received such other benefits by the time of application for Federal assistance under this section; and

(B) such State educational agency, local educational agency, or school agrees to repay all duplicative Federal assistance received to carry out the purposes of this section.

(g) Definition of Non-Public School. The term "non-public school" means a non-public elementary school or secondary school that—

(1) is accredited or licensed or otherwise operates in accordance with State law; and

(2) was in existence prior to **[old text: August 22, 2005]** **[new text: the date that is one week prior to the date that the major disaster or emergency was declared for the area]**.

(h) Assistance to Non-Public Schools.

(1) Funds availability. From the payment provided by the Secretary of Education under subsection (b) to a State educational agency, the State educational agency shall reserve an amount of funds, to be made available to non-public schools in the State, that is not less than an amount that bears the same relation to the payment as the number of **[new text: students in]** non-public elementary schools and secondary schools in the State bears to the total number of **[new text: students in]** non-public and public elementary schools and secondary schools in the State. The number of **[new text: students in]** such schools shall be determined by the **[old text: National Center for Education Statistics Common Core of Data for the 2003-2004 school year]** **[new text: most recent and appropriate data set for the 2016-2017 school year]**. Such funds shall be used for the provision of services or assistance at non-public schools, except as provided in paragraph (2).

(2) Special rule. If funds made available under paragraph (1) remain unobligated 120 days after the date of enactment of this Act, such funds may be used to provide services or assistance under this section to local educational agencies or non-public schools.

(3) Public control of funds. The control of funds for the services and assistance provided to a non-public school under paragraph (1), and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds, materials, equipment, and property and shall provide such services (or may contract for the provision of such services with a public or private entity).

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## **SEC. 106. ASSISTANCE FOR HOMELESS YOUTH.**

(a) In General. The Secretary of Education shall provide assistance to local educational agencies serving homeless children and youths displaced by **[old text: Hurricane Katrina or Hurricane Rita]** **[new text: a covered disaster or emergency]**, consistent with section 723 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11433), including identification, enrollment assistance, assessment and school placement assistance, transportation, coordination of school services, supplies, referrals for health, mental health, and other needs.

(b) Exception and Distribution of Funds.

(1) Exception. For purposes of providing assistance under subsection (a), subsections (c) and (e)(1) of section 722 and subsections (b) and (c) of section 723 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11432(c) and (e)(1), 11433(b) and (c)) shall not apply.

(2) Disbursement. The Secretary of Education shall disburse funding provided under subsection (a) to State educational agencies based on demonstrated need, as determined by the Secretary, and such State educational agencies shall distribute funds, that are appropriated under section 109 and available to carry out this section, to local educational agencies based on demonstrated need, for the purposes of carrying out section 723 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11433).

**[new text:** PL 115-123 makes available up to \$25,000,000 to provide assistance to local educational agencies serving homeless children and youths displaced by the covered disaster, consistent with section 723 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 – 11435), and section 106 of title IV of division B of Public Law 109-148 (above), except that funds shall be disbursed based on demonstrated need and the number of homeless children and youth enrolled as a result of displacement by a covered disaster or emergency].

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**SEC. 107. TEMPORARY EMERGENCY IMPACT AID FOR DISPLACED STUDENTS.**

(a) Temporary Emergency Impact Aid Authorized.

(1) Aid to state educational agencies. From amounts appropriated to carry out this subtitle, the Secretary of Education shall provide emergency impact aid to State educational agencies to enable the State educational agencies to make emergency impact aid payments to eligible local educational agencies and eligible BIA-funded schools to enable—

(A) such eligible local educational agencies and schools to provide for the instruction of students served by such agencies and schools; and

(B) such eligible local educational agencies to make immediate impact aid payments to accounts established on behalf of displaced students (referred to in this section as "accounts") who are attending eligible non-public schools located in the areas served by the eligible local educational agencies.

(2) Aid to local educational agencies and BIA-funded schools. A State educational agency shall make emergency impact aid payments to eligible local educational agencies and eligible BIA-funded schools in accordance with subsection (d).

(3) State educational agencies in certain States. In the case of the **[old text:** States of Louisiana and Mississippi<sup>3</sup>] **[new text:** States or territories affected by a covered disaster or emergency], the State educational agency shall carry out the activities of eligible local educational agencies that are unable to carry out this section, including eligible local educational agencies in such States for which the State exercises the authorities normally exercised by such local educational agencies.

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**[old text:** <sup>3</sup> Assuming that even though only two states are referenced, drafters intended for the reference to be changed to a covered disaster or emergency. See par. (2)(D) at 132 Stat. 96.]

(4) Notice of funds availability. Not later than 14 calendar days after the date of enactment of this Act, the Secretary of Education shall publish in the Federal Register a notice of the availability of funds under this section.

(b) Definitions. In this section:

(1) Displaced student. The term "displaced student" means a student who enrolled in an elementary school **[new text: <sup>4</sup>]** or secondary school (other than the school that the student was enrolled in, or was eligible to be enrolled in, on **[old text: August 22, 2005]** **[new text: the date that is one week prior to the date that the major disaster or emergency was declared for the area]**) because such student resides or resided on **[old text: August 22, 2005]** **[new text: the date that is one week prior to the date that the major disaster or emergency was declared for the area]**, in an area for which a **[old text: major disaster has been declared in accordance with section 401]** **[new text: major disaster or emergency has been declared by the President in accordance with section 401 or 501, respectively,]** of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170 **[new text: , 5191]**), related to **[old text: Hurricane Katrina or Hurricane Rita]** **[new text: a covered disaster or emergency]**.

(2) Eligible local educational agencies. The term "eligible local educational agency" means a local educational agency that serves—

(A) an elementary school or secondary school (including a charter school) in which there is enrolled a displaced student; or

(B) an area in which there is located an eligible non-public school.

(3) Eligible non-public school. The term "eligible non-public school" means a non-public elementary school or secondary school that—

(A) is accredited or licensed or otherwise operates in accordance with State law;

(B) was in existence on **[old text: August 22, 2005]** **[new text: the date that is one week prior to the date that the major disaster or emergency was declared for the area]**; and

(C) serves a displaced student on behalf of whom an application for an account has been made pursuant to subsection (c)(2)(A)(ii).

(4) Eligible BIA-funded school. In this section, the term "eligible BIA-funded school" means a school funded by the Bureau of Indian Affairs in which there is enrolled a displaced student.

(c) Application.

(1) State educational agency. A State educational agency that desires to receive emergency impact aid under this section shall submit an application to the Secretary of Education, not later than 7 calendar days after the date by which an application under paragraph (2) must be submitted<sup>5</sup>, in such manner, and accompanied by such information as the Secretary of Education may reasonably require, including—

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**[new text: <sup>4</sup>** Each reference to a public elementary school may include, as determined by the local educational agency, a publicly-funded preschool program that enrolls children below the age of kindergarten entry and is part of an elementary school. See par. (2)(J) at 132 Stat. 97.]

<sup>5</sup> The Secretary may modify the State educational agency and local educational agency application timelines. See par. (2)(I) at 132 Stat. 97.

(A) information on the total displaced student child count of the State provided by eligible local educational agencies in the State and eligible BIA-funded schools in the State under paragraph (2);

(B) a description of the process for the parent or guardian of a displaced student enrolled in a non-public school to indicate to the eligible local educational agency serving the area in which such school is located that the student is enrolled in such school;

(C) a description of the procedure to be used by an eligible local educational agency in such State to provide payments to accounts;

(D) a description of the process to be used by an eligible local educational agency in such State to obtain—

(i) attestations of attendance of eligible displaced students from eligible non-public schools, in order for the local educational agency to provide payments to accounts on behalf of eligible displaced students; and

(ii) attestations from eligible non-public schools that accounts are used only for the purposes described in subsection (e)(1);

(E) the criteria, including family income, used to determine the eligibility for and the amount of assistance under this section provided on behalf of a displaced student attending an eligible non-public school; and

(F) the student count for displaced students attending eligible non-public schools.

(2) Local educational agencies and BIA-funded schools. An eligible local educational agency or eligible BIA-funded school that desires an emergency impact aid payment under this section shall submit an application to the State educational agency, not later than 14 calendar days after the date of the publication<sup>6</sup> of the notice described in subsection (a)(4), in such manner, and accompanied by such information as the State educational agency may reasonably require, including documentation submitted quarterly for the **[old text: 2005-2006] [new text: 2017-2018]** school year that indicates the following:

(A) In the case of an eligible local educational agency—

(i) the number of displaced students enrolled in the elementary schools and secondary schools (including charter schools and including the number of displaced students who are children with disabilities) served by such agency for such quarter;

(ii) the number of displaced students for whom the eligible local educational agency expects to provide payments to accounts under subsection (d)(3) (including the number of displaced students who are children with disabilities) for such quarter who meet the following criteria—

(I) the displaced student enrolled in an eligible non-public school prior to the date of enactment of this Act;

(II) the parent or guardian of the displaced student chose to enroll the student in the eligible non-public school in which the student is enrolled; and

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<sup>6</sup> The Secretary may modify the State educational agency and local educational agency application timelines. See para. (2)(I) at 132 Stat. 97.

(III) the parent or guardian of the displaced student submitted, in a timely manner that allows the local educational agency to meet the documentation requirements under this paragraph, an application requesting that the agency make a payment to an account on behalf of the student; and

(iii) an assurance that the local educational agency will make payments to accounts within 14 calendar days of receipt of funds provided under this section.

(B) In the case of an eligible BIA-funded school, the number of displaced students, including the number of displaced students who are children with disabilities, enrolled in such school for such quarter.

(3) Determination of number of displaced students. In determining the number of displaced students for a quarter under paragraph (2), an eligible local educational agency or eligible BIA-funded school shall include the number of displaced students served—

(A) in the case of a determination for the first quarterly installment, during the quarter prior to the date of enactment of this Act; and

(B) in the case of a determination for each subsequent quarterly installment, during the quarter immediately preceding the quarter for which the installment is provided.

(d) Amount of Emergency Impact Aid.

(1) Aid to state educational agencies.

(A) In general. The amount of emergency impact aid received by a State educational agency for the **[old text: 2005-2006]** **[new text: 2017-2018]** school year shall equal the sum of—

(i) **[old text: the product of the number of displaced students (who are not children with disabilities), as determined by the eligible local educational agencies and eligible BIA-funded schools in the State under subsection (c)(2), times \$6,000; and]** **[new text: \$9,000 for each displaced student who is an English learner, as that term is defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801);]**

(ii) **[old text: the product of the number of displaced students who are children with disabilities, as determined by the eligible local educational agencies and eligible BIA-funded schools in the State under subsection (c)(2), times \$7,500.]** **[new text: \$10,000 for each displaced student who is a child with a disability (regardless of whether the child is an English learner); and]**

**[new text: (iii) \$8,500 for each displaced student who is not a child with a disability or an English learner.]**

(B) Insufficient funds. If the amount available under this section to provide emergency impact aid under this subsection is insufficient to pay the full amount that a State educational agency is eligible to receive under this section, the Secretary of Education shall ratably reduce the amount of such emergency impact aid.

(C) Retention of State share. In the case of a State educational agency that has made a payment prior to the date of enactment of this Act to a local educational agency for the purpose of covering additional costs incurred as a result of enrolling a displaced student in a school served by the local educational agency, the State educational agency may retain a portion of the payment described in paragraph (2)(A)(ii) that bears the same relation to the total amount of the payment under such paragraph as the sum of such prior payments bears to the total cost of attendance for all students in that local educational agency for

whom the State educational agency made such prior payments, except that a local educational agency shall not adjust the level of funding provided to accounts under this section based on the State's retention of such amount.

(2) Aid to eligible local educational agencies and eligible BIA-funded schools.

(A) Quarterly installments.

(i) In general. A State educational agency shall provide emergency impact aid payments under this section on a quarterly basis for the **[old text: 2005-2006] [new text: 2017-2018]** school year by such dates as determined by the Secretary of Education. Such quarterly installment payments shall be based on the number of displaced students reported under subsection (c)(2) and in the amount determined under clause (ii).

(ii) Payment amount. Each quarterly installment payment under clause (i) shall equal 25 percent of the sum of—

(I) the number of displaced students **[new text: who are English learners]** (who are not children with disabilities) reported by the eligible local educational agency or eligible BIA-funded school for such quarter (as determined under subsection (c)(2)) times **[old text: \$6,000] [new text: \$9,000]; [old text: and]**

(II) the number of displaced students who are children with disabilities **[new text: (regardless of whether the child is an English learner)]** reported by the eligible local educational agency or eligible BIA-funded school for such quarter (as determined under subsection (c)(2)) times **[old text: \$7,500] [new text: \$10,000; and]**

**[new text: (III) \$8,500 for each displaced student who is not a child with a disability or an English learner.<sup>7</sup>]**

(iii) Timeline. The Secretary of Education shall establish a timeline for quarterly reporting on the number of displaced students in order to make the appropriate disbursements in a timely manner.

(iv) Insufficient funds. If, for any quarter, the amount available under this section to make payments under this subsection is insufficient to pay the full amount that an eligible local educational agency or eligible BIA-funded school is eligible to receive under this section, the State educational agency shall ratably reduce the amount of such payments.

(B) Maximum payment to account. In providing quarterly payments to an account for the **[old text: 2005-2006] [new text: 2017-2018]** school year on behalf of a displaced student for each quarter that such student is enrolled in a non-public school in the area served by the agency under paragraph (3), an eligible local educational agency may provide not more than 4 quarterly payments to such account (each of which shall be paid not later than 14 calendar days after the date of receipt of each quarterly installment payment received under subparagraph (A)), and the aggregate amount of such payments shall not exceed the lesser of—

(i)(I) in the case of a displaced student **[new text: who is an English learner]** who is not a child with a disability, **[old text: \$6,000] [new text: \$9,000];** or

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**[new text: ]**<sup>7</sup> Language added to include displaced students who are not children with a disability or English language learners. See (d)(1)(A)(iii), above.]

(II) in the case of a displaced student who is a child with a disability **[new text: (regardless of whether the child is an English learner)], [old text: \$7,500] [new text: \$10,000];** or

**[new text: (III) \$8,500 for each displaced student who is not a child with a disability or an English learner; or<sup>8</sup>]**

(ii) the cost of tuition and fees (and transportation expenses, if any) at the non-public school for the **[old text: 2005-2006] [new text: 2017-2018]** school year.

(C) Limitation. A non-public school accessing funds on behalf of a displaced student under this section must waive tuition, or reimburse tuition paid, in an amount equal to the amount accessed.

(3) Displaced students. Subject to the succeeding sentence, an eligible local educational agency or eligible BIA-funded school receiving emergency impact aid payments under this section shall use the payments to provide services and assistance to elementary schools and secondary schools (including charter schools) served by such agency, or to such BIA-funded school, that enrolled a displaced student. An eligible local educational agency that receives emergency impact aid payments under this section and that serves an area in which there is located an eligible non-public school shall, at the request of the parent or guardian of a displaced student who meets the criteria described in subsection (c)(2)(A)(ii) and who enrolled in a non-public school in an area served by the agency, use such emergency impact aid payment to provide payment on a quarterly basis (but not to exceed the total amount specified in subsection (d)(2)(B) for the **[old text: 2005-2006] [new text: 2017-2018]** school year) to an account on behalf of such displaced student.

(e) Use of Funds.

(1) Authorized uses. The authorized uses of funds are the following:

(A) Paying the compensation of personnel, including teacher aides, in schools enrolling displaced students.

(B) Identifying and acquiring curricular material, including the costs of providing additional classroom supplies, and mobile educational units and leasing sites or spaces.

(C) Basic instructional services for such students, including tutoring, mentoring, or academic counseling.

(D) Reasonable transportation costs.

(E) Health and counseling services.

(F) Education and support services.

(2) Verification of enrollment for non-public schools. Before providing a quarterly payment to an account, the eligible local educational agency shall verify with the parent or guardian of a displaced student that such displaced student is, or was, enrolled in the non-public school for such quarter.

(3) Prohibition. Funds received under this section shall not be used for construction or major renovation of schools.

(4) Provision of special education and related services.

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**[new text: <sup>8</sup> See above.]**

(A) In general. In the case of a displaced student who is a child with a disability, any payment made on behalf of such student to an eligible local educational agency or any payment available in an account for such student, shall be used to pay for special education and related services consistent with the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

(B) Special rule.

(i) Retention. Notwithstanding any other provision of this section, if an eligible local educational agency provides services to a displaced student attending an eligible non-public school under section 612(a)(10) of the Individuals with Disabilities Education Act (20 U.S.C. 1412(a)(10)), the eligible local educational agency may retain a portion of the assistance received under this section on behalf of such student to pay for such services.

(ii) Determination of portion.

(I) Guidelines. Each State shall issue guidelines, not later than 14 calendar days after the date of the publication of the notice described in subsection (a)(4), that specify the portion of the assistance that an eligible local educational agency in the State may retain under this subparagraph. Each State shall apply such guidelines in a consistent manner throughout the State.

(II) Determination of portion. The portion specified in the guidelines shall be based on customary costs of providing services under such section 612(a)(10) for the local educational agency.

(C) Definitions. In this paragraph:

(i) Special education; related services. The terms "special education" and "related services" have the meaning given such terms in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401).

(ii) Individualized education program. The term "individualized education program" has the meaning given the term in section 614(d)(2) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(2)).

(f) Return of Aid.

(1) Eligible local educational agency or eligible BIA-funded school. An eligible local educational agency or eligible BIA-funded school that receives an emergency impact aid payment under this section shall return to the State educational agency any payment provided to the eligible local educational agency or school under this section that the eligible local educational agency or school has not obligated by **[old text: the end of the 2005-2006]** **[new text: December 31, 2018,<sup>9</sup>]** **[old text: school year]** in accordance with this section.

(2) State educational agency. A State educational agency that receives emergency impact aid under this section, shall return to the Secretary of Education—

(A) any aid provided to the agency under this section that the agency has not obligated by **[old text: the end of the 2005-2006]** **[new text: December 31, 2018,<sup>10</sup>]** **[old text: school year]** in accordance with this section; and

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**[new text:** <sup>9</sup> Timeframe for return of aid further amended by Division H, Title III, Section 312 of P.L. 115-141, the "Consolidated Appropriations Act", enacted on March 23, 2018.]

**[new text:** <sup>10</sup> See above.]

(B) any payment funds returned to the State educational agency under paragraph (1).

(g) Limitation on Use of Aid and Payments. Aid and payments provided under this section shall only be used for expenses incurred during the **[old text: 2005-2006] [new text: 2017-2018]** school year.

(h) Administrative Expenses. A State educational agency that receives emergency impact aid under this section may use not more than 1 percent of such aid for administrative expenses. An eligible local educational agency or eligible BIA-funded school that receives emergency impact aid payments under this section may use not more than 2 percent of such payments for administrative expenses.

(i) Special Funding Rule. In calculating funding under section **[old text: 8003] [new text: 7003]** of the Elementary and Secondary Education Act of 1965 **[new text: (20 U.S.C. 7703)]** for an eligible local educational agency that receives an emergency impact aid payment under this section, the Secretary of Education shall not count displaced students served by such agency for whom an emergency impact aid payment is received under this section, nor shall such students be counted for the purpose of calculating the total number of children in average daily attendance at the schools served by such agency as provided in section **[old text: 8] [new text: 7]003(b)(3)(B)(i)** of such Act (20 U.S.C. 7703(b)(3)(B)(i)).

(j) Notice. Each State receiving emergency impact aid under this section shall provide, to the parent or guardian of each displaced student for whom a payment is made under this section to an account who resides in such State, notification that—

(1) such parent or guardian has the option of enrolling such student in a public school or a non-public school; and

(2) the temporary emergency impact aid for displaced students provided under this section is temporary and is only available for the **[old text: 2005-2006] [new text: 2017-2018]** school year.

(k) Bypass. For a State in which State law prohibits the State from using Federal funds to directly provide services on behalf of students attending non-public schools and provides that another entity shall provide such services, the Secretary of Education shall make such arrangements with that entity.

(l) Redirection of funds.

(1) In general. If a State educational agency or eligible local educational agency is unable to carry out this section, the Secretary of Education shall make such arrangements with the State as the Secretary determines appropriate to carry out this section on behalf of displaced students attending an eligible non-public school in the area served by such agency.

(2) Special rule. If an eligible local educational agency does not make a payment to an account within 14 calendar days of receipt of funds provided under this section, then—

(A) the eligible local educational agency shall return the funds received that quarter for such account to the State educational agency; and

(B) the State educational agency shall ensure that the proper payment to such account for such quarter is made not later than 14 calendar days after the date of the receipt of funds under subparagraph (A), before any further funds for such account are distributed to the eligible local educational agency.

(m) Nondiscrimination.

(1) Prohibition.

(A) In general. A school that enrolls a displaced student under this section shall not discriminate against students on the basis of race, color, national origin, religion, disability, or sex.

(B) Applicability. The prohibition of religious discrimination in subparagraph (A) shall not apply with regard to enrollment for a non-public school that is controlled by a religious organization or organized and operated on the basis of religious tenets, except that the prohibition of religious discrimination shall apply with respect to the enrollment of displaced students assisted under this section.

(2) Single sex schools, classes, or activities.

(A) In general. To the extent consistent with title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), the prohibition of sex discrimination in paragraph (1)(A) shall not apply to a non-public school that is controlled by a religious organization or organized and operated on the basis of religious tenets if the application of paragraph (1)(A) would not be consistent with the religious tenets of such organization.

(B) Single sex schools, classes, or activities. Notwithstanding paragraph (1)(A) and to the extent consistent with title IX of the Education Amendments of 1972, a parent or guardian may choose and a non-public school may offer a single sex school, class, or activity.

(3) General provision. Nothing in this subtitle may be construed to alter or modify the provisions of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), and the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

(4) Opt-out. A parent or guardian of a displaced student on behalf of whom a payment to an account is made under this section shall have the option to have such parent or guardian's displaced child opt out of religious worship or religious classes offered by the non-public school in which such student is enrolled and on behalf of whom a payment to an account is made under this section.

(5) Rule of construction. The amount of any payment (or other form of support provided on behalf of a displaced student) under this section shall not be treated as income of a parent or guardian of the student for purposes of Federal tax laws or for determining eligibility for any other Federal program.

(m) Treatment of State Aid. A State shall not take into consideration emergency impact aid payments received under this section by a local educational agency in the State in determining the eligibility of such local educational agency for State aid, or the amount of State aid, with respect to free public education of children.

**[new text: Two additional notes:**

1. **No need to regulate:** Under paragraph (6) (132 Stat. 98), section 437 of GEPA (20 U.S.C. 1232) and section 553 of the APA (5 U.S.C. 553) do not apply.
2. **Restart rules:** Public Law 110-28, May 25, 2006; 121 Stat. 112, an appropriations act that, in part, allocated additional hurricane recovery funds for Katrina, also contained

additional guidance on section 102 of the Hurricane Education Recovery Act (see below).]

### **Programs to Restart School Operations (121 Stat. 159 – 160)**

Funds made available under section 102 of the Hurricane Education Recovery Act (title IV of division B of Public Law 109-148) may be used by the States of Louisiana, Mississippi, Alabama, and Texas, in addition to the uses of funds described in section 102(e), for the following costs: (1) recruiting, retaining, and compensating new and current teachers, school principals, assistant principals, principal resident directors, assistant directors, and other educators for school-based positions in public elementary and secondary schools impacted by Hurricane Katrina or Hurricane Rita, including through such mechanisms as paying salary premiums, performance bonuses, housing subsidies, signing bonuses, and relocation costs and providing loan forgiveness; (2) activities to build the capacity, knowledge, and skills of teachers and school-based school principals, assistant principals, principal resident directors, assistant directors, and other educators in such public elementary and secondary schools to provide an effective education, including the design, adaptation, and implementation of high-quality formative assessments; (3) the establishment of partnerships with nonprofit entities with a demonstrated track record in recruiting and retaining outstanding teachers and school-based school principals, assistant principals, principal resident directors, and assistant directors; and (4) paid release time for teachers and principals to identify and replicate successful practices from the fastest-improving and highest-performing schools.

P.L. 115-72, the "Additional Supplemental Appropriations for Disaster Relief Requirements, 2017", Division A, §305, Oct. 26, 2017; 131 Stat. 1227 – 1228

Showing amendments made by P.L. 115-123, the "Bipartisan Budget Act of 2018", Division B, Subdivision 1, Title XII, §21208(a), Feb. 9, 2018; 132 Stat. 108

**SEC. 305.** (a)(1) Not later than [old text: December 31, 2017] [new text: March 31, 2018], in accordance with criteria to be established by the Director of the Office of Management and Budget (referred to in this section as "OMB"), each Federal agency shall submit to OMB, the Government Accountability Office, the respective Inspector General of each agency, and the Committees on Appropriations of the House of Representatives and the Senate internal control plans for funds provided by this division and division B of Public Law 115-56.

[old text: (2) Not later than March 31, 2018, the Government Accountability Office shall review for the Committees on Appropriations of the House of Representatives and the Senate the design of the internal control plans required by paragraph (1).]

(b) All programs and activities **[old text: receiving funds under this division] [new text: expending more than \$10,000,000 of funds provided by this division and division B of Public Law 115-56 in any one fiscal year]** shall be deemed to be "susceptible to significant improper payments" for purposes of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note), notwithstanding section 2(a) of such Act.

(c) Funds for grants provided by this division or division B of Public Law 115-56 shall be expended by the grantees within the 24-month period following the agency's obligation of funds for the grant, unless, in accordance with guidance to be issued by the Director of OMB, the Director waives this requirement for a particular grant program and submits a written justification for such waiver to the Committees on Appropriations of the House of Representatives and the Senate. In the case of such grants, the agency shall include a term in the grant that requires the grantee to return to the agency any funds not expended within the 24-month period.

**NOTE:** Subsections (b) and (c) of P.L. 115-123, the "Bipartisan Budget Act of 2018",

Division B, Subdivision 1, Title XII, §21208, Feb. 9, 2018; 132 Stat.108, provide as follows:

*(b) Section 305 of division A of the Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Public Law 115–72), as amended by this section, shall apply to funds appropriated by this division as if they had been appropriated by that division.*

*(c) In order to proactively prepare for oversight of future disaster relief funding, not later than one year after the date of enactment of this Act, the Director of the Office of Management and Budget shall issue standard guidance for Federal agencies to use in designing internal control plans for disaster relief funding. This guidance shall leverage existing internal control review processes and shall include, at a minimum, the following elements:*

*(1) Robust criteria for identifying and documenting incremental risks and mitigating controls related to the funding.*

*(2) Guidance for documenting the linkage between the incremental risks related to disaster funding and efforts to address known internal control risks.*

[END]