Definition of Immigrant Children and Youth under Title III (ESEA Title III, Sec. 3201(5))

The term “immigrant children and youth” refers to individuals who:

- Are aged 3 through 21.
- Were not born in any state.
  “State” means the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico (Section 3127 of ESEA). Children born to U.S. citizens abroad (e.g., children born on a military base overseas) may be considered immigrants if they meet all the criteria in the definition of immigrant.
- Have not been attending one or more schools in any one or more states for more than 3 full academic years.
  A full academic year is 10 months of school attendance, kindergarten through 12th grade. If a student has been in different schools in different school districts and even in different states, the number of months that the student has been in school in any one or more states must not add up to a total of more than 3 full academic years.

Identification and Reporting

Identify students who meet the definition of “immigrant” by asking the following questions from the state’s home language survey during enrollment:

- In what country was your child born?
- When did your child first attend a school in the United States? (Kindergarten-12th Grade)

In addition to the home language survey, this information can also be collected through birth certificates and school records. Note that districts cannot require birth certificates as part of their enrollment process.

Although many immigrant students are English language learners, this is not always the case. Students who meet the Title III definition of “immigrant” must be reported regardless of their primary language or language proficiency level.

Districts report immigrant students through their student information systems to CEDARS based on the following data elements:

- Element B09 – Birth Date (required)
- Element B10 – Birth Country (required)
• Element B32 – Initial USA Public School Enrollment (required for students whose birth country is not the United States). Provide the initial date of enrollment in a U.S. school, kindergarten-12th grade, public or private.
• Element B34 – Number of Months Non US Attendance in School

Immigrant Competitive Grant
Districts that have experienced at least a significant increase in their immigrant count are eligible to apply for an immigrant grant on a competitive basis. To determine this increase, the state pulls the October immigrant student count for each district from CEDARS. This count is compared to the two preceding fiscal years to determine if a district has experienced a significant increase [ESEA Title III, Section 3114(d)(1)].

Under ESEA Title III, Section 3115(e)(1), districts receiving an immigrant grant must provide enhanced instructional opportunities for immigrant children and youth, such as:
• Family literacy, parent and family outreach, and training activities designed to assist parents and families to become active participants in the education of their children;
• Recruitment of, and support for, personnel, including teachers and paraprofessionals who have been specifically trained, or are being trained, to provide services to immigrant children and youth;
• Provision of tutorials, mentoring, and academic or career counseling for immigrant children and youth;
• Identification, development, and acquisition of curricular materials, educational software, and technologies to be used in the program carried out with awarded funds;
• Basic instructional services that are directly attributable to the presence of immigrant children and youth in the local educational agency involved, including the payment of costs of providing additional classroom supplies, costs of transportation, or such other costs as are directly attributable to such additional basic instructional services;
• Other instructional services that are designed to assist immigrant children and youth to achieve in elementary schools and secondary schools in the United States, such as programs of introduction to the educational system and civics education;
• Activities, coordinated with community-based organizations, institutions of higher education, private sector entities, or other entities with expertise in working with immigrants, to assist parents and families of immigrant children and youth by offering comprehensive community services.

Immigrant Students' Rights to Attend Public Schools
While school districts are required to identify immigrant students as defined by Title III, districts may not take steps with the purpose of determining the undocumented status of children or their parents.

The U.S. Supreme Court ruled in Plyler vs. Doe (457 U.S. 202 (1982)) that undocumented children and young adults have the same right to attend public primary and secondary schools as do U.S. citizens and permanent residents. Like other children, undocumented students are obliged under state law to attend school until they reach a mandated age. As a result of the Plyler ruling, public schools may not:
• Deny admission to a student during initial enrollment or at any other time on the basis of undocumented status.
• Treat a student differently to determine residency.
• Engage in any practices to "chill" the right of access to school.
• Require students or parents to disclose or document their immigration status.
• Make inquiries of students or parents that may expose their undocumented status.
• Require social security numbers from students.
Please note that parents or guardians without social security numbers who are completing the Free and Reduced Price School Meals Application and Verification Form for a student only need to indicate on the application that they do not have a social security number.

Requirements of the F-1 (Student) Visa Program, which only applies to students who apply for a student visa from outside the U.S., do not alter the Plyler obligations to children residing in a district’s service area. Dependents of a nonimmigrant visa holder of any type, including F-1, are not prohibited from attendance at a public primary or secondary school.

School personnel — especially building principals and those involved with student intake activities — should be aware that they have no legal obligation to enforce U.S. immigration laws. (U.S. Supreme Court, 1982)

Visit http://www.k12.wa.us/MigrantBilingual/ImmigrantRights.aspx for additional resources.