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Subject: CLARIFICATION OF SECTION 49.1 OF THE EDUCATION ACT:
EDUCATION OF PERSONS UNLAWFULLY IN CANADA

Application: Directors of Education
Secretaries of School Authorities

Introduction

The purpose of this memorandum is to assist school boards¹ in applying section 49.1 of the Education Act, which deals with education of children who are living unlawfully in Canada or whose parents² are living unlawfully in Canada.

Section 49.1

Section 49.1 was added to the Education Act in 1993 to ensure that minor children are not denied an education because of their immigration status or that of their parents. The section reads as follows:

A person who is otherwise entitled to be admitted to a school and who is less than eighteen years of age shall not be refused admission because the person or the person's parent or guardian is unlawfully in Canada.

Responsibilities of Boards

The admission criteria that are applied to a child who is, or whose parents are, unlawfully in Canada should be no different from the criteria applied to any other child seeking admission to a school under the jurisdiction of a school board. Where the child is otherwise entitled to be admitted to a school, the fact that the child or the child's parents are unlawfully in Canada should not be a barrier to the child's admission. In other words, no children should be excluded from school merely because they or their parents are unlawfully living in Canada.

1. Under the Education Act, *board* means a district school board or a school authority.

2. In this document, *parent(s)* refers to parent(s) and guardian(s).

When admitting children from other countries, a board may make inquiries to determine whether a child is entitled to be admitted to school with or without the payment of a fee, and may require proof of entitlement, provided that the standard of proof is no higher than that applied to other children. Once admitted to school, students to whom section 49.1 applies would, in most cases, be designated “pupils of the board” and would therefore generate provincial grants.

Accordingly, no children should be refused admission to school solely because of their or their parents’ inability to produce any of the following:

- proof of immigration status or application for legal immigration status
- a work permit or social insurance number
- health documentation that is different from that required of all other children
- other documentation not required of other children seeking admission to school

Please note, however, that for admission to a school in a French-language school board, proof of Canadian citizenship may be required.

Citizenship and Immigration Canada (CIC) has confirmed that there is no federal legal requirement for boards to refer families without immigration status or documentation to a local CIC office to obtain documents before their child is admitted to school.

The following is an example of a situation that a board might encounter:

A family arrived in Canada as temporary residents in the visitor class, and has stayed in Canada beyond the period allowed on the visitor record or passport (usually six months from the date of arrival in Canada) without renewing the documentation. The family’s visitor status has been lost, and under the Immigration and Refugee Protection Act (Canada), this family can now be considered to be living unlawfully in Canada. The parents now intend to stay in Canada, have established a residence in the jurisdiction of an Ontario school board, and have approached the board about registering their two children, aged eight and ten, at the local school.

In this example, section 49.1 would apply, and the children, who are of school age and are resident in the board’s jurisdiction, should be admitted to a school, provided that there is no valid reason for refusing admittance.

Reasons for Refusal of Admission to School

There are many reasons under the Education Act why a child may not qualify to be admitted to school. However, the legislation applies equally to all children regardless of immigration status.

Compliance With Protection of Privacy Legislation

School boards are reminded that, when they collect personal information from an individual, they must give the individual notice of the collection, as required by the Municipal Freedom of Information and Protection of Privacy Act. That act sets out specific rules for the collection, use, and disclosure of personal information. In addition, parents should be told about the confidential manner in which the information will be kept. Any information kept in the Ontario Student Record (OSR) is also governed by the Education Act, which clearly sets out who may have access to a student's records.

Legal Advice

Boards are encouraged to consult their own legal counsel for advice on the application of section 49.1 in individual situations and for interpretation of other relevant sections of the Education Act and of other legislation.