

Impact of Immigration on Students, the PK-12 Perspective

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Undocumented students enrolling in American schools are scrutinized by policy and case law that define their existence as part of a general student population. Through a historical review of legal authority, the legal rights of this student population were defined as policy impacts their student life. Immigrant students have the right to PK-12 public schooling under the law. However, access is often barred as discriminatory practices affect their participation in programs available in the American system of education. The impact of legal authority and policy action aimed at this marginalized population was captured through qualitative research that highlights different aspects of immigration effects on schooling.

Keywords: Legal authority, Plyler, undocumented students, public education

Los estudiantes indocumentados matriculados en escuelas públicas de los Estados Unidos son escrutinizados por reglas y leyes que definen su existencia como parte del cuerpo estudiantil. A través de una revisión histórica de la autoridad legal, los derechos de los estudiantes indocumentados se definieron ya que la política impacta su vida estudiantil. De acuerdo a la ley, todo estudiante, inmigrante tiene derecho a la matrícula desde pre-escolar hasta preparatoria. Sin embargo, el acceso es frecuentemente prohibido debido a prácticas discriminatorias que afectan su participación en programas educativos disponibles en el sistema educativo americano. El impacto de la autoridad legal y la acción política dirigida hacia esta población marginada fue el objetivo de esta investigación cualitativa arrojó el impacto autoritario que impone la ley, tanto como el impacto de la acción política que realiza varios aspectos de el efecto de la inmigración sobre la escolarización.

Palabras clave: Autoridad legal, Plyler, estudiantes indocumentados, educación pública

Undocumented Students in American Public Schools

Undocumented students attending American schools are scrutinized by policy and case law that define their existence within any public campus. The phenomenon of legal authority and policy action aimed at this marginalized student population was captured through qualitative research that highlights different aspects of immigration effects on schooling. While immigrant and undocumented students have the right to a PK-12 public education under the law, access may be barred as discriminatory practices negatively impact their participation in programs otherwise available within the American system of education. Needless to say, immigrant

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students and their families often encounter trouble and experience tribulations as their immigration status and policy curtail their participation in public schooling. Approximately 1.8 million students, under age eighteen, are classified as undocumented (Perez, 2009). Building of a demographic context for this study revealed a growing American public school population as the effect of a large influx of students with immigrant origins.

Immigrant students enjoy the benefit of a free public education, as do their citizen and legal resident counterparts. This study utilized a legal search and analysis that produced a non-traditional format, historical review of case law, statutes, and legal authority, which discuss the legal rights of undocumented immigrant students in American public schools. Despite the existence of scholarly work on the topic, there is no specific guide that corresponds to K-12 immigrant students. The thirty-year chronology allowed for both a descriptive analysis of sequential legal authority and the exhibited action by school districts regarding the rights of undocumented students. Through the use of an analytic and historical framework based on the Tyack and Cuban interpretation of political and institutional analysis (1995), implications of immigration on students and families were analyzed as the result of legal authority impact. Conclusions revealed a frequent disregard and refusal of existing law by school personnel, which impacts immigrant students. The current global climate and policy talk on immigration repress immigrant students in the mainstream of public schools. This repression translates into experiences of discrimination occurring at school, where students face a construct of legal restrictions and battle public reaction, individual ethics, and moral principles.

Method

This study employed qualitative research methods to capture the phenomenon embodied in legal authority and policy action impacting a marginalized student population within the American public school system. Through the construct of a thirty-year database of legal authority, the methodology yielded an analysis of policy inclusive of original documents relevant to compulsory, public education in a K-12 setting. Creswell's (2009) defines qualitative research as inquiry that explores social problems. Thus, the current global climate of unsettled immigration provided a clear basis for inquiry on educational policy affecting this segment of our student population. Moreover, generalizability (Maxwell, 1992) was utilized to analyze legal authority impacting the education of undocumented students. Generalizability, according to Maxwell (1992, p. 293) refers to the "extent to which one can extend the account of a particular population". In this study the policies affecting a specific demographic context are easily extended to a general student population. This research study was conducted through location and analysis and the Tyack and Cuban framework structured the policy cycles that highlight the undocumented student population's trials as policies implemented often aim at curtailing their access to educational benefits. Mahoney & Rueschemeyer (2003)

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describe historical analysis as a commitment to offering historically grounded explanations to important outcomes. Historical analysis was used to develop a narrative on the topic of undocumented students and the causal mechanisms that govern their benefits of education, a pressing issue in our public schools. The data collection took place during an epoch of international policy talk on immigration reform and impending policy action.

Participants

A specific demographic context was set to represent the demography, past and present, of undocumented immigrant children as encapsulated within the general immigrant population of the United States. Immigration to the United States has substantially increased from 14, 079, 906 million in 1980, to 39, 955, 854 million immigrants in 2010 according to the Census (Migration Policy Institute, 2012). Currently, this student population accounts for approximately 25 percent of enrolled students. In 2050, immigrant students are projected to account for over one third of 100 million children (Haskins & Tienda, 2011). A large-scale immigration has had implications on educational policy in addition to continuously diversifying the American classroom. The rationale for selecting this demographic context was based on the need to disclose existing legal authority that provides benefits of education to immigrant students in our public school system.

Procedure

This study was initiated by constructing the demographic context of an immigrant student population in American compulsory schooling as viewed from within a student body that is projected to reach twenty-eight million enrollees by 2050 (Fry & Gonzalez, 2008). The influx of immigrant students to American schools began in the 1970's, when this group comprised a mere six percent of our total student population (Fix & Capps, 2005). Next, the public school system's responsibility was highlighted in terms of their duty to protect the educational benefits of approximately 1.8 million undocumented students present in our classrooms (Perez, 2009). This was followed by a legal authority/literature review beginning with *Plyler v. Doe*, 457 U.S. 202, (1982) (FindLaw, 1996), as the base legislation inclusive of the Supreme Court's ruling, which extended the 14th Amendment's guarantee of Equal Protection to unsanctioned entry immigrant students. *Plyler* provides a guarantee of equal and full access to benefits of education. Prior to *Plyer*, a school district in Tyler, Texas drafted board policy that attempted to charge undocumented immigrants \$1000 annual tuition as a means to compensate for the loss of state funding (OpenJurist, 2010). Post *Plyler*, school districts can no longer adopt policies that exclude "alien" students.

California's Proposition 187 Save Our State Initiative of 1994 provided the study with public education implications on schooling practices. This initiative was a state initiated statute that intended to deny all undocumented immigrants access to

state funded services, inclusive of public education (Eig, 1999). Moreover, Proposition 187 required school personnel, to collaborate with the U.S. Immigration and Naturalization Service in identifying and removing undocumented students and their families (Eig, 1999). California's 1994 Proposition 187 was a xenophobic measure that also aimed at barring admission to all public state colleges and universities (Yates, 2004).

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 contained various sections that negatively impacted undocumented students. In Section 505, higher education benefits were deemed unattainable for undocumented students on the basis of residence within a state (Public Law 104-208, 1996). Section 506, called for reporting on eligibility for postsecondary federal financial assistance and in section 507, verification of immigration status for purposes of higher educational financial assistance, required institutions to provide copies of documents to the INS for official verification (Public Law 104-208, 1996).

An extreme anti-immigrant law, Alabama's Immigration Law, H.B. 56 in 2011, attempted to obstruct access to public schooling as well as prevented sanctioned-entry immigrants from attending public higher education campuses. H.B. 56 was an undisguised attempt at discrimination as lawful immigrants could have been denied access to enrollment and benefits of financial aid by merely delaying verification of their immigration status (American Civil Liberties Union, 2011). The discriminatory purpose of H.B. 56 was reflected in comments made during one of many public hearings on this bill, where White (2011) quotes an Alabamian stating that "if we are a magnet to draw these people here, we're going to see the burdens on our schools...".

K-16 Guidance in the form of the Dear Colleague Letter from the United States Department of Justice and Department of Education in 2011 outlined school districts' responsibility for the benefit of immigrant students and their families. Moreover, this legal authority emphasized that immigration status is irrelevant to access public education, which is a benefit within the parameters of the Constitution. The literature review/legal authority collection concluded with the Executive Order Deferred Action for Childhood Arrivals, established in 2012. DACA is a step towards educational access for undocumented students as it provides a gateway for increased enrollment and removes the fear of deportation.

Research Design

This analysis of legal authority highlighted laws and policies impacting undocumented students through scaffolding implications on the fabric of our compulsory education system. The chronological timeline and subsequent public policies disclosed the effect of precedents set forth by analogous cases, each in a turn of events culminating with Obama's executive order, DACA. This qualitative analysis of policy and practice issues included proposed law as well as established policy of relief affecting undocumented student populations. Quantitative statistical data was

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used to highlight the immigrant population in our educational system as well as implications on school reform in an era of changing demographics within the context of schooling practices. Rationale for utilizing a historical policy analysis focused on the intent of providing a detailed overview of applicable policy action, in reference to responsibilities impacting the education of immigrant students, with unsanctioned entry.

The historical review began with a revision on the Texas Education Code Section 21.031 that created policy changes during the early part of the 1970's and instituted reform against a specific student population. Plyler v. Doe, as a catalyst for further policy cycles of school reform benefitting the undocumented student population, was studied in terms of its implications on the polity of compulsory school. More specifically, the role of Plyler was examined in terms of student participation, privacy issues that extend to parents, and its moral aspects that mandate the inclusion of undocumented students within the context of public education. Ballot initiatives and other attempts at policy action aimed at circumventing Plyler were examined as failed efforts to bar undocumented students from the public school system. The role of school districts and their staff in regards to undocumented immigrant student populations presented policy action through administrative mandates and educational implications. Deferred Action for Childhood Arrivals, or DACA, provided the most current policy affecting undocumented students who may be products of compulsory K-12 education. DACA is policy that may potentially frame future reform and provide a basis for research in educational implications residing on 20th century developments as steps to promote educational access.

Reform in American compulsory educational system was noted as policy processes were examined through the specific concept framework of policy talk, policy action, and policy implementation (Tyack & Cuban, 1995). A personal, professional and practitioner's experience gained from over fifteen years in the public education system was utilized throughout the research process. A commitment to improving education for underserved populations guided the development of this historical evaluation with the intent of providing a basis for future policy advancement. Rationale for this study was also grounded on a policy climate permeated by a continuity of immigration bills, aimed at curtailing education benefits and introduced in thirty-seven state legislatures (National Conference of State Legislatures, 2011).

Results

The tracking of legal authority affecting undocumented immigrants in our school system was focused on implications in K-12 schooling policies that adhere to policy cycles directly impacting immigrant students. The outcome yielded a comprehensive analysis of federal and state cases, statutes, and school board policy, which exposed derivative implications of policy talk and action aimed at school

reform with direct impact on undocumented students and their families. The data collection and analysis also yielded information on policy for school reform that seemingly aimed to change institutionalized discrimination but failed to eradicate deep social injustice. A specific demographic context was utilized to represent the demography, of undocumented immigrant students in our nation, as encapsulated within the general immigrant population of the United States. The projected K-12 fall enrollment for public school year 2014 was 50,268,000 students (Institute for Education Sciences, 2012). Within this pipeline, only 65,000 undocumented students per school year will graduate high school and only ten to twenty percent within this group will have the opportunity to access higher education. These figures represent the demography of undocumented students in K-12 public school, a marginalized student population in terms of access to higher education at the core of unsettled immigration reform in the United States.

Case Law

This historical policy analysis commenced with the U.S. Supreme Court ruling in *Plyler v. Doe* 457 U.S. 202 (1982). This law specifically impacted K-12 undocumented students in public school settings, as it rendered a ruling with many implications for alien children, for border barriers, for the adoption of school policies, and for federal program requirements. Between June 1982 and prior to September 11, 2011, enrolling undocumented students entailed a clear set of duties and responsibilities on behalf of school districts (Winograd, 2012). Enrollment and educational access was carried out through policy implementation, which incorporated protections for benefits of education impacting undocumented students. Post 9/11, policy talk resurfaced through the expressed possibility of allowing states to deny benefits of a public education to undocumented students.

The country seemingly forgot that, back in July of 1980, a Texas court, specifically the District Court for the Southern District of Texas, determined that “the absolute deprivation of education should trigger strict judicial scrutiny, particularly when the absolute deprivation is the result of complete inability to pay for the desired benefit” (p. 538). The court determined that undocumented students are people and, therefore, their physical presence within the jurisdiction entitles them to equal protection of the law. In 1982, the United States Supreme Court in *Plyler v. Doe*, 457 U.S. 202, issued a historic ruling which, to this day, grants undocumented immigrant students access to a free K-12 public education. In addition, *Plyler* was a catalyst for other changes, such as emphasizing that all public schools adhere to privacy issues on behalf of undocumented students and their families. In other words, public school staff cannot request that students disclose their immigration status nor can they request documentation that may expose a family at any time (Hunter & Howley, 1990). Moreover, in order to preserve democracy of schooling, undocumented students are not required to present a social security number for registration.

Program Participation

As public school students, undocumented children may participate in Bilingual Education as well as the Emergency Immigrant Education Program, and the Transitional Program for Refugee Children (Hunter & Howley, 1990). Undocumented immigrant students also have access to services in Special Education and free or reduced meals through the National School Lunch Program (Hunter & Howley, 1990). Under Plyler, undocumented students must be included in extracurricular activities, such as academic and social clubs, as team building and social skill evolve from participation and are fundamental values addressed under the law (National School Boards Association, 2012). As a result of Plyler v. Doe's educational policy implications through statute, regulation, and/or guidance, immigrant students are guaranteed services such as transportation and access to health centers at individual campuses. Other safeguarded benefits include breakfast programs, school counseling, and any other service essential to receiving a public education.

Attempted Exclusion

In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act included the Gallegly amendment, which sought the reversal of Plyler and would have authorized public K-12 schools to verify the status of students enrolled within the system. Estimated figures show this amendment would have negatively impacted 600, 000 to 700, 000 undocumented students as it aimed to exclude them from our public school system (University of California, Davis, 1996). Noticeable was the lapse in time of policy development between IIRIRA in 1996 and the new millennium, which brought about extreme changes in policy regarding the undocumented population in general. A plausible explanation is that 9/11 promoted the development of policy talk and action through later developments in the 21st century. Post 9/11, the United States began a period characterized by increased suspicion on foreigners in our country, which included undocumented students.

Under a new policy cycle in June 9th, 2011, and in a partial response to the World Trade Center bombing by terrorists, Alabama's state legislature passed HB 56, a controversial immigration bill that allowed public schools to check students' and parents' immigration status. A particular provision of this bill required students to disclose and/or register their immigration status, a violation of the 14th Amendment's Equal Protection clause. This anti-immigrant law also contained language that would bar access to public schooling and prevented sanctioned-entry immigrants from attending public colleges or universities in the state of Alabama. DACA concluded the tracking of legal authority, as this executive order affects the undocumented student population, who are products of our K-12 compulsory educational system. Deferred Action for Childhood Arrivals embodied the

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demographic context of this study and created more policy talk for future policy development. DACA in 2012 and the policy talk of comprehensive immigration reform has impacted immigrants with relief and future educational implications on behalf of thousands of undocumented students present in our country today. These laws, policy, and statutes provide us with a list of explicit responsibility on behalf of immigrant student populations and implicitly in the ethical duty of school districts and their personnel. Current policy talk and action have made the compliance of policy a difficult task, thus, localities and states have continued to make futile attempts to circumvent Plyler. Through policy stratagem, school districts, governing boards, and politicians have attempted instituting measures and enacting unofficial policies that clearly violate the intent of the existing law. This study, probed on the responsibility of schools and the right of the individual student through benefits provided by specific programs. The results of this historical research study could potentially be used as a guide of policy related to undocumented students in our public school system.

Conclusion

It must be noted that as a nation, our school system provides a benefit of education that is considered the most basic factor in achieving success. This study heavily relied on the Tyack and Cuban policy cycle, which was applied to unsettled immigration and its effects on the institution of American education. The study revealed a cycle of policy with scaffolding implications on the structure of our compulsory K-12 education system. Some of the policies included in the study may be modified if substantive bipartisan immigration reform becomes policy action during a future administration. However, in a parallel accordance with Tyack and Cuban's (1995) assertion on educational forecasting, this study may not reflect a cycle of educational reform as the United States is undergoing a major political shift. Nonetheless, a current and trending topic, policy talk on immigration reform will continue to increase the demand for policy action, which will create further confusion on behalf of school districts, while immigrant students, both will remain a protected class within our student population.

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