

Access to compulsory education for migrant children

This fact sheet provides some information on access to education in England for children with immigration issues. This includes preschool (nursery), primary school and secondary school. This fact sheet does not cover provision in Scotland, Wales or Northern Ireland.

School education

Local authorities – or more correctly local education authorities (LEAs) – usually coming under the same local government structure – have a duty to provide suitable full-time education for all children of compulsory school age resident in their area. For further information on school age, please see the Child Law Advice Service (CLAS) website, available here: <http://childlawadvice.org.uk/tag/school-age/>

The education must be appropriate to the child's age, ability, and any special educational needs they may have, regardless of their immigration status. [1]

Young people aged 16-19 who want to stay in school or Sixth Form College must also be found a place by the LEA. For further information, please see the access to education information page on the Citizen's Advice website here: <https://www.citizensadvice.org.uk/family/education/school-education/access-to-education/>.

A parent has a matching duty to make sure that their child is educated if they are of compulsory school age, either by regular attendance at school, or by alternative provision. [2] The general principle relating to education is that the child should be educated in accordance with the wishes of the parent(s) as far as compatible with effective provision and avoiding unreasonable public expenditure. [3].

Being undocumented or having a 'no recourse to public funds' (NRPF) condition on a visa does not prevent a child from accessing education. Education is not a 'public fund' as set out in the immigration rules. [4]

The educational needs and abilities of migrant children will, like the UK population generally, differ greatly depending on past education and family circumstances. In 2013, there were over one million five to 16 year olds in education whose first language was not, or was believed not to be, English. [5]

Special educational needs

The special educational needs (SEN) of migrant children can be highly specific, with some children not having received formal schooling before, and needing focused help to access the mainstream curriculum.

All schools have a special educational needs co-ordinator (usually referred to as a SENCO), who has responsibility for arranging that special needs are met. For further information, please see the CLAS website here: <http://childlawadvice.org.uk/information-pages/special-educational-needs/>

English as an additional language (EAL) teaching in schools is often co-ordinated by the SENCO, or sometimes by an ethnic minority achievement consultant. Unfortunately, recent cuts to education funding have affected provision, but parents or carers should speak to the school SENCO if they have concerns about their child's language, or other learning, needs.

Preschool and nursery provision

The early years foundation stage covers the period between birth and the age of 5 (thus including the Reception class in primary school). For further information, please see the government website - <https://www.gov.uk/early-years-foundation-stage>.

All three and four year olds qualify for 15 hours a week free education during school term time to ensure their 'school-readiness'. Some migrant children, for example in asylum-seeking families who are on certain types of asylum support, are entitled to free early years childcare provision from the age of two. [6]

Primary & Secondary Education

Local authorities must offer free school places in accordance with their published admissions arrangements, and they must ensure that there is no unreasonable delay in securing school admission for any child. This includes provision for children who are temporarily living in an authority's area for long enough to attend school – for example the child of a Traveller who is on a caravan site for six months, or the child of an asylum seeker in interim asylum support accommodation.

It is necessary to give personal details when enrolling a child for school in order to prove their legal name and date of birth. A residential address must also be given. Proof of residence can be an issue for migrants who lack status at secondary school transfer. The local authority where the child lives (not where they go to primary school) administers the child's transition to year 7, taking into account parental preference and allocation of school places. Many local authorities ask for a council tax bill or tenancy agreement to prove residence within their area.

Upon admission, the school should also identify who has parental responsibility for a child, and ask to record details of the child's NHS healthcare provider (GP), as these are safeguarding issues.

The school does not need to know what the immigration status or nationality of a child is, but sight of a child's passport or other ID document (such as an European Union or asylum registration ID card) may be requested in order to ascertain the child's correct name and date of birth, where there is no UK-issued birth certificate.

Children in local authority care should be found a full-time education placement in a local mainstream school within 20 school days of becoming looked after. The Education Act 2005 makes it a statutory responsibility to prioritise school admissions of looked-after children, and the 2014 Department for Education School Admissions Code recommends that looked-after children are given the highest priority when placed on the waiting lists of oversubscribed schools. [7]

Social workers and carers should understand local arrangements for priority admissions and ensure the child gains a place at the most appropriate school for them.

Most LEA's have equality policies that cover areas where children might suffer discrimination (e.g. race discrimination in failing to place a Traveller child). It can be possible to take legal action against an authority which is not following its own policies.

Schools cannot legally refuse to admit a child at the beginning of the academic year unless the school is full, or they have selective admissions criteria (for example relating to being a member of a particular religious group). [8]

In-year admissions can be more difficult, but if a local authority cannot place a child through its normal in-year admissions process, it must have a protocol covering fair access, developed in partnership with local schools, published on its website. The purpose of the protocol is to ensure that children who are 'hard to place', including migrant children, get into school as soon as possible.

School Sixth Form or Further Education

A young person must now continue in education or training until their 18th birthday, but the compulsory school age has not been raised and participation cannot be compelled. The LEA, on the other hand, is responsible for making sure that there is a suitable offer: of either full-time education, work-based learning like an apprenticeship, or part-time training alongside part time work. Many migrant young people will not have permission to work (for example, if they are in the process of regularising their leave to remain), and so continuation of full-time education can be their best option.

Looked after children

Local authorities have a duty to provide additional support for unaccompanied children in their care. Department for Education guidance states that '*as for any looked after child, a health plan and a personal education plan should be produced as part of the overall care plan*'.

The education plan should include:

...a clear education pathway for securing high quality education provision in school or other education setting and details of particular support the child may need, for example, where the child has a special educational need. With children for whom English is not their first language, this may also include support both to learn English and to develop literacy skills in their mother tongue.

The local authority should also:

take steps to ensure robust procedures are in place to monitor educational progress and a culture of proactive commitment to secure the highest educational outcomes for unaccompanied or trafficked children. This should be monitored by a senior manager, such as the virtual school head.

If looked-after children are moved, for example to a new foster placement, education must be considered and in place before the move, unless it occurs in an emergency. Looked-after children should not spend more than 20 days out of education.

In *R (KS) v LB of Croydon*, it was held that the failure to facilitate access to education for three unaccompanied asylum-seeking minors for almost a year was unlawful. Following judicial review proceedings, Croydon was ordered to provide suitable education to the children pending the identification of a full-time mainstream placement. The English as a Second Language (ESOL) course on which the children had been placed was found not to meet the local authority's obligations under the Education Act 1996 because it was under a duty to provide full-time, suitable education taking into consideration the child's individual needs. [9]

Alternative Provision

The Department for Education defines alternative provision as

education arranged by local authorities for pupils who, because of exclusion, illness or other reasons, would not otherwise receive suitable education; education arranged by schools for pupils on a fixed period exclusion; and pupils

being directed by schools to off-site provision to improve their behaviour. [10]

This means that local authorities need to provide suitable education for pupils who cannot receive such education without specific arrangements being made. Although there is no requirement to ensure suitable education to begin for those not excluded, the statutory guidance states that pupils should be placed as quickly as possible. The guidance also notes that although 'full-time' education is not defined, those receiving alternative provision should receive the same amount of education as they would receive in a maintained school.

Other issues

Free school meals

In a few local areas, free school meals are provided to every primary school pupil. In most areas, however, provision of universal school meals is for all children who are in reception, year 1 and year 2 (Key stage 1). [11]

For older children, getting free school meals will depend on eligibility – which is linked to receipt of certain benefits, including asylum support. Those who have an NRPF condition will not be able to receive the requisite 'passporting' benefits. There is, in theory, a discretion for individual schools to provide free school meals to those who are not eligible. However, this involves the school itself paying for the child's meals on a compassionate basis, and for the parent to explain why they are in hardship to justify it.

For looked after children in local authority care, it is the responsibility of children's services departments, under the provisions of the Children Act 1989, to ensure that those children in their care have a midday meal while at school. For example, a foster carer may provide a packed lunch, or a social worker may give money to the young person to buy a school meal.

Pupil Premium

The pupil premium is given to schools by the Government to provide extra financial resources to improve the education of disadvantaged children. If a school has children who have qualified for free school meals at any point in the past six years, they will

receive the pupil premium for those children. If the school has children who have been or are looked after by the local authority, then they will receive the pupil premium plus for those children.

National pupil database/ School Census

Schools collect and update information on all pupils on a regular basis, and submit this to the Department for Education for local and national research and planning purposes. Amongst other data, details of pupil country of birth, pupil nationality, and proficiency in English are likely to be requested. The guidance states that schools can accept what parents report and do not need to see passports or birth certificates. Parents are not required to co-operate with requests for this sort of data, and can refuse to do so.

Travel costs

A local authority has a duty to provide free transport if they consider it necessary in order to enable a pupil to attend school. This will always be the case for a child of compulsory school age who attends the nearest suitable school if it is beyond statutory walking distance: two miles to a primary school and three miles to a secondary school. Other cases are decided upon their own merits (and including factors such as special needs, religion or road safety) and local authorities have the power to use discretion in the decision-making process. [12]

School uniform grants

Under the Education Act 1996 [13] and Local Authority (Payment of School Expenses) Regulations 1999 all local authorities have the power, but no statutory duty, to provide financial assistance for school uniforms, and it is for them to decide the criteria on which the provision of such assistance would be based. Practice varies from one local authority to another. In some locations, financial assistance for school uniforms and equipment may be available from local foundations or voluntary organisations. Separated children in care who do not receive this assistance should get help from children's services in obtaining a school uniform in accordance with the provisions of the Children Act 1989.

NOTES

[1] Section 14 of the Education Act 1996 and Department for Education, Schools admissions: applications from overseas children guidance, December 2014, available at:

<https://www.gov.uk/guidance/schools-admissions-applications-from-overseas-children>

[2] Section 7 of the Education Act 1996, available at:

<http://www.legislation.gov.uk/ukpga/1996/56/section/7>

[3] Section 9 of the Education Act 1996, available at:

<http://www.legislation.gov.uk/ukpga/1996/56/section/9>

[4] See paragraph 6 of the Immigration Rules, available at:

<https://www.gov.uk/guidance/immigration-rules>

[5] Anglia Ruskin University/University of Cambridge, School approaches to the education of EAL students, April 2014, available at:

<https://www.educ.cam.ac.uk/research/projects/ealead/Fullreport.pdf>

[6] Gov.uk website, 'Help paying for childcare', available at:

<https://www.gov.uk/help-with-childcare-costs/free-childcare-and-education-for-2-to-4-year-olds>

[7] Department for Education, School Admissions Code 2014, paragraph 1.7, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389388/School_Admissions_Code_2014_-_19_Dec.pdf

[8] Department for Education, School Admissions Code 2014 (ibid)

[9] *R (KS) v LB of Croydon* [2010] All ER (D) 206 (Oct)

[10] Department for Education, Alternative Provision: Statutory guidance for local authorities, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/268940/alternative_provision_statutory_guidance_pdf_version.pdf

[11] Gov.uk website, 'Apply for Free School Meals', available at: <https://www.gov.uk/apply-free-school-meals>

[12] Section 509, Education Act 1996, available at:

<http://www.legislation.gov.uk/ukpga/1996/56/section/509>

[13] Section 19, Education Act 1996

This fact sheet should not be used to give legal advice and is for information and guidance only. For advice on individual cases, assistance should be sought from an independent regulated legal adviser.

For further assistance please contact us by email at mcpadvice@coramclc.org.uk or call our advice line on 020 7636 8505 (Tuesday to Thursday 10am-2pm).