

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3228

To amend the Elementary and Secondary Education Act of 1965 to provide services to immigrant children.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 6, 1993

Mr. JOHNSTON of Florida (for himself, Mr. BACCHUS of Florida, Mr. GIBBONS, Mr. PETERSON of Florida, Ms. ROS-LEHTINEN, Mr. DIAZ-BALART, Mr. CHAPMAN, Mr. MANTON, Mrs. MEEK, Mr. ACKERMAN, Mr. OWENS, Mr. STARK, Ms. VELÁZQUEZ, Mr. MENENDEZ, Mr. HASTINGS, Mr. HINCHEY, Mr. DELLUMS, Mr. GOSS, Ms. PELOSI, Mr. FILNER, Mr. MILLER of California, Mr. LEWIS of Florida, Mr. PAYNE of New Jersey, Ms. BROWN of Florida, Mr. MARTINEZ, and Mr. MILLER of Florida) introduced the following bill; which was referred to the Committee on Education and Labor

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## A BILL

To amend the Elementary and Secondary Education Act of 1965 to provide services to immigrant children.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That Part D of title IV of the Elementary and Secondary
- 4 Education Act of 1965 is amended to read as follows:

1                   **“PART D—IMMIGRANT EDUCATION**

2   **“SEC. 4401. SHORT TITLE.**

3           “‘This part may be cited as the ‘Emergency Immi-  
4 grant Education Act of 1993’.

5   **“SEC. 4402. POLICY STATEMENT.**

6           “Congress recognizes that—

7                   “(1) the Government has jurisdiction over im-  
8 migration and refugee admissions;

9                   “(2) immigrants and refugees have special  
10 needs which require Government assistance in order  
11 to facilitate assimilation;

12                   “(3) the Government has acknowledged these  
13 needs by mandating that both documented and un-  
14 documented immigrants be provided with medical at-  
15 tention, education, and other services;

16                   “(4) the Government has not provided adequate  
17 reimbursement to States that bear the costs of im-  
18 migrant populations;

19                   “(5) the costs of educating immigrant children  
20 have largely been left to States and local school dis-  
21 tricts;

22                   “(6) the educational needs of immigrant chil-  
23 dren create financial and administrative burdens on  
24 school districts;

25                   “(7) the Government has an obligation to help  
26 immigrant children assimilate; and

1           “(8) the Government has an obligation to help  
2           local educational agencies pay for the additional  
3           costs of serving immigrant children.

4   **“SEC. 4403. DEFINITIONS.**

5           “For purposes of this part—

6           “(1)(A) The term ‘immigrant children’ means  
7           children who were not born in any State and have  
8           resided in any 1 or more States for less than 5 years  
9           and are attending school in any State in the United  
10          States.

11          “(B) The term ‘immigrant’ has the same mean-  
12          ing given such term under section 101(15) of the  
13          Immigration and Nationality Act.

14          “(2) The term ‘elementary or secondary  
15          nonpublic schools’ means schools which comply with  
16          the applicable compulsory attendance laws of the  
17          State and which are exempt from taxation under  
18          section 501(c)(3) of the Internal Revenue Code of  
19          1954.

20   **“SEC. 4404. AUTHORIZATION AND ALLOCATION OF APPRO-**  
21                                   **PRIATIONS.**

22          “(a) AUTHORIZATION OF APPROPRIATIONS.—There  
23          are authorized to be appropriated to make payments to  
24          which State educational agencies are entitled under this  
25          part and local educational agencies under section 4412

1 and payments for administration under section 4404  
2 \$100,000,000 for each of the fiscal years 1994, 1995,  
3 1996 and such sums as may be necessary for each of the  
4 fiscal years 1997, 1998, 1999, and 2000.

5 “(b) ALLOCATION OF APPROPRIATIONS.—(1) If the  
6 sums appropriated for any fiscal year to make payments  
7 to States under this part are not sufficient to pay in full  
8 the sum of the amounts which State educational agencies  
9 are entitled to receive under this part for such year, the  
10 allocations to State educational agencies shall be ratably  
11 reduced to the extent necessary to bring the aggregate of  
12 such allocations within the limits of the amounts so appro-  
13 priated.

14 “(2) In the event that funds become available for  
15 making payments under this part for any period after allo-  
16 cations have been made under paragraph (1) of this sub-  
17 section for such period, the amounts reduced under such  
18 paragraph shall be increased on the same basis as they  
19 were reduced.

20 **“SEC. 4405. STATE FUNDS.**

21 “(a) ADMINISTRATIVE COSTS.—The Secretary is au-  
22 thorized to pay to each State educational agency amounts  
23 equal to the amounts expended by it for the proper and  
24 efficient administration of its functions under this part,  
25 except that the total of such payments for any period shall

1 not exceed 2 percent of the amounts which the State edu-  
2 cational agency is entitled to receive for such period under  
3 this part.

4 “(b) STATE FUNDS.—A State that receives funds  
5 under this part may reserve not more than 3 percent of  
6 such funds for services to immigrant children in local edu-  
7 cational agencies that do not meet the requirements of sec-  
8 tion 4407.

9 **“SEC. 4406. WITHHOLDING.**

10 “Whenever the Secretary, after reasonable notice and  
11 opportunity for a hearing to any State educational agency,  
12 finds that there is a failure to meet the requirements of  
13 any provision of this part, the Secretary shall notify that  
14 agency that further payments will not be made to the  
15 agency under this part, or in the discretion of the Sec-  
16 retary, that the State educational agency shall not make  
17 further payments under this part to specified local edu-  
18 cational agencies whose actions cause or are involved in  
19 such failure until the Secretary is satisfied that there is  
20 no longer any such failure to comply. Until the Secretary  
21 is so satisfied, no further payments shall be made to the  
22 State educational agency under this part, or payments by  
23 the State educational agency under this part shall be lim-  
24 ited to local educational agencies whose actions did not

1 cause or were not involved in the failure, as the case may  
2 be.

3 **“SEC. 4407. STATE ENTITLEMENTS.**

4       “(a) PAYMENTS.—The Secretary shall, in accordance  
5 with the provisions of this section, make payments to  
6 State educational agencies for each of the fiscal years  
7 1994 through 2000 for the purpose set forth in section  
8 4407.

9       “(b) ENTITLEMENTS.—(1) Except as provided in  
10 paragraph (3) and in subsections (c) and (d) of this sec-  
11 tion, the amount of the grant to which a State educational  
12 agency is entitled under this part shall be equal to the  
13 product of (A) the number of immigrant children enrolled  
14 during such fiscal year in elementary and secondary public  
15 schools under the jurisdiction of each local educational  
16 agency described under paragraph (2) within that State,  
17 and in any elementary or secondary nonpublic school with-  
18 in the district served by each such local educational agen-  
19 cy, multiplied by (B) \$500.

20       “(2) The local educational agencies referred to in  
21 paragraph (1) are those local educational agencies in  
22 which the sum of the number of immigrant children who  
23 are enrolled in elementary or secondary public schools  
24 under the jurisdiction of such agencies, and in elementary  
25 or secondary nonpublic schools within the districts served

1 by such agencies, during the fiscal year for which the pay-  
2 ments are to be made under this part, is equal to—

3 “(A) at least 1,000; or

4 “(B) at least 5 percent of the total number of  
5 students enrolled in such public or nonpublic schools  
6 during such fiscal year;

7 whichever number is less.

8 “(c) DETERMINATIONS OF NUMBER OF CHIL-  
9 DREN.—(1) Determinations by the Secretary under this  
10 section for any period with respect to the number of immi-  
11 grant children shall be made on the basis of data or esti-  
12 mates provided to the Secretary by each State educational  
13 agency in accordance with criteria established by the Sec-  
14 retary, unless the Secretary determines, after notice and  
15 opportunity for a hearing to the affected State educational  
16 agency, that such data or estimates are clearly erroneous.

17 “(2) No such determination with respect to the num-  
18 ber of immigrant children shall operate because of an un-  
19 derestimate or overestimate to deprive any State edu-  
20 cational agency of its entitlement to any payment (or the  
21 amount thereof) under this section to which such agency  
22 would be entitled had such determination been made on  
23 the basis of accurate data.

24 “(d) REALLOCATION.—Whenever the Secretary de-  
25 termines that any amount of a payment made to a State

1 under this part for a fiscal year will not be used by such  
2 State for carrying out the purpose for which the payment  
3 was made, the Secretary shall make such amount available  
4 for carrying out such purpose to 1 or more other States  
5 to the extent the Secretary determines that such other  
6 States will be able to use such additional amount for car-  
7 rying out such purpose. Any amount made available to a  
8 State from an appropriation for a fiscal year in accordance  
9 with the preceding sentence shall, for purposes of this  
10 part, be regarded as part of such State's payment (as de-  
11 termined under subsection (b)) for such year, but shall  
12 remain available until the end of the succeeding fiscal  
13 year.

14 **“SEC. 4408. USES OF FUNDS.**

15       “(a) SERVICES AND COSTS.—Funds provided under  
16 this part may be used in accordance with approved appli-  
17 cations for supplementary educational services and costs  
18 for immigrant children enrolled in the elementary and sec-  
19 ondary public and nonpublic schools within the boundaries  
20 of the local educational agency.

21       “(b) KINDS OF SERVICES AND COSTS.—Financial  
22 assistance shall be available to meet the costs of providing  
23 immigrant children supplementary educational services in-  
24 cluding—

1           “(1) supplementary educational services nec-  
2           essary to enable immigrant children to achieve a sat-  
3           isfactory level of performance, including—

4                   “(A) English language instruction;

5                   “(B) other bilingual educational services;

6           and

7                   “(C) special materials and supplies;

8           “(2) start-up costs for special services designed  
9           to meet the needs of new populations of immigrant  
10          children if services such as newcomer centers and  
11          gateway facilities are unavailable;

12          “(3) additional basic instructional services  
13          which are directly attributable to the presence in the  
14          local educational agencies of new populations of im-  
15          migrant children, including the costs of providing  
16          additional classroom supplies, overhead costs, costs  
17          of construction, acquisition or rental of space, costs  
18          of transportation, or such other costs as are directly  
19          attributable to such additional basic instructional  
20          services;

21          “(4) essential inservice training for personnel  
22          who will be providing instruction, including cultural  
23          awareness training;

24          “(5) special personnel to assess academic and  
25          achievement levels, register and provide certain so-

1 cial services, and assist the parents of immigrant  
2 children to help them understand the requirements  
3 of their children’s educational programs;

4 “(6) community and parent outreach programs;

5 “(7) family educational services that enable  
6 parents to contribute to the education of their chil-  
7 dren;

8 “(8) collaboration with social and health serv-  
9 ices;

10 “(9) counseling services; and

11 “(10) preschool intervention programs.

12 **“SEC. 4409. APPLICATIONS.**

13 “(a) SUBMISSION.—No State educational agency  
14 shall be entitled to any payment under this part for any  
15 period unless that agency submits an application to the  
16 Secretary at such time, in such manner, and containing  
17 or accompanied by such information, as the Secretary may  
18 reasonably require. Each such application shall—

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

23 “(2) provide assurances that payments under  
24 this part will be used for purposes set forth in sec-  
25 tion 4407;

1           “(3) provide assurances that such payments will  
2 be distributed among local educational agencies  
3 within that State on the basis of the number of chil-  
4 dren counted with respect to such local educational  
5 agency under section 4406(b)(1), adjusted to reflect  
6 any reductions imposed pursuant to section  
7 4406(b)(3) which are attributable to such local edu-  
8 cational agency;

9           “(4) provide assurances that the State edu-  
10 cational agency will not finally disapprove in whole  
11 or in part any application for funds received under  
12 this part without first affording the local educational  
13 agency submitting an application for such funds rea-  
14 sonable notice and opportunity for a hearing;

15           “(5) provide for making such reports as the  
16 Secretary may reasonably require to perform the  
17 functions under this part; and

18           “(6) provide assurances—

19           “(A) that to the extent consistent with the  
20 number of immigrant children enrolled in the  
21 elementary or secondary nonpublic schools with-  
22 in the district served by a local educational  
23 agency, such agency, after consultation with ap-  
24 propriate officials of such schools, shall provide  
25 for the benefit of these children secular, neu-

1           tral, and nonideological services, materials, and  
2           equipment necessary for the education of such  
3           children;

4           “(B) that the control of funds provided  
5           under this part and title to any materials,  
6           equipment, and property repaired, remodeled,  
7           or constructed with those funds shall be in a  
8           public agency for the uses and purposes pro-  
9           vided in this part, and a public agency shall ad-  
10          minister such funds and property; and

11          “(C) that the provision of services pursu-  
12          ant to this paragraph shall be provided by em-  
13          ployees of a public agency or through contract  
14          by such public agency with a person, associa-  
15          tion, agency, or corporation who or which, in  
16          the provision of such services, is independent of  
17          such elementary or secondary nonpublic school  
18          and of any religious organization; and such em-  
19          ployment or contract shall be under the control  
20          and supervision of such public agency, and the  
21          funds provided under this paragraph shall not  
22          be commingled with State or local funds.

23          “(b) APPROVAL OF APPLICATION.—The Secretary  
24          shall approve an application which meets the requirements  
25          of subsection (a). The Secretary shall not finally dis-

1 approve an application of a State educational agency ex-  
2 cept after reasonable notice and opportunity for a hearing  
3 on the record to such agency.

4 **“SEC. 4410. PAYMENTS.**

5       “(a) AMOUNT.—Except as provided in section  
6 4403(b), the Secretary shall pay to each State educational  
7 agency having an application approved under section 4408  
8 the amount which that State is entitled to receive under  
9 this part.

10       “(b) SERVICES TO CHILDREN ENROLLED IN  
11 NONPUBLIC SCHOOLS.—If by reason of any provision of  
12 law a local educational agency is prohibited from providing  
13 educational services for children enrolled in elementary  
14 and secondary nonpublic schools, as required by section  
15 4408(a)(6), or if the Secretary determines that a local  
16 educational agency has substantially failed or is unwilling  
17 to provide for the participation on an equitable basis of  
18 children enrolled in such schools, the Secretary may waive  
19 such requirement and shall arrange for the provision of  
20 services to such children through arrangements which  
21 shall be subject to the requirements of this part. Such  
22 waivers shall be subject to consultation, withholding, no-  
23 tice, and judicial review requirements in accordance with  
24 the provisions of chapter 1 of title I.

1 **“SEC. 4411. MINIMUM AMOUNTS FOR EQUAL FUNDING.**

2 “If appropriations under this part exceed  
3 \$50,000,000 for a fiscal year, such additional amounts  
4 shall be divided equally between the programs developed  
5 under sections 4407 and 4412.

6 **“SEC. 4412. DISTRICTWIDE IMMIGRANT GRANTS.**

7 “(a) IN GENERAL.—A grant may be made under this  
8 section upon application by a local educational agency if  
9 the sum of the number of immigrant children who are en-  
10 rolled in elementary and secondary public and nonpublic  
11 schools within the boundaries of the local educational  
12 agency is equal to not less than 5,000 or not less than  
13 10 percent of the total number of students enrolled in such  
14 public or nonpublic schools during the fiscal year for which  
15 the payments are to be made under this part, whichever  
16 is less.

17 “(b) USES OF FUNDS.—(1) Funds provided under  
18 this part may be used in accordance with approved appli-  
19 cations for supplementary educational services and costs  
20 for immigrant children enrolled in the elementary and sec-  
21 ondary public and nonpublic schools within the boundaries  
22 of the local educational agency.

23 “(2) Financial assistance shall be available to meet  
24 the costs of providing immigrant children supplementary  
25 educational services including—

1           “(A) supplementary educational services nec-  
2           essary to enable immigrant children to achieve a sat-  
3           isfactory level of performance, including—

4                   “(i) English language instruction;

5                   “(ii) other bilingual educational services;

6           and

7                   “(iii) special materials and supplies;

8           “(B) start-up costs for special services designed  
9           to meet the needs of new populations of immigrant  
10          children if services such as, newcomer centers and  
11          gateway facilities are unavailable;

12          “(C) additional basic instructional services  
13          which are directly attributable to the presence in the  
14          (local educational agencies) of new populations of  
15          immigrant children, including the costs of providing  
16          additional classroom supplies, overhead costs, costs  
17          of construction, acquisition or rental of space, costs  
18          of transportation, or such other costs as are directly  
19          attributable to such additional basic instructional  
20          services;

21          “(D) essential inservice training for personnel  
22          who will be providing instruction;

23          “(E) special personnel to assess academic and  
24          achievement levels, register and provide certain so-  
25          cial services, and assist the parents of immigrant

1 children to help them understand the requirements  
2 of their children’s educational programs;

3 “(F) community and parent outreach programs;

4 “(G) family educational services that enable  
5 parents to contribute to the education of their chil-  
6 dren;

7 “(H) collaboration with social and health serv-  
8 ices;

9 “(I) counseling services; and

10 “(J) preschool intervention programs.

11 “(c) CONTENT OF APPLICATION.—Applications for  
12 grants shall contain information regarding—

13 “(1) the total number of children enrolled in  
14 programs conducted by the local educational agency;

15 “(2) the number of children residing in the area  
16 served by the local educational agency who are en-  
17 rolled in nonpublic schools;

18 “(3) the number of children enrolled in public  
19 and nonpublic schools in the area served by the local  
20 educational agency who are immigrant children as  
21 defined by this Act;

22 “(4) the number of immigrant children who are  
23 enrolled in instructional programs specifically de-  
24 signed to meet their educational needs, as well as  
25 descriptions of such programs;

1           “(5) the number of immigrant children enrolled  
2           in public or nonpublic schools in the area served by  
3           the local educational agency who need or could bene-  
4           fit from education programs such as programs as-  
5           sisted under this part;

6           “(6) the number of immigrant children who are  
7           to receive instruction through the proposed program  
8           and the extent of their educational needs;

9           “(7) a statement of the applicant’s ability to  
10          serve immigrant children, including an assessment of  
11          the qualifications of personnel who will participate in  
12          the proposed project and of the need for further  
13          training of such personnel;

14          “(8) the resources needed to develop and oper-  
15          ate, or improve the proposed program;

16          “(9) the school facilities needed to make room  
17          for sudden increases in enrollment, with specific de-  
18          scriptions of increases in classroom size and over-  
19          crowded conditions;

20          “(10) the activities which would be undertaken  
21          under the grant, including training of educational  
22          personnel and parents, and how these activities will  
23          improve the educational attainment of immigrant  
24          students and expand the capacity of the applicant to

1 operate programs such as those assisted under this  
2 part when Federal assistance is no longer available;

3 “(11) the total budget of the applicant’s local  
4 educational agency;

5 “(12) the percentage of the applicant’s total  
6 budget that is spent on programs for immigrant  
7 children; and

8 “(13) the estimated cost of providing edu-  
9 cational and educational-related services for the im-  
10 migrant student population in the area served by the  
11 local educational agency, including costs of construc-  
12 tion.

13 “(d) APPROVAL OF APPLICATIONS.—An application  
14 for a grant under this part may be approved if the Sec-  
15 retary determines—

16 “(1) that the program will use qualified person-  
17 nel;

18 “(2) that Federal funds made available for the  
19 project or activity will be used so as to supplement  
20 the level of State and local funds that, in the ab-  
21 sence of such Federal funds, would have been ex-  
22 pended for special programs for immigrant children  
23 and in no case supplant such State and local funds;

24 “(3) that the assistance provided under the ap-  
25 plication will contribute toward building the capacity

1 of the applicant to provide a program on a regular  
2 basis, similar to that proposed for assistance, which  
3 will be of sufficient size, scope, and quality to prom-  
4 ise significant improvement in the education of chil-  
5 dren of limited English proficiency, and that the ap-  
6 plicant will have the resources and commitment to  
7 continue the program when assistance under this  
8 part is reduced or no longer available; and

9 “(4) that the applicant will provide or secure  
10 training for personnel participating, or preparing to  
11 participate, in the program which will assist them to  
12 meet State and local certification requirements and  
13 that, to the extent possible, college or university  
14 credit will be awarded for such training.

15 “(e) SPECIAL CONSIDERATION.—In awarding grants,  
16 the Secretary shall take into consideration—

17 “(1) the geographic distribution of immigrant  
18 children across the Nation and grants must be dis-  
19 tributed accordingly, ensuring that there is geo-  
20 graphic diversity in grant awards;

21 “(2) the relative numbers of persons from low-  
22 income families who would benefit from the appli-  
23 cants’ programs; and

24 “(3) the applicants’ relative ability to provide  
25 needed services and activities.

1       “(f) TERM.—Districtwide grants shall be made avail-  
2 able for a 5-year period with the amount of each grant  
3 not to exceed \$400,000 for each fiscal year. Recipients  
4 must submit to the Secretary a report each year that dem-  
5 onstrates a continuing need for such funds.

6       **“SEC. 4413. REPORTS.**

7       “(a) BIENNIAL REPORT.—Each State educational  
8 agency receiving funds under this part shall submit, bien-  
9 nially, a report to the Secretary concerning the expendi-  
10 ture of funds by local educational agencies under this part.  
11 Each local educational agency receiving funds under this  
12 part shall submit to the State educational agency such in-  
13 formation as may be necessary for such report.

14       “(b) REPORT TO CONGRESS.—The Secretary shall  
15 submit biannually a report to the appropriate committees  
16 of the Congress concerning programs under this part.”.

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HR 3228 IH—2