



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF VOCATIONAL AND ADULT EDUCATION

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SENT TO: State Directors of Adult Education
ESL Colleagues

SUBJECT: New Legal Requirements For F-1 Nonimmigrant Foreign Students

Attached is a copy of an informational document issued by the United States Department of State regarding the effect of section 625 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. This act may be found in the Omnibus Consolidated Appropriations Act, 1997, Public Law 104-208, enacted on September 30, 1996. Because Section 625 will affect the procedures for granting F-1 visas to foreign students desiring to study at United States public schools, we think that you should be aware of this law.

Because a number of schools or school districts have raised questions about this provision, the Department of State has issued the attached informational document. It is in question and answer form and was developed in consultation with the Immigration and Naturalization Service and with the United States Department of Education which will continue to work with the Department of State on matters relating to the administration of this new law.

Section 625 amends the provisions of section 214 of the Immigration and Nationality Act relating to the granting of F-1 visas to nonimmigrants applying for these visas to study in the United States. Under the amended Immigration and Nationality Act, an alien may **not** be accorded this F-1 status as a nonimmigrant (under section 101a(15)(F)(I) of that act) in order to pursue a course of study in the United States at a public elementary school or in a publicly funded adult education program. Furthermore, an alien may not be accorded this status to pursue a course of study at a public secondary school unless two conditions are met. These two conditions are: (1) The aggregate period of this status at the school may not exceed twelve months with respect to an alien. (2) The alien must demonstrate that the alien has reimbursed the local educational agency that administers the school in question "for the full, unsubsidized per capita cost of providing education at such for the period of the alien's attendance."

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Nonimmigrant Foreign Students

Section 625 does not affect most foreign students. It relates only to the conditions for granting F-1 visas to the very limited number of nonimmigrant students who come to the United States to study at public secondary schools (and to whom Form I-20 would be issued). The provisions do not affect foreign students in any other immigration status. For example, exchange students (who hold J-1 status), F-2 students (dependents of F-1 students), or students whose parents are here as diplomats, researchers or foreign workers are unaffected by Section 625. Nor does Section 625 affect a foreign student attending a private elementary or secondary school or private training program. However, if the student terminates or abandons this course of study and undertakes a course of study at a public school or a publicly funded adult education program, the new requirements in Section 625 must be met.

Moreover, it should be emphasized, Section 625 does not affect immigrant students who are residing in a school district in the United States and who may not be denied access to a basic education as determined by the United States Supreme Court in Plyer v. Dole (457 U.S. 202 (1982)). Therefore, except for those students who specifically seek F-1 student status by obtaining a I-20 certificate of eligibility from a local educational agency, Section 625 does not constitute a basis for requiring students to verify alien or citizenship status. Again Section 625 and the attached Department of State guidance are confined to the conditions for issuing F-1 visas to the limited class of nonimmigrant students identified in Section 625 who have applied for these visas.

You may wish to share this information with your local educational agencies or others in the State as appropriate. If you have questions or comments, please direct them to me or Joyce Campbell.

Attachments

New Legal Requirements for F-1 Foreign Students in Public Schools

Congress recently enacted new limitations on certain foreign students planning to study in U.S. public elementary and secondary schools. Section 625 of Public Law 104-208, which took effect on November 30, 1996, places the following restrictions on foreign students in F-1 immigration status:

- Prohibits their attendance in public elementary schools (grades K through 8) or publicly-funded adult education programs;
- Limits their attendance in public secondary schools (grades 9 through 12) to a maximum of 12 months; and
- Requires them to reimburse public secondary schools for the full, unsubsidized per capita cost of education for the intended period of study.

The new provisions affect **only** foreign students in F-1 immigration status, or who obtain F-1 student visas – in other words, those to whom Form I-20 would be issued. The provisions do **not** affect foreign students in any other immigration status, for example J-1 exchange visitors, or dependents of foreign nationals in the United States on long-term visas.

Likewise, the new provisions do not affect foreign students attending private schools or private training or language programs. F-1 students who wish to transfer from private schools or programs into public schools or programs must meet the new public school requirements.

F-1 students who were attending public schools or programs before the legislation took effect on November 30, 1996, can remain in school without penalty. If those students travel outside the U.S. after November 30, however, they will have to meet the new requirements in order to return.

Suggestions for preparing Form I-20

Public secondary schools issuing Form I-20 should list the full unsubsidized per capita cost of education under "tuition" in item 7. The student's payment should be noted under "Remarks." Because F-1 foreign students are now limited to a maximum of 12 months in U.S. public secondary schools, the program duration listed in item 5 should not exceed the student's 12-month limit.

The full text of Section 625 can be found on the back of this information sheet.

From: Public Law 104-208, Omnibus Authorization Bill for the Commerce, State and Justice departments, signed into law on September 30, 1996. The bill contained provisions entitled the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Provisions dealing with foreign students in public schools follow:

SEC. 625. FOREIGN STUDENTS.

(a) Limitations.--

(1) In general.-- Section 214 (8 U.S.C. 1184) is amended by adding at the end the following new subsection:

“(1)(1) An alien may not be accorded status as a nonimmigrant under section 101(a)(15)(F)(i) in order to pursue a course of study--

“(A) at a public elementary school or in a publicly funded adult education program; or

“(B) at a public secondary school unless--

“(i) the aggregate period of such status at such a school does not exceed 12 months with respect to any alien, and

“(ii) the alien demonstrates that the alien has reimbursed the local educational agency that administers the school for the full, unsubsidized per capita cost of providing education at such school for the period of the alien's attendance.

“(2) An alien who obtains the status of a nonimmigrant under section 101(a)(15)(F)(i) in order to pursue a course of study at a private elementary or secondary school or in a language training program that is not publicly funded shall be considered to have violated such status, and the alien's visa under section 101(a)(15)(F) shall be void, if the alien terminates or abandons such course of study at such a school and undertakes a course of study at a public elementary school, in a publicly funded adult education program, in a publicly funded adult education language training program, or at a public secondary school (unless the requirements of paragraph (1)(B) are met).”

1. **Conforming amendment.** -- Section 101(a)(15)(F) (8 U.S.C. 1101(a)(15)(F)) is amended by inserting “consistent with section 214(l)” after “such a course of study”.

(b) Reference to New Ground of Exclusion for Student Visa Abusers. -- For addition of ground of inadmissibility for certain nonimmigrant student abusers, see section 347.

(c) Effective Date. -- The amendments made by subsection (a) shall apply to individuals who obtain the status of a nonimmigrant under section 101(a)(15)(F) of the Immigration and Nationality Act after the end of the 60-day period beginning on the date of the enactment of this Act, including aliens whose status as such a nonimmigrant is extended after the end of such period.

Questions and Answers on the New Public School Provisions for F-1 Foreign Students

Can our school waive the tuition requirement for a deserving F-1 foreign high school student?

No, the new law does not allow a foreign student in F-1 status to attend public secondary school on a tuition waiver. It requires payment of the full unsubsidized per capita cost of education in all cases.

Do the new provisions affect all foreign students?

No, they only affect students in F-1 status, or applicants for F-1 visas, who plan to attend public schools or publicly-funded adult education. Other foreign students -- for example exchange students (who hold J-1 status) or students whose parents are here as diplomats, researchers or foreign workers -- are unaffected by the new provisions.

How do the provisions affect F-1 students in private schools?

Foreign students attending private schools, or in privately-funded adult education or language programs, are not subject to the requirements in Section 625. However, if a private school student wishes to transfer into a public school or publicly-funded adult education or language program, he or she will have to comply with Section 625 in order to maintain F-1 status.

Will F-1 students who are already attending our public school have to leave?

The new law applies to students who obtain F-1 status on or after November 30, 1996. Students who were attending public schools in F-1 status before that date can continue in school. However, if they travel outside the United States, they will be required to conform to the new rules to be readmitted.

Can our adult education program continue issuing I-20s if we charge full tuition?

The new law prohibits the issuance of F-1 visas to attend publicly-funded adult education programs. The Immigration and Naturalization Service's interim guidance defines publicly-funded adult education as "education, training or English-as-second-language programs operated by, through or for a local public school district, system, agency or authority, regardless of whether such a program charges fees or tuition." Programs falling under this definition can no longer accept students in F-1 status, even if tuition is charged.

Do we have to re-issue I-20s we provided before learning about the new law?

An I-20 issued for public elementary or publicly-funded adult education can no longer be used to obtain an F-1 visa. It is not necessary to replace an I-20 issued for public secondary school, unless it indicated a program duration greater than 12 months. If full payment is not indicated on the I-20 (with a notarized signature from the responsible school official), the school authority should provide the student with a notarized letter as evidence of payment. If the student is otherwise eligible, overseas consulates will generally accept this as proof and will not ask for a new I-20.

If a foreign student attended public school before the new law, does that time count against his or her 12-month limit?

No. Only public secondary school attendance after November 30, 1996 counts toward the 12-month maximum. And only attendance while the student was in F-1 status should be counted. Attendance in other immigration categories, such as J-1, are not considered.

Can organizations or individuals sponsor an F-1 foreign student to attend public secondary school?

Yes. Nothing in the new law would preclude an organization or individual from reimbursing the school authority on the student's behalf, so long as payment does not come from public funds. In addition, previous requirements that a foreign student have sufficient funds to cover education and living expenses while in the United States have not changed.

What about students who come here to live with U.S. citizen relatives while attending public school?

If the student would require a Form I-20 and F-1 status in order to study at your school, he or she must still meet the new requirements, like any other F-1 student.

The U.S. Department of Education has provided the following information on calculating the cost of education under Section 625:

What is meant by "the full, unsubsidized per capita cost of providing education?"

Each Local Educational Agency (LEA) is responsible for determining "the full unsubsidized per capita cost of providing education," for the purposes of Section 625. The determination should be made in accordance with applicable policy in the LEA's state, if any. A variety of approaches are acceptable, as long as they arrive at a reasonable estimate of the full, unsubsidized per capita cost. Two examples follow:

- The per capita (per student) cost may be determined by dividing the sum of all public expenditures (see below) of the school or school district by the number of students in the school or school district.
- x
- If the LEA has established a tuition charge for students attending public secondary schools located in a district outside the district in which the student resides, the LEA may use this charge as the basis for determining the per student cost -- if the LEA believes that the tuition reflects the "full per capita cost" of education for the school or LEA in

question. If the tuition does not cover all public expenditures, it must be adjusted to do so for the F-1 student.

What does "unsubsidized" mean with respect to the cost of providing education?

The unsubsidized cost is the LEA's total expenditure per student, excluding any fees and charges to the individual student. It includes expenditures from all public revenue sources including local, state and federal funds. All public expenditures would include all operating and capital expenditures (such as for instructional, support and non-instructional services; equipment acquisition; and facilities and construction), from all public revenue sources.

Does a K-12 district need to compute a separate per student cost for secondary students?

No. Unified school districts may utilize the K-12 per student cost, rather than computing a separate per student cost for secondary students. Alternatively, the LEA may choose to compute cost on a school-by-school basis.

What is the per student basis to be used in calculating the unsubsidized per capita cost for F-1 students? Is it fall membership, average daily attendance or average daily membership?

The per student basis used should be the same as that used by the LEA, in accordance with state law or policy, for calculating per student cost or non-resident tuition for students from other school districts.