Public Law 94-405
94th Congress

An Act

To provide Federal financial assistance to States in order to assist local educational agencies to provide education to Vietnamese and Cambodian refugee children, and for other purposes.

Sept. 10, 1976
[S. 2145]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indochina Refugee Children Assistance Act of 1976".

Indochina Refugee Children Assistance Act of 1976.
20 USC 1211b note.

TITLE I—PROGRAM FOR THE 1976 FISCAL YEAR

APPLICABILITY; DEFINITIONS

SEC. 101. (a) The provisions of this title shall be applicable for fiscal year 1976.

20 USC 1211b note.

(b) As used in this title—

(1) The term "Commissioner" means the Commissioner of Education.

(2) The term "elementary school" means a day or residential school which provides elementary education, as determined under State law.

(3) The term "free public education" means education which is provided at public expense under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary school education in the applicable State.

(4) The term "Indochinese refugee children" means children who are refugees within the meaning of that term as defined in section 3 of the Indochina Migration and Refugee Assistance Act of 1975.

22 USC 2601 note.

(5) The term "average per pupil expenditure" for a State means the aggregate current expenditures during the second fiscal year preceding the fiscal year for which the determination is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the State, plus any direct current expenditures by the State for the operation of such agencies (without regard to the source of funds from which either of such expenditures is made), divided by the aggregate number of children in average daily attendance to whom such agencies provided free public education during such preceding year.

(6) The term "current expenditures" means all expenditures for free public education, except for (A) expenditures attributable to fixed charges, including payments of principal and interest on short-term and long-term debt, and payments for retirement benefits, for insurance and judgments, for rental of land and buildings, and for construction costs, (B) expenditures attributable to administration, and (C) expenditures attributable to transportation or building maintenance.

(7) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city,

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(8) The term "secondary school" means a day or residential school which provides secondary education, as determined under State law.

(9) The term "State" includes, in addition to the several States of the Union, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(10) The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(11) The term "elementary or secondary nonpublic schools" means schools which comply with the compulsory education laws of the State and which are exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

26 USC 501.

STATE ENTITLEMENTS

20 USC 1211b note.

SEC. 102. (a) The Commissioner shall, in accordance with the provisions of this title, make payments to State educational agencies for the fiscal year 1976 for the purposes set forth in section 103.

(b)(1) Subject to the provisions of paragraphs (2) and (3), each State educational agency shall be entitled to receive, for the fiscal year ending June 30, 1976, an amount which, in addition to any amounts received by such agency and the local educational agencies of such State in that fiscal year under the Indochina Migration and Refugee Assistance Act of 1975, equals the additional expenditures, as determined under section 103, incurred by such State and local education agencies in that fiscal year in providing additional basic educational services and necessary supplementary educational services for Indochinese refugee children.

22 USC 2601 note.

(2) For the fiscal year ending June 30, 1976, no State educational agency shall be entitled to receive an amount under this title, which, when combined with any funds received by such agency and the local educational agencies of such State in such fiscal year under the Indochina Migration and Refugee Assistance Act of 1975, exceeds an amount equal to the average per pupil expenditure in such State for such fiscal year multiplied by the number of Indochinese refugee children in such State receiving public educational services.

"State."

(3) For the purpose of this subsection, the term "State" does not include American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(c)(1) The jurisdictions to which this subsection applies are American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(2) Each jurisdiction to which this subsection applies shall be entitled to a grant for the purposes set forth in section 103 in an amount equal to an amount determined by the Commissioner in accordance with criteria established by him, except that the aggregate of the amount to which such jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 per centum of the aggregate of

the amounts to which all States are entitled under subsection (b) of this section for that fiscal year. If the aggregate of the amounts, determined by the Commissioner pursuant to the preceding sentence, to be so needed for any fiscal year exceeds an amount equal to such 1 per centum limitation, the entitlement of each such jurisdiction shall be reduced proportionately until such aggregate does not exceed such 1 per centum limitation.

(d) Determinations with respect to the number of Indochinese refugee children by the Commissioner under this section for any fiscal year shall be made, whenever actual satisfactory data are not available, on the basis of estimates. No such determination shall operate, because of an underestimate, to deprive any State educational agency of its entitlement to any payment (or the amount thereof), under this section to which such agency would be entitled had such determination been made on the basis of accurate data.

USES OF FUNDS

SEC. 103. (a) Financial assistance to State and local educational agencies under this title shall be available only to meet the cost of providing Indochinese refugee children— 20 USC 1211b note.

(1) supplementary educational services necessary to enable those children to achieve a satisfactory level of performance including, but not limited to—

(A) English language instruction,

(B) other bilingual educational services, and

(C) special materials and supplies;

(2) additional basic instructional services which are directly attributable to the presence in the school district of Indochinese refugee children, including the cost of providing additional classroom teachers and additional teaching materials and supplies, but not including overhead costs, costs of construction, acquisition or rental of space, or costs of transportation; and

(3) special inservice training for personnel who will be providing instruction described in either paragraph (1) or (2).

(b) The Commissioner shall by regulation prescribe standards for the determination of the actual additional expenditures incurred by State and local educational agencies in providing educational services for Indochinese refugee children. Such standards may include— Standards.

(1) maximum incremental costs for providing basic educational services in relation to the number of additional children;

(2) maximum allowable costs for particular types of supplementary educational services; and

(3) to the extent consistent with this section, categories of programs, services, and expenditures for which funds provided under this title may be used.

ALLOCATION OF APPROPRIATIONS

SEC. 104. (a) If the sums appropriated for the fiscal year 1976 for making the payments provided for in this title are not sufficient to pay in full the total amounts which State educational agencies are entitled to receive under this title for such year, the allocations to such State educational agencies shall be ratably reduced to the extent necessary to bring the aggregate of such allocations within the limits of the amount so appropriated. 20 USC 1211b note.

(b) In the event that funds become available for making payments under this title for such fiscal year after allocations have been made under subsection (a) for that year, the amounts reduced under subsection (a) shall be increased on the same basis as they were reduced.

APPLICATIONS

Submittal to Commissioner. 20 USC 1211b note.

SEC. 105. (a) No State educational agency shall be entitled to any payment under this title for any fiscal year unless that agency submits an application to the Commissioner at such time, in such manner, and containing or accompanied by such information, as the Commissioner may reasonably require. Each such application shall—

(1) provide that the educational programs, services, and activities for which payments under this title are made will be administered by or under the supervision of the agency;

(2) provide that payments under this title will be used for purposes set forth in section 103;

(3) provide such data and assurances as the Commissioner may prescribe—

(A) to demonstrate that the costs of the additional instructional services for which the payment will be made are the direct result of the presence of Indochinese refugee children and that those additional instructional services will actually be provided to those children for the duration of the period for which assistance is made available under this title; and

(B) to demonstrate that such payments are distributed between the State educational agency and the local educational agencies within the State in proportion to the contribution to such costs by each such agency;

(4) provide assurances that the State educational agency will not finally disapprove in whole or in part any application for funds received under this title without first affording the local educational agency submitting an application for such funds reasonable notice and opportunity for a hearing;

(5) provide for making such reports as the Commissioner may reasonably require to perform his functions under this title; and

(6) provide assurances—

(i) that to the extent consistent with the number of Indochinese refugee children enrolled in the elementary or secondary nonpublic schools within the district served by a local educational agency, such agency, after consultation with appropriate officials of such schools, shall provide for the benefit of these children secular, neutral, and nonideological services, materials, and equipment necessary for the education of such children;

(ii) that the control of funds provided under this paragraph and title to materials, equipment, and property repaired, remodeled, or constructed therewith shall be in a public agency for the uses and purposes provided in this title, and a public agency shall administer such funds and property; and

(iii) that the provision of services pursuant to this paragraph shall be provided by employees of a public agency or through contract by such public agency with a person, association, agency, or corporation who or which, in the provision of such services, is independent of such elementary or secondary nonpublic school and of any religious organization;

and such employment or contract shall be under the control and supervision of such public agency, and the funds provided under this paragraph shall not be commingled with State or local funds.

(b) The Commissioner shall approve an application which meets the requirements of subsection (a). The Commissioner shall not finally disapprove an application of a State educational agency except after reasonable notice and opportunity for a hearing on the record to such agency.

Approval.
Notice and hearing.

PAYMENT

SEC. 106. (a) The Commissioner shall pay to each State educational agency having an application approved under section 105 the amount which that State is entitled to receive under section 102.

20 USC 1211b note.

(b) The Commissioner is authorized to pay to each State educational agency amounts equal to the amounts expended by it for the proper and efficient administration of its functions under this title, except that the total of such payments for any fiscal year shall not exceed 1 per centum of the amounts to which that State educational agency is entitled to receive for that year under this title.

(c) If a State is prohibited by law from providing public educational services for children enrolled in elementary and secondary nonpublic schools, as required by section 105(a)(6), the Commissioner may waive such requirement and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of this title.

Waiver.

WITHHOLDING

SEC. 107. Whenever the Commissioner, after reasonable notice and opportunity for a hearing to any State educational agency, finds that there is a failure to meet the requirements of this title, the Commissioner shall notify that agency that further payments will not be made to the agency under this title, or in his discretion, that the State educational agency shall not make further payments under this title to specified local educational agencies (whose actions cause or are involved in such failure) until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, no further payments shall be made to the State educational agency under this title or payments by the State educational agency under this title shall be limited to local educational agencies whose actions did not cause or were not involved in the failure, as the case may be.

Notice and hearing.
20 USC 1211b note.

AUTHORIZATION OF APPROPRIATIONS

SEC. 108. There are authorized to be appropriated for fiscal year 1976 such sums as may be necessary to make payments to which State educational agencies are entitled under this title and payments for administration under section 106(b).

20 USC 1211b note.

TITLE II—PROGRAM FOR THE TRANSITION PERIOD AND THE 1977 FISCAL YEAR

APPLICABILITY; DEFINITIONS

SEC. 201. (a) The provisions of this title shall be applicable for the period beginning July 1, 1976, and ending September 30, 1977.

20 USC 1211b note.

(b) As used in this title—

(1) The term "Commissioner" means the Commissioner of Education.

(2) The term "elementary school" means a day or residential school which provides elementary education, as determined under State law.

(3) The term "Indochinese refugee children" means children who are refugees within the meaning of that term as defined in section 3 of the Indochina Migration and Refugee Assistance Act of 1975.

22 USC 2601 note.

(4) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(5) The term "secondary school" means a day or residential school which provides secondary education, as determined under State law.

(6) The term "State" includes, in addition to the several States of the Union, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(7) The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(8) The term "elementary or secondary nonpublic schools" means schools which comply with the compulsory education laws of the State and which are exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

26 USC 501.

STATE ENTITLEMENTS

20 USC 1211b note.

SEC. 202. (a) The Commissioner shall, in accordance with the provisions of this title, make payments to State educational agencies for the period July 1, 1976, through September 30, 1977, for the purposes set forth in section 203.

(b)(1) Except as provided in subsection (d) of this section, the maximum amount of the grant to which a State educational agency is entitled under this title, for the period beginning July 1, 1976, and ending September 30, 1977, shall be equal to the sum of—

(A) the number of Indochinese refugee children aged 5 to 17, inclusive, receiving public educational services under the supervision of each local educational agency within that State during the period for which the determination is made;

multiplied by—

(B) the lesser of—

(i) $300 for each of the first one hundred such children who are furnished such services under the supervision of each local educational agency within such State, or

(ii) if the number of such children equals or exceeds 1 per centum of the total number of children enrolled in the schools of that agency, $300 for each such child in such 1 per centum

who is furnished such services under the supervision of each local educational agency within such State; and

(C) $600 for each additional such child in excess of one hundred such children, or in excess of such 1 per centum, as the case may be, being furnished such services under the supervision of that agency.

(2) For the purpose of this subsection, the term "State" does not include American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands. "State."

(c)(1) The jurisdictions to which this subsection applies are American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(2) Each jurisdiction to which this subsection applies shall be entitled to a grant for the purposes set forth in section 203 in an amount equal to an amount determined by the Commissioner in accordance with criteria established by him, except that the aggregate of the amount to which such jurisdictions are so entitled for any period shall not exceed an amount equal to 1 per centum of the aggregate of the amounts to which all States are entitled under subsection (b) of this section for that period. If the aggregate of the amounts, determined by the Commissioner pursuant to the preceding sentence, to be so needed for any period exceeds an amount equal to such 1 per centum limitation, the entitlement of each such jurisdiction shall be reduced proportionately until such aggregate does not exceed such 1 per centum limitation.

(d) Notwithstanding any other provision of this section, no State educational agency shall be entitled to receive a grant for any period in excess of the amount equal to the amount to which such agency would otherwise be entitled under this section for that period minus the sum of the amounts received by the local educational agencies of that State and by that State educational agency for that period under the Indochina Migration and Refugee Assistance Act of 1975. 22 USC 2601 note.

(e) Determinations with respect to the number of Indochinese refugee children by the Commissioner under this section for any period shall be made, whenever actual satisfactory data are not available, on the basis of estimates. No such determination shall operate, because of an underestimate, to deprive any State educational agency of its entitlement to any payment (or the amount thereof), under this section to which such agency would be entitled had such determination been made on the basis of accurate data.

USES OF FUNDS

SEC. 203. Payments made under this title to any State may be used in accordance with applications approved under section 205 for public educational services for Indochinese refugee children in the schools of the local educational agencies of that State and in elementary and secondary nonpublic schools of that State. 20 USC 1211b note.

ALLOCATION OF APPROPRIATIONS

SEC. 204. (a) If the sums appropriated for the period from July 1, 1976, to September 30, 1977, for making the payments provided for in this title are not sufficient to pay in full the total amounts which State educational agencies are entitled to receive under this title for such period, the allocations to such State educational agencies shall 20 USC 1211b note.

be ratably reduced to the extent necessary to bring the aggregate of such allocations within the limits of the amount so appropriated.

(b) In the event that funds become available for making payments under this title for such period after allocations have been made under subsection (a) for that period, the amounts reduced under subsection (a) shall be increased on the same basis as they were reduced.

APPLICATIONS

Submittal to Commissioner. 20 USC 1211b note.

SEC. 205. (a) No State educational agency shall be entitled to any payment under this title for any period unless that agency submits an application to the Commissioner at such time, in such manner, and containing or accompanied by such information, as the Commissioner may reasonably require. Each such application shall—

(1) provide that the educational programs, services, and activities for which payments under this title are made will be administered by or under the supervision of the agency;

(2) provide that payments under this title will be used for purposes set forth in section 203;

(3) provide assurances that such payments will be distributed among local educational agencies within that State in accordance with sections 202(b)(1) and 202(d);

(4) provide assurances that the State educational agency will not finally disapprove in whole or in part any application for funds received under this title without first affording the local educational agency submitting an application for such funds reasonable notice and opportunity for a hearing;

(5) provide for making periodic reports to the Commissioner evaluating the effectiveness of the payments made under this title, and such other reports as the Commissioner may reasonably require to perform his functions under this title; and

(6) provide assurances—

(i) that to the extent consistent with the number of Indochinese refugee children enrolled in the elementary or secondary nonpublic schools within the district served by a local educational agency, such agency, after consultation with appropriate officials of such schools, shall provide for the benefit of these children secular, neutral, and nonideological services, materials, and equipment necessary for the education of such children;

(ii) that the control of funds provided under this paragraph and title to materials, equipment, and property repaired, remodeled, or constructed therewith shall be in a public agency for the uses and purposes provided in this title, and a public agency shall administer such funds and property; and

(iii) that the provision of services pursuant to this paragraph shall be provided by employees of a public agency or through contract by such public agency with a person, association, agency, or corporation who or which, in the provision of such services, is independent of such elementary or secondary nonpublic school and of any religious organization; and such employment or contract shall be under the control and supervision of such public agency, and the funds provided under this paragraph shall not be commingled with State or local funds.

(b) The Commissioner shall approve an application which meets the requirements of subsection (a). The Commissioner shall not finally disapprove an application of a State educational agency except after reasonable notice and opportunity for a hearing on the record to such agency.

Approval.
Notice and hearing.

PAYMENTS

SEC. 206. (a) The Commissioner shall pay to each State educational agency having an application approved under section 205 the amount which that State is entitled to receive under this title.

20 USC 1211b note.

(b) The Commissioner is authorized to pay to each State educational agency amounts equal to the amounts expended by it for the proper and efficient administration of its functions under this title, except that the total of such payments for any period shall not exceed 1 per centum of the amounts which that State educational agency is entitled to receive for that period under this title.

(c) If a State is prohibited by law from providing public educational services for children enrolled in elementary and secondary nonpublic schools, as required by section 205(a)(6), the Commissioner may waive such requirement and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of this title.

WITHHOLDING

SEC. 207. Whenever the Commissioner, after reasonable notice and opportunity for a hearing to any State educational agency, finds that there is a failure to meet the requirements of this title, the Commissioner shall notify that agency that further payments will not be made to the agency under this title, or in his discretion, that the State educational agency shall not make further payments under this title to specified local educational agencies (whose actions cause or are involved in such failure) until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, no further payments shall be made to the State educational agency under this title or payments by the State educational agency under this title shall be limited to local educational agencies whose actions did not cause or were not involved in the failure, as the case may be.

Notice and hearing.
20 USC 1211b note.

AUTHORIZATION OF APPROPRIATIONS

SEC. 208. There are authorized to be appropriated for the period beginning July 1, 1976, and ending September 30, 1977, such sums as may be necessary to make payments to which State educational agencies are entitled under this title and payments for administration under section 206(b).

20 USC 1211b note.

TITLE III—ADULT EDUCATION PROVISION

AMENDMENT TO THE ADULT EDUCATION ACT

SEC. 301. The Adult Education Act (Public Law 91-230) is amended by adding the following new section at the end thereof:

20 USC 1201 note.

"EMERGENCY ADULT EDUCATION PROGRAM FOR INDOCHINA REFUGEES

"SEC. 315. (a) From the appropriations authorized for the period beginning July 1, 1976, and ending September 30, 1977, but not appropriated for other programs under this title, the Commissioner shall

Grants.
20 USC 1211b.

carry out a program of making grants to State and local education agencies for such years for the purpose of operating special adult education programs for Indochina refugees, as defined in section 3 of the Indochina Migration and Refugee Assistance Act of 1975. Such grants may be used for—

22 USC 2601 note.

"(1) programs of instruction of adult refugees in basic reading, mathematics, development and enhancement of necessary skills, and promotion of literacy among refugee adults, for the purpose of enabling them to become productive members of American society;

"(2) administrative costs of planning and operating such programs of instruction;

"(3) educational support services which meet the needs of adult refugees, including but not limited to guidance and counseling with regard to educational, career, and employment opportunities; and

"(4) special projects designed to operate in conjunction with existing Federal and non-Federal programs and activities to develop occupational and related skills for individuals, particularly programs authorized under the Comprehensive Employment and Training Act of 1973 or under the Vocational Education Act of 1963.

29 USC 801 note.
20 USC 1241 note.

"(b) The Commissioner shall not approve an application for a grant under this section unless (1) in the case of an application by a local education agency, it has been reviewed by the respective State education agency which shall provide assurance to the Commissioner that, if approved by the Commissioner, the grant will not duplicate existing and available programs of adult education which meet the special needs of Indochina refugees, and (2) the application includes a plan acceptable to the Commissioner which provides reasonable assurances that adult refugees who are in need of a program are located in an area near that State or local education agency, and would participate in the program if available.

State education agency review.

"(c) Applications for a grant under this section shall be submitted at such time, in such manner, and contain such information as the Commissioner may reasonably require.

"(d) Notwithstanding the provisions of sections 305 and 307(a), the Commissioner shall pay all the costs of applications approved by him under this section.".

Approved September 10, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 94-719 accompanying H.R. 7897 (Comm. on Education and Labor) and No. 94-1333 (Comm. of Conference).
SENATE REPORT No. 94-432 (Comm. on Labor and Public Welfare).
CONGRESSIONAL RECORD:
Vol. 121 (1975): Oct. 29, considered and passed Senate.
Vol. 122 (1976): Jan. 19, considered and passed House, amended, in lieu of H.R. 7897.
Aug. 30, House agreed to conference report.
Sept. 1, Senate agreed to conference report.