

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.
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- 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.