



Indiana Department of Education

SUPPORTING STUDENT SUCCESS

Center for School Improvement and Performance
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To Whom This Matter May Concern:

RE: Attendance in Public Schools and Immigration Status

Some schools have used the immigration status of a person of compulsory school attendance age as grounds for denial of attendance in K-12 public schools in violation of the state compulsory school attendance law. This is apparently done without procedural or substantive due process of law and using the alleged provisions of the Student and Exchange Visitor Information System (SEVIS) or the United States Department of Homeland Security as authority for the exclusion. The question is whether the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104-208, 8 USC 1372, as amended, and other federal statutes such as the USA Patriot Act (Public Law 107-56) may limit enrollment in public, Kindergarten through 12th grade, schools in the state of Indiana. This memorandum will describe the policy of the Indiana Department of Education in this matter.

SEVIS implements section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Public Law 104-208 (as amended), that requires the Department of Homeland Security (DHS) to collect current information, on an ongoing basis, from DHS-certified schools and Department of State (DoS)-designated exchange visitor program sponsors relating to nonimmigrant foreign students (F and M visas) and exchange visitors (J-visa) during the course of their stay in the United States. SEVIS is an Internet-based system that provides tracking and monitoring functionality, with access to accurate and current information on nonimmigrant students (F and M visa) and exchange visitors (J visa), and their dependents (F-2, M-2, and J-2). SEVIS enables schools and program sponsors to transmit electronic information and event notifications, via the Internet, to the DHS and DoS throughout a student's or exchange visitor's stay in the United States.

<http://exchanges.state.gov/education/jexchanges/about/sevis.htm>, US Department of State, updated February 2008.

For a description of visas go here: http://travel.state.gov/visa/temp/types/types_1286.html

The primary purpose of SEVIS is to maintain complete and up-to-date information on all foreign students. 67 FR 76265, Section XV, amending 8 CFR Parts 103, 214, 248 and 274a. SEVIS will also be used as a tool for ensuring that F, J and M nonimmigrant students are complying with applicable regulatory requirements. 67 FR 76269. Compliance with SEVIS reporting does not exempt F, M or J

non-immigrants from requirements or restrictions associated with other applicable statutes and regulations. 67 FR 76256. In accordance with 8 USC 1372 (d) (IIRIRA) the effect of failure to provide information required under this federal law by an approved educational institution shall result in the denial of issuance or the revocation of approved visas. These rules apply to approved institutions of higher education, designated exchange visitor programs and approved educational institutions such as air flight schools, language training schools or vocational schools. 8 USC 1372 (h).

The Indiana compulsory school attendance law is applicable to any student age 7 to age 18 who resides in Indiana, without regard to legal domicile. See IC 20-33-2. Administrators of any educational, benevolent, correctional or training institution are responsible for ensuring that any person within their jurisdiction, and of compulsory school attendance age, be enrolled in school. IC 20-33-2-29. Each day of violation is a separate offense. Violation of the compulsory school attendance law is a Class B misdemeanor offense. IC 20-33-2-44. Indiana Code 20-26-11-15 gives the Indiana State Board of Education jurisdiction to hear any dispute on the right to attend school in any school corporation in Indiana.

Policy: It is the policy of the department that any school-aged child in Indiana for at least 30 days (Indiana State Board of Education Rule 511 IAC 1-7-1) must be enrolled in public or private school. Any child of compulsory school attendance age presented for enrollment should be enrolled without delay. No child should be denied enrollment in public schools (K-12) in Indiana due to immigration status. Any reports of the student's immigration status to any federal government office is the responsibility of the local school corporation in accordance with federal law. Any question or dispute concerning the right to attend school or tuition should be brought to the Indiana State Board of Education. The child in question should be enrolled and enrollment should continue during the appeal process. The State Attendance Officer has jurisdiction and authority to enforce the law in court, if necessary. IC 20-33-2-43. In review of the federal law I find nothing preventing the enforcement of this state law.

Gaylon J. Nettles
State Attendance Officer