

Regarding Student Visas

Your District's Role and Responsibilities, Part Two

A parent in your district has approached you, stating that a foreign exchange student from Chile will live with the parent's family next year. Does your district have to admit the student?

A student from France e-mails you, asking your district to sponsor her for study in the U.S. Can you do this?

Last month, the first article in a two-part series published in *Texas Lone Star* discussed a district's role and responsibilities with respect to foreign students who do not have student visas and who are already living in the United States.

This article, second in the series, addresses the district's role and responsibilities with respect to foreign nationals who are seeking school-district sponsorship to obtain student visas or who wish to come to this country as foreign exchange students.

Student Visas: A Quick Overview

Many types of visas are available to foreign nationals who wish to come to the United States. The type of visa a foreign national is eligible for depends upon the primary reason for his or her visit.

Four categories of visas are specifically directed to foreign students: F-1, J-1, M-1, and M-3 visas. In simplest terms, F-1 visas are for academic study; J-1 visas are for foreign exchange students; and M-1 visas are for vocational study. M-3 visas are for Mexican and Canadian foreign nationals who commute to school in the United States ("border commuters").

As discussed in part one, foreign students may be present in the United States holding any number of non-student visas or maintaining undocumented—"illegal"—status. A district's obligations toward such students are different from its obligations toward foreign nationals who have not already arrived in this country. The district's obligations toward foreign nationals who have not yet arrived are addressed in this article.

District Responsibility: Pre-Admission (Sponsorship)

A foreign national who wishes to come to the United States must obtain a visa to gain entry into the country. In the case of a student visa, the foreign national must obtain admission to an educational institution (for F-1, M-1, or M-

3 visas) or to an approved foreign exchange program (for J-1 visas) before the State Department will issue him or her a visa.

As a practical matter, Texas districts are not likely to handle the sponsorship of F-1, M-1, or M-3 students because they cannot admit such students to elementary or secondary programs.¹ The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) prohibits public elementary schools (and publicly funded adult education programs) from admitting foreign nationals under these student visas.²

As to secondary students, IIRAIRA requires an F-1, M-1, or M-3 visa holder to reimburse the school for the full unsubsidized per-capita cost of the student's education. Since Texas law does not permit districts to charge such students tuition, Texas school districts are unable to sponsor students for these visas.

Districts may encounter J-1 (foreign exchange) students. J-1 students are not subject to the IIRAIRA tuition requirements. Also, they are sponsored by approved exchange programs, not by individual school districts.³ Thus, the

responsibility for obtaining a visa for the student lies with the foreign exchange program, not the district.

District Responsibility: Admission of Foreign Exchange Students

Texas law requires a district to admit a foreign exchange student who is placed with a host family that resides in the district by a nationally recognized foreign exchange program. The district may apply to the commissioner of education for a waiver of this requirement on the grounds that:

- Admitting foreign students would impose a financial or staffing hardship on the district;
- The admission would diminish the district's ability to provide high-quality education services for the district's domestic students; or
- The admission would require domestic students to compete with foreign exchange students for educational resources. (Texas Education Code §25.001(b)(6), (e))

District Responsibility: Post-Admission

Once a district admits a foreign student, the next question is whether the district's responsibilities toward the stu-

dent vary from its responsibilities toward other students. As a general rule, districts should treat foreign students the same as other students.

There are two exceptions to this rule relating to student visa holders: laws relating to education records and the Student and Exchange Visitor Information System (SEVIS).

A restriction on the application of the Family Educational Rights and Privacy Act (FERPA) to holders of student visas exists. FERPA prohibits a district from disclosing education records to third parties without the student's permission.⁴ However, a district must report certain education information regarding an F, J, or M visa holder to the Bureau of Citizenship and Immigration Services (BCIS, formerly the Immigration and Naturalization Service), notwithstanding the provisions of FERPA or its implementing regulation.⁵

The new SEVIS system frequently prompts questions regarding its impact on Texas school districts. Implemented after the events of September 11, 2001, SEVIS is an electronic system for the electronic registration and monitoring of student visa holders. SEVIS is administered by the BCIS. SEVIS will be a factor for few Texas districts, if any.

Educational institutions that sponsor F-1, M-1, and M-3 visa holders must register with SEVIS and provide information regarding the visa holders.

However, as discussed above, Texas districts are precluded from sponsoring foreign nationals for visas in these categories.

SEVIS is also not a significant factor for districts that admit foreign exchange (J-1) students. The responsibility for SEVIS reporting for these students lies with the foreign exchange program sponsor, not the district.

So, does your district have to admit the Chilean exchange student? Probably. A district is required to admit a foreign national who comes to the United States as an exchange student (J-1 visa), unless the district obtains a waiver from the Texas Education Agency.

As to the student from France, the district itself cannot sponsor her for an F-1 or M-1 visa. However, the student may be able to obtain a J-1 visa through sponsorship from a foreign exchange program.

All visas entail special conditions affecting such matters as duration of stay, reporting requirements, and ability to work. Because this area can be highly technical, the district should work with its immigration attorney, local attorney, the student, and immigration authorities on a case-by-case basis to resolve issues as they arise.⁶★

⁴ 8 C.F.R. 214.9(a)(2)(v); http://travel.state.gov/visa/tempvisitors_types_scholars.html#10 (visited October 1, 2004); Texas Education Agency *To the Administrator Addressed* letter dated July 26, 2004.

⁵ See Texas Education Agency *To the Administrator Addressed* letter dated July 26, 2004. An exception may arise in the case of spouses and qualifying children of F-1, J-1, or M-1 visa holders. 8 C.F.R. 214.2(f)(3), (m)(3). If your district is asked to admit a person in this status before the person arrives in this country, and to provide supporting documentation, a call to an immigration attorney is in order. ⁶http://travel.state.gov/visa/tempvisitors_types_scholars.html#10 (visited October 1, 2004).

⁶ 20 U.S.C. § 1232g.

⁷ 8 U.S.C. § 1372. This limited waiver of FERPA does not apply to students who are already in the United States on non-student visas or who are in illegal status. Accordingly, districts should apply the principals of FERPA in determining whether to release educational records relating to these students.

⁸ The Texas Board of Legal Specialization (TBSL) 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 TBSL Web site, <http://www.tbis.org/Directory/AttList.asp>.

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