

Immigration Obligations

Your District's Responsibilities Vary Little Regarding Foreign Students

Since the events of September 11, 2001, foreign nationals have been subjected to increased scrutiny. New laws and regulations place restrictions on immigration, particularly foreign students.

The new laws affect more than the 36 Texas school districts that have a common border with Mexico. Administrators and board members statewide have questions about the status of foreign students, such as: "How does this new emphasis on homeland security affect my district and its responsibilities toward foreign students?"

The first of a two-part series, this article discusses the obligations of Texas school districts toward foreign nationals who are living in the United States—those with non-student visas and those who are in undocumented ("illegal") status. The second installment will address foreign nationals who have not yet arrived in the United States but seek entry on student visas.

District Responsibility: Admission

A common question regarding foreign nationals is whether the district must pro-

vide an education to these students. As a general rule, districts must provide a free education to all students residing in the district, regardless of their immigration status.¹

Stated another way, a district may not exclude a student based solely on the student's illegal status.²

All students, including foreign nationals, must meet state eligibility requirements, however. For example, Texas law requires districts to admit all persons who are older than 5 and younger than 21 years of age and who reside in the district.³ Accordingly, a district may require a foreign student to demonstrate age and residency on the same basis as other students.

Similarly, the benefits of the Foundation School Program are not available to students who have graduated from high school.⁴ Thus, a district may exclude a foreign student who has already obtained a high school diploma.

Unfortunately, it is not always clear whether a degree obtained by a foreign student in his or her home country equates to a high school diploma. This is a matter of local interpretation. Districts should



apply their local interpretations consistently to avoid claims of unfairness or discrimination.

Districts must also be mindful of state immunization laws. Texas law prohibits a district from admitting any student unless: (1) the student demonstrates that he or she has received the required immunizations;⁵ (2) the student demonstrates that he or she has begun immunizations (provisional admission); or (3) the student documents an

exemption from the immunization laws.⁶ There is no general exception to the immunization requirements for foreign nationals.⁷

Another frequent question is whether the district must or should report a student who maintains undocumented or illegal status. No law exists requiring a district to report undocumented students to the Bureau of Citizenship and Immigration Services (formerly the Immigration and Naturalization Service) or to

any other federal authority. A district should, however, notify local law enforcement if any student, including a foreign national, fails to provide the paperwork required by Texas law within 30 days of enrollment.⁸

District Responsibility:

Post-Admission

Once a district admits a foreign student, the next question is whether the district's responsibilities toward the student vary from the district's responsibilities toward other students. No laws address this particular subject. Thus, as a general rule, districts should treat foreign students the same as all other students.

Congress amended the Family Educational Rights and Privacy Act (FERPA) after September 11, 2001, to require school districts to provide certain information regarding non-citizens, on request, to law enforcement officials.⁹

However, this amendment applies only to foreign nationals who hold student visas.¹⁰ It does not apply to students who are already in the United States on non-student visas or who are here illegally. Accordingly, districts should apply the principals of FERPA in determining whether to release education records of illegal immigrants or those of foreign nationals in the United States on non-student visas.

As with any legal issue, districts should not hesitate to consult their local attorney when questions arise regarding foreign students. Districts may also wish to consult attorneys who specialize in immigration law, as this can be a complex and technical area.¹¹

The relationship between foreign students and Texas school districts can be mutually enriching. Districts benefit from the diversity and cultural perspective that foreign stu-

dents bring from their home countries. The students, in turn, learn about our society and customs, taking that information back to their home country to share with others. Keeping in mind the principles outlined above, districts can continue to make this experience rewarding for all.

Next month: A district's responsibilities regarding foreign nationals seeking entry under student visas. ★

¹*Phyller v. Doe*, 457 U.S. 202 (1982); see also Texas Education Agency To the Administrator Addressed letter dated July 26, 2004.

²*Id.*

³Tex. Educ. Code § 25.001(b).

⁴Tex. Educ. Code § 42.003(a). A student who has received a high school equivalency certificate is entitled to enroll on the same basis as a student who has not graduated from high school. Tex. Educ. Code § 29.087(h).

⁵Districts should contact the Texas Department of State Health Services for guidance on appropriate documentation of immunizations obtained in foreign countries.

⁶Tex. Educ. Code § 38.001; 25 Tex. Admin. Code ch. 97.

⁷A foreign student may, however, be entitled to provisional admission if he or she is "homeless," as defined by the McKinney-Vento Act. 25 Tex. Admin. Code § 97.66.

⁸See Tex. Educ. Code § 25.002(a).

⁹8 U.S.C. § 1372.

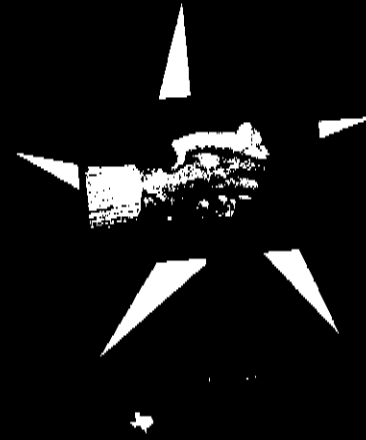
¹⁰8 C.F.R. § 214.1(h).

¹¹The Texas Board of Legal Specialization (TBLS) offers certification in the area of Immigration and Nationality Law. Certification is not required to practice in any area but does reflect an attorney's commitment and training in his or her specialty. A list of attorneys certified in Immigration and Nationality Law is available at the TBLS Web site: www.tbls.org/Directory/AttList.asp.

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