

The Education of Non-Native Language Speaking Children: England, European Union, France, Israel, and Japan

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ENGLAND¹

THE EDUCATION OF NON-NATIVE LANGUAGE SPEAKING CHILDREN

Executive Summary

There is no set strategy for addressing the education of non-English speakers in schools across England; responsibility for education rests with a number of Local Education Authorities across the country. However, a national strategy is in place that focuses on the inclusion of non-English speakers into mainstream education and classrooms, with additional support being provided for them therein.

I. Introduction

In schools across England the number of pupils recorded as having a language other than English has quickly risen from 653,800 in 2003 (representing 9.6 percent of the school population) to 789,790 in 2007 (representing 12 percent of the school population).² More than 200 languages are spoken in the homes of school-age English children.³

II. Right to Education

Education is funded by the government and the way in which it is provided is governed primarily by statute and a voluminous amount of secondary legislation, although some aspects of the common law continue to exist in the educational setting, such as the duty of care owed by education authorities and their employees regarding the care and supervision of students.⁴ This legislation provides the framework for the provision of nursery education for children that are not yet old enough for compulsory education, and primary and secondary education for children and teenagers, and covers issues such as funding, governance, staffing, admissions, and attendance.

¹ The United Kingdom of Great Britain and Northern Ireland comprises four separate countries, England, Wales, Scotland, and Northern Ireland. While central rule at Westminster remains, various Acts have provided for the devolution of power back to Wales, Scotland, and Northern Ireland in certain areas, one of these being education. One notable item regarding the devolved powers can be seen in education in Wales. The Welsh Assembly has stated that its ultimate aim is a bilingual Wales, where people can transition easily between English and Welsh.

² Education Act 1996 c. 56, § 10; *see also* Department for Children, Schools and Families, *New Arrivals Excellence Programme: Primary and Secondary National Strategies*, <http://nationalstrategies.standards.dcsf.gov.uk/node/97311> (last visited Mar. 31, 2009).

³ Department for Children, Schools and Families, *English as an Additional Language: Primary National Strategy EAL Programme*, http://www.standards.dfes.gov.uk/ethnicminorities/raising_achievement/763697/?section=0 (last visited Apr. 1, 2009).

⁴ *Williams v. Eady*, (1893) 10 TLR 41 (CA).

It is the duty of the Secretary of State to provide children with an education in England, regardless of the child's immigration status.⁵ This duty is typically performed by Local Education Authorities (LEAs) for each county in England.⁶ There are three stages of public education in England comprised of the primary education stage, secondary education stage, and further education.⁷ Nursery education is also provided for children that are over two years of age but have not yet reached the compulsory school age.⁸ Compulsory education in England begins at the age of five years old and continues until the end of the school-leaving year in which the child is sixteen years old.⁹ When a child turns five years old the parents must ensure that their child receives "efficient full-time education suitable to his age, ability and aptitude, and to any special educational needs he may have, either by regular attendance at school or otherwise."¹⁰ Once a child has reached the age for compulsory education and is registered with a school in their area, it is an offense for the parent to fail to have them attend school regularly and they may be punished with a fine.¹¹ The duty for children to obtain an education thus falls upon the parents to ensure that they attend school, and local education authorities, who are responsible for providing the schools.

III. Language Instruction in English

The approach of teaching English to non-English speakers in school rests with each LEA. An English as an additional language (EAL) program has been piloted across parts of England; however, individual LEAs retain responsibility for teaching English to non-English speakers.

The Qualifications and Curriculum Authority (QCA) in England¹² has provided guidance to teachers on how to teach EAL. The guidance emphasizes inclusion, with teachers modifying and adapting the curriculum to support the inclusion of EAL. It notes that:

this can be supported by the use of pupils' first languages with peers and bilingual staff and by the provision of appropriate bilingual books and materials to support the learning. At the same time pupils have to acquire English for both social and academic purposes.

⁵ Education Act 1996, c. 56, § 12. The education of migrant children is also provided for in Directive 486/EEC, On the Education of the Children of Migrant Workers, 1977 O.J. (L199) 32. The Race Relations Act 1976, c. 74 places an obligation on Local Authorities to promote equal opportunity as well as to avoid discrimination when providing education. See also Home Office, UK Border Agency, *Education*, <http://www.ukba.homeoffice.gov.uk/ukresidency/rightsandresponsibilities/education/> (last visited Apr. 13, 2009).

⁶ Education Act 1996 c. 56, § 12.

⁷ *Id.* 56; Further and Higher Education Act 1992 c. 13.

⁸ School Standards and Framework Act 1998 c. 30.

⁹ Education Act 1996, c. 56, § 8(3)(a).

¹⁰ 15(1) HALSBURY'S LAWS OF ENGLAND ¶ 15 (Lord MacKay of Clashfern ed., 4th ed. Reissue 2006); Education Act 1996, § 7.

¹¹ Education Act 1996, c. 56, § 444.

¹² Part of the Qualifications and Curriculum Authority's remit is to develop and review the national curriculum. Qualifications and Curriculum Authority, *What We Do*, http://www.qca.org.uk/qca_8710.aspx (last visited Apr. 13, 2009).

Provision of support by EAL staff and ensuring the pupils' engagement in active learning across the curriculum are effective ways of supporting the acquisition of English language skills.¹³

In certain instances, such as where students are still developing proficiency in English, the class materials are difficult; the QCA recommends that the pupils should be encouraged to use their first language. It notes this can be achieved through several methods, such as visual cues or collaboration with other EALs that share the same language.¹⁴

The government launched a strategy in October 2003 to support children who speak EAL as part of the "Aiming High" initiative.¹⁵ The EAL program has been implemented "through the primary national strategy involving a package of professional development for mainstream staff ... a secondary national strategy programme for EAL was launched in June 2006 which builds on from this work to promote awareness of best practice in EAL teaching in secondary schools."¹⁶

IV. Additional Measures

Additional funding to help support students whose second language is English is available to local authorities who fund schools from the ethnic minority achievement grant (EMAG). This grant is "distributed to local authorities by formula which includes the number of EAL pupils in each [local authority], with locally determined formulae devolving at least 85 per cent to schools. The grant is £179 million in 2007-08."¹⁷ The grant "provides resources for schools to employ specialist EAL support teachers and teaching assistants and for local authorities to maintain a small advisory team."¹⁸

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¹³ Qualifications and Curriculum Authority, *English as an Additional Language*, http://www.qca.org.uk/qca_5093.aspx (last visited Apr. 13, 2009).

¹⁴ *Id.*

¹⁵ DEPARTMENT FOR EDUCATION AND SKILLS, AIMING HIGH: RAISING THE ACHIEVEMENT OF ETHNIC MINORITY STUDENTS (March 2003), available at http://www.standards.dfes.gov.uk/ethnicminorities/links_and_publications/AHConsultationdocmar03/aim_high2.doc.

¹⁶ 461 PARL. DEB. (6th ser.) (HC) (2007) 1161W.

¹⁷ *Id.* The stated amount (£179 million) is equivalent to about \$US270 million.

¹⁸ *Id.*

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EUROPEAN UNION

EDUCATION OF NON-NATIVE LANGUAGE SPEAKING CHILDREN

Executive Summary

The European Union's role in the field of education is limited to supporting and promoting the educational policies of its Member States. The latter retain full control in establishing their school systems and school curricula, provided that they apply the principle of equality and prohibit discrimination.

Based on Directive 77/486/EEC, EU Members are required to offer free tuition to children of workers who are nationals of another EU member state, including in particular the teaching of the official language of the host state; to train teachers for this purpose; and to promote, along with regular education, the mother tongue and culture of the country of origin.

In 2008, the European Commission opened, through its Green Paper, a debate on the issue of educating non-native language speaking children and on possible expansion of application of the 77/486/EEC to children of parents from third countries. Results are expected to be published sometime in 2009.

I. Introduction

At the European Union (EU) level, the issue of educating non-native language speaking children has recently gained increased attention. This is being attributed to the transformation that the EU has undergone in the last five years, due to the greater mobility associated with the two recent enlargements,¹ in conjunction with a large influx of immigrant families.²

The European Commission's 2008 Green Paper on *Migration & Mobility: Challenges and Opportunities for EU Education Systems*,³ as part of its renewed social agenda, addresses

¹ In 2004, the following countries joined the EU: Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia, and Slovakia, followed in 2007 by Bulgaria and Romania. See Europa, *Key facts and figures about the European and the Europeans*, http://europa.eu/abc/keyfigures/index_en.htm.

² The Commission states that in Ireland, Italy, and Spain, the percentage of school students born in another country has multiplied by three or four times since 2000. In the United Kingdom, the number of students attending schools after arriving from abroad has grown by 50 percent in two years. See *Green Paper, Migration & Mobility: Challenges and Opportunities for EU Education System 2*, COM(2008) 423 final (Mar. 7, 2008), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0423:FIN:EN:PDF>.

³ *Id.*

the specific challenges of educating such children.⁴ Teaching the language of instruction, a key element in integrating children in the host country, is also the topic of a 2004 study on *Integrating Immigrant Children into Schools in Europe*,⁵ supported by the Directorate General for Education and Culture of the European Commission. Both documents employ the term “migrant children” or “immigrant children.” Within the EU context, the term refers to children who were not born in the territory of the EU member state where they reside, irrespective of whether they are third-country nationals or citizens of another EU member state, or of irregular status.⁶

In the field of education and vocational training, the EU Member States – as the European Community (EC) Treaty mandates – have the full responsibility to organize their education systems and the content thereof, based on their particular cultural and linguistic diversity, while the role of the EU is confined to supporting and supplementing their actions.⁷ The EC Treaty further stipulates that any Community action must aim at developing “the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States.”⁸

The majority of the EU members, pursuant to their obligations arising from national and international legal instruments, afford non-native speaking children the basic right to education, irrespective of legal status. At the EU level, the Charter of Fundamental Rights⁹ proclaims that “everyone has the right to education and to have access to vocations and continuing training” and that “this right includes the possibility to receive free compulsory education”¹⁰ The right to education is *inter alia* recognized in Article 28 of the Convention on the Rights of the Child. EU

⁴ See also Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Improving Competences for the 21st Century, An Agenda for European Cooperation on School*, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0425:FIN:EN:PDF>.

⁵ EUROPEAN COMMISSION, EURYDICE (THE INFORMATION NETWORK ON EDUCATION IN EUROPE), INTEGRATING IMMIGRANT CHILDREN INTO SCHOOLS IN EUROPE (2004) (hereafter, EURYDICE Study), available at http://eacea.ec.europa.eu/ressources/eurydice/pdf/0_integral/045EN.pdf. A 2008 update of the study is not yet available.

⁶ See *Green Paper, Migration & Mobility*, *supra* note 2, at 2; EURYDICE Study, *supra* note 5, at 7.

⁷ European Community Treaty arts. 149, 150. The European Commission supports and funds a number of programs that focus on the education of migrant children, such as the Lifelong Learning Program and the Youth Program, which support projects related to school integration of migrant students and social inclusion of disadvantaged youth as well as intercultural education. For more information see, *Green Paper, Migration & Mobility*, *supra* note 2, at 12.

⁸ European Community Treaty art. 149, para. 1.

⁹ The Charter of Fundamental Rights of the EU was signed and proclaimed by the Presidents of the European Parliament and the Commission at the Nice European Council of December 2000. Charter of Fundamental Rights of the EU, available at http://www.europarl.europa.eu/charter/pdf/text_en.pdf. On December 13, 2007, the EU Members signed the Lisbon Treaty, which introduces several key amendments to the EU and EC Treaties. Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, Dec. 13, 2007, available at <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML>. Upon ratification of the Lisbon Treaty by all EU Members, the Charter will acquire binding status.

¹⁰ *Id.* art. 14.

Members that are also state parties to the Convention are required to ensure that primary education is compulsory and available to all children.¹¹

II. Legal Framework

Several EU directives have a bearing on the education of migrant children. Generally, discrimination on the grounds of race and ethnicity in education is prohibited by Directive 2000/43/EC.¹² Directive 2003/9/EC¹³ applies to minors who have applied for asylum or who are children of asylum seekers. It provides for access to the education systems of the EU Members under conditions similar to those applicable to nationals of the EU Members. Directive 2003/109/EC¹⁴ applies to children whose parents have a legal residence and hold a long-term residence permit. It provides a similar requirement, regarding access to school, including the award of study grants. EU Members have the option of restricting access to their educational system by requiring proof of language proficiency.

The sole legislative measure on point is Directive 486/EEC, entitled *On the Education of the Children of Migrant Workers*, which was adopted by the then European Community in 1977.¹⁵ The Directive's scope is limited to children of workers who are nationals of other Member States and it aims to ease the difficulties associated with the initial reception and integration of such children into the educational school system of the host state.

The 1977 Directive requires EU Members to ensure the following:¹⁶

- Free tuition, including in particular the teaching of the official language or languages of the host state, provided that teaching is adapted to the individual needs of children;
- Training and re-training of teachers who are tasked to provide tuition;
- Promotion of the teaching of the mother tongue and culture of the country of origin of such children, along with regular education and in cooperation with the country of origin; and
- Compliance with the provisions of this Directive and notification of the Commission of measures undertaken in compliance with its provisions.

¹¹ Convention on the Rights of the Child, G.A. res. 54/263, Annex II, 54 U.N. GAOR Supp. (No. 49) at 6, U.N. Doc. A/54/49 (2000), entered into force Sept. 2, 1990.

¹² Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin 2000, O.J. (L180) 22.

¹³ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, 2003 O.J. (L 31) 18.

¹⁴ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, 2004 O.J. (L 16) 44.

¹⁵ Directive 486/EEC, *On the Education of the Children of Migrant Workers*, 1977 O.J. (L199) 32.

¹⁶ *Id.* arts 2-5.

III. Policy Considerations

The Commission's Green Paper¹⁷ invited stakeholders to share their opinions on the future of the 1977 Directive, whether to extend its scope, since it does not apply to children from third-countries, and also on the role of the EU in assisting its Members in formulating their education policies. Given the fact that the Directive requires EU Members to take appropriate measures to also promote the teaching of the mother tongue and culture of the country of origin, in cooperation with the country of origin, the Commission suggested that the "creation of networks and school twinning"¹⁸ could be used to achieve this goal. The Commission is planning to publish the results of the survey in early 2009.¹⁹

The Commission has also proposed the Open Method of Coordination for Education and Training as a tool for sharing information on policy exchanges and best practices among the EU Members.²⁰

In response to the Commission's Green Paper, Hannue Takkula, a Finnish Liberal member of the European Parliament, issued, on his own initiative, a report which was debated in the Parliament on April, 1, 2009. On April 2, 2009, the European Parliament adopted a resolution on Educating the Children of Migrants.²¹ The resolution includes the following recommendations:

- Additional financial and administrative support for language courses should be provided to legal migrants by trained staff who also understand the mother tongue of the migrants;
- Ghetto-type schools or special classes for migrant children should be avoided; and
- Children should be allocated to classes based on educational level and individual needs.

¹⁷ See also NESSE, EDUCATION AND MIGRATION: STRATEGIES FOR INTEGRATING MIGRANT CHILDREN IN EUROPEAN SCHOOLS AND SOCIETIES (Apr. 2008), available at http://www.nesse.fr/nesse/nesse_top/activites/education-and-migration.

¹⁸ In 2002, the European Commission proposed that each of the 150,000 secondary schools in the EU conclude an "Internet twinning" agreement with one or more schools in other EU member or third states to encourage communication between cultures and to enable students to participate in educational projects, such as language study, cultural exchanges, or environmental issues, via the Internet. See Press Release, The Commission Backs Generalization of School Twinning Via the Internet (June 4, 2002), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/02/809&format=HTML&aged=0&language=EN&guiLanguage=en>.

¹⁹ *Green Paper, Migration & Mobility*, supra note 2, at 15.

²⁰ *Id.* at 13.

²¹ European Parliament Resolution of 2 April 2009, on Educating the Children of Migrants, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0202+0+DOC+XML+V0//EN>.

IV. Programs Implemented by the EU Member States

A. Educational Models

The 2004 study on *Integrating Immigrant Children into Schools in Europe*, noted above, stated that European educational systems fall within two main models:

- a) An integrated model, in which immigrant children are included in mainstream education classes and taught the same curricula as native students. Classes are composed of children of the same age or occasionally younger children. Measures to offer support for the language of the host country are offered to individual children as needed during normal school hours;
- b) A separate model, which appears in two forms:
 - Transitional arrangements: Immigrant children are grouped together separately from other children in school temporarily in order to receive special attention suited to their needs; such children may attend some mainstream classes; and
 - Long-term arrangements: Immigrant children are grouped together for several school years according to their competence level in the language of instruction.

The study finds that these two systems often coexist within a given country.²² Only a few countries, such as Ireland and Scotland, follow the integrated model with additional linguistic support. Italy is also included in this group. However, the study also finds that within the above two basic models, the educational systems of the EU Member States offer additional measures that are often combined in integrated or separate models and fall into three categories:

- a) Measures for support designed “to compensate for the language needs” of children whose mother tongue is different from the language of instruction. Such measures are based on the idea of “linguistic immersion” in which children are directly exposed to the language of the host country and receive additional intensive individual or small-group instruction;
- b) Measures for support designed to address “the learning needs of immigrant pupils in certain areas of the curriculum” based on the educational level of children. In such cases, the contents and methods of teaching of the mainstream curriculum may be changed to; and
- c) Class sizes can be reduced to offer better child/teacher ratios.²³

²² EURYDICE Study, *supra* note 5.

²³ *Id.* at 44.

B. Additional Findings

Teaching the language of instruction is the initial step and the salient feature of the educational systems of all EU Member States.²⁴

Some Scandinavian countries, including Finland, Norway, and Sweden, as well as Cyprus, Estonia, and Latvia, offer bilingual instruction, where teachers teach in the mother language of the immigrant students and the language of instruction.

Several countries have adopted programs to teach young children the language of instruction prior to attending compulsory education. For instance, Germany has such programs for children who were born in the country or came to Germany at a very young age. The Flemish community in Belgium as well as Lithuania, Luxembourg, and Norway provide reception classes to children to equip them with language skills prior to attending compulsory education. In addition, the Czech Republic, Finland, and some municipalities of Sweden offer pre-primary language instruction.

Countries that offer mainstream education, such as the Czech Republic, Germany, and Italy, often limit the number of immigrant students in a given class.²⁵

V. Concluding Remarks

As suggested in the 2004 study on *Integrating Immigrant Children into Schools in Europe*,²⁶ teaching the language of instruction is the primary goal of schools across Europe in an effort to integrate immigrant children, while recognizing at the same time the importance of keeping in touch with the mother tongue and culture of the country of origin.

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²⁴ *Id.*

²⁵ *Id.* at 45.

²⁶ See EURYDICE Study, *supra* note 5.

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FRANCE

EDUCATION OF NON-NATIVE LANGUAGE SPEAKING CHILDREN

Executive Summary

Newly arrived children whose mother tongue is not French are offered special support measures in school, in particular, daily intensive French classes. These measures are aimed at providing the conditions for a rapid integration into mainstream classes. There also exists a program for the teaching of languages and cultures of origin in cooperation with certain countries to allow foreign students to keep up with their mother tongue when it is not offered as a foreign language.

The Code of Education provides that “instruction is compulsory for both French and foreign children of both sexes between the ages of six and sixteen.”¹ It further states that newly arrived children whose mother tongue is not French are offered special support measures.² These measures are aimed at providing the conditions for a rapid integration in mainstream classes. The measures apply to primary and secondary education.

The measures are described in Circular 2002-100 of April 25, 2002, on educational provisions for students who are newcomers to France and have an insufficient knowledge of French, as issued by the Ministry of Education.³ The Circular first requires that particular attention be given to these newcomers. The school staff must explain to the immigrant families how the French education system functions, and how they can take part in school councils or other activities. Schools are strongly encouraged to supply the information to the families with the assistance of interpreters or by means of a document presenting the education system in several languages.⁴

The Circular also requires an initial assessment of the student, which is conducted in his mother tongue if at all possible. The assessment focuses on:⁵

¹ CODE DE L'EDUCATION art. L131-1.

² *Id.* arts. L321-4, L332-4.

³ Circulaire 2002-100 du 25 Avril 2002 sur l'organisation de la scolarité des élèves nouvellement arrivés en France sans maîtrise suffisante de la langue française ou des apprentissages [Circular 2002-100 of April 25, 2002, on educational provisions for students who are new to France and have an insufficient knowledge of French], Ministère de l'Education, Bulletin Officiel No 10, Apr. 10, 2005, <http://www.education.gouv.fr/bo/2002/special10/texte.htm> (last visited Apr. 8, 2009).

⁴ *Id.* § 1.2 Information des parents.

⁵ *Id.* § 2 scolarisation: Evaluation, affectation, classes spécifiques.

- The level of knowledge of the French language;
- The skills the student developed at school in his mother tongue and how far he has learned to read and write; and
- The experience acquired in various areas as well as personal interests, which may constitute important educational building blocks.

The Circular emphasizes that it is crucial to find out how familiar these students are with the written medium, irrespective of the particular system of writing involved and how they master certain subjects such as mathematics.⁶

The students are enrolled in daily intensive French classes for a limited period of time depending on their level of knowledge. The aim is to achieve full mainstream integration as soon as possible, by the end of the year, or at the most two years in case the students arrived in France during the school year. For schools to provide these intensive French classes, they must enroll at least fifteen newcomers with an insufficient knowledge of French. Otherwise, these newcomers will be taught French by teachers paid overtime for their work. The intensive French classes are financed by the state, which also remunerates the teachers.⁷

Finally, there exists a program for the teaching of languages and cultures of origin (ELCO) when the language concerned is not offered as a foreign language. ELCO is provided under bilateral agreements that were entered into with the following countries: Algeria, Italy, Morocco, Portugal, Serbia- Montenegro, Spain, Tunisia, and Turkey. Teachers are provided and remunerated by the country of origin.⁸

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⁶ *Id.*

⁷ *Id.*

⁸ Circulaire DGESCO A1-1 No 2008-0388 of September 8, 2008, Ministère de l'Éducation, Académie de Nancy, http://www.ac-nancy-metz.fr/casnav/elco/elco_textes.htm (last visited Apr. 8, 2009).

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ISRAEL

THE EDUCATION OF NON-NATIVE LANGUAGE SPEAKING CHILDREN

Executive Summary

All children, including immigrants, are entitled to receive a free education from ages three to eighteen. Immigrants who qualify under the Law of Return are entitled to supplemental Hebrew education programs. The Ministry of Education allocates limited funds for education in foreign languages, including those of originating countries.

I. Introduction

The modern State of Israel was re-established as a national home for the Jewish people.¹ It therefore maintains an immigration policy that gives priority to immigrants of Jewish descent (*Olim*).² The State has absorbed large populations of *Olim* from all over the world. In the last decade it has received approximately 850,000 *Olim* from the CIS (Commonwealth of Independent States, former U.S.S.R), and approximately 65,000 from Ethiopia.

The absorption of *Olim* is viewed as an important objective and is handled primarily by the Ministry of Immigrant Absorption. The Ministry “views knowledge of the Hebrew language as an important prerequisite for an immigrant’s absorption into Israeli life.”³ The Ministry runs special educational programs (*Ulpan*) for the teaching of Hebrew to both children and adults who are *Olim*. In addition to *Ulpan* programs, children are entitled to attend educational programs that are developed and maintained by the Ministry of Education.

II. Right to Education

The Compulsory Education Law, 5709-1949,⁴ as amended, provides for mandatory free education for all children ages three to eighteen for a period of fifteen years. This includes three years of pre-school from age three to age five; and twelve years of school from the first through the twelfth grade.

¹ Declaration of the Establishment of the State of Israel, 1 Laws of the State of Israel (hereafter LSI) 3 (5708-1948).

² See Law of Return 5710-1950, 4 LSI 114, as amended.

³ *What is an Ulpan?*, Ministry of Immigrant Absorption website, at http://www.moia.gov.il/Moia_en/StudyingHebrew/WhatsUlpan.htm (last visited March 25, 2009).

⁴ 3 LSI 125 (5709-1949).

Non-*Olim* children enjoy educational programs based on Israel's general obligations under the Convention on the Rights of the Child.⁵ Accordingly, the children of foreign workers are entitled to receive a free education, without discrimination.

III. Instruction in Hebrew - Language of the Host Country

1. School Programs

Olim immigrants are entitled to receive supplementary education in accordance with regulations issued by the Minister of Education.⁶ Although non-*Olim* immigrant children are qualified to register and study in preschools and in schools, they may not be entitled to receive supplementary services, such as special assistance and reinforcement in the study of Hebrew, that is given to children of legal immigrants.⁷

Immigrant children are usually “immersed” into regular classes, but may be entitled to receive special assistance tutoring, sometimes during regular class hours. Students twelve years of age or older may attend special *Ulpans* for a period of six months, after which they transfer to regular classes.⁸

The Ministry of Education maintains a special department for the planning and development of education programs. The department's recent proposal titled “A New Educational Program in Hebrew as Second Language in Grades 1st to 12th in Public and Religious-Public Schools” was issued on January 1, 2009 and is awaiting final approval.⁹

2. Ulpan Programs

Ulpanim (plural of *Ulpan*) are educational frameworks run by the Ministry of Immigrant Absorption and Education and the Jewish Agency, for learning the Hebrew language. They are held throughout the year in various locations throughout the country. The *Ulpanim* offer several study programs, the most common of which is reportedly the five-day-a-week morning program. There are also evening programs. According to information posted on the Ministry of Immigrant Absorption website, a morning program lasts approximately five months; and an evening

⁵ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

⁶ Compulsory Education (Accepted Services) Regulations, 5711-1950 §1(a), Kovetz ha-Takanot (Subsidiary Legislation) No. 125, p. 160 (Nov. 3, 1950), as amended.

⁷ YORAM RABIN, HA-ZEKHUT LE-HINUKH [The Right for Education] 427 ft. 422 (Nevo Publishing, 2002 [in Hebrew]).

⁸ Avital Epel, *Teaching the Hebrew Language to Olim Students in the Education System*, Knesset Center for Research and Information, the Knesset website (June 18, 2001), available at, <http://www.knesset.gov.il/MMM/data/docs/m00053.rtf>.

⁹ *Hebrew as a Second Language (Education Plan For Olim Children In Classes First Through Twelfth At Schools)*, Ministry of Education, Pedagogue Division, Division for Planning and Development of Educational Programs, available at Ministry of Education website, <http://cms.education.gov.il/NR/rdonlyres/47B46FAC-E3DB-4201-9E1B-9A3A13380C53/65928/safa2.pdf>.

program lasts approximately 10 months, depending on the study program. In total, students study approximately 500 study hours.¹⁰

Additional types of *Ulpanim* include;

- special kibbutz¹¹ living programs;
- programs that are run by the Student Authority;
- *Ulpan* for Retirees;
- supplementary *Ulpanim*, including special ones for members of the medical and paramedical professions;
- supplementary *Ulpanim* for Caucasian (Kavkazian)¹² *Olim* in localities with concentrations of these *Olim*; and,
- vocational *Ulpanim*, including those specially designed for members of various vocations: medical, paramedical and technological professions.

In addition to the specialized *Ulpanim*, the Ministry also runs *Second Chance Ulpanim* that are designed for immigrants who have been in Israel for up to 10 years and who encounter everyday difficulties with the Hebrew language. These programs address speech, writing, comprehension and language issues. The studies take place in 30-hour modules, mainly in the evening. Tuition is nominal and is paid by the immigrant.¹³

Private *Ulpanim* are also available in universities, immigrant organizations, etc. The Ministry of Immigrant Absorption, however, has no connection with these *Ulpanim*.

IV. Bilingual Teaching in the Language of Students' Mother Tongue

While the Ministry of Education allocates a sizable budget for the study of Arabic and French, it is said to provide very limited support for the study of the Russian language. According to a transcript of a joint meeting of the Knesset (Parliament) Committee for Alia (immigration of *Olim*), Absorption and Diaspora, and the Knesset Committee for Education, Culture and Sport, there is priority for the study of the French language in all schools because of a special cultural agreement with France that also established subsidies for certain activities, such as travel to France.

¹⁰ *Supra* note 3.

¹¹ Collective settlements.

¹² Immigrants from the Caucasus Mountain region.

¹³ *Additional Types of Ulpanim*, The Ministry of Immigrant Absorption website at http://www.moia.gov.il/Moia_en/StudyingHebrew/AdditionalTypes.htm (last visited March 25, 2009).

Considering the sizable population of native Russian-speaking *Olim*, the Committee concluded that they wished to equate the status of other foreign languages to that of the French language, and that they would propose a legislative reform if such equation is not adopted by the Ministry of Education.¹⁴

V. Additional Programs for Immigrant Children

Information was requested from the Ministry of Education in Israel and will be provided upon receipt.

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¹⁴ *Press Release: A Second Foreign Language in Middle School (including the Russian Language)*, Knesset Committee for Alia, Absorption and Diaspora website at http://portal.knesset.gov.il/Com27alia/he-IL/Messages/news_7273.htm (May 8, 2007).

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JAPAN

THE EDUCATION OF NON-NATIVE LANGUAGE SPEAKING CHILDREN

Executive Summary

The right of the children of illegal immigrants to education is recognized, and they can receive nine-years of public primary education for free. Children who do not understand Japanese are immersed into regular classes. To support such children, schools may have additional teachers who teach Japanese as a second language and tutors who explain subjects in foreign language.

I. Right to Education and Compulsory Education

The Constitution of Japan provides Japanese nationals with the equal right to receive education, and obligates Japanese people to ensure that all children under their protection receive primary education, which in Japan is defined as “ordinary education.” Such compulsory education is free.¹ The Basic Law on Education also obligates Japanese people to have all children under their protection receive primary education.² The Constitution and the Basic Law on Education do not provide foreigners with the right to receive an education. However, Japan ratified the International Covenant on Economic, Social and Cultural Rights in 1979.³ The Covenant provides that “Primary education shall be compulsory and available free to ‘all’ (emphasis added by the author).”⁴ Also, the Convention on The Rights of The Child, which Japan ratified, provides that “States Parties recognize the right of the child to education, and ... they shall, in particular: (a) Make primary education compulsory and available free to ‘all’.... (Emphasis added by the author).”⁵ The Constitution of Japan provides, “The treaties concluded by Japan and established laws of nations shall be faithfully observed.”⁶ Therefore, foreign nationals, as well as Japanese nationals, have a right to education, and children of foreign nationalities who live in Japan can attend public schools in Japan for free. The School Education

¹ Nihonkoku Kenpō [Constitution of Japan], 1946, art. 26. The English translation of the Constitution that is posted at Prime Minister and his Cabinet’s website uses the word “people,” instead of “nationals” at http://www.kantei.go.jp/foreign/constitution_and_government_of_japan/constitution_e.html (last visited Apr. 8, 2009). The direct translation of the word in the original language is “nationals.”

² Kyōiku kihon hō [Basic Law on Education], Law No. 120 of 2006, art. 5, para. 1.

³ International Covenant on Economic, Social and Cultural Rights, opened for signature Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976), Treaty No. 6 of 1979 (Japan), available at http://www.unhchr.ch/html/menu3/b/a_cescr.htm.

⁴ *Id.* art. 13, para. 2 (a).

⁵ Convention on The Rights of The Child, Nov. 20, 1989, 1577 U.N.T.S. 3, Treaty No. 2 of 1994 (Japan), art. 28, para. 1, available at <http://www.unhchr.ch/html/menu3/b/k2crc.htm>.

⁶ Kenpō, 1946, art. 98, para. 2.

Law provides that children's guardians must have the children receive nine-years of primary education.⁷ There is no distinction whether or not guardians or children are Japanese nationals or not.

There may, however, in fact be difficulties preventing illegal immigrant children from attending public schools. An education committee of a municipal government prepares a list of school-age children in its jurisdiction.⁸ The list is made based on the resident registration record.⁹ The resident registration that is maintained at the municipal government is for Japanese nationals. Foreigners who stay in Japan more than ninety days must apply for alien registration at the municipal government office.¹⁰ Children who have alien registration records are accepted by public schools. Many municipal governments accept alien children even where the children are not registered, but are able to prove their identities and residences. Some municipal governments do not accept alien children without registration for public schools.¹¹ Illegal immigrants usually avoid alien registration because of fear that the authority would try to deport them when the authority recognizes the existence of them, although municipalities do not tend to report existence of illegal aliens voluntarily.¹² Japanese children who do not have resident registration (while such a situation is very rare, it can happen) would have the same problem.¹³

II. Language Issues

Children who do not understand Japanese are immersed into regular classes. To support such children, schools may have additional teachers who can teach Japanese as a second language¹⁴ and tutors who are able to explain subjects in foreign languages.¹⁵ In the 2008 fiscal

⁷ Gakkō kyōiku hō [School Education Law], Law No. 26 of 1947, *last amended by* Law No. 96 of 2007, art. 16.

⁸ Gakkō kyōiku hō sekō rei [School Education Law Enforcement Order], Order No. 340 of 1953, *last amended by* Order No. 363 of 2007, art. 1, para. 1.

⁹ *Id.* art. 1, para. 2.

¹⁰ Gaikokujin tōroku hō [Alien Registration Law], Law No. 126 of 1952, *last amended by* Law No. 134 of 1999, art. 3, para. 1.

¹¹ Mitsunobu Kan-no and Setsu Imamura, *Oya wa huhō taizai, gaikokujin tōroku naku [Parents illegally stay, no foreigner registration...]*, TOKYO NEWSPAPER, Jan. 28, 2006 (on file with author).

¹² *Id.*

¹³ In the case that a child's resident registration was refused by a municipal government because the parents refused to follow the birth registration procedure for their child, and the child's birth had not been registered, the demerits of not having resident registration were examined. Such child may be admitted to public schools and receive welfare ultimately, but the residence and identity need to be proved every time a child or the child's parent/guardians are addressing the public authority, and it may not be easy sometimes. Heisei 18 (Gyo u) 309, Tokyo Dist. Ct., *available at* http://www.courts.go.jp/search/jhsp0030?action_id=dspDetail&hanreiSrchKbn=01&hanreiNo=35415&hanreiKbn=04.

¹⁴ Kōritsu gimu kyōiku sho gakkō no gakyū hensei oyobi kyōshokuin teisuu no hyōjun ni kansuru hōritsu [Law Concerning Forming Classes and Standard Numbers of Teachers and Staffs at Public Schools], Law No. 116 of 1958, *last amended by* Law No. 73 of 2008, art. 7, para. 2. This provision allows a school to have extra number of teachers for special instruction for a small group of children. The national government pays a part of the costs.

year, 985 teachers were placed to teach children Japanese as a second language.¹⁶ Recently, the national government developed JSL (Japanese as a Second Language) curriculums for students who do not understand Japanese. The National Center for Teachers' Development provides trainings for teachers who teach Japanese to foreign students.¹⁷

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¹⁵ Tutors are placed in pilot programs that municipal government planned and the national government financially supported. For example, Ohta City Education Committee, Heisei 19 nendo kikoku-gaikokujin jidō seito ukeire sokushin jigyō ni kakaru hōkokusho no gaiyō [Summary of the report on programs to facilitate settlement of Japanese students returned from foreign countries and foreign students in 2007 fiscal year], Ministry of Education, Culture, Sports, Science and Technology [MEXT], available at http://www.mext.go.jp/a_menu/shotou/clarinet/003/001/009/002.htm.

¹⁶ Shotō chūtō kyōiku ni okeru gaikokujin jidō seito kyōiku no jūjitsu no tame no kentō kai [Discussion group for fulfillment of foreign pupil and student education at elementary and middle schools], gaikokujin jidō seito kyōiku no jūjitsu hōsaku ni tsuite [Regarding measures to fulfill foreign pupil and student education], IV (June 2008), available at http://www.mext.go.jp/b_menu/shingi/chousa/shotou/042/houkoku/08070301/005.htm.

¹⁷ *Id.* The National Center for Teachers' Development has a website at <http://www.nctd.go.jp/>.