

Volume I Revised
Frequently Asked Questions
Emergency Impact Aid for Displaced Students
February 2, 2006

**Responses to Questions 9, 45, 49, and 51
have been revised or clarified.**

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GENERAL QUESTIONS

1. What is the purpose of the Emergency Impact Aid for Displaced Students program?

The Emergency Impact Aid for Displaced Students program provides funds for local educational agencies (LEAs) to assist with the cost of educating students displaced by Hurricanes Katrina and Rita during school year 2005-2006, for nonpublic schools serving displaced students, and for Bureau of Indian Affairs (BIA)-funded schools serving displaced students.

2. Who may be counted as displaced students?

“Displaced students,” that is, the students for whom LEAs may receive payments, are those students who:

- a. on August 22, 2005, resided in, and were enrolled or were eligible to be enrolled in a school in, an area for which the Federal Government later declared a major disaster related to Hurricane Katrina or Hurricane Rita; and
- b. as a result of their displacement by the storm, are enrolled in different schools on a date on which an enrollment count is taken for the purpose of this program.

Note that the definition includes students who, on the date a count is taken, are enrolled in a school in their original LEA but, because of the impact of one of the hurricanes, are not in their original school.

3. May pre-kindergarten students be included in the count of displaced students?

Displaced preschool students may be counted if preschool education is included as a part of elementary education by State law. If State law defines elementary education as beginning with kindergarten, preschool students may not be included for any child counts from that State.

4. For the purpose of the “displaced students” definition, which are the counties that the Federal Emergency Management Agency (FEMA) designated in the Federal

Register as eligible for individual or public assistance, as a result of a Presidential declaration of a major disaster related to Hurricane Katrina or Rita?

These counties include the following:

In Alabama: Baldwin, Bibb, Choctaw, Clarke, Colbert, Culliman, Greene, Hale, Jefferson, Lamar, Lauderdale, Marengo, Marion, Mobile, Monroe, Perry, Pickens, Sumter, Tuscaloosa, Washington, Wilcox, and Winston Counties.

In Florida: Bay, Broward, Collier, Escambia, Franklin, Gulf, Miami-Dade, Monroe, Okaloosa, Santa Rosa, and Walton Counties.

In Louisiana: all parishes.

In Mississippi: Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, DeSoto, Forrest, Franklin, George, Grenada, Greene, Hancock, Harrison, Hinds, Holmes, Humphreys, Issequena, Itawamba, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Madison, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, and Yazoo Counties.

In Texas: all counties.

5. What timelines apply to the Emergency Impact Aid Program for Displaced Students?

Under the statute, LEAs are required to apply to their State educational agency (SEA) for funds under the program no later than 14 calendar days after the date of publication of the U.S. Department of Education's (the Department's) Federal Register notice announcing the availability of funds. The law further specifies that SEAs must submit their initial applications to the Department no later than 21 days after the publication of this notice. LEAs must make payments to accounts on behalf of nonpublic students within 14 calendar days of receiving payments from their SEAs. When students enroll in different nonpublic schools on different quarterly count dates, LEAs need to ensure that payments for these students are directed to the correct accounts on their behalf.

We strongly encourage SEAs and LEAs to submit full and final student count data for the first and second quarters within these specified deadlines. We are also aware that it may take some time for SEAs and LEAs to count retroactively for those quarters all students who may have now moved to other States or districts. Therefore, SEAs and LEAs that meet these specified timelines may make upward or downward revisions to their initial child counts if they collect more satisfactory data that were not available at the time of their initial application submission. Any application amendments must be submitted to the Department no later than April 30, 2006.

The Secretary may solicit from any applicant at any time additional information needed to process an application. If the Secretary determines that an SEA has received a payment that is larger or smaller than it should have received under this program for any quarter, the Secretary will make appropriate upward or downward revisions to subsequent payments that the SEA is eligible to receive this year. If the SEA is not eligible for subsequent payments, the SEA must promptly refund the amount of any overpayment to the Secretary.

STATE AND LOCAL APPLICATION REQUIREMENTS

6. What must an SEA include in its application to the Department?

An SEA's application must include the following, along with identifying information and assurances:

- a. Numbers of public, nonpublic, and BIA school students displaced by Hurricane Katrina or Rita, with separate counts for numbers of students without disabilities and numbers of students with disabilities, and the date of each quarterly count;
- b. A description of procedures the SEA will establish for LEAs to use in receiving applications for assistance from the parents or guardians of nonpublic school students;
- c. A description of procedures that the SEA will establish for LEAs to use in providing payments to accounts for nonpublic school students;
- d. A description of procedures the SEA will establish for LEAs to use in obtaining:
 - i. Certifications of attendance from nonpublic schools for displaced students; and
 - ii. Certifications from nonpublic schools that payments for displaced nonpublic school students will be used only for allowable purposes; and
- e. The criteria that the SEA will use to determine eligibility for displaced nonpublic school students and the information, including family income, that will be used to determine the amount of assistance provided for those students.

7. What must an LEA include in its application to the SEA?

An LEA's application must include the following, along with identifying information and certifications:

- a. The procedures that the LEA will use to receive applications for assistance from the parents or guardians of nonpublic school students;
- b. The procedures that the LEA will use to make payments to accounts for nonpublic school students;
- c. The procedures that the LEA will use to obtain:
 - i. Certifications of attendance from nonpublic schools for displaced students; and
 - ii. Certifications from nonpublic schools that payments for displaced nonpublic school students will be used only for allowable purposes;
- d. Numbers of students displaced by Hurricane Katrina or Rita, including separate counts of numbers of students without disabilities and numbers of students with disabilities, who are enrolled in public schools;
- e. Numbers of students displaced by Hurricane Katrina or Rita, including separate counts of numbers of students without disabilities and numbers of students with disabilities, who are enrolled in nonpublic schools; and
- f. An assurance that the LEA will make payments to all accounts established for displaced students enrolled in nonpublic schools within 14 days of receiving its allocation.

8. What must be included in a BIA-funded school's application?

A BIA-funded school's application must include separate counts of numbers of students without disabilities and with disabilities, who were displaced by Hurricane Katrina or Rita, as of the specified count dates, along with identifying information and certifications.

9. What must be included in the application of a parent of a nonpublic school student?

Parents or guardians must provide verification and evidence that the students on whose behalf they are applying meet the definition of displaced students. (See Question 2.) They must also supply evidence, such as a registration form, that they enrolled displaced students in an eligible, nonpublic school for the quarter(s) claimed and prior to December 30, 2005.

Parents of nonpublic school displaced students should promptly submit the required data and supporting documentation to their appropriate LEAs or SEAs so that program funds can be received on behalf of those students.

10. When must an LEA count displaced students?

The Department has identified four suggested quarterly count dates for identifying numbers of eligible displaced students: October 1, 2005; December 1, 2005; February 1, 2006; and April 1, 2006. States may use these dates or select count dates that fall within a 21-day range for each of the quarters, that is, within 10 calendar days before or after these dates. Each State must select four specific dates for the quarterly counts and use those dates consistently for all applicants within the State.

11. How may an LEA identify eligible displaced students?

An LEA must take a count of the displaced students it has enrolled on each of the count dates, based on the definition of a “displaced student” above. (See Question 2.) In doing so, it must document that, on August 22, 2005, each such student was enrolled, or eligible to be enrolled, in a public or nonpublic school within the disaster areas covered by the declarations for Hurricanes Katrina and Rita and resided in that area on that date.

Similarly, for students enrolled in nonpublic schools, the LEA must take a count of the number of students whose parents have applied for assistance under the program. It must document that, on August 22, 2005, each such student was enrolled, or eligible to be enrolled, in a public or nonpublic school within the disaster areas covered by the declarations for Hurricanes Katrina and Rita and resided in that area on that date.

Examples of documentation include, but are not limited to, a transcript from the student’s former school, a student registration form with a former address within the disaster areas, verification of enrollment from an SEA, a utility bill, or a copy of a parent’s driver’s license.

12. How may an LEA identify eligible displaced students with disabilities?

An LEA with an eligible displaced student may identify that student as a student with a disability by determining the student’s eligibility for services under the Individuals with Disabilities Act (IDEA). This could be done either by the LEA conducting its own evaluation and determining the student eligible or obtaining evidence, such as the most recent IDEA eligibility determination for the student or the student’s last individualized education program (IEP) as defined in Section 614(d)(2) of the IDEA, that the former school or LEA had determined the student to be eligible under the IDEA. Any funds received by an LEA on behalf of a displaced student with a disability must be used for special education and related services consistent with the IDEA.

ELIGIBLE LOCAL EDUCATIONAL AGENCIES AND SCHOOLS

13. For the purposes of this program, what is a “local educational agency”? What other definitions apply to this program?

The same definition of LEA applies to the Emergency Impact Aid program as applies to programs authorized by the Elementary and Secondary Education Act (ESEA). Briefly, an LEA is a public board of education legally constituted within a State for administrative control or direction of, or to perform a service function for, public elementary and secondary schools (including public, nonprofit charter schools). In general, all the definitions in section 9101 of the ESEA apply to this program, including “child with a disability.”

14. Which LEAs are eligible to receive funds under this program?

An LEA is eligible to receive funds if it:

- a. enrolls or enrolled at least one displaced student on a date on which a child count is taken under this program; or
- b. serves an area in which at least one displaced nonpublic school child is enrolled on a date on which a count is taken.

15. May educational service agencies apply for funds on behalf of LEAs?

An educational service agency may apply for funds only if one or more LEAs elect to have it apply for funds and carry out program activities on their behalf. Under the ESEA definition of “local educational agency,” an educational service agency is considered an LEA and, thus, such an agency is eligible to apply for and receive funds under the program. However, an SEA may not make payments on behalf of the same child to two different agencies for the same quarter.

16. May charter schools receive program funds?

A public, nonprofit charter school that enrolls one or more displaced students is eligible for funds under the program. Depending on State law, a charter school is generally considered either an LEA (and thus would receive a payment directly from the State) or a school within an LEA (and thus would receive funds from the payment to the LEA under which it is established). LEAs that have within their jurisdictions charter schools that enroll displaced students must ensure that those charter schools receive their full, proportional share of an LEA’s formula grant.

The parent of a displaced student who is enrolled in a nonpublic, nonprofit charter school may apply for funds on behalf of that student in the same manner as parents of displaced students enrolled in other nonpublic schools.

17. Must a charter school meet the requirements of the Federal Charter Schools Program in order to receive funding?

Section 5210(1) of the ESEA includes requirements that a charter school must meet if it is to receive assistance from the Department's Charter Schools program. These requirements do not apply to participation in the Emergency Impact Aid program.

18. What is an eligible BIA-funded school? Are tribal schools included?

A school is eligible if it enrolls or enrolled at least one displaced child on the date on which a child count is taken and if it is:

- a. operated by the BIA; or
- b. operated by a tribe or an organization controlled or sanctioned by an Indian tribal government, for the children of that tribe, under a contract with or grant from the Department of the Interior.

PAYMENTS

19. How does the Secretary calculate a State's payment?

For each quarter, the Secretary will provide each State with a payment equal to:

- a. the number of displaced students who are not reported as children with disabilities determined by the State to be enrolled in public and nonpublic schools for that quarter, multiplied by \$1,500, plus
- b. the number of displaced students who are reported as children with disabilities determined by the State to be enrolled in public and nonpublic schools for that quarter, multiplied by \$1,875.

However, if the amount available to the Secretary is not sufficient to make these payments in full, the Secretary will proportionately reduce the payments to fit within the amount available.

In any case, the total amount of a payment on behalf of a displaced student enrolled in a nonpublic school may not exceed the lesser of—

- a. \$6,000 for a student who is not reported as a child with a disability;
- b. \$7,500 for a student who is reported as a child with a disability, or
- c. the cost of tuition and fees (and transportation expenses, if any) at the nonpublic school for the 2005-2006 school year.

20. When does the Secretary make payments to SEAs?

The Secretary will issue a quarterly payment to an SEA as soon as possible after receiving the State's application.

21. How does the SEA calculate an LEA's payment?

SEAs calculate LEA payments in the same manner that the Secretary calculates the State allocations. That is, for each quarter, the SEA will provide each LEA making an application for assistance with a payment equal to:

- a. the number of displaced students who are not reported as children with disabilities determined by the LEA to be enrolled in the schools of the LEA, or in nonpublic schools in the area served by the LEA, for that quarter, multiplied by \$1,500, plus
- b. the number of displaced students reported as children with disabilities determined by the LEA to be enrolled in the schools of the LEA, or in nonpublic schools in the area served by the LEA, for that quarter, multiplied by \$1,875.

However, if the amount available to the SEA for that quarter is insufficient to make those payments in full, the SEA will proportionately reduce each LEA's payment.

The aggregate amount of a payment on behalf of a displaced student enrolled in a nonpublic school may not exceed the lesser of—

- a. \$6,000 for a student who is not reported as a child with a disability;
- b. \$7,500 for a student who is reported as a child with a disability; or
- c. the cost of tuition and fees (and transportation expenses, if any) at the nonpublic school for the 2005-2006 school year.

22. When does the SEA make payments to LEAs?

The SEA should make every effort to issue quarterly payments to its applicant LEAs and BIA-funded schools within 14 days following receipt of a payment from the Secretary.

23. When must funds under this program be obligated and spent? What happens if an LEA or SEA has not obligated all funds by the end of the school year?

SEAs, LEAs, and BIA schools must obligate funds received under this program by July 31, 2006. The SEA must return any funds that are not obligated by any of

these entities by this deadline to the Department. Obligations must be liquidated within 90 days of this July 31 date.

24. May an SEA retain any of the funds it receives under this program for its own use?

An SEA may retain up to one percent of its allocation to pay the costs of administering the program. We encourage SEAs to distribute as much of these funds as possible to the LEAs.

Also, if, prior to the date the President signed into law the legislation creating this program (December 30, 2005), an SEA had made a payment to an LEA to cover the additional costs of educating displaced students, the SEA may retain a portion of the LEA's Emergency Impact Aid payment. This retained amount may not exceed the proportion of the total cost of education of a student represented by the earlier payment made by the SEA.

For example, a State has available \$1,500 per displaced child as its first-quarter allocation under the Emergency Impact Aid program and, prior to enactment, the SEA provided an LEA with \$3,000 per child for the costs of educating displaced students, and that amount constituted 40 percent of the full cost of education per child in the LEA (\$7,500). Then the State could retain up to \$600 (40 percent of \$1,500) of that LEA's allocation. If the State has available another \$1,500 per child for the second quarter, the SEA may retain an additional \$600. From the four quarterly payments in total, the SEA may retain up to \$2,400.

25. Are there any special requirements for SEAs in Louisiana and Mississippi?

The SEAs in Louisiana and Mississippi must carry out the activities of eligible LEAs that are unable to implement this program.

26. May States take aid under this program into consideration in determining the amounts of State aid that its LEAs may receive?

States may not consider Emergency Impact Aid payments received under this section in determining the eligibility of their LEAs for State aid, or the amount of State aid, with respect to free public education of children. In the example provided in Question 24, the State would be required to provide at least \$3,600 to the LEA and could not consider those funds in determining eligibility for or the amount of State aid that it provides.

USES OF FUNDS

27. For what activities and services may an LEA, BIA-funded school, or nonpublic school expend program funds?

These entities may use program funds to provide instructional opportunities for displaced students who enroll in their schools and for expenses the recipient incurs in serving displaced students. Examples of allowable expenses include:

- a. paying the compensation of personnel, including teacher aides, in schools enrolling displaced students;
- b. identifying and acquiring curricular material and classroom supplies;
- c. acquiring or leasing mobile educational units or leasing sites and spaces (to the extent that those costs are not met by FEMA);
- d. providing basic instructional services for displaced students, including tutoring, mentoring, or academic counseling;
- e. paying reasonable transportation costs;
- f. providing health and counseling services; and
- g. providing education and support services.

The recipients may use these funds for pre-award costs, including the reimbursement of expenditures incurred prior to the receipt of a grant. See also Question 31 regarding funding for displaced students with disabilities.

28. Must those activities and services be specifically related to serving displaced children?

While the activities and services must be related to serving displaced students, there is no requirement that they be provided only to those students. For instance, one of the allowable activities under the law is provision of basic instructional services. There is no requirement that program funds be used to provide those services only to displaced students; rather, LEAs may use the funds to support regular classroom programs in which both displaced and other students participate. Similarly, the law authorizes the use of funds for reasonable transportation costs. LEAs are under no obligation to provide separate transportation, using these funds, to displaced students. They may instead use the money to support their regular transportation budget, taking care to ensure that the transportation needs of displaced students are met.

29. How much of its grant may an LEA use for administration?

An LEA may use up to two percent of its allocation for administration of the program.

30. How is “administration” defined for the purposes of this program?

Administrative costs include costs (direct and indirect) involved in the proper and efficient performance and administration of this Federal grant. This use of funds, as well as indirect costs and rates, must comply with the Office of Management and Budget Circular A-87 (Cost Principles for State, Local, and Indian Tribal Governments) and the Department's administrative regulations. (See 34 CFR 76.560-76.569 on indirect costs.)

31. What restrictions or conditions apply to the funds that LEAs, BIA-funded schools, and nonpublic schools receive on behalf of displaced students with disabilities?

Recipients of funds under this program for students with disabilities may use those funds only to pay for special education and related services consistent with the IDEA. However, the law does not require that these funds be used to provide special education and related services only to students displaced by the hurricanes. They may become part of an LEA's or school's regular special education budget, and the LEA or school may use them to provide activities and services in which both displaced and other students with disabilities participate, taking care to ensure that the special education needs of displaced students are met.

32. What is the meaning of “special education and related services consistent with” the IDEA?

The requirements that apply to the use of funds provided for displaced students with disabilities are the same as those that apply to the use of funds provided under Part B of the IDEA. They include the requirement that the funds be used for the excess costs of providing special education and related services to students with disabilities, as well as maintenance-of-effort and supplement, not supplant, requirements. Since these provisions have special meaning under the IDEA, distinct from the way these terms are applied under the ESEA, we advise you to consult with your State and local staff who administer the IDEA if you need additional information on IDEA requirements. The applicable regulations regarding these requirements can be found at 34 CFR sections 300.152-300.155 and 300.230-300.235.

33. Are any uses of funds prohibited?

LEAs may not use program funds for construction or for major renovation of schools. If reasonable and necessary, these funds may be used for minor remodeling.

34. What is minor remodeling?

Minor remodeling refers to minor alterations in a previously completed building. The term also includes the extension of utility lines, such as water or electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building. The term does not include building construction, structural alteration to buildings, building maintenance, or repairs.

RECORDKEEPING

35. What records must an LEA or BIA-funded school keep after submitting its application?

In general, all LEA and BIA recipients of Emergency Impact Aid must maintain adequate written records to support the amount of payments that are received and the allowable expenditures that are made under the program for this fiscal year. At a minimum, recipients must keep auditable records documenting the enrollments of the displaced children who they claimed as the basis for receiving payments and evidence that the children claimed met the definition of a displaced student. On request, any recipient must make its records available to the Department for the purpose of examination or audit. The full requirements regarding recordkeeping are in the Department's regulations at 34 CFR 80.42.

36. What records must a nonpublic school keep after receiving funds from accounts on behalf of displaced students?

At a minimum, a nonpublic school that receives Emergency Impact Aid funds from student accounts must maintain adequate written records to support the amount of funds that are received and the allowable expenditures that are made under the program for this fiscal year. Recipients must keep auditable records documenting the enrollments of the displaced children on whose behalf the nonpublic school received payments for displaced students.

37. What records must an SEA keep after submitting an application?

Similarly, all SEA recipients must maintain adequate written records to support the amount of payments that are received, spent, and disbursed under the program for this fiscal year. These records should include the LEA and BIA school applications received. The records must be made available to the Department, if requested, for the purpose of examination or audit. The full requirements regarding recordkeeping are in 34 CFR 80.42.

38. Will SEAs be responsible for ensuring that any BIA-funded schools receiving allocations in their States meet the requirements of the program?

Although SEAs typically do not have administrative control or jurisdiction over BIA-funded schools, they are responsible for ensuring that any such schools within their boundaries receiving Emergency Impact Aid grants meet the terms and conditions associated with those grants.

PAYMENTS ON BEHALF OF DISPLACED STUDENTS ENROLLED IN NONPUBLIC SCHOOLS

39. What is an eligible nonpublic school?

An eligible nonpublic school is one that is accredited or otherwise operates in accordance with State law, was in existence on August 22, 2005, and serves at least one student whose family has applied for assistance under the program. In addition, participating nonpublic schools, including nonpublic charter schools, must abide by certain civil rights requirements, described below. (See Question 51.) A nonpublic school must also waive tuition or reimburse tuition paid in order to receive funds under this program.

40. Who are eligible displaced students for nonpublic schools?

Displaced students attending a nonpublic school must meet certain additional criteria beyond the requirements in Question 2. They must have enrolled in an eligible nonpublic school prior to December 30, 2005, the date of enactment of the Hurricane Education Recovery Act (Act). The students' parents must have chosen to enroll the students in a nonpublic school, and the students' parents must submit a timely application for funding under this program to the LEA.

41. Must a nonpublic school have waived tuition for an eligible displaced student at the time of the displaced student's enrollment in the nonpublic school?

A nonpublic school need not have waived tuition at the time of a displaced student's enrollment. If it has not previously waived or reimbursed tuition, the school must reimburse tuition that was paid for a displaced student in order to meet the requirement referenced in Question 39.

42. How and where does an LEA establish an “account” for displaced nonpublic school students?

These accounts may be established as part of the LEA’s financial recording system, at the nonpublic schools the displaced students attend, or through some other means such as an account at a financial institution. The LEA makes the funds in these accounts available to the nonpublic schools that these displaced students attend. The LEAs and nonpublic schools must record (such as in a ledger or spreadsheet) the names of the displaced students, the funds provided for each student, and the disbursement of those funds to a particular nonpublic school.

43. What type of notice must the SEA provide to parents of displaced students attending nonpublic schools?

An SEA must provide notice to each parent of a displaced student attending a nonpublic school informing the parent that:

- a. the parent or guardian has the option to enroll his or her child in a public school or a nonpublic school; and
- b. Emergency Impact Aid is a temporary program that will be available only for the 2005-2006 school year.

An SEA may work through its LEAs to meet this requirement.

44. Are SEAs required to limit the payment of assistance on behalf of nonpublic school students to students from families that fall below a certain income level?

As described above (Question 6), the SEA must include in its application to the Secretary a description of the criteria it will use, including family income, in determining eligibility for, and the amount of, assistance provided on behalf of a student attending a nonpublic school. However, SEAs have broad flexibility in determining the extent to which they establish family income or wealth criteria for the receipt of this assistance. For instance, an SEA may want to preclude wealthy families from applying for assistance or consider a family’s post-hurricane income.

45. What goods and services may nonpublic schools purchase using program funds?

As noted in Question 27, nonpublic schools that receive payments from accounts on behalf of displaced students enrolled in their schools may use those funds for any of the following services and activities:

- a. paying the compensation of personnel, including teacher aides;
- b. identifying and acquiring curricular material and classroom supplies;

- c. acquiring or leasing mobile educational units or leasing sites and spaces (to the extent that those costs are not met by FEMA);
- d. providing basic instructional services for displaced students, including tutoring, mentoring, or academic counseling;
- e. paying reasonable transportation costs;
- f. providing health and counseling services; and
- g. providing education and support services.

As with payments made on behalf of displaced students enrolled in public schools, there is no requirement that the nonpublic schools use these funds for activities and services that serve only displaced students. Also, nonpublic schools may not use the funds for construction or major renovations.

Additionally, SEAs are responsible for ensuring that all of the program requirements are met. Consistent with the requirements of 34 CFR 80.40, all SEA grantees for Department programs are also responsible for monitoring grant and subgrant activities to ensure compliance with applicable Federal requirements.

While nonpublic schools that access accounts on behalf of nonpublic students are not considered subgrantees as defined in 34 CFR 80.3, SEAs are responsible for monitoring the nonpublic schools with respect to applicable requirements including ensuring that: 1) a school's certification regarding its enrollment of displaced students as defined in section 107(c)(1)(D) of the Act is adequately documented; 2) the school is an eligible nonpublic school as defined in section 107(b)(3); and 3) the funds from accessed accounts are used only for allowable goods and services. The SEA should take appropriate enforcement actions if it determines that a nonpublic school has not met any of these requirements.

46. What requirements apply to payments made to accounts on behalf of displaced children with disabilities who are enrolled in nonpublic schools?

Recipients of funds under the program on behalf of students with disabilities may use those funds only to pay for special education and related services consistent with the IDEA. However, the law does not require that these funds be used to provide special education and related services only to students displaced by the hurricanes. They may become part of a school's regular special education budget, and the school may use them to provide activities and services in which both displaced and other students with disabilities participate, taking care to ensure that the special education needs of displaced students are met.

47. If an LEA provides special education and related services to a displaced student attending a nonpublic school, may the LEA retain a portion of the funding it would otherwise place in that student's account?

Under the IDEA, LEAs typically provide special education and related services to students enrolled in nonpublic schools. An LEA that provides such services to a displaced student enrolled in a nonpublic school may retain a portion of the money that it would otherwise place in the student's account in order to cover its cost of providing those services. Each SEA must establish guidelines (based on the customary cost of providing services under section 612(a)(10) of the IDEA) specifying the portion of funds that an LEA may retain for this purpose and must apply those guidelines consistently throughout the State.

48. Is there a deadline for when an LEA must make a quarterly payment to the account of a student attending a nonpublic school?

In its application to the SEA, an LEA must assure that it will make payments to the accounts of students enrolled in nonpublic schools within 14 calendar days of receiving those funds. Each LEA must abide by this deadline.

49. What actions must an LEA take to ensure that nonpublic schools use funds from student accounts only for allowable goods and services?

SEAs are responsible for ensuring that any such schools receiving Emergency Impact Aid grants meet the terms and conditions associated with those grants. SEAs may wish to request that the nonpublic schools submit regular reports to them with listings of expenditures from the Emergency Impact Aid funds they have received from student accounts.

Participating nonpublic schools that access funds from student accounts should cooperate with SEAs in meeting all applicable program requirements including those related to allowable uses of funds and promptly provide required data and supporting documentation to their appropriate SEA.

50. What happens if an SEA or LEA is unable to implement the nonpublic school provisions of the program? Who determines whether an SEA or LEA is unable to do so?

As noted above, in Question 25, if LEAs in Mississippi or Louisiana are unable to implement the provisions of this program, including those related to nonpublic schools, the SEAs are authorized to act on their behalf. If LEAs in other States are unable to implement the provisions, they should notify and consult immediately with their SEAs. If any SEAs are unable to implement the nonpublic school

provisions, they should notify the Department as soon as possible and we will work with them in order to ensure that the provisions are appropriately implemented, including, if appropriate, through a “bypass” arrangement.

51. What civil rights requirements apply to nonpublic schools whose students receive assistance under the program? Who is responsible for ensuring that those requirements are met?

From the time that they receive funds under the program through July 31, 2006, nonpublic schools that receive funds on behalf of displaced students under this program must comply with the program statute’s non-discrimination provision, which prohibits discrimination on the basis of race, color, national origin, religion, disability, or sex. Additionally, nonpublic schools receiving funds on behalf of displaced students under this program are considered recipients of Federal financial assistance, and are subject for the grant period (from the time of the grant award through July 31, 2006) to the provisions of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act, which are enforced by the Department’s Office for Civil Rights.

In addition, any entity that employs 15 or more employees is subject to Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of race, color, national origin, religion, or sex, except that Title VII may not apply to the employment of individuals of a particular religion by a religious organization, such as a nonpublic religious school. Title VII is enforced by the Equal Employment Opportunity Commission.

52. May the parent of a nonpublic school student for whom assistance is provided under this program opt out of religious instruction?

A parent who has applied for assistance on behalf of a displaced student in a nonpublic school may have that student opt out of religious worship or classes offered by the nonpublic school.

OTHER ISSUES

53. What other requirements apply to schools that educate displaced students on whose behalf payments are made under this program?

Any school that enrolls displaced students who generate payments under this program must not discriminate against students on the basis of race, color, national origin, religion, disability, sex or age. However, the prohibition on religious discrimination is limited with respect to a nonpublic school that is controlled by a

religious organization or organization that is operated on the basis of religious tenets in that it only applies to displaced students who generate payments under this program.

In addition, under Title IX of the Education Amendments of 1972 (Title IX) a nonpublic school that is controlled by a religious organization may seek an exemption from any Title IX provision, if that provision is inconsistent with the religious tenets of that religious organization. Moreover, to the extent that is consistent with Title IX, a parent or guardian is still free to choose and a nonpublic school may still offer a single sex, school, class, or activity.

54. May LEAs that receive regular Impact Aid payments include displaced students in their child counts for school year 2005-2006 applications?

In order to avoid duplicate Federal funding, an LEA may not claim any displaced student in its annual section 8003 Impact Aid application if the LEA receives an Emergency Impact Aid payment, for any quarter, for that student under this program. Displaced students also must not be counted in the total number of students reported on Table 6 of the LEA's section 8003 application.

55. Do Davis-Bacon prevailing wage requirements apply to this program?

Although subgrantees may not use these funds for construction or major renovation, any laborers and mechanics employed by contractors or subcontractors on minor remodeling projects assisted with these Federal education funds must be paid in accordance with prevailing wage requirements in the Davis-Bacon Act.

56. May any of these requirements be waived?

Because this is a stand-alone program and not a part of the ESEA, States (including ED-Flex States) and LEAs are not eligible to apply for waivers of any of these program requirements.