FACT SHEET: Educational Services for Immigrant Children and Those Recently Arrived to the United States

Schools in the United States have always welcomed new immigrant children to their classrooms – according to the most recent data, there were more than 840,000 immigrant students in the United States, and more than 4.6 million English learners. We have begun to receive inquiries regarding educational services for a specific group of immigrant children who have been in the news – children from Central America who have recently crossed the U.S.-Mexico border. This fact sheet provides information to help education leaders better understand the responsibilities of States and local educational agencies (LEAs) in connection with such students, and the existing resources available to help educate all immigrant students – including children who recently arrived in the United States.

BACKGROUND

All children in the United States are entitled to equal access to a public elementary and secondary education, regardless of their or their parents’ actual or perceived national origin, citizenship, or immigration status. This includes recently arrived unaccompanied children, who are in immigration proceedings while residing in local communities with a parent, family member, or other appropriate adult sponsor.

Under the law, the U.S. Department of Health and Human Services (HHS) is required to care for unaccompanied children apprehended while crossing the border. While in care at a HHS shelter, such children are not enrolled in local schools but do receive educational services and other care from providers who run HHS shelters.

Recently arrived unaccompanied children are later released from federal custody to an appropriate sponsor – usually a parent, relative, or family friend – who can safely and appropriately care for them while their immigration cases proceed. While residing with a sponsor, these children have a right under federal law to enroll in public elementary and secondary schools in their local communities and to benefit from educational services, as do all children in the U.S.

EXISTING RESOURCES

Existing resources that may be helpful to communities enrolling immigrant children, including newly arrived immigrant children, include:

- **Services for Educationally Disadvantaged Children (Title I):** Title I, Part A of the Elementary and Secondary Education Act (ESEA) provides funds to raise the achievement of children who attend high-poverty schools. To the extent that newly arrived immigrant children attend Title I schools, they may be eligible to receive Title I, Part A services. Additional information about Title I, Part A programs is available [here](#).

- **Individuals with Disabilities Education Act (IDEA):** IDEA funds may be used by LEAs to evaluate children of any background who are suspected of having a disability under IDEA. Once a child is found to
be a child with a disability under IDEA, the funds may be used to provide special education and related services to the child consistent with the child’s individualized education program and subject to IDEA’s notice and consent provisions. Additional information about IDEA is available here.

- **English Language Acquisition Programs**: States are required to set aside up to 15 percent of their Title III funds under the ESEA for subgrants to LEAs that have experienced a significant increase in immigrant students. Such funds can be used for a broad range of activities including improving instruction, providing tutoring and intensified instruction, and conducting community participation programs. Such funds may be used to serve newly arrived immigrant children regardless of whether such children are English Learners. Additional information about Title III is available here and here.

- **McKinney-Vento Act**: The McKinney-Vento Homeless Assistance Act delineates educational rights and support for children and youth experiencing homelessness, including guaranteeing immediate access to a free, appropriate public education. Federal law identifies a number of living arrangements such as sharing the housing of others, in which inhabitants would qualify for purposes of the Act. Under McKinney-Vento, school districts must appoint a local liaison to ensure, among other things, that (1) children and youth eligible under McKinney Vento are identified; (2) that they immediately enroll in, and have a full and equal opportunity to succeed in, the schools of the district; and (3) they receive educational services for which they are eligible, and referrals to health care services, dental services, mental health services, and other appropriate services.

  Unaccompanied children who are in HHS shelters would not be eligible for McKinney-Vento services, but children who are released to live with a sponsor may be eligible on a case-by-case basis under the law’s broad definition, which includes youth who are living with family members in “doubled-up” housing, i.e., sharing the housing of other persons due to economic hardship or a similar reason. School districts should refer children they believe may qualify to the district’s local liaison for further consideration and a determination of McKinney-Vento eligibility. More information about McKinney-Vento eligibility is available here and more information about the rights and services available under the McKinney-Vento Act is available here.

- **Migrant Education Programs (MEP)**: MEP funds are awarded to States under the authority of Title I, Part C of the ESEA. The MEP provides educational and supportive services to children who are migratory agricultural workers or fishers or who move with a parent or guardian who is a migratory agricultural worker or fisher. Newly arrived immigrant children may qualify as eligible migratory children on a case-by-case basis—provided they meet the program requirements and fit the program-specific definition of migratory child. Additional information about migrant education programs is available here.

- **National Clearinghouse for English Language Acquisition**: This Clearinghouse provides non-monetary assistance in research-based strategies and approaches such as academic language development, and can also share data and models for the creation of Newcomer Centers to serve recently arrived immigrant students and English language learners. Additional information about the Clearinghouse is available here.
FREQUENTLY ASKED QUESTIONS

Q1. Do States and school districts have an obligation to educate children who arrived to the United States?
A1. Yes. Under Federal law, States and local educational agencies are obligated to provide all children – regardless of immigration status – with equal access to public education at the elementary and secondary level. This includes children such as unaccompanied children who may be involved in immigration proceedings. The U.S. Departments of Education and Justice published a joint guidance letter on this topic that is available here and a fact sheet that is available here.

Q2. Where are unaccompanied children housed while in temporary custody?
A2. The Department of Health and Human Services (HHS) operates about 150 shelters throughout the nation for unaccompanied children that care for the children until they are released to sponsors, on average within 35 days. A majority of these shelters care for fewer than 50 children. Shelters are operated by non-profit organizations, generally as group homes. HHS pays for and provides all services for the children while they are in care at a shelter. This includes providing food, clothing, education, medical screening, and any needed medical care to the children. The children at these shelters do not attend local public schools, do not integrate into the local community, and remain under staff supervision at all times. Additional information about HHS custody is available here.

Q3. Are children provided with basic education services while in temporary custody at HHS shelters?
A3. Yes. The children are provided with basic education services and activities by HHS grantees. Thus, these children do not enroll in local schools while living in HHS shelters.

Q4. Are children who arrived as unaccompanied children ever enrolled in local schools?
A4. While students are in HHS custody at HHS shelters, they will not be enrolled in the local school systems. When students are released to an appropriate sponsor, typically a parent, relative or family member, or other adult sponsor, while awaiting immigration proceedings, they have a right – just like other children living in their community – to enroll in local schools regardless of their or their parents’ actual or perceived immigration or citizenship status. State laws also require children to attend school up to a certain age. A small number of children in HHS custody are placed in long-term foster care instead of being released to a sponsor. These children do enroll in public school in the community where their foster care is located. Children in all other care settings receive education at an HHS facility.

Q5. Are immunization records available for children who arrived as unaccompanied children to the United States?
A5. While at HHS shelters, the children receive vaccinations. When a child is released from HHS custody to a sponsor, the sponsor is given a copy of the child's medical and immunization records compiled during their time in custody. If a sponsor does not have a copy of the child's medical or immunization records, the sponsor can request a new copy from HHS via e-mail at Requests.DUCS@acf.hhs.gov.

Q6. Are children who arrived as unaccompanied children eligible for Deferred Action for Childhood Arrivals?
A6. Deferred Action for Childhood Arrivals, or “DACA,” does not apply to children who arrive now or in the future in the United States. To be considered for DACA, individuals must have continually resided in the U.S. since June 2007.

Q7. Do districts have the ability to use Federal education funds to address the needs of unaccompanied children who enroll in the district?
A7. States and LEAs have the ability to use various Federal education funds for this purpose. For example, to the extent that such children attend Title I schools, they may be eligible to receive Title I, Part A services. In addition, as discussed above, States can reserve up to 15% of their Title III formula grants for immigrant subgrants, and if a State has previously reserved a lesser amount, it could increase that amount for next year’s subgrants.

Q8. Is there a place to ask additional questions about immigrant children who enroll in the district?
A8. For help with additional questions regarding resources for unaccompanied children, please call the U.S. Department of Education at 1-800-USA-LEARN or visit answers.ed.gov.

For an electronic version of this fact sheet, please visit: www.ed.gov/unaccompaniedchildren
A. GENERAL ENROLLMENT INFORMATION

A1. What forms might unaccompanied children receive from HHS at their release and bring with them when they are living with a sponsor and seeking to enroll in a local school?

Youth who have been released from HHS shelters to a sponsor receive certain paperwork and forms from HHS at the time of their release. For example, youth may have copies of a “Verification of Release” form which shows their name and the name and address of the sponsor who is caring for the child. Such forms may indicate, either directly or indirectly, that a particular youth is involved in immigration proceedings. In addition, HHS requires that sponsors be provided with a copy of the child’s medical and immunization records compiled during their time in custody. Sponsors are made aware that they may be required to provide certain documents, including immunization records, to the school upon enrollment, depending on the local school district’s policies.

Although schools and/or school districts should not ask for HHS “Verification of Release” forms, some youth living with a sponsor may bring the HHS Verification of Release form along with their immunization records with them when they arrive at school to enroll. If voluntarily presented, the HHS Verification of Release form may be appropriate for schools to accept as proof of identity, residency, and age for purposes of enrolling these children.

A2. Do schools need to maintain any HHS forms or other documents presented by a child at enrollment?

No. Generally, in order to enroll a student schools only need documentation necessary to establish the residency and age of a child, unless the child is eligible to enroll immediately in school without such documentation under the McKinney-Vento Act (see discussion of McKinney-Vento Act in Fact Sheet: Educational Services for Immigrant Students and Those Recently Arrived to the United States). Thus, unless the HHS forms presented by the child provide information necessary to assist with enrollment, e.g., information about a child’s identity, residency or age that is not otherwise available, schools need not maintain records of the HHS forms or other documents voluntarily presented by students. As discussed further in Questions B-1 through B-3 below, schools also need not maintain records of the HHS forms for purposes of determining eligibility for the immigrant program in Title III of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The relevant information needed for those purposes may be obtained in other ways.

A3. Do all unaccompanied children meet the definition of “refugees” for purposes of the HHS Refugee School Impact program?

No. U.S. law provides a specific definition of a “refugee” that does not necessarily apply to unaccompanied children who have been apprehended at the U.S. border. Although unaccompanied children may have forms
showing that they were temporarily in the care and custody of HHS’s Office of Refugee Resettlement, they are not consequently considered “refugees” under U.S. law. Thus, the number of unaccompanied children is not itself considered in the formula used to distribute the HHS Refugee School Impact program funds to states.

B. TITLE III OF THE ESEA – ENGLISH LANGUAGE ACQUISITION AND IMMIGRANT STUDENTS

B1. Under ESEA Title III, what funds may be available that can help educate immigrant students?

There are two programs under ESEA Title III that may be available to help educate immigrant students once they are enrolled in school. First, many school districts receive formula subgrants under Title III, Part A (English Language Acquisition and Language Enhancement) for helping limited English proficient students (also known as English Learners or ELs) attain English proficiency and develop high levels of academic attainment in English. The English Language Acquisition subgrants are used by school districts to supplement their basic services for English Learners. Basic services for English Learners are designed to meet the district’s civil rights obligation to enable English Learners to meaningfully participate in the district’s educational programs. Second, many school districts also receive Title III immigrant subgrants, which are described in further detail in the Fact Sheet: Educational Services for Immigrant Students and Those Recently Arrived to the United States under the heading “English Language Acquisition Programs.” Additional information about Title III is available here and here.

B2. What information is needed to determine whether students are “immigrants” for purposes of the Title III immigrant children and youth program?

Section 3301(6) of Title III of the ESEA defines immigrant children and youths as individuals who:

- are aged 3 through 21;
- were not born in any State (defined as each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico); and
- have not been attending one or more schools in any one or more States for more than 3 full academic years. The months need not be consecutive.

For example, if a student was enrolled in a school in the United States three years ago from January through April (four months), left school to return to his native country, returned two years later to attend a different school in the United States for one month, left school again, and has now returned, for Title III purposes the student would be deemed to have been enrolled in schools in the United States for a cumulative total of five months.

Thus, information about a student’s date of birth, place of birth, and prior school enrollment would provide sufficient information to determine if a student meets the definition of immigrant children and youth under Title III.

B3. How should districts collect data for purposes of determining Title III immigrant children and youth program eligibility and providing information for within-state allocations under Title III?

To determine whether or not a student meets the Title III definition of an immigrant child and youth, a school and/or district should not ask about a student, parent, guardian, or sponsor’s citizenship or immigration status or date of entry into the United States. Such information has no bearing on whether or not the student meets the
definition of immigrant child or youth for Title III purposes, and may create a chilling effect that could discourage students and families from enrolling in school.

Rather, for purposes of determining if a student meets the definition of immigrant children and youth under Title III, a school should request only information about a student’s date of birth, place of birth, and prior school enrollment.

- First, in seeking such information, the school and/or district should note in writing that providing the information is not required and that the requested information will only be used to determine whether the child may be eligible for programs offered in the district that provide enhanced instructional opportunities for immigrant children and youth.

- Second, the school and/or district should determine whether a student meets the first two criteria of the definition of immigrant child or youth (confirming age and birth outside the United States). In collecting such information, schools and/or districts should pose the same question of all students and ensure that the information is not used to discriminate against students in any way.

- Finally, only after determining that a student meets the initial criteria for Title III eligibility should the school and/or district then ask questions to determine the total cumulative number of months that the student has attended schools in the United States.

C. ADDITIONAL INFORMATION AND TECHNICAL ASSISTANCE

C1. Is there a place to get more information or technical assistance about best practices and legal requirements on enrollment procedures?

Yes.

- For specific questions about ESEA Title III, LEAs should contact their State program office. SEAs should contact the program officer at the U.S. Department of Education who has been assigned as their state contact.

- For questions on research or approaches to support English Learners, please visit the Center for English Language Acquisition website [here](https://www.ed.gov/loc/).

- For additional technical assistance regarding guidance issued by the Departments of Justice and Education reminding school districts of the legal requirements to ensure that enrollment procedures do not discriminate based on race, color, national origin, immigration, or citizenship status ([DCL](https://www.ed.gov/ocr/dcl)., [Fact Sheet](https://www.ed.gov/ocr/factsheet), and [Questions and Answers](https://www.ed.gov/ocr/qa)), you may contact the Department of Education Office for Civil Rights (OCR) at (800) 421-3481 or [ocr@ed.gov](mailto:ocr@ed.gov). You may also visit [here](https://www.ed.gov/ocr/enforcement) for the OCR enforcement office that serves your area.

- For additional information about the HHS Refugee School Impact program, please contact HHS through [Rezene Hagos](mailto:rezene.hagos@hhs.gov), State Analyst, Division of Refugee Assistance, Phone: 202-205-8051, online [here](https://www.hhs.gov/).

- For general information about equal access to public education, please visit OCR’s website at [www.ed.gov/ocr](https://www.ed.gov/ocr).
C2. If a student or family requests help identifying legal services, are there available resources that can be shared?

Yes.

- For information about the U.S. Department of Justice’s (DOJ) Legal Orientation Program for Custodians (LOPC) of Unaccompanied Minors, please see:
  - [English Version](#).
  - [Spanish Version](#).

- For additional information about legal service organizations that provide free or low-cost immigration legal assistance and representation for non-detained children in immigration proceedings, please visit [here](#).

- For information from DOJ’s Executive Office of Immigration Review about free legal service providers in 30 states, please visit [here](#).

- For information about advocacy for minors with disabilities available through the National Disability Rights Network, please visit [here](#).

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