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Governor



Jamie Link  
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Labor Cabinet

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Interim Commissioner of Education

**KENTUCKY DEPARTMENT OF EDUCATION**

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June 11, 2024

Senator Robby Mills  
Representative David Hale  
Representative Kevin Bratcher  
Co-Chairs of the Interim Joint Committee on State Government  
702 Capital Ave.  
Frankfort, KY 40601

**VIA EMAIL**

RE: Invitation to Speak - June 18th Meeting

Dear Senator Mills, Representative Hale, and Representative Bratcher:

Thank you for your invitation to testify next week before the Interim Joint Committee on State Government. Specifically, you asked for the Kentucky Department of Education (KDE) to “testify about undocumented immigrants and education in Kentucky, specifically:

- *The estimated number of undocumented immigrants that attend or are enrolled in public elementary and secondary schools and postsecondary education institutions in Kentucky*
- *Any estimates or projections of the number of undocumented immigrants anticipated to attend or enroll in secondary and postsecondary education institutions over the next five (5) years*
- *The estimated cost to the state in providing public education services to undocumented immigrants, and the projected costs in the next five (5) years”.*

KDE is not in possession of records or data that would allow it to estimate the number of unauthorized immigrants attending public elementary and secondary schools, either currently or in future years. This information is not collected by Kentucky public school districts or KDE. Based on the holding of the United States Supreme Court in *Plyler v. Doe*, 457 U.S. 202 (1987), the United States Departments of Justice and Education issued joint guidance in May 2014 explaining that “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.” KDE is attaching both the Plyler case and 2014 guidance for your reference. As such, neither KDE nor public school districts collect information regarding the citizenship or immigration authorization of students or parents.

With that said, the KDE is able to provide data on English Learners (EL) and Immigrant Children and Youth. However, these categories must not be confused with unauthorized immigration. **Identification of students as EL or Immigrant Children and Youth is separate and distinct from any determination regarding United States citizenship or immigration authorization.** That is, United States citizens and legally authorized immigrants may meet the definitions of EL or Immigrant Children and Youth.

The Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA) defines an EL as:

[A]n individual—

- (A) who is aged 3 through 21;
- (B) who is enrolled or preparing to enroll in an elementary school or secondary school;
- (C)(i) who was not born in the United States or whose native language is a language other than English;
- (ii)(I) who is a Native American or Alaska Native, or a native resident of the outlying areas; and
- (II) who comes from an environment where a language other than English has had a significant impact on the individual’s level of English language proficiency; or
- (iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
- (D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—
  - (i) the ability to meet the challenging State academic standards;
  - (ii) the ability to successfully achieve in classrooms where the language of instruction is English; or
  - (iii) the opportunity to participate fully in society.

The ESEA defines Immigrant Children and Youth as “individuals who — (A) are aged 3 through 21; (B) were not born in any State; and (C) have not been attending one or more schools in any one or more States for more than 3 full academic years.”

Finally, KDE is unable to speak to your request for data regarding postsecondary education institutions in Kentucky. KDE provides oversight of public elementary and secondary schools in the Commonwealth. The Council for Postsecondary Education (CPE) may have information relevant to postsecondary education institutions.

Please let us know if you have any questions or would like the KDE to testify regarding the available data.

Sincerely,



Robin Fields Kinney  
Interim Commissioner of Education

cc: Todd Allen, KDE Deputy Commissioner & General Counsel  
Brian Perry, KDE Director of Government Relations  
Kelly Foster, KDE Associate Commissioner