



Border Security

HOUSE PUBLIC EDUCATION COMMITTEE

APRIL 26, 2022

Interim Charge

Public Education - Examine the impact, including any financial impact, to the Texas public school system of an increase in the number of children crossing the Texas-Mexico border. Review the history, any applicable precedents, and the legal landscape regarding the education of migrant children in Texas's public schools.

Legal Synopsis

1. Admission to public school is mostly based on residency. Federal jurisprudence has interpreted the 14th Amendment to include all persons, regardless of legal status.
 - 1A. Legal status inquiry: Questioning legal status for enrollment heavily discouraged; courts would use “heightened” scrutiny due to the potential chilling effect.
 - 1B. Public versus higher education: Cases focused on primary and secondary education. Higher education may differ.
2. Children held in federal custody are the responsibility of the federal government or other jurisdiction. Tuition is required if served by Texas public schools.
 - When released from federal custody; children become eligible for funding if residing in Texas.
3. Daily or Regular Border Crossing: Residents of a border jurisdiction are not eligible for funding purposes.

State Law Admission Section 25.001, Education Code

Admissions to Texas public schools largely based on residency:

- Section 25.001, Education Code, requires schools to accept, free of tuition, residents of the school district. (See appendix for statutory language and exceptions.)
- Foundation School Program (state and local funding) pays for the education of students admitted free of tuition in the school district.

Admission: Federal law

Admission into public school regardless of legal status:

- 14th amendment, U.S. Constitution: “... nor deny to any person within its jurisdiction the equal protection of the laws.”
- U.S. Supreme Court, in the *Plyer v. Doe* case (1982), strikes down Texas statute denying admission and state funds for children residing in Texas who were not legally admitted into the U.S. as a violation of the Equal Protection Clause of the Fourteenth Amendment.
- Federal guidance suggests that denial of enrollment or attendance based on legal status would violate Title IV and VI of the Civil Rights Act of 1964. (See May 8, 2014, joint letter from U.S. Department of Justice and U.S. Department of Education).

Admission: Legal Status

Requesting legal status at time of enrollment is problematic.

- *Plyler v. Doe*
- Federal guidance discourages use of any documents to establish residency that would discourage or bar an undocumented child from attending or enrolling. (See May 8, 2014, joint letter from US Department of Justice and US Department of Education.)
- *Hispanic Interest Coalition of Alabama v. Alabama*, 11th Circuit, US Court of Appeals, struck down an Alabama law requiring schools to collect information when enrolling a student regarding whether the child was “born outside the jurisdiction of the United States or is the child of an alien not lawfully present in the United States.”
- NOTE: Court applies ‘heightened scrutiny’ standard – does the action significantly interfere with the exercise of a right to an elementary or secondary public education and does a substantial state interest justify the interference.

Custody: State Law

Children in custody of the federal government are provided for by the federal government, not the State of Texas.

1. Section 25.003, Education Code (TEC), requires tuition charges for students held by another state or the United States in a residential facility in Texas.
2. TEC, Section 25.0011, requires full compensation of the education of a student placed in a private juvenile detention facility as a result of a court order from another state.

Custody: Federal Law

- Under federal law (government regulations, *Flores* stipulated agreement), generally, minors are:
 - Released from federal custody pending a hearing; or
 - Held in custody and placed in a facility by the federal government
- When released and the minors are in Texas, they become eligible for admission into Texas public schools.
- When held in federal custody, minors are not eligible for admission into public schools and state funding.
- Per federal guidance, children in the care of the office of refugee resettlement care do not attend local schools. (<https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-frequently-asked-questions>)

Financial Impact

Financial Impact – TEA has not received any information directly from the federal government regarding the precise number of unaccompanied children (“UAC”) in Texas. Additionally, since the State of Texas does not track the citizenship status of students enrolled in Texas public schools, there is no way to ascertain the exact financial impact of serving UAC in Texas public schools.

The Foundation School Program serves as the primary funding mechanism for providing state aid to public schools in Texas. Any additional UAC enrolled in Texas public schools would increase the State’s cost of the Foundation School Program over what would otherwise have been spent. Additionally, to the extent that UAC enroll in Texas public schools once released to sponsors, then all the costs of educating these students would be borne by the State.

Financial Impact

Generally speaking, on a per pupil basis, the cost to the public school system is \$6160+, with additional costs for special programs as follows:

- Bilingual / ESL: Additional \$616 (funding weight of 0.10)
- State Compensatory Education: \$1,386 - \$1,694 (funding weights range from 0.225 thru 0.275)
- Special Education: varies greatly depending on instructional setting
- Small / Midsize District Allotment: if the child enrolls in districts with fewer than 5,000 students, cost varies, depending on the size of the district.
- (Note – the individual student will qualify for all applicable weights)

APPENDIX

Section 25.001(b), Education Code

(b) The board of trustees of a school district or its designee shall admit into the public schools of the district free of tuition a person who is over five and younger than 21 years of age on the first day of September of the school year in which admission is sought, and may admit a person who is at least 21 years of age and under 26 years of age for the purpose of completing the requirements for a high school diploma, if:

- (1) the person and either parent of the person reside in the school district;
- (2) the person does not reside in the school district but a parent of the person resides in the school district and that parent is a joint managing conservator or the sole managing conservator or possessory conservator of the person;
- (3) the person and the person's guardian or other person having lawful control of the person under a court order reside within the school district;
- (4) the person has established a separate residence under Subsection (d);
- (5) the person is homeless, regardless of the residence of the person, of either parent of the person, or of the person's guardian or other person having lawful control of the person;
- (6) the person is a foreign exchange student placed with a host family that resides in the school district by a nationally recognized foreign exchange program, unless the school district has applied for and been granted a waiver by the commissioner under Subsection (e);
- (7) the person resides at a residential facility located in the district;
- (8) the person resides in the school district and is 18 years of age or older or the person's disabilities of minority have been removed;
- (9) the person does not reside in the school district but the grandparent of the person:
 - (A) resides in the school district; and
 - (B) provides a substantial amount of after-school care for the person as determined by the board; or
- (10) the person and either parent of the person reside in a residence homestead, as defined by Section 11.13(j), Tax Code, that is located on a parcel of property any part of which is located in the school district.

Section 25.001(c), Education Code

25.001(c): The board of trustees of a school district or the board's designee may require evidence that a person is eligible to attend the public schools of the district at the time the board or its designee considers an application for admission of the person. The board of trustees or its designee shall establish minimum proof of residency acceptable to the district. The board of trustees or its designee may make reasonable inquiries to verify a person's eligibility for admission.

Section 25.002, Education Code (excerpt)



Sec. 25.002. REQUIREMENTS FOR ENROLLMENT. (a) If a parent or other person with legal control of a child under a court order enrolls the child in a public school, the parent or other person or the school district in which the child most recently attended school shall furnish to the school district:

- (1) the child's birth certificate or another document suitable as proof of the child's identity;
- (2) a copy of the child's records from the school the child most recently attended if the child has been previously enrolled in a school in this state or another state; and
- (3) a record showing that the child has the immunizations as required under Section 38.001, in the case of a child required under that section to be immunized, proof as required by that section showing that the child is not required to be immunized, or proof that the child is entitled to provisional admission under that section and under rules adopted under that section.

[...]

(f) Except as otherwise provided by this subsection, for a child to be enrolled in a public school, the child must be enrolled by the child's parent or by the child's guardian or other person with legal control of the child under a court order. A school district shall record the name, address, and date of birth of the person enrolling a child.

Section 25.0021, Education Code

Sec. 25.0021. USE OF LEGAL SURNAME. In each public school a student must be identified by the student's legal surname as that name appears:

- (1) on the student's birth certificate or other document suitable as proof of the student's identity; or
- (2) in a court order changing the student's name.

Plyler v. Doe (1982) excerpt

If the State is to deny a discrete group of innocent children the free public education that it offers to other children residing within its borders, that denial must be justified by a showing that it furthers some substantial state interest. No such showing was made here.

14th Amendment, Section 1, US Constitution

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Federal Guidance Letters

Link: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf>

- Excerpt: "To comply with these Federal civil rights laws, as well as the mandates of the Supreme Court, you must ensure that you do not discriminate on the basis of race, color, or national origin, and that students are not barred from enrolling in public schools at the elementary and secondary level on the basis of their own citizenship or immigration status or that of their parents or guardians."
- Excerpt: "Moreover, districts may not request information with the purpose or result of denying access to public schools on the basis of race, color, or national origin."
- Excerpt: "While a district may restrict attendance to district residents, inquiring into students' citizenship or immigration status, or that of their parents or guardians would not be relevant to establishing residency within the district. A district should review the list of documents that can be used to establish residency and ensure that any required documents would not unlawfully bar or discourage a student who is undocumented or whose parents are undocumented from enrolling in or attending school."

Hispanic Interest Coalition of Alabama v. Alabama, 11th Circuit, US Court of Appeals

Our duty [...] is to analyze whether [...] operates in such a way that it “significantly interferes with the exercise of’ the right to an elementary public education as guaranteed by Plyler.

Having concluded [...] substantially burdens the rights secured by Plyler, we may only uphold it if the provision “furthers some substantial state interest.”

This alone is sufficient to allow us to conclude [...] cannot be upheld because under heightened scrutiny, it is the state that bears the burden of demonstrating that the measure is constitutional.

Although those might be legitimate state interests, the means chose by Alabama ‘unnecessarily burden[s]’ the children’s right to a basic education.

Section 25.0011, Education Code

Sec. 25.0011. CERTAIN INCARCERATED CHILDREN. (a) For purposes of Section 25.001, a person is not considered to reside in a school district if:

- (1) the person is incarcerated in a private juvenile detention facility in the district as a result of the order of a court in another state; and
- (2) the person resided in another state or country immediately before incarceration in the facility.

(b) A school district may provide educational services to a person described by Subsection (a) if the district is fully compensated for the cost of the services through payment of tuition for the person by the operator of the juvenile detention facility or other person having lawful control of the person in an amount equal to the actual cost of educating the person.

(c) For purposes of this section, "private juvenile detention facility" means a juvenile detention facility that is not operated by a governmental entity.

Section 25.003, Education Code

Sec. 25.003. TUITION FOR CERTAIN CHILDREN FROM OTHER STATES. (a) Notwithstanding any other provision of this code, a school district shall charge tuition for a child who resides at a residential facility and whose maintenance expenses are paid in whole or in part by another state or the United States.

(b) A tuition charge under this section must be submitted to the commissioner for approval.

(c) The attendance of the child is not counted for purposes of allocating state funds to the district.

Section 25.040, Education Code

Sec. 25.040. TRANSFER TO DISTRICT OF BORDERING STATE. Any child entitled to attend the public school of any school district situated on the border of Louisiana, Arkansas, Oklahoma, or New Mexico who finds it more convenient to attend the public school in a district in the contiguous state may have the apportionment of the state and county available school funds paid to the school district of the contiguous state and may have additional tuition, if necessary, paid by the district of the child's residence on terms agreed on by the trustees of the receiving district and the trustees of the residence district.

Section 48.052, Education Code

Sec. 48.052. SPARSITY ADJUSTMENT. [...]

(b) Subsection (c) applies only to a school district that:

(1) does not offer each grade level from kindergarten through grade 12 and whose prospective or former students generally attend school in a state that borders this state for the grade levels the district does not offer;

(2) serves both students residing in this state and students residing in a state that borders this state who are subsequently eligible for in-state tuition rates at institutions of higher education in either state regardless of the state in which the students reside; and

(3) shares students with an out-of-state district that does not offer competing instructional services.

(c) Notwithstanding Subsection (a) or Section 48.051, a school district to which this subsection applies, as provided by Subsection (b), that has fewer than 130 students in average daily attendance shall be provided a basic allotment on the basis of 130 students in average daily attendance if it offers a kindergarten through grade four program and has preceding or current year's average daily attendance of at least 75 students or is 30 miles or more by bus route from the nearest high school district.

Student Attendance Accounting Handbook, Section 3.2.3

Ineligible: A student who does not reside in Texas (even if the student's parent or grandparent does).

Sec. 25.001(b)(9), Education Code, the person does not reside in the school district but the grandparent of the person:

(A) resides in the school district; and

(B) provides a substantial amount of after-school care for the person as determined by the board