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## Legal Guidance Regarding International Student Exchange Placement Organizations

California school districts have recently been enrolling an increasing number of international students. While the international students benefit from this experience, districts and their resident students benefit as well. The international students offer new perspectives in classrooms and on the playground, and offer resident students a glimpse of what another part of the world is like. In addition, federal law requires that international students generally must pay the full cost of enrollment. However, the laws and regulations over this area are limited in some areas, which allows for problems to arise. To assist districts in avoiding such problems, CSBA is publishing this legal guidance to address the following questions:

1. *What are the potential penalties and liabilities for an international student exchange placement organization ("ISEPO") that does not register with the state?*
2. *What are the potential penalties and liabilities for a school district that enrolls international students through an unregistered ISEPO?*
3. *Are there any restrictions or guidelines on what to charge international students for enrollment in a school district?*
4. *What ISEPO documents are available to the public and when and where are they accessible?*

The brief answers to these questions are as follows:

1. *The failure of an international student exchange placement organization to register or to otherwise comply with state law and regulations constitutes a misdemeanor.*
2. *State law permits but does not request a school district to request proof of ISEPO registration before enrolling an international student through that ISEPO. Nevertheless, a district may still incur liability for enrolling an international student through an unregistered ISEPO. Thus, as a best practice we recommend that a district always determines whether the ISEPO is properly registered with the Attorney General prior to enrolling an international student through that ISEPO.*
3. *There do not appear to be any restrictions or guidelines on what a district can charge international students for enrollment. Therefore, a district should establish a policy on how it calculates and adjusts its enrollment fee for international students.*
4. *All ISEPO documents filed with the Attorney General are public, but are only available to be viewed in person.*

## Legal Background

The Uniform Supervision of International Student Exchange Visitor Placement Organizations Act of 1994 (the “Act”), Government Code section 12620 *et seq.*, governs ISEPOs. The Act requires ISEPOs to register with the Attorney General “prior to arranging the placement of any international student exchange visitor in any school in California.” (Gov. Code, § 12623(a).) To be eligible, an international student must possess a J-1 or F-1 visa. (8 CFR § 214.2(f), (j).)

In order to register, an ISEPO must pay a fee and provide the Attorney General with certain contact information on the ISEPO, including information on its CEO and the ISEPO’s “Responsible Officer.” This Officer is the person within the ISEPO who has primary responsibility for supervising placements within California. Registration also requires ISEPO to provide the Attorney General with the number of international students it placed in the previous year, the length of their placements, their home countries, and the school districts in which they were placed. (Gov. Code, § 12626(a)(2), (5).)

Once an ISEPO is registered it can begin arranging the placement of international students at schools in California. However, the Act and its accompanying regulations establish very specific requirements related to the selection of international students, the selection of host families, and the logistics of the program. For instance, each ISEPO must:

- Provide each international student and his or her immediate family “with suitable orientation prior to departure from their home and upon arrival in the State of California . . . [and] with detailed knowledge of the school and academic program in which he or she will be participating and information relating to their host family.” (11 CCR § 359(a)(1).)
- Provide each host family “with suitable orientation in advance of the [international] student’s arrival, including information on family, school, cultures of the student’s native country, as well as information relating to the academic program in which the student will be enrolled.” (11 CCR § 359(a)(2).)
- Ensure that each international student “has health and accident insurance from the time of departure from home to the time the student returns to his or her home country,” although the ISEPO does not have to provide the insurance itself. (11 CCR § 360.)
- Make all arrangements for the placement of each international student with a host family. The host family must be able to provide a separate bed for each international student with no more than four persons to a bedroom. The host must maintain the home in a clean and sanitary condition, free of hazards, and in good repair. (11 CCR §§ 362(a), 363.)

- Visit the home of, and personally interview, each host family before an international student is assigned to the family. (11 CCR § 362(c).)
- Maintain a California telephone number that is registered to a California resident who must be an employee, an officer, or a volunteer of the ISEPO. (11 CCR § 374.)
- Maintain records demonstrating that it has complied with the above requirements. (11 CCR §§ 359, 362, 367, 369.)

Prior to accepting a student, the ISEPO must also provide a school district with its California telephone number as well as “[a]n explanation of services to be performed by the [ISEPO] for the student, host family, and the school district in which the student will be enrolled” and a summary of the Act and its accompanying regulations. (Gov. Code, § 12628.)

The Act does not directly address or impose responsibilities on school districts. However, the Education Code does permit school districts “require proof of registration pursuant to [the Act], as a condition to agreement to enroll that student.” (Educ. Code, § 35185.)

In order to assist school district governance teams with enrolling international students, the following questions and answers are provided.

### **Questions & Answers**

*Question #1: What are the potential penalties and liabilities for an ISEPO that does not register with the state?*

The answer to this question is addressed directly by Government Code section 12630, which states that “[a]ny person or organization who violates any provision of this article or who willfully and knowingly provides false or incorrect information to the Attorney General in filing documents required by this article, whether or not the documents are verified, is guilty of a misdemeanor.” Enforcement of this provision is left to the Attorney General.

To the extent that other illegal activities occurred with respect to a district’s involvement with an ISEPO, it is the applicable laws and enforcement mechanisms that would be relevant. For example, a school board member cannot accept gifts, including travel, of more than \$440 a year from a single source. (2 CCR § 18703.4.) Gifts below that amount are permitted as long as they are reported. (2 CCR § 18421.7.) Thus, board members are cautioned that their independent involvement with ISEPO’s is limited by the rules governing the acceptance and reporting of gifts.

School board members are also prohibited from self-dealing and from participating in governmental decisions in which they have a financial interest. (See Gov. Code, § 87100

*et seq.*; see also Gov. Code, § 1090) Enforcement of these provisions, which is up to the Fair Political Practices Commission and District Attorneys, is primarily governed by the Political Reform Act (Title 9 (commencing with section 81000) of the Government Code) and its accompanying regulations. Thus, board members are cautioned that any financial involvement with ISEPOs (including but not limited to the acceptance of gifts, travel, or employment) could result in a conflict of interest if that ISEPO then places international students in their districts.

In contrast to when a board member acts independently, a school board member can and should be reimbursed by the district if board member's actions are authorized by the board and the board member is conducting official board business, including business that requires travel. This does not constitute a gift because it is part of a board member's responsibilities. This also does not run afoul of the provisions against self-dealing because board members are fulfilling their responsibilities as elected officials when they properly incur district-related expenses.

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*Question #2: What are the potential penalties and liabilities for a school district that enrolls international students through an unregistered ISEPO?*

As noted above, neither the Act nor its associated regulations imposes a penalty or liability on a school district for enrolling international students through an unregistered ISEPO. Similarly, the Education Code permits, but does not require, school districts to request proof that the ISEPO registered with the Attorney General before accepting an international student from the ISEPO. (Educ. Code, § 35185.)

Nevertheless, we strongly recommend that a district first determine whether the ISEPO is properly registered with the Attorney General before agreeing to enroll an international student in the district. Not only is this good practice but it also protects the districts from liability. A district that fails to determine whether an ISEPO is not registered with the Attorney General and continues to enroll international students through the ISEPO may be liable if an international student is harmed by the unregistered ISEPO and the harm would have been remedied had the ISEPO been registered. Consider, for instance, if the ISEPO failed to visit the host family and personally interview them. If an international student was then mistreated by the host family, the ISEPO is liable. But the district might also be liable because the district's potential negligence (in not determining whether an ISEPO is registered) may have contributed to the harm caused to the student. That is, had the district required that the ISEPO be registered, the ISEPO would have visited the host family and would have determined that it was not a safe place to place an international student.

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*Question #3: Are there any restrictions or guidelines on what to charge international students for enrollment in a school district?*

Under federal law, an international student is required to pay tuition according to federal law. (8 U.S.C. 1184(m)(1)(B)(ii).) Specifically, an international student (or the ISEPO on behalf of the student) must reimburse a district “for the full, unsubsidized per capita cost of providing education at such school for the period of the alien’s attendance.” Unfortunately, the Act and its associated regulations do not include any additional guidance on the amount a school district can charge an international student for enrolling. At the same time, a district is not allowed to profit from such a student either. Thus, it is recommended that a district develop a written policy that establishes how the district would regularly calculate and update “the full, unsubsidized per capita cost of providing education” to the international student.

One option for such a policy would be to use the per pupil amount of the high school base grant provided to school districts under the Local Control Funding Formula. This per pupil grant amount could be augmented, on a per pupil basis, by the amount a district receives from the 13 remaining categorical programs and by any federal funding it receives. Another option would be to look at the district’s prior year per pupil expenditures.

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*Question #4: What ISEPO documents are available to the public and when and where are they accessible?*

Government Code section 12625 states that “the [ISEPO] registry and copies of instruments and the documents filed with the Attorney General pursuant to [the Act] shall be open to public inspection.” The Attorney General has promulgated regulations based on this statute that require that “applications, copies of instruments and reports filed with the Attorney General shall be open to public inspection at the Office of the Attorney General in San Francisco at such reasonable times as the Attorney General may determine.” (11 CCR § 352.)

The San Francisco office of the Attorney General is located at 455 Golden Gate Ave, San Francisco, CA. Any member of the public can request an appointment to review the available ISEPO documentation *in person* during normal business hours, including current registration applications, by calling 415-703-1006. However, some information – including a list of registered ISEPOs – is available online at <http://oag.ca.gov/exchangestudents/>.

## Additional Resources

- The California Attorney General’s ISEPO webpage:
  - <http://oag.ca.gov/exchangestudents>
- The Council on Standards for International Educational Travel website:
  - <http://www.csiet.org/index.html>
- The U.S. State Department’s “Student Visa” webpage:
  - <http://travel.state.gov/content/visas/english/study-exchange/student.html>
- The U.S. State Department’s “Foreign Student in Public Schools” webpage:
  - <http://travel.state.gov/content/visas/english/study-exchange/student/foreign-students-in-public-schools.html>
- The U.S. State Department’s “J-1 Visa Exchange Visitor Program” webpage:
  - <http://j1visa.state.gov/programs/secondary-school-student/>

*For additional information, please contact Keith Bray, General Counsel, or Josh Daniels, Staff Attorney, at 800-266-3382.*