

2013-01-01

From Plyler To DACA, Policy Guiding Undocumented Students' Rights In A Public Education System And Its Pipeline To Higher Education

L. Guzman-Duvernois

University of Texas at El Paso, lguzman3@miners.utep.edu

Follow this and additional works at: https://digitalcommons.utep.edu/open_etd



Part of the [Educational Administration and Supervision Commons](#)

Recommended Citation

Guzman-Duvernois, L., "From Plyler To DACA, Policy Guiding Undocumented Students' Rights In A Public Education System And Its Pipeline To Higher Education" (2013). *Open Access Theses & Dissertations*. 1833.
https://digitalcommons.utep.edu/open_etd/1833

This is brought to you for free and open access by DigitalCommons@UTEP. It has been accepted for inclusion in Open Access Theses & Dissertations by an authorized administrator of DigitalCommons@UTEP. For more information, please contact lweber@utep.edu.

FROM PLYLER TO DACA, POLICY GUIDING UNDOCUMENTED STUDENTS' RIGHTS
IN A PUBLIC EDUCATION SYSTEM AND ITS PIPELINE TO
HIGHER EDUCATION

LAURA GUZMAN-DuVERNOIS

Department of Educational Leadership and Foundations

APPROVED:

Arturo Pacheco, Ph.D., Chair

Dennis Bixler-Marquez, Ph.D.

Maria Teresa Cortez, Ed.D.

Richard Sorenson, Ed.D.

Benjamin C. Flores, Ph.D.
Dean of the Graduate School

Copyright ©

by

Laura Guzmàn-DuVernois

2013

All rights reserved.

Dedication

I dedicate this dissertation to my family, as they were my support team during my destination to this terminal degree. Thank you for your encouragement and understanding through the endless hours of reading, composing, and editing, even in planes and automobiles. To my two daughters, Gabi and Mimi, you are next and I can't wait to see you walk at your graduations from medical school and college, respectively. Mark, my spouse, cheerleader, and sometimes editor, this is my terminal degree. To my friends and colleagues, thanks for the talks, the listening, the encouragement, and certainly the coffee.

FROM PLYLER TO DACA, POLICY GUIDING UNDOCUMENTED STUDENTS' RIGHTS
IN A PUBLIC EDUCATION SYSTEM AND ITS PIPELINE TO
HIGHER EDUCATION

by

LAURA GUZMAN-DuVERNOIS, M.Ed.

DISSERTATION

Presented to the Faculty of the Graduate School of
The University of Texas at El Paso
in Partial Fulfillment
of the Requirements
for the Degree of

DOCTOR OF EDUCATION

DEPARTMENT OF EDUCATIONAL LEADERSHIP AND FOUNDATIONS
THE UNIVERSITY OF TEXAS AT EL PASO

August 2013

Acknowledgments

I very gratefully acknowledge my advisor, Dr. Pacheco, what can I say, but a humble and enormous thank you. In addition, my other committee members, Dr. Bixler-Marquez, Dr. Cortez, and Dr. Sorenson, thank you for your time, encouragement, and confidence. You have helped to make this an unforgettable experience. I wish to acknowledge my three siblings, Angie, Juan, and Alex who provide their grain of salt to K-12 reform and practice, one day at a time and for student advocacy. To my other brother Frank, I wish to say thanks for the unconditional smiles and friendship.

Abstract

This study was designed to provide a guide and understanding of policy, and/or case law pertinent to undocumented students in our school system. The presentation, a non-traditional format, comprised a historical review of case law, statutes, and other legal authority which discuss the legal rights of undocumented students in the United States' public schools. The primary purpose of this study was to increase the reader's understanding of policy related to the undocumented immigrant student population in our American system of education. The secondary purpose was to examine the different aspects of immigration and other policy that have impacted student access to other programs established by the law. Qualitative research methods were employed to capture the phenomenon embodied in legal authority found in policy action aimed at a marginalized student population within our school system. The Tyack and Cuban framework emphasized policy cycles that include this student population's trials and tribulations as policies implemented often aim at curtailing their participation and access to educational benefits. Approximately 1.8 million students, under age eighteen, are classified as undocumented students (Perez, 2009). Building of a demographic context for this research study revealed a growing public school population due to a large influx of students with immigrant origins. Undocumented immigrant students enjoy the benefit of a K-12 public education, as do their citizen and legal resident counterparts. Conclusions derived from this study highlight frequent disregard and blatant refusal of existing law as well as policy talk that provokes reaction in the American public's ethics and moral principles.

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

Table of Contents

Acknowledgements.....	v
Abstract.....	vi
Table of Contents	xi
List of Tables.....	xi
Chapter 1: Introduction to the Study	1
Introduction	1
Education and Immigration-Background.....	2
1.1 Undocumented Immigrant Students Access to Education-Overview	3
1.2 Texas Statute Revised and Enrollment Denied, circa 1975.....	3
1.3 Supreme Court Ruling-Plyler v. Doe 457 U.S. 202, 1982.....	4
1.4 Deferred Action for Childhood Arrivals (DACA), 2012.....	5
1.5 Implications on Student Rights and School Responsibilities	6
1.6 Statement of the Problem.....	7
Undocumented Students’ Points of Origin and Populations Estimates	13
1.7 Purpose of the Study	13
1.8 Rationale for Methodology	14
1.9 Guiding Questions	15
1.10 Significance of the Study	16
1.11 Nature of the Study	17
1.12 Definition of Terms.....	18
1.13 Assumptions, Limitations, Delimitations	22
1.14 Summary and Organization of the Remainder of the Study	23

Chapter 2: Literature Review and Legal Authority	25
Introduction and Background	26
2.1 Demographic Context	26
2.1.1 Immigrant Student Population in U.S. Schools	26
2.1.2 Undocumented Students in American Compulsory Schooling	27
2.2 Public Schools and Undocumented Students Before and After 9/11	27
2.3 The U.S. Constitution 14 th Amendment.....	28
2.3.1 Due Process and Equal Protection	28
2.4 Plyler v. Doe -1982 United States Supreme Court Decision	28
2.4.1 Background of Legislation.....	28
2.4.2 U.S. District Court for the Eastern District of Texas-September 1977	30
2.4.3 Rule of Law and Issue.....	32
2.4.4 Plyler v. Doe 1982-Factual Summary.....	32
2.4.5 The Court’s Decision and the Dissenters	35
2.4.6 Dissenting Opinion-Four Votes.....	35
2.5 Plyler Implications-The Test of Time	35
2.5.1 Compulsory School’s Polity.....	35
2.5.2 Other Systemic and Secondary Benefits	37
2.5.3 Plyler, Immigration Authority and FERPA.....	38
2.6 California’s Proposition 187 Save Our State Initiative-1994 Ballot	40
2.6.1 Background-SOS Ballot.....	40
2.7 Illegal Immigration Reform and Immigrant Responsibility Act, 1996.....	44
2.7.1 Background of Legislation- Public Law 104-208	44

2.7.2 IIRIRA as Federal Code and Unclear Intent.....	46
2.8 Immigration Law, H.B. 56 Alabama 2011	47
2.8.1 Background- House Bill 56 Alabama.....	48
2.8.2 ACLU Lawsuit Aims to Preserve Benefits of Education	49
2.9 HB 56-A Statement of Behavior Meant to Attack.....	52
2.9.1 Ecology of Fear Post HB 56.....	52
2.10 Dear Colleague Letter	52
2.10.1 K-16 Educational Guidance.....	52
2.11 Deferred Action for Childhood Arrivals Executive Order, 2012	54
2.11.1 What is Deferred Action?	54
2.11.2 Background of DACA Policy	55
2.11.3 DACA and Access to Higher Education.....	56
2.12 Summary, From Plyler to DACA	57
Chapter 3: Methodology.....	59
Introduction.....	60
3.1 Statement of the Problem.....	60
3.2 Guiding Questions	61
3.3 Research Methodology	61
3.3.1 Research Design and Data Collection Procedures.....	63
3.3.2 Population and Demographic Context.....	65
3.3.3 Validity	66
3.4 Data Collection Procedures.....	67
3.5 Data Analysis Procedures	68

3.6 Scope of Study and Limitations	69
3.7 Summary	70
Chapter 4: Data Collection and Analysis	71
Introduction.....	71
4.1 Descriptive Data.....	75
4.2 Data Analysis	82
4.3 Conceptual Framework.....	87
4.4 Results.....	89
4.5 Summary.....	96
Chapter 5: Summary, Conclusions, and Recommendations	98
Introduction.....	98
5.1 Summary of the Study	98
5.2 Summary of Findings and Conclusion.....	100
5.3 Implications.....	105
5.4 Recommendations.....	112
References	114
Appendix A	121
Vita.....	122

List of Tables

Table 1.1. 1975-2012 Policy Action Targeting Undocumented Immigrant Students in U.S. Schools	9
Table 1.2. Number of Immigrant and Immigrants as Percentage of the U.S. Population, 1850 to 2010	12
Table 4.3. Children in Immigrant Families by age 0-1: Demographic Context by State	78
Table 4.4. Number of Bills and Resolutions Introduced in Different States During First Quarter of 20.....	80
Table 4.5. Conceptual Model	88

Chapter 1: Introduction to the Study

Introduction- Undocumented Students in American Public Schools

The purpose of this study was to provide a guide and understanding of policy, and/or case law pertinent to undocumented students in our school system, a legal search and analysis was conducted. The presentation, a non-traditional format, comprised a historical review of case law, statutes, and other legal authority which discuss the legal rights of undocumented students in the United States' public schools. Using an analytic, historical framework from the Tyack and Cuban interpretation of political and institutional analysis (1995), the review of case law and other legal authority was analyzed with regard to implications on school reform on behalf of undocumented immigrant students. Education was defined as a benefit afforded to citizens, rather than a fundamental right within the context of each policy.

The significance of this historical policy analysis was reflected on creating a guideline on the legal rights of undocumented students. Due to a lack of statutes, case law, and legal authority willing to develop a guide, practitioners and the public in general continue to function in a school system that offers few or no guidelines on this topic. Despite the existence of scholarly work on the topic, there continues to be a lack of specific guide that corresponds to K-12 issues and the pipeline to higher education. A thirty-year chronology produced descriptive analysis of the sequential legal authority and exhibited action by school districts regarding the rights of undocumented students in our system of education. Chapter 1 provides background information on education and immigration in our country as well as background history on the trending topic of immigration reform as it pertains to education. A general overview of the studied legal authority was discussed with the intent of creating a historical view of events within the realm of legal authority as applied to a specific demographic context of our student population.

1.1 Education and Immigration-Background

Historically, immigration reform and its policy talk evoke strong feelings that keep the media and public attention off the educational arena. Immigration deeply permeates the American dream and jostles school reform through sluggish development and action in education policy. School districts across our nation and their respective administrators are faced with geographical mobility trends with a continued influx of immigrant students and their families, thus continuing a cycle of hope, perseverance, and policy. Concurrently, American compulsory, public education has evolved into a variety of cumulative layers of accomplishment while new generations of immigrants impact our schools and diversify the once traditional classroom.

Current issues on immigration barely touch on education as a fundamental benefit, yet, policy talk about schooling and its governing operations continues to occur and dominate public discourse. Meanwhile, the inpouring of immigrant students continues and their school enrollment prevails as has the Supreme Court's 1982 ruling, which guarantees public school attendance (FindLaw, 1996), regardless of a student's immigration status.

The topic of undocumented persons and/or immigration reform in our country is a recurring and often trending issue in the media, and as such, maintains forerunner status to ongoing policy talk. Contrary to the recurring media coverage, debate, and often public opposition, statutes and/or case law, pertinent to undocumented students and their rights in our school system, has sustained minor changes since 1982. Nonetheless, access to a public education is a guarantee of our compulsory system of education and school staff and administrators must legitimize and acknowledge this benefit without penalty due to a student's country of origin and/or residency status. Administrators, educators, parents, students, and the public in general must have thorough understanding of the legal authority, or policy, regarding

the rights of undocumented students. This student population is currently present in K-16 campuses across our nation.

1.2 Undocumented Immigrant Students Access to Education-Overview

Texas Statute Revised and Enrollment Denied, circa 1975

In May of 1975, the Texas legislature revised the state's education laws, and consequently, Texas public schools ceased receiving funds for immigrant students with illegal status through unsanctioned entry (Legal Information Institute, 1992). In addition, the revised law authorized school districts and their officials to deny enrollment, within their public schools, to students not legally admitted and residing in the country. This type of reform aimed at a basic institutional change, but failed to eradicate a deep social injustice (Tyack & Cuban, 1995).

Texas Education Code Section 21.031, as revised in 1975, gave school districts the authorization to deny a free, public education based on a financial measure that targeted a disadvantaged student population. A minimal revision on a statute yielded monetary benefits, from the Texas Available School Fund, exclusively for those students who met the eligibility age limitation criteria. In order to meet eligibility, a student must be over 5 years and under the age of 21 by September 1st on any school year, be an American citizen or otherwise have gained lawful entry to the country (McGowan, 2011).

Local tuition policy implemented at Tyler ISD, 1977. In response to the Texas Education Code Section 21.031 and the loss of funding from the state, Tyler Independent School District created policy which required undocumented students to pay \$1000.00 annual tuition (Hood, 2007). Access to a free and public education was reduced to a benefit for eligible students, who met criteria within the context of a statute. Undocumented students, residing in the country, were subjected to exclusion. School administrators from Tyler ISD became the actors

carrying out reform through instituted tuition policy with political origins aimed at undocumented immigrants. This type of policy action or adoption reform (Tyack & Cuban, 1995) violated student rights under the 14th Amendment's Equal Protection Clause, which has the goal to abolish governmental barriers that present unreasonable obstacles to advancement on the basis of individual merit (FindLaw, 2012).

1.3 Supreme Court Ruling-Plyler v. Doe 457 U.S. 202, 1982

A challenge to the tuition policy imposed by Tyler Independent School District resulted in a lawsuit by undocumented school-aged children and consequently a Supreme Court ruling that granted access to a free public school education as guaranteed to U.S. citizens and permanent residents (FindLaw, 1996). One can ask if the Tyack and Cuban's policy cycle metaphor was embodied in this cyclical fashion, where progress was curtailed and solutions impeded true reform. While the Supreme Court's main goal was to prevent the deprivation of education and illiteracy, potential implications of this ruling extended far beyond into society as depicted by the Court's statement found in the case brief (FindLaw, 1996):

The inability to read and write will handicap the individual deprived of a basic education each and every day of his life. The inestimable toll of that deprivation on the social, economic, intellectual, and psychological well-being of the individual, and the obstacle it poses to individual achievement, make it most difficult to reconcile the cost or the principle of a status-based denial of basic education with the framework of equality embodied in the Equal Protection Clause. (II)

In addition to the guarantee of equal educational benefits for undocumented students, Plyler v. Doe instituted specific restrictions for public school districts and their personnel when working with immigrant students.

1.4 Deferred Action for Childhood Arrivals (DACA), 2012

Thirty years after *Plyler v. Doe*, our educational system and society in general continue living the implications of an unresolved immigration issue, which now also affect higher education access and participation, despite our K-12 compulsory education system. In conjunction with *Plyler's* thirty years of policy implementation, 2012 represented a potential electoral change, and as such, policy talk and public attention shifted to continue the cycle. Through Deferred Action for Childhood Arrivals, or DACA, there now exists an opportunity to defer removal action of certain individuals as an act of prosecutorial discretion, as deferred action is a discretionary determination. Although it has no statutory basis, deferred action policy is established as a form of relief for immigrants (Vaughan, 2012). It must be noted that DACA does not provide amnesty relief and that it is a temporary measure, which may be revoked at any time. DACA does not provide a path to legal immigration. However, it provides access to an Employment Authorization Document or EAD (Immigration Policy Center, 2012). In terms of implications on immigrants' education, participation and access, DACA recipients may be eligible for reduced tuition, or other state benefits, depending on the law of their respective state of residence (Immigration Policy Center, 2012). The announcement of DACA occurred three decades after *Plyler v. Doe's* historical 20th century ruling that revamped the American system of education and contributed to school reform in an era of changing demographics.

Is this an allegory to the policy cycle? Politicians continue to strategize in the art of policy, as they create structures that establish codes (Geertz, 1973) and thousands of undocumented immigrant students continue to be caught in proceedings of legislative stratagem. Meanwhile, undocumented students and quality graduates of public K-12 education continue to

go unnoticed, in terms of their latent potential, as they are limited to entering the pipeline of DACA recipients.

1.5 Implications on Student Rights and School Responsibilities

The U.S. Supreme Court ruled in *Plyler v. Doe* 457 U.S. 202 (1982) that undocumented immigrant students could not be denied free access to public schools. Explicit implications of this ruling declare that undocumented students have benefits as guaranteed by the protection afforded through the Equal Protection Clause of the Fourteenth Amendment. Implicitly, these benefits were previously interpreted as an exclusive right for students who are citizens or permanent, legal residents. The decision rendered a specific ruling with many implications for “alien” children, for border barriers, for the adoption of school policies, and also for federal program requirements, including lunch programs.

Perhaps most importantly, *Plyler* established implications for delineating the duties and responsibilities of school staff and immigrant students themselves, who are obligated to attend school under our compulsory law. Implications on behalf of school districts across our nation must clearly allow access to immigrant students, regardless of their points of origin, settlement patterns or varied socioeconomics. In the long run, and within yet another policy cycle, undocumented students will provide a multitudinous assemblage for data assortment. A certification of skills, from compulsory K-12, will create a bottom line of statistics that discounts their individual potential and access to higher education will continue to be an elusive dream, for most undocumented students.

1.6 Statement of the Problem

The problem addressed through this comprehensive study of policy, embodied by law, statutes, and inclusive of special collections of papers and other authority, elucidated the legal

basis delineating the duties and responsibilities of our national public school system on behalf of undocumented immigrant student populations. Other derivative policy aimed at legal immigrant students was studied as derivative implications of policy action aimed at school reform. As national reports and the media use incidents of public school academic failure to docu-soap the struggle of public education policy, immigrant students' rightful access to adequate education, and/or supplemental services under federal mandate, may or may not be adequately provided due to school districts' improper training on the rights of this protected class. A comprehensive analysis of federal and state cases as well as statutes, and school board policies, was utilized to disclose the existing legal authority for providing the benefits of education to undocumented immigrant students within our national public school system. The inherent nature of validity embedded within this type of policy action account relied on a qualitative research approach (Maxwell, 1992). In this case, it examined the existence of such legal authority and/or policy as it has continued to be challenged since Plyler became law. Moreover, the responsibilities of school districts across our public system of education were delineated to clarify legal and ethical obligations grounded on the law. Benefits of public education, such as extracurricular activities and other services must be highlighted to fill the gap in literature and information regarding the education of undocumented students. The National School Boards Association (2012) makes clear distinction of our school system's educational programs and access grounded on policy:

Public schools should provide equitable access and ensure that all students
Have the knowledge and skills to succeed as contributing members of a
rapidly changing, global society, regardless of factors such as race, gender,
sexual orientation, ethnic background, English proficiency, immigration
status, socioeconomic status, or disability. (Article IV, Section 1.2).

The 20th century witnessed the passing of educational laws which revamped the American system of education and contributed to school reform in an era of changing demographics in a widespread influx of immigration, both legal and unsanctioned. In *Plyler v. Doe*, 457 U.S. 202, (1982), the U. S. Supreme Court issued a historic ruling, which grants undocumented immigrant students access to a free K-12 public education. While this law affects K-12 settings, its significance in regards to higher education resides in the court's rendering, as it provides rationality that touts education as part of the national democratic fabric through compulsory schooling. This results in explicit responsibility on behalf of immigrant student populations and implicitly in the ethical duty of school districts and their personnel. This duality of roles can be described from a qualitative analysis perspective, which derives at descriptive validity as the resulting inference is complex (Maxwell, 1992). As the immigrant population grew by approximately 17 million people between the years 1970 to 1989, the decade of the 1990's saw an influx of 14 to 16 million immigrants, while the beginning of the millennium has seen a steady increase of a million foreign-born people per year (Capps et al, 2005). Immigration to the United States continues to be surrounded by idealism and has permeated the American public schooling experience, evoking mixed feelings on human rights, as perceived or adjudicated by law. Indeed, idealism interjects the public policy arena while legislative policy implicates the duties and responsibilities of school districts and their personnel. A lack of information on legal authority pertinent to undocumented immigrant students and their rights in our public school system has led to frequent disregard and blatant refusal of existing law. Therefore, a thirty-year chronology with ideational intent, for the reader, produced a descriptive analysis of the sequential legal authority, and exhibited action by school districts and their personnel regarding these mandates (Maxwell, 1992).

Since the 1970's, the influx of foreign born students has steadily continued. Thirteen years into the 21st century and school districts across our nation must continue to provide equal access to education for all students, regardless of immigrant status. This presents a challenge as concrete information of legal authority of responsibility may or may not be readily accessible to public school personnel. Thirty years have passed since Plyler became law, and changing demographics in our nation continue to diversify the American classroom. As resource implications have made the compliance of policy a difficult task, localities and even states, have made 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 as documented in the following table of three decades of policy action:

Table 1.1

<i>1975-2012 Policy Action Targeting Undocumented Immigrant Students in U.S. Schools¹</i>	
<i>Searching for Policy Action: Legal Issues and Resulting Implications</i>	
Policy Action	Purpose and *Result
Statute Revised- Texas Education Code 1975 [Section] 21.031	To prohibit the spending of state funds on students who were not U.S. citizens or legally admitted to this country... *Loss of funding and authorization to public school districts to deny enrollment in their public schools to students not legally admitted and residing in the country. Tyler ISD ignored the law and continued to enroll students of illegal immigrant status (FindLaw, 1996).
Tyler Independent School District- Board of Trustees Policy July 1977	To implement local district policy aimed at generating revenue through tuition for immigrant students- with illegal status-(school finance reform that covered the loss of funding from TEA)... *Access to a free and public education was reduced to a benefit for eligible students, who met criteria within the context of a statute. Undocumented students, residing in the country, were subjected to exclusion in a violation of the 14th Amendment (McGowan, 2011).

<p>Preliminary Injunction by Judge Justice Doe v. Plyler September 1977</p>	<p>To challenge constitutionality of a portion of the Texas Education Code by seeking authorization for enrolling undocumented students that the state would not reimburse for daily attendance... *Preliminary injunction resulted in directing Tyler schools to admit all children living in the district, regardless of immigration status. Judge also ordered the TEA to release state funds to the Tyler ISD for each undocumented child (Hood, 2007).</p>
<p>Final Ruling Doe, Roe, Boe, and Loe v. Plyler ISD September 1978</p>	<p>To prevent the Texas Ed. Agency from using immigrant children to deal with longstanding problems caused by a school finance system based on property taxes... *Undocumented immigrant students in Tyler, Texas were explicitly afforded judicial protection under the 14th Amendment’s Equal protection clause of the Constitution- resulting in immediate appeal to Fifth Circuit- (Hood, 2007).</p>
<p>In re: Alien Children Litigation 628 F.2d 448, 1980</p>	<p>To take the issue of denied enrollment in a statewide fashion while raising larger issues about federal immigration law through the history and context of the state of Texas as influence on labor and migration patterns *Concluded that Section 21.031 of the Texas Education Code was unconstitutional and Texas Education Code was amended to protect the Mexican American population along the border (Hilkin, 2010).</p>
<p>Plyler v. Doe No. 80-1538 U.S. Court of Appeals, Fifth Circuit Decided: June 15, 1982</p>	<p>To ensure equal access to education for children regardless of immigrant status... *Court held that if states provide a free public education to U.S. citizens and lawful residents, they cannot deny such an education to undocumented children without “showing that it furthers some substantial state interest (FindLaw, 1996).</p>
<p>Proposition 187 (SOS) Save Our State Initiative California 1994</p>	<p>To enact an absolute ban on undocumented immigrant students from public school benefits and other services *Voters passed the proposed law as a referendum. Consequently, the law was challenged in a legal suit and found unconstitutional by a federal court (Martin, 1995).</p>
<p>Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) Public Law 104-208, [Section] 505, 506, 1996</p>	<p>To strengthen and streamline U.S. immigration laws... *Effective after 7-1-1998, notwithstanding any other provision of law, undocumented immigrant students shall not be eligible, on the basis of residence within a State, for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (Chang, 2011).</p>

<p>District Directive Elmwood Park Community Unity School District #401, Elmwood Park, Illinois 2006</p>	<p>To circumvent Plyler by denying enrollment to a student who had overstayed the tourist visa on which he had entered the country... *School District ultimately permitted the student to enroll, after the Illinois State Board of Education threatened to withhold funding (Immigration Policy Center, 2012).</p>
<p>Immigration Law, H.B. 56 Alabama 2011</p>	<p>To affect every aspect of an unauthorized immigrant’s daily life, from employment to housing to transportation to entering into and enforcing contracts to going to school... *A federal appellate court subsequently blocked implementation of the provision pending resolution of an appeal (Immigration Policy Center, 2012).</p>
<p>Joint “Dear Colleague Letter” Civil Right Division U.S. Departments of Education and Justice December 2, 2011</p>	<p>To remind public school districts not to discourage the participation, or exclude students based on their or their parents’ or guardians’ actual or perceived citizenship or immigration status *Letter was distributed nationally to remind public school districts of their Federal obligation to provide equal educational opportunities to all children residing within their district(s). Assistance was also offered to ensure compliance with the law (Office for Civil Rights, 2011).</p>
<p>Deferred Action for Childhood Arrivals (DACA) Policy 2012</p>	<p>To implement the discretionary determination to defer removal action of individuals as an act of prosecutorial discretion... * Individuals under 31, as of June 15, 2012 are eligible to obtain employment authorization and, under limited circumstances are eligible for reduced tuition, or other state benefits, depending on the law of their respective state of residence (Immigration Policy Center, 2012).</p>

¹In the three decades since the Plyler ruling was issued, states and localities have attempted to or passed numerous measures and adopted other unofficial policies that violate the policy action if not the letter of the decision.

It is necessary to illustrate the general demographic context of the immigrant population, as it has impacted demographics in schools. As our school system continues to diversify and transform through implications of immigration policy the lack of accessible guideline on this topic remains a fact. Policy action in public schooling extends beyond a population increase as implementation occurs through local district administrative actions that may intersect their own private choice.

Table 1.2

<i>Number of Immigrants² and Immigrants as Percentage of the U.S. Population, 1850 to 2010</i>		
<i>Searching for Immigrant Population Statistics: Demographic Context</i>		
Year	Number of immigrants	Immigrants as a percentage of the U.S. population
1850	2,244,602	9.7
1860	4,138,697	13.2
1870	5,567,229	14.4
1880	6,679,943	13.3
1890	9,249,547	14.8
1900	10,341,276	13.6
1910	13,515,886	14.7
1920	13,920,692	13.2
1930	14,204,149	11.6
1940	11,594,896	8.8
1950	10,347,395	6.9
1960	9,738,091	5.4
1970	9,619,302	4.7
1980	14,079,906	6.2
1990	19,767,316	7.9
2000	31,107,889	11.1
2010	39,955,854	12.9

²The term "immigrants" refers to people residing in the United States who were not US citizens at birth. This population includes naturalized citizens, lawful permanent residents, certain legal non-immigrants (e.g., persons on student or work visas), those admitted under refugee or asylee status, and persons illegally residing in the U.S.

Source: The 2010 data are from the US Census Bureau's American Community Survey, the 2000 data are from Decennial Census 2000 (see www.census.gov). All other data are from Gibson,

Campbell and Emily Lennon, US Census Bureau, Working Paper No. 29, Historical Census Statistics on the Foreign-Born Population of the United States: 1850 to 1990, US Government Printing Office, Washington, DC, 1999 (Migration Policy Institute, 2012)

Undocumented Students' Points of Origin and Population Estimates

According to the Immigration Policy Center (2008), undocumented school-aged students account for 1.8 million immigrants currently living in the country. That figure is 15% of approximately 12 million undocumented immigrants currently living in the United States. About 56% of all undocumented immigrants are of Mexican origin and 22% from other Latin American countries. Asians comprise 13% and 6% of all undocumented immigrants are from Europe and Canada. Only 3% are from Africa and other regions of the world.

1.7 Purpose of the Study

The primary purpose of this study was to increase the reader's understanding of policy related to the undocumented immigrant student population as it has revamped the American system of education. This legal authority or policy through implanted guidelines has also contributed to school reform in an era of changing demographics throughout our nation. Policy action, in terms of legal provisions and/or milestones, is a reflection of practice. Therefore, policy created at the federal level affects state law, which has direct implications on the integration of students born in and out of the United States, through local policy action in a cycle that is asynchronous. By providing a systemic review of relevant cases, beginning with *Plyler v. Doe*, 457 U.S. 202, (1982) (FindLaw, 1996) and developing a timeline composed of three decades of milestones and other rulings, this study revealed a cycle of policy and its scaffolding implications on the structure of our compulsory education system. The secondary purpose was to examine the different aspects of immigration and other policy that have impacted student access to other programs established by the law. As the nation's classrooms continue to expand their

student populations, with a continuous influx of immigrant students in a system undergoing reform, excellence of education often discounts the uneven levels of equality as imposed by conflicting immigration policy. Our American compulsory system of education is responsible for providing all students with the assemblage of accouterments necessary to articulate and comprehend democracy through multiple venues in multicultural and structural literacies in a 21st century of global modes and without restrictive geographical borders. The fundamental basis for this proposed study was to focus attention on legal authority and policy as well as the reciprocal role of school districts and their personnel, on the education of undocumented immigrant and within the context of public schooling in the uphill race for progress. The purpose of this qualitative research was to understand and explain the phenomenon of educational implications stemming from legal authority, or guidelines, aimed at immigrant students with unsanctioned entry, through a context of three decades overlapping into the 21st century.

1.8 Rationale for Methodology

Rationale for this study was 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). It is necessary for school districts and their personnel to thoroughly understand the passing of education laws and other legal provisions stemming from the 20th century. The rationale for this historical evaluation involved the recognition of an unresolved immigration issue, which affects our current K-12 compulsory education system and restricts access to higher education.

The general and focused intent of this qualitative study was to provide a detailed overview of applicable policy action, in reference to responsibilities concerning the education of immigrant students, with unsanctioned entry, in a compulsory K-12 system. Access to higher

education was discussed through policy currently implemented in the new millennium. Due to the tragedy of 9/11, policy talk on immigration increased throughout our country, and the nation's lawmakers continue to be faced with public demands on the issue of immigrant students' education. Inherent to the evoked conflicting feelings on immigration, this policy talk has created confusion on behalf of school districts' and existing policies affecting undocumented immigrant students as a protected class and student population.

Public schools in our American compulsory system of education provided the site for this historical policy analysis and the undocumented student population became the focus of study participants for this historical policy analysis. The rationale for the selection of this demographic context was based on the need to disclose existing legal authority for providing benefits of education to undocumented immigrant students within our national public school system.

1.9 Guiding Questions

School reformists in the 21st century have established new aggregate levels in schooling acquisition for both immigrant and American students within a wide spectrum of socioeconomic status. The passage of law and policy as action meant to prevent marginalization of undocumented immigrant students, coupled with the reciprocal role of our school system as the venue towards progress in a democratic society, will guide the probing questions within this study and analysis of policy analysis. Inherent to the study, the guiding questions will probe the responsibility of schools and the right of the individual student through benefits provided by specific programs. The following questions were inclusive in this policy analysis study:

1. How did a revision on Texas Education Code Section 21.031 create policy changes during the early part of the 1970's and was this type of reform a notion of progress?

2. How was Plyler v. Doe a catalyst for further policy cycles of school reform on behalf of undocumented, student populations and how did it preserve democracy in schooling?
3. How have states and school entities across our nation tried to circumvent Plyler since the 1970's to the present?
4. What is the role of school districts in regards to undocumented immigrant student populations and what are the established policies, or benefits, established for this student population in our school system?
5. How is Deferred Action for Childhood Arrivals or DACA a step towards educational access for undocumented students who are products of compulsory K-12 education?
6. How does the Tyack and Cuban framework of policy cycles apply to the historical analysis of policies aimed at undocumented student(s) participation and access to education and its benefits?

1.10 Significance of the Study

As our public school system continues to diversify and transform through implications of immigration, there continues to be a lack of accessible guideline the topic of educating undocumented immigrant students. Therefore, the significance of this research study was to understand and explain the phenomenon of educational implications stemming from legal authority, or guidelines, aimed at immigrant students with unsanctioned entry, through a context of three decades overlapping into the 21st century. This research study is also relevant as it illustrated the general demographic context of the immigrant population and its impact on demographics in schools. Moreover, this research study fills the need to increase the reader's understanding of policy related to the undocumented immigrant student population as it has revamped specific policy in the American system of education. Another aspect of significance

involved the examination of the different aspects of immigration policy that have impacted undocumented student access to other programs established by the law.

While our country currently faces unsettled immigration reform and unknown impending change, it is necessary for school districts and their personnel to thoroughly understand the passing of education laws and other legal provisions stemming from the 20th century. Significance of this historical evaluation involved the recognition of an unresolved immigration issue, which affects our current K-12 compulsory education system and restricts access to higher education. The need for this type of study is significant because our school system will continue to diversify as implications of immigration policy become policy action and the lack of accessible guideline(s) on this topic remains a fact. Policy action in public schooling extends beyond a population increase as implementation occurs through local district administrative actions that may intersect private choice under a climate of impending immigration reform.

Using an analytic, historical framework from the Tyack and Cuban (1995) interpretation of political and institutional analysis, the review of case law and other legal authority was analyzed to create significance with regard to implications on school reform. Education was defined as a benefit within the context of each policy.

1.11 Nature of the Study

This study employed qualitative research methods to capture the phenomenon embodied in legal authority, and/or guidelines, found in policy action aimed at the undocumented student population within our school system. . This research study was conducted through location and analysis of specific policy, which included original documents relevant and pertinent to compulsory, public education in a K-12 American setting and in a span of a thirty year time line. The Tyack and Cuban framework was utilized to emphasize policy cycles that included this

student population's trials and tribulations as policies implemented often aimed at curtailing their participation and access to educational benefits. The results of this research study could potentially be used guide and understand policy related to undocumented students in our public school system. Moreover, the resulting guide based on the research study provides information to public school administrators and staff on their responsibilities necessary to implement policy regarding the undocumented student population.

The research approach utilized in this historical trajectory began by researching the demographic context of the immigrant student population in American schools through a search of immigrant children and their families. Quantitative data was also provided in tables as well as a written summary. By providing a clear and specific demographic context for the population studied in this policy analysis, the public school system's responsibility for protecting the educational benefits of approximately 1.8 million undocumented students under the age of eighteen (Perez, 2009) was emphasized. The tracking of legal authority or policy focused on implications in K-12 schooling policies that adhere to a policy cycle.

1.12 Definition of Terms

Alien

Someone who is not a naturalized citizen of the country in which they reside; a foreign national (McFadyen, 2013)

Backward Mapping

An approach to policy implementation analysis, which begins at the last possible stage of the implementation process, where administrative actions intersect with personal and private choice, thus making policy implementation a statement of behavior rather than a statement of intent (Elmore, 1979)

Bill

Draft of a proposed law presented to the legislature for consideration (National Conference of State Legislatures, 2011)

Code

A code is a subject arrangement of general statutes of a permanent nature currently in force for a specific jurisdiction. Codes are sets of rules that tell us if our behavior is legal or illegal (The Law Library of Congress, 2012)

Deferred Action

A discretionary determination aimed at prosecutorial discretion. In this study it will refer to deferred removal action of undocumented immigrant students who arrived in the United States in their childhood years as specified by criteria (Vaughn, 2012)

Deferred Action for Childhood Arrivals (DACA)

A policy directive impacting an estimated 1.76 million undocumented immigrants under 31 years of age. Eligible and qualified immigrants potentially receive benefits that include protection from deportation for up to two years (renewable), authorization to work legally, travel abroad for employment, education, or otherwise humanitarian purposes, and depending on the state, access to obtaining a driver's license and access to in-state tuition in higher education institutions (Vaughn, 2012)

FERPA

Family Educational Rights and Privacy Act

Fourteenth Amendment of the Constitution

Says in part, "No State shall ... deny to any person within its jurisdiction the equal protection of the laws." (FindLaw, 2012)

Independent School District (ISD)

Public school districts are referred to as Independent School Districts or ISD's in the state of Texas

Illegal Immigration Reform and Immigrant Responsibility Act of 1996 or IIRIRA

Its enactment resulted in significant changes to existing U.S. immigration laws. Although IIRIRA was promoted as an illegal immigration bill, its provisions have had a serious impact on legal immigration

Hispanic

See Latino below- Interchangeably used with the term Latino in this study

INS

United States Immigration and Naturalization Service

Latino

Persons with origin in the countries of Latin America and the Iberian peninsula consisting of Spain and Portugal and in general all persons in the United States who self-identify as Hispanic or Latino; they may be of any race

Legal Authority

Guidelines or policy implemented in our American compulsory educational system

Paperwork Reduction Act or PRA

A federal law passed in 1980 that gave authority over the collection of certain information to the Office of Management and Budget (OMB).

Policy Action

The adoption of reforms-through state legislation, school board regulations, or decisions by other authorities (Tyack & Cuban, 1995)

Policy Cycle

A metaphor in reference to reform proposals that keep recycling as innovators reinvent them while inducing a feeling of general futility because the cycle returns to the same place (Tyack & Cuban, 1995)

Policy Implementation

Actual implementation of planned change in schools, with implications or practice (Tyack & Cuban, 1995)

Policy Talk

The diagnoses of problems and advocacy of solutions (Tyack & Cuban, 1995)

Public Education

A benefit afforded to citizens, legal residents and unsanctioned-entry immigrants within the context of policy and law and not defined as a fundamental right for student populations

Texas Education Code § 21.031

Provides: All children who are citizens of the United States or legally admitted aliens and who are over the age of five years and under the age of 21 years on the first day of September of any scholastic year shall be entitled to the benefits of the Available School Fund for that year (OpenJurist, 2010)

Statute

Statute is a rule passed into law (or acts) by the federal government or state legislatures. These legislative acts become law with or without the approval of the President (The Law Library of Congress, 2012)

Unsanctioned Entry

Entry to the United States without explicit or official permission; considered a crime and subject to deportation

1.13 Assumptions, Limitations, Delimitations

The following assumptions were present in this study:

1. It is assumed immigration reform and its policy talk evoke strong feelings that keep the media and public attention off the educational arena while immigration permeates the American dream and jostles school reform through sluggish development and action in education policy. Continued public coverage on immigration occurs daily through a variety of media. Immigration effects and policy implications on school reform are rarely publicized unless the topic directly involves funding or accountability. The legal basis delineating the duties and responsibilities of our national public school system on behalf of undocumented immigrant student populations is never a trending issue in the media, unless it is to highlight the anniversary of specific law.
2. It is assumed that this historical study is an accurate representation of the current situation in our public school system. Access to a public education is a guarantee of our compulsory system of education and school staff and administrators must legitimize and acknowledge this benefit without penalty due to a student's country of origin and/or residency status.

The following limitations were present in this study:

1. The use of specifically selected law, statutes, court cases, and school policies related to the education and in reference to undocumented immigrant student populations. Some of the policies included in the study may be modified post immigration reform if reform actually goes past the policy talk stage. In accordance with Tyack and Cuban's (1995) assertion on educational forecasting, this study may not reflect a cycle of educational reform during major political shifts. Conclusions for this study will be based on the body of policy analyzed.

1.14 Summary and Organization of the Remainder of the Study

Chapter 1 provided a legal search and analysis conducted through a historical review of case law, statutes, and other legal authority which discuss the legal rights of undocumented students in the United States' public schools. Using an analytic, historical framework from the Tyack and Cuban interpretation of political and institutional analysis (1995), the review of case law and other legal authority was analyzed with regard to implications on school reform and presented in a non-traditional format. In summary, the U.S. Supreme Court ruled in *Plyler v. Doe* 457 U.S. 202 (1982) that undocumented immigrant students could not be denied free access to public schools. This law affects K-12 settings and has significance in regards to higher education resides in the court's rendering, as it provides rationality that touts education as part of the national democratic fabric through compulsory schooling. This results in explicit responsibility on behalf of immigrant student populations and implicitly in the ethical duty of school districts' personnel.

A comprehensive analysis of federal and state cases as well as statutes, and other policies, was necessary to disclose the existing legal authority for providing the benefits of education to

undocumented immigrant students enrolled in our national public school system. In Chapter 1, it was necessary to illustrate the general demographic context of the immigrant population, as it has impacted demographics in schools. As our school system continues to diversify and transform through implications of immigration policy the lack of accessible guideline on this topic remains a fact. The demographic context in the study reflects the presence of children of immigrants as one in four of all school-aged children in the first decade of the new millennium (Fix & Capps, 2005). Moreover, this heterogeneous school population currently represents ten million public school students enrolled in our public system of education and the number is expected to continue growing to a projected twenty eight million by the year 2050 (Fry & Gonzalez, 2008).

Chapter 2 presents a review of current research on the centrality of the dissertation literature review and legal authority in research preparation. Chapter 3 describes the methodology, research design, and procedures for this policy analysis. Chapter 4 details how the legal authority and/or data were analyzed and provides a written summary of the results. Chapter 5 is an interpretation and discussion of the results as it relates to the existing body of legal authority research related to the educational benefits of undocumented students in our public school system.

Chapter 2: Literature Review and Legal Authority

Introduction and Background

The benefit of public education is grounded in the United States Constitution's fourteenth amendment and its equal protection clause, which through *Plyler v. Doe*, guarantees a free and compulsory schooling to all populations, whether citizens of the United States, legally admitted aliens, or students with unsanctioned entry status. As a country, the United States has restricted immigration since the late 19th century. The 20th century witnessed the law's establishment of democracy in education for all students enrolled in our compulsory system, while the new millennium continues to witness the struggle of unsettled immigration reform, which includes access and participation for the undocumented student population. The current influx of immigrant student enrollment in our public school system provokes debate as demographics change across the nation. A national climate of policy talk on immigration reform represses undocumented students' inclusion into the mainstream of our society within a construct of legal restrictions. Meanwhile, the 21st century demands a democratic education for all students enrolled in our public school system notwithstanding of the national geopolitical response to the issues surrounding immigration reform.

Our educational institutions must be blind to the broken immigration system and carry through their mission of providing quality public education. In the role of public servants, school personnel must implement policy that promotes advocacy towards students without concern to national immigration issues or influence of personal choice. Scholarly literature on unsanctioned-entry immigrant students in the 21st century is scarce in terms of quantity and depth of studies. The same scarcity is found in both the range of legal authority or policy pertinent to undocumented students in the public school system and the limited number of guides available to

those responsible for implementing such policies. According to scholarly literature, we continue to have significant gaps on the actual educational attainment of undocumented children after the Supreme Court's decision in 1982, which integrated this student population in our public school system (Kohli, 2008). Undocumented students, their benefits of education, and their rights as students in our school system is a topic of cultural diversity, which reverberates in our nation's changing demographics and educational needs in a democratic, 21st century society. A personal commitment to improving education for underserved populations guided the development of this historical evaluation with the intent of providing a basis for future policy analysis and potential advancement.

2.1 Demographic Context

2.1.1 Immigrant Student Population in U.S. Schools

Our public school population is growing through a large influx of students with immigrant origins. This change in student demography began in the early 1970's when Latino immigrant students comprised approximately six percent of the total student population (Fix & Capps, 2005). The presence of children of immigrants steadily grew to a solid one in four of all school-aged children in the first decade of the new millennium (Fix & Capps, 2005). This new heterogeneous school population currently represents ten million public school students enrolled in our compulsory system of education and the number is expected to continue growing to a projected twenty eight million by the year 2050 (Fry & Gonzalez, 2008). Latino immigrant students are classified under the indicator of Hispanics and they represent about fifty eight percent of all immigrant youth in the United States.

2.1.2 Undocumented Students in American Compulsory Schooling

Approximately 1.8 million students, under age eighteen, are classified as immigrants with unsanctioned entry or undocumented students (Perez, 2009). Undocumented immigrant students enjoy the benefit of a K-12 public education, as do their citizen and legal resident counterparts. Compulsory schooling provides them with knowledge and skills, venues for socialization with other peers, access to affordable meals, and most of all infuses their aspirations to a better future in a country that has given them identity. Nonetheless, this student population faces daily trials and tribulations as policies implemented often aim at curtailing their participation and access to educational benefits.

The K-12 public school system in the country is currently responsible for protecting the educational benefits of approximately 1.8 million undocumented students under the age of eighteen (Perez, 2009). By comparison, the projected fall enrollment for school year 2014 in public K-12 schools is 50,268,000 overall students across the United States (Institute for Education Sciences, 2012). In the pipeline to high school graduation, rates are limited to approximately 65,000 undocumented students per school year and only ten to twenty percent within this group have the opportunity to access higher education. Although these figures represent the current demography of our unsanctioned-entry immigrant student population, they also reflect marginalized students at the core of unsettled immigration reform in the 21st century.

2.2 Public Schools and Undocumented Students Before and After 9/11

After June 1982 and prior to September 11, 2001 educating undocumented students was a clear responsibility of school districts across our nation (Winograd, 2012) through both legal and educational aspects that together, incorporate protections for educational benefits to unsanctioned entry immigrant students. Applicable laws can translate to confusion of

responsibility on behalf of public school districts, who must implement policy while protecting the legal rights and benefits of undocumented student populations. Post 9/11, policy talk has once again emerged expressing the possibilities of allowing states to deny benefits of a public education to all and any undocumented student. The policy cycle seems to have turned full circle to the early years prior to *Plyler v. Doe*. According to scholar Michael Olivas (2012), thirty years after *Plyler* became the law for public education benefits of undocumented students, it continues to suffer from implementation issues and requires repeated and additional litigation as well as administrative vigilance to enforce the ruling.

2.3 The U.S. Constitution 14th Amendment

2.3.1 Due Process and Equal Protection

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (Section I).

2.4 Plyler v. Doe -1982 United States Supreme Court Decision

2.4.1 Background of Legislation

Plyler v. Doe is a case in which the United States Supreme Court struck down a Texas statute denying funding for education to undocumented immigrant students and therefore, banning access to elementary and secondary public schools. Simultaneously, *Plyler* struck down a 1975 Tyler, Texas school district's board policy that attempted to charge illegal immigrants a tuition fee of \$1,000, per school year, for each illegal immigrant student as a means to

compensate for the lost state funding (OpenJurist, 2010). Texas Education Code, Section 21.031³ was enacted in 1975 without actual hearing on the issue and without public record explaining the origin of this change. Further inquiry on this matter discloses a lack of legislative history as well as the absence of studies preceding the introduction to the revision in the school code legislature that was passed by a voice vote. What is archived public record is the fact that school district superintendents, on the Texas-Mexico border, initiated the revision through their respective representatives. The result lacked projected fiscal implications as denoted by the small student presence of undocumented students in Tyler ISD (Olivas, 2009). Five years later, during school year 1980-1981, districts around the state were randomly polled on the results of the tuition policy implementation. Houston and Tyler Independent School Districts reported full implementation, while other school districts with fewer than 100,000 students reported opting not to charge tuition (Olivas, 2009). Brownsville, Dallas, and El Paso's Ysleta Independent School District reported absolute exclusion of undocumented students whether or not tuition was paid. Clearly the legislation created legal responsibilities and in turn yielded moral obligations through implications in K-12 schooling policies. The state of Texas and its school districts carried out their administrative values by attempting to marginalize undocumented students. The embodiment of this type of policy implementation, based on personal bias, is found in the following quote taken directly from Plyler v. Doe (FindLaw, 2012): "But 21.031 is directed

³Section 21.031 imposes a lifetime hardship on a discrete class of children not accountable for their disabling status. The rationality of 21.031, we may appropriately take into account its costs to the Nation and to the innocent children who are its victims. In light of these countervailing costs, the discrimination contained in 21.031 can hardly be considered rational unless it furthers some substantial goal of the State. (FindLaw, 2012)

against children, and imposes its discriminatory burden on the basis of a legal characteristic over which children can have little control (457 U.S. 202, 221).

2.4.2 U.S. District Court for the Eastern District of Texas, September 1977

On June 15th, 1982, the United States Supreme Court issued a ruling which extended the 14th Amendment's guarantee of Equal Protection to unsanctioned entry immigrant students, and consequently prevented a generation of immigrants from complete marginalization. This class action was originally filed in the United States District Court for the Eastern District of Texas in September of 1977. The plaintiffs were school-aged children of Mexican origin residing in Smith County, Texas and within the boundaries of Tyler Independent School District. The Defendants were named as the Superintendent of the district and the district's Board of Trustees while the State of Texas intervened as a party-defendant (FindLaw, 2012).

The District Court ruled that a change to Texas Code Section 21.031 coupled with a district policy for tuition rates aimed at undocumented students was neither effective or served the purpose of keeping illegal aliens from entering the State of Texas (458 F. Supp. 569, 575, 1978). Nevertheless, the court did acknowledge the defendant's claim that a change to Section 21.031 was an attempt at creating a corrective measure designed to prevent a drain on the State's budget. Simultaneously, the court recognized the Tyler Independent School District's population increase was in part a result of legal immigration. Therefore, barring access to undocumented students would indeed save some money but, would not affect the quality of education for either student population (*Plyler v. Doe*, 457 U.S. 202, June 15, 1982a). In addition, the court firmly stated that depriving a child of an education, would alter the fabric our American society and disturb its traditional political and cultural heritage. It must be stated that as a society, we view education as the critical embodiment responsible for the social, economic, and intellectual well-

being of any individual, regardless of legal status definition. Also noted is the court's stance on a budgetary issue, which alluded to the school district's board policy development and its legal and ethical ramifications while considering financial and moral costs to our nation and most importantly, to the innocent victims, who were being treated as a suspect class due to their undocumented status.

The United States District Courts for the Southern, Western, and Northern Districts of Texas saw a variety of action in the years 1978 and 1979, as lawsuits were filed to challenge the constitutionality of Texas Code 21.031. The Texas Education Agency was added as a defendant. Due to the number of cases, officials consolidated the claims into one single action and in July of 1980, the court decided that 21.031 indeed violated the Equal Protection Clause of the Fourteenth Amendment (Alien Children Education Litigation District Court for the Southern District of Texas July, 1980). In this case, 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. 583). Furthermore, it was the court's determination that undocumented students are people and therefore because of their physical presence within the jurisdiction, they are entitled to the equal protection of the laws. The court emphasized that despite immigration laws even aliens with unlawful presence are recognized as "persons", and as such, they are guaranteed due process of law by the Fourteenth Amendment (Shaughnessy v. Mezei, 1953). Pertinent to educational policy, the phrase "within its jurisdiction" establishes the protection of the Fourteenth Amendment to anyone, and anyone must be emphasized, who is subject to the laws of a State and its territory. The court also acknowledged that the Equal Protection Clause was violated by the State of Texas with regards to failure to reimburse districts for the education

of undocumented immigrants and possibly by the board of trustees causing a financial burden on minor students.

2.4.3 Rule of Law and Issue

Denying a targeted group of individuals, or a discrete group, the rights and/or benefits afforded to others, must have justification that demonstrates a legitimate state interest (FindLaw, 2012). In the case of *Plyler v. Doe*, the state of Texas was attempting to deny undocumented students, an “arbitrarily chosen class” (UMKC School of Law, 2012) a free public education that its school districts offered all citizens and legal residents of the state. Therefore, the issue argued at the Supreme Court level, became a question of whether the state’s action was consistent with the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution or not.

2.4.4 Plyler v. Doe 1982-Factual Summary

The Landmark Supreme Court Case extended the 14th Amendment’s guarantee of equal protection to undocumented immigrants and reinforced the notion that public education is not a right automatically granted under the Constitution of the United States (*San Antonio Independent School District et al. v. Rodriguez et al. Appeal from the United States District Court for The Western District Of Texas, March 21, 1973*). However, the ruling in this landmark case ended in a victory of 5 to 4 votes, with five Justices voting favorably for the legal provision of Equal Protection under the Fourteenth Amendment. The United States Supreme Court argued that immigrants with unsanctioned entry and their children are indeed people “in any ordinary sense of the term” (OYEZ, 2012) and as such they are protected under the Fourteenth Amendment. Moreover, the Court affirmed the State of Texas attempt to disadvantage children, with unsanctioned entry to the United States, and highlighted the state’s failure to prove that charging tuition would serve a “compelling state interest” (OYEZ, 2012).

2.4.5 The Court's Decision and the Dissenters

Justice William J. Brennan. Justice William J. Brennan delivered the opinion of the Court which touted enforcement of the laws barring entry into the United States as lax and responsible for the creation of a “shadow population” (UMKC School of Law, 2012) of undocumented migrants, Justice Brennan also remarked on the potential establishment of a “permanent caste of undocumented resident aliens” (*Plyler v. Doe*, 457 U.S. 202, June 15, 1982a), and the creation of cheap labor sources, serving our society, and whose access to benefits otherwise available to our citizens and lawful residents is barred. The embodiment of the Court’s decision can be summed up in Justice Brennan’s description of the values of our Nation, which is founded and functions on strict observance to “principles of equality under law” (OYEZ, 2012). Since prioritizing education or making reference to its importance was not a part of the dispute, the Court focused on education as a governmental service and not a fundamental right to fulfill purposes of equal protection analysis. Moreover, the Equal Protection Clause, as stated by the Court, is supposed to protect against arbitrary and sometimes irrational classifications, and more importantly, against invidious discrimination that originates from blatant prejudiced and unmitigated hostility (FindLaw, 2012). The decision of the Supreme Court (UMKC School of Law, 2012) ended with the following assertion:

If the State is to deny a discrete group of innocent children the free public education that it offers to other children residing within its borders, that denial must be justified by a showing that it furthers some substantial state interest. No such showing was made here. Accordingly, the judgment of the Court of Appeals in each of these cases is *Affirmed* (5).

Concurring: Justices Marshall, Blackmun, Powell and Stevens. Justice Thurgood Marshall concurred with the opinion of the court while expressing his personal belief that education is fundamental to an individual's personal interest and that our most basic constitutional values are reflected through public education (*Plyler v. Doe*, 457 U.S. 202, June 15, 1982a). Justice Marshall added that it is important to employ different approaches to the analysis of equal protection, which considers both the constitutional and societal importance in regards to a stratagem of classification that places students in a class-based group with the potential of barring benefits of education. Justice Harry A. Blackmun briefly stated that the undocumented students in the litigation "should not be left on the streets uneducated" (*Plyler v. Doe*, 457 U.S. 202, 1982b). In an impassioned statement, Justice Blackmun alluded to education by stating that even a lay person could predict the effects of a denial of education as resulting by the state of Texas' classification of the targeted students. With eloquence of words, Justice Blackmun joined in both the opinion and judgment of the Court, as he too recognized the importance of equal protection. Justice Lewis F. Powell concurred and expressed his view by stating that Texas schools' denial of public education had no substantial relation to any substantial state interest and added that although no one benefits by creating a "subclass" of illiterates and that they will likely remain within the Lone Star state (*Plyler v. Doe*, 457 U.S. 202, 1982b). This premise was based on the projection that a generation of illiterates eventually would cost both State and Federal Governments when unemployment or welfare benefits are sought, or when they become entangled with the law. The fifth vote to uphold the decision came from Justice John Paul Stevens, who explicitly wrote that a denial of a basic education, would undoubtedly prohibit the students from living within our society and function in its civic institutions (National Education Association, 2011). Justice Stevens also recognized that

illiteracy would certainly hinder the undocumented students' ability to contribute to our Nation and its progress (National Education Association, 2011), thus poking at our ethical and moral principles as embodied by the American public conscience.

2.4.6 Dissenting Opinion-Four Votes

Chief Justice Warren E. Burger, Justice Byron White, Justice William H. Rehnquist, and Justice Sandra Day O'Connor conceded on the importance of education and its status as a benefit and not a fundamental right (*Plyler v. Doe*, 457 U.S. 202, 1982b). The dissenters touted the Court's opinion as a convergence of theories and rationales that would stand for "little beyond the results in these particular cases" (p. 9) while pointing out that the Court did not point to a proper way of distinguishing education from other governmental benefits (*Plyler v. Doe*, 457 U.S. 202, 1982b). The final argument written in the dissenting opinion suggests that the Court sought to carry out the duties of Congress and thus was attempting at compensating for their inaction, therefore they concluded by stating that the only solution was to defer to the political processes (*Plyler v. Doe*, 457 U.S. 202, 1982b). The dissent in *Plyler* acknowledged, in principle, that denial of an education was not just, nor an appropriate course of action. However, in their opinion, their view of the Texas statute, that attempted to charge tuition to undocumented students, was not deemed unconstitutional. The four dissenters also stated that our Constitution does not provide answers for social issues and the Court was certainly overstepping its bounds in an attempt to fix congressional inaction.

2.5 Plyler Implications-The Test of Time

2.5.1 Compulsory School's Polity

Program participation. Thirty years after the *Plyler* decision made history, American public education finds itself at the beginning of a new millennium, in a state of chaos framed by

accountability procedures, and affected by the continuous growth stemming from waves of migration and globalization. Post Plyler, scholarly analysis praise the law's peculiarity in the sense that it has weak doctrinal force and insufficient constitutional significance (Olivas, 2010). Subsequent to Plyler, policy talk has continued the debate, which includes the role of education at the core of American values and a public school system that cannot punish undocumented students for their parents' actions. Since Plyler grants the benefit of public school attendance through 12th grade, public school staff must strive to protect students' right of access and confidentiality status (Hunter & Howley, 1990). More specifically, Hunter & Howley (1990) emphasize that all public schools must adhere to the following protocol of recommendations as it follows Plyler's constitutional implications in reference to privacy issues within our school system:

- Do not ask about a student's immigration status or request documentation at any time.
- Do not treat students differently in order to determine residency.
- Do not make inquiries of a student or parent that may expose their immigrant status.
- Do not require undocumented families to apply for Social Security numbers.

It must be noted that students do not need an actual social security number for enrollment in public schools and that an identification number can be provided for record keeping within the respective state agency of residency and enrollment. In reality, and given the influx of immigrants to our public school system, schools districts along the Mexican border have accommodated unauthorized students without opposition to access (Olivas, 2010).

Plyler also provided some extended benefits previously barred from their access in our public school system. As public school students, undocumented immigrants are entitled to participate in the Emergency Immigrant Education Program, the Transitional Program for

Refugee Children and Bilingual Education, the Head Start⁴ programs, Special Education, and free and reduced meals through the National School Lunch Program⁵ (Hunter & Howley, 1990). Criteria for membership and participation in these programs are set under each program's definitions and guidelines. The benefits acquired by undocumented immigrant students do not suggest a general acceptance of this student population in the polity of our school system. However, they do reflect thirty years of deep and scaffolding implications in our compulsory system of education, as rooted in Plyler's legacy.

2.5.2 Other Systemic and Secondary Benefits

Slow systemic implications, based on constitutional values and implemented by a compulsory system of education, through its public servants, have succeeded at integrating immigrant students as part of our national schooling process within both its academic and social strands. Under Plyler, undocumented students must be included in extracurricular activities such as academic clubs and other social organizations, as team building and social skills occurring from participation are fundamental values addressed under the law (National School Boards Association, 2012). Extracurricular activities in any school are considered to be educational as they promote a student's character development, therefore, exclusion from any of these activities would have to prove that a substantial state interest is served if access to an undocumented

⁴Head Start is a federal program that promotes the school readiness of children ages birth to 5 from low-income families by enhancing their cognitive, social and emotional development. <http://www.acf.hhs.gov/programs/ohs/> receiving a public education are guaranteed and safeguarded benefits to all student populations,

⁵The National School Lunch Program is a federally assisted meal program operating in public and nonprofit private schools and residential child care institutions. It provides nutritionally balanced, low-cost or free lunches to children each school day. The program was established under the National School Lunch Act, signed by President Harry Truman in 1946. <http://www.fns.usda.gov/cnd/Lunch/default.htm>

student is denied (National School Boards Association, 2012). Through statute, regulations, or guidance, other services are extended to undocumented students. Transportation, use of health centers at individual campuses, lunch and breakfast programs, and any other service essential to as a result of Plyler v. Doe's educational policy implications. However, a strong critique on Plyler is its lack "precedential value" outside the context of public education (Motomura, 2007). In reality, precedential value may take a backseat to the different approaches used in its implementation when varied authority and actors may try to establish their own precedent.

2.5.3 Plyler, Immigration Authority and FERPA

An indirect implication of Plyler is the lack of federal law, which would require school districts to report undocumented students to any Immigration authority. Since Plyler does not discuss the permissibility of reporting students on a case-by-case basis (National School Boards Association, 2012), this is a possibility. Plyler has been described as a law that regulates immigrants directly through independent action, as school personnel may report individual students in the shadows of individual cases and in the service of federal regulations (Motomura, 2007). On the other hand, FERPA⁶, or the Family Educational Rights and Privacy Act, prohibits schools from providing any identifiable information in a student's cumulative records to any outside agency without proper legal authorization, such as parental consent or a court's subpoena (National School Boards Association, 2012). Schools are required to provide parents a notification of FERPA every school year.

⁶The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

Moral and pragmatic aspects of Plyler. Motomura (2007) argues that undocumented immigrants in our public system of education could be interpreted as a pragmatic issue with susceptibility to the position of policy or interpretation of the law. Therefore, whether public school officials choose to report individual students, or not, becomes a part of this pragmatic issue, as administrative action becomes intersected with personal and private choices and thus the scaffolding of implications continues to build the structure of public schooling. On the other hand, Plyler has been touted as endorsing incomplete immigration law enforcement as it stands as de facto federal policy that “tolerates unlawful immigration” (Motomura, 2007). This view of Plyler makes it a moral issue (Motomura, 2007), as some school personnel and the general public could view undocumented students as a part of our society integrated in both the context of education as well as in the economy. Other views may see them as “illegal aliens” and therefore, reporting their immigrant status is a possibility of policy implementation with implications in our school system.

Higher education extension. Plyler focused on K-12 public schooling access and participation while it kept hermetic silence on any extension to higher education. The question at hand was whether or not these protective elements of the law would be effective in higher education settings, as Plyler’s footnote number 22 clearly states that undocumented students may establish domicile in the country despite illegal entry (Olivas, 2009). In 2001, the state of Texas enacted H.B. 1403⁷, which granted the right to certain undocumented students to establish resident status and pay in-state tuition in the state’s public colleges (Texas Higher Education

⁷ House Bill 1403, BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS: relating to the eligibility of certain persons to qualify as residents of this state for purposes of higher education tuition or to pay tuition at the rate provided to residents of this state. <http://www.thecb.state.tx.us/reports/PDF/1528.PDF>

Coordinating Board, 2008). The enactment of this law is an indirect reference to Texas Education Code 21.031, which implied that the student resides where he/she lives and if interpreted through Plyler, H.B. 1403 implies no regard to the student's immigration status in the context of education. Whether or not undocumented students should have access and attend public colleges or universities will continue to be a debated issue in the context of both immigration law and education as a benefit. What does remain clear is that this issue is strongly rooted in Plyler's intended policy action through its administrative mandates and educational implications, as access continues to be the topic of policy talk in the 21st century with learners in a global community.

2.6 California's Proposition 187 Save Our State Initiative-1994 Ballot

2.6.1 Background-SOS Ballot

On November 8, 1994 Proposition 187 was on California's general election Ballot initiative as a state initiated statute that broadly denied undocumented immigrants state-funded services including public education and non-emergency health care (Eig, 1999). In addition, Proposition 187 required state authorities to facilitate the identification and removal of illegal aliens by the U.S. Immigration and Naturalization Service or INS (Eig, 1999). Proposition 187 was approved by the voters, as a referendum, in November of 1995 with a 59 percent win. This proposition was a part of an attempt at a broader social change within an economic context of specific demographics in the state of California and rooted in potential policy implementation prompted by a former Republican Governor's personal political orientation of choice.

Public education ramifications. The first of five major sections in Proposition 187 intended to bar undocumented students from California's public school system in a K-16 stipulation, which also asked that school personnel verify immigration status of both pupils and

parents (Migration News, 1994). Under Plyler, this action is illegal, as it affords neither students or parents the due process necessary to deny public education benefits based on established residency status. In 1994, California's public school system enrolled approximately 300,000 immigrant students at the cost of \$1.7 billion for public education, a federally mandated service (Armbruster, Geron, & Bonacich, 1995). Pete Wilson, then California's Republican Governor, endorsed this Proposition to deter Latino immigration from Mexico, simultaneous to barring undocumented students from California's public schools, as reportedly this student population "did not bother to learn English" (Schugurensky, 2003). Clearly, there were issues of implicit social forces behind California's SOS Proposition, as educational access was deemed a benefit of "equal protection" specifically extended to the undocumented student population in federal court through Plyler v. Doe. Based on this precedent, several California school districts joined the suits to have Section 1 of Proposition 187 declared unconstitutional (Migration News, 1994). In the end, California's Saving Our State Proposition was declared unconstitutional, but not without establishing a couple of precedents according to Gibbs and Bankhead (2001):

A precedent for anti-immigrant, nativist, political activism was established in the SOS campaign that provided the groundwork for the anti-affirmative action and anti-bilingual education initiatives soon to follow as ballot measures in the statewide elections of 1996 and 1998. (p. 91)

187 and undocumented students' rights. Prop 187 was passed by the voters on November 8, 1994 and it denied public benefits to undocumented immigrants in California. Within three days, exactly on November 11, 1994 a temporary restraining order was issued by Federal Judge Matthew Byrne (California Coalition for Immigration Reform, 2012). In 1995, in *League of Latin American Citizens vs. Wilson*, the district court invalidated Proposition 187's

Section 7, thus preventing public school employees from reporting their students to the INS (National School Boards Association, 2012). The court also found that Plyler and Section 7 in the Proposition were conflicting, as the precedent specifically prohibits the states from denying the benefit of public education to any and all undocumented students.

Postsecondary education, access barred. Postsecondary education and public higher education systems are the responsibility of each respective state. California's 1994 Proposition 187 aimed at barring admission to public state colleges and universities (Yates, 2004), as policy talk continued to occur throughout the state and around the country. In the end, the policy would fail to set a precedent as it was ruled unconstitutional. Higher education students at the Massachusetts Institute of Technology and guests of the United States Cano, Lemus, Rubio, Escobar, Castillo, and Terrones, (1994) responded to this portion of 187 by publishing the following statement:

Measures like this can only further polarize a society already suffering the consequences of serious racial and ethnic tension. Xenophobic measures like this, especially when aimed at our compatriots, hurt us deeply. It seems many Californians have forgotten the origins of their state and long history of Hispanic inhabitants in that land. (p. 617)

187 is declared unconstitutional. In the Spring of 1998, the primary provisions of Proposition 187 were ruled unconstitutional due to its interference with the federal government's right to control matters related to immigration, as well as its blatant violation of Plyler, which provides undocumented students with access to the nation's compulsory public school system (Siskind and Susser, 2006). The district court issued decisions, ruling that sections 1, and 4 through 9 of Proposition 187 were preempted by the federal Paperwork Reduction Act⁸, the

Illegal Immigration Reform and Immigrant Responsibility Act⁹ of 1996, and other federal law (American Civil Liberties Union, 1999). The measure became unconstitutional and immigrant students continued to receive the benefits of a public education. It could be said that the court deemed Proposition 187 a state immigration law with potential for causing interference and thus blocked it as a reminder that states are relegated to enforce federal authority in the role of enforcing agents in their respective states. Motomura (2007) describes the blocking of Proposition 187 as a reminder to the nation's states that federal authority's role is to "deputize state and local law enforcement officers to enforce federal immigration law" (p. 15).

Implications on schooling practices and administrators. Proposition 187 was a statutory initiative and as such, attempted to create new state laws for California's K-12 school system as well as its higher education institutions. While the primary purpose of 187 was to make undocumented immigrant students ineligible for enrollment in public schools (Melendez, 1995), it would also have forced school districts and their personnel to report "suspected" students to the INS. This would change the role of school practices from one where learning is

⁸The Paperwork Reduction Act (PRA) is a federal law passed in 1980 that gave authority over the collection of certain information to the Office of Management and Budget (OMB). PRA aims to reduce the amount of paperwork which needs to be handled by federal agencies, businesses, and private citizens, reducing the burden on people who routinely handle paperwork. PRA established the Office of Information and Regulatory Affairs (OIRA) to regulate matters regarding federal information and to establish information policies. It was amended in 1995 and the amendment increased the security of information collected by the government, while expanding public access to relevant collected data. <http://definitions.uslegal.com/p/paperwork-reduction-act-p-r-a/>

⁹The enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), on September 30, 1996, resulted in significant changes to existing U.S. immigration laws. Although IIRIRA was promoted as an illegal immigration bill, its provisions have had a serious impact on legal immigration <http://www.americanlaw.com/1996law.html>

imparted to that of institutions of government and agents implementing Proposition 187. As a specific consequence to administrators, Melendez (1995) described how responsibilities stemming from 187 would create ethical dilemmas for school personnel, as their professional mission and commitment is to teach regardless of students' citizenship status. Long term educational implications stemming from this failed Proposition may be interpreted through an established image, as set by the policy, that refers to undocumented immigrants students as a "public burden" (Hunt, 2001). Schooling practices and administrative duties derived from the failed proposition can be contextualized in California's mid 1990's immigrant population. More specifically, this context was described by Navarrette (1995), as more than due process or an undeniable cost of services, but rather as the "undesirable element going to public school with your children" (p. 2).

2.7 Illegal Immigration Reform and Immigrant Responsibility Act, 1996

2.7.1 Background of Legislation- Public Law 104-208

The Illegal Immigration Reform and Immigrant Responsibility Act, or IIRIRA, became law on September 30th, 1996, as the result of the combination of two different sets of immigration bills in each house of Congress (Siskind, 1996). IIRIRA addresses many aspects pertinent to legal and illegal immigration and the responsibilities of immigrants as well as those parties involved in the enforcement of the law. Before President Clinton signed this bill into law, it encountered deleted provisions that would directly affect undocumented students in our public schools as well as threats of Senate filibuster on the issue of barred access to schooling for those students with unsanctioned entry (Siskind, 1996). Within IIRIRA, as a House bill, the Gallegly amendment sought the reversal of Plyler and would have authorized public K-12 schools to verify the status of students enrolled within the system. Estimated 1996 figures show this

amendment would have barred 600, 000 to 700, 000 undocumented students from our public school system and according to Bob Dole R save the state of California an annual \$1.8 billion (University of California, Davis, 1996). Ultimately, the Gallegly amendment was deleted from IIRIRA with the support of forty seven Senators, which included five Republicans as well as President Clinton.

IIRIRA 96 is organized within six sections. Title I covers improvement to border control and Title II enhances the enforcement and penalties against alien smuggling. Title III deals with the inspection, apprehension, and detention of deportable aliens and Title IV delineates enforcement of restrictions against employment. Title V includes restrictions on benefits for aliens and Title VI contains other miscellaneous provisions (Siskind, 1996). In Section 505, higher education preferential treatment benefits are deemed unattainable for undocumented students on the basis of residence within a state or political subdivision (Public Law 104-208, 1996). Furthermore, Section 506, eligibility for postsecondary federal student financial assistance was ordered to be studied and reported to certain committees¹⁰ of Congress. Under IIRIRA and section 507, verification of immigration status for purposes of higher educational assistance, required that institutions provide photostatic copies of documents as specified by INS for official verification (Public Law 104-208, 1996). Whether or not undocumented students should have access to assistance, as access to higher educational attainment, is a topic that is highly debated as historically unsanctioned entry denotes a crime.

¹⁰Appropriate Committees Of The Congress.-For purposes of this section the term "appropriate committees of the Congress" means the Committee on Economic and Educational Opportunities and the Committee on the Judiciary of the House of Representatives and the Committee on Labor and Human Resources and the Committee on the Judiciary of the Senate.
<http://www.uscis.gov/ilink/docView/PUBLAW/HTML/PUBLAW/0-0-0-10948.html>

Higher education and undocumented student financial assistance. Federal law relevant to postsecondary education financial aid clearly stipulates that no undocumented student shall receive benefits unless a citizen or legal resident of the United States is eligible for such a benefit in no less an amount, duration, and scope (NCSL, 2011). As the debate continues to exist in both policy talk and action, certain states have enacted laws that grant in-state tuition to undocumented students. These laws are based and contingent on high school graduation and membership established through attendance, and not based on residency within the state. Some scholars argue that substantive membership in a society occurs through the development of factors such as residency, identification, or patriotism and that through these, undocumented students may be viewed as substantive members deserving of financial assistance (Perry, 2006). Other views stem from a legal analysis perspective, which based on Plyler denote only K-12 schooling as essential to the “fabric of our society”, thus giving states the option to distinguish legislation that restricts undocumented student(s) access to higher education (Feder, 2008). Interpretations differ as do eligibility factors from state to state, while section 505 in IIRIRA has maintained its congressional intent of absolute prohibition for conferring educational benefits to higher education on the basis of state residency.

2.7.2 IIRIRA as Federal Code and Unclear Intent

Undocumented students’ access to higher education was denied as part of Section 505 in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. More specifically the section vaguely spells out the limitations on eligibility for higher education benefits:

Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or

national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident (Section 505, a).

The effective date for the above section was provided as July 1st, 1998 (Public Law 104-208, 1996). While the statute clearly states that undocumented immigrants are not eligible for financial assistance of any kind, it remains unclear if the federal statute confers states the authority to provide access to in-state tuition for undocumented students. Some may argue that tuition is interpreted as a state benefit, which in turn has allowed the states¹¹ to enact laws that provide in-state tuition benefits for undocumented students.

Over a decade after IIRIRA became federal law, the undocumented student population has continued to grow as consequences of noncompliance continue to be unspecified within this federal code. Section 505 continues to remove the states' ability to define and determine who qualifies as a "resident" of a respective state (Yates, 2004). This fact has not precluded the development of different initiatives, through state law, designed with the purpose of circumventing Section 505. As an educational implication, IIRIRA's 20th century intent is currently facing 21st century educational reform, which includes the global community in a complex system of education necessary for survival and advancement.

2.8 Immigration Law, H.B. 56 Alabama 2011

¹¹Currently, 12 states have laws allowing undocumented students who meet specific requirements to receive in-state tuition rates at public postsecondary institutions. In all, since 2001, 13 states have enacted such legislation (Wisconsin has revoked its law). In addition, Rhode Island's Board of Governors for Higher Education passed a policy that permits eligible undocumented students to pay in-state tuition.
<http://www.ncsl.org/issues-research/educ/undocumented-student-tuition-state-action.aspx>

2.8.1 Background- House Bill 56 Alabama

On June 9th, 2011, fifteen years after IIRIRA became law in a partial response to the World Trade Center bombing by terrorists¹², Alabama's state legislature passed a controversial new immigration bill that allowed public schools to check students' and parents' immigration status. HB 56 is formally titled the Hammon-Beason Alabama Taxpayer and Citizen Protection Act and it was co sponsored by Alabama Representative Micky Hammon and Alabama State Senator Scott Beason. One of the bill's particular provisions required students to disclose and/or register their immigration status, a violation of the 14th Amendment's Equal Protection clause. In addition, the House Bill also attempted to criminalize the act of transporting or providing a ride to undocumented immigrant(s) and it required employers to use E-Verify to check the entry status of potential employees (LAND, 2011). Under this bill, police would have the authority to check the immigration status of any person they stop, detain, or arrest, if undocumented status was suspected. Such authority would subject immigrant parents or care givers to potential scrutiny, when taking their children to school. In terms of implementation analysis, the law intended in this bill would hinder schools and their personnel from fulfilling their professional mission of educating our youth. This statement of behavior, on behalf of Alabama's Governor R, is the epitome of backward mapping. The administrative action is depicted by the vital task of educating students, and the House Bill language is the behavior that precludes its implementation.

¹² 1996-The Illegal Immigration Reform and Immigrant Responsibility Act makes it easier to deport aliens attempting to enter the U.S. without proper documents. It was enacted, in part, as a response to World Trade Center bombing by terrorists.
<http://www.unc.edu/~perreira/198timeline.html>

2.8.2 ACLU Lawsuit Aims to Preserve Benefits of Education

The American Civil Liberties Union filed a class action lawsuit on July 2011, charging that Alabama's HB 56 provided an extreme anti-immigrant law, which is unconstitutional as it unlawfully subjects Alabama public school students to prove the status of their entry to the United States. The ACLU (2011b) stated this law chills student access to public schooling as "papers" were required to demonstrate immigration status and/or citizenship. This extreme anti-immigrant law also contained language that would bar complete access to public schooling and prevent sanctioned-entry immigrants from attending public colleges or universities in the state of Alabama (American Civil Liberties Union, 2011b). Sin Yen Ling, a senior staff attorney affiliated with the Asian Law Caucus describes HB 56:

HB 56 is the harshest version of the SB 1070 copycats we have seen so far.

Requiring schools to verify a student's immigration status forces teachers to become law enforcement officers, which is counterproductive to creating a positive learning environment. HB 56 should be struck down as unconstitutional (2).

The American Civil Liberties Union lawsuit was a clear attempt to prevent the state of Alabama from creating its own immigration police force and more importantly, to prevent the unsanctioned-entry student population from becoming non-persons in the eyes of the law and within our school system.

HB 56 Sections 28 and 5-interference with K-12 schooling. A preliminary analysis of Section 28 deemed the deterrence of undocumented students from public school as a motivating purpose for enacting HB 56 (American Civil Liberties Union, 2011a). In a public hearing, the bill's sponsor, Representative Micky Hammon, R-Decatur, describes the motivation as a means to save education dollars, or about \$200 million per school year, which totals public

education costs for undocumented immigrants in the state of Alabama (White, 2011). The Birmingham News David White (2011) quotes Representative Hammon's prediction as follows:

We want to discourage illegal immigrants from coming to Alabama and prevent those that are already here from putting down roots. There will be some expenses of enforcing this law, but they will be highly outweighed by the cost savings for this state (p. 2).

Implications on school populations were strategically extended to parents and caregivers, as the aim was to drive them away from school, and out of Alabama. Section 28's provisions seemingly involved data collection from the undocumented population in the state of Alabama. Upon enrollment, students would be subjected to providing their birth certificate or authenticity of their legal status. The intent was to determine if the student had unsanctioned-entry status or if the parents were as well undocumented aliens, thus providing schools the responsibility of periodically reporting the number of "unlawfully present" students to Alabama's legislature (American Civil Liberties Union, 2011a). An additional provision, would have allowed public school officials to report both parents and students to federal agencies and their officials.

HB 56, § 5, forbids all public schools, among other state and local agencies, from drafting policy that would, in any way, hinder communication with immigration officials (American Civil Liberties Union, 2011a). When combined, Sections 28 and 5 attempted to make school administrators and other employees enforcers of immigration, as HB 56's delineated the category of "presumed...unlawful presence" (American Civil Liberties Union, 2011a). It must be noted that this category bears absolutely no resemblance or follows any pattern, or precedent, to existing federal immigration law.

HB 56 Section 8- higher education no more. Under §8, undocumented students were barred from enrolling and/or attending public postsecondary institution (American Civil Liberties Union, 2011a). In the case of students who were enrolled at public colleges or universities, financial aid was to be cut off and officials automatically earned the right and responsibility of verifying students' immigrant status. In a blatant attempt at discrimination, "lawful immigrant" students could have been denied access to enrollment of benefits of financial aid, if verification of immigrant status was delayed by federal government agencies (American Civil Liberties Union, 2011a). The intent of the House Bill was a parallel to comments made during one of many public hearings on this bill, where White (2011) quotes an Alabamian complaining that "if we are not a magnet to draw these people here, we're going to see the burdens on our schools...". The personal and private choice of HB 56 supporters is reflected in its proposed draft, as § 8 obviously aimed at barring all immigrant student populations from higher education in the State of Alabama.

2.9 HB 56-A Statement of Behavior Meant to Attack

The Southern Poverty Law Center (2012) published an article which describes HB 56 and its cruel provisions as a self-inflicted wound and now a failed experiment that attacked every aspect of undocumented immigrants' lives as well as their basic human dignity. Representative Micky Hammon was also cited by the Southern Poverty Law Center as he conflated Hispanics and illegal immigrants. This amalgamation between ethnicity and immigration status results in a type of generic prejudice towards an ethnicity in general, which in turn, encourages harassment and intimidation with impunity. Federal immigration laws do not require school administrators and their personnel to ask, request, or verify any type of immigration related documentation from parents or students, yet HB 56 makes provisions specifically for these administrative actions.

The Decatur Daily edition on November, 2011 highlighted the arrest of a German executive while visiting the state of Alabama through the following statement: “The drafters of the law were targeting a stereotype, not humans. They could not dismiss their stereotypes as long as those suffering from the law were Hispanic” (editorial).

2.9.1 Ecology of Fear Post HB 56

The lawsuit filed by the American Civil Liberties Union in the 11th Circuit or Federal Appeals Court resulted in a suspension of enforcement for most provisions of HB56. However, between initial implementation and the Court’s decision certain dangerous trends emerged and formed an environment or ecology of fear (Pena, 2011) in a state whose motto is Audemus jura nostra defendere or “We dare to defend our rights”. Devon Pena (2011) reported the findings of a study conducted by National Immigration Law Center, or NILC. Dangerous trends related to schooling implications were revealed as follows:

The provision of the law requiring Alabama school officials to determine the immigration status of enrolled students (or that of their parents) has discouraged children of color from attending school and encouraged discrimination in the schools based on students’ appearance and perceived ethnicity (p. 2).

Whether this is the latest failure to challenge Plyler, or a cry for immigration reform, our school system continues to function through misguided policy implementation and polarized immigration politics.

2.10 Dear Colleague Letter U.S. Departments of Justice and Education 2011

2.10.1 K-16 Educational Guidance

On December 2, 2011, the Department of Justice (DOJ) and the Department of Education (ED) issued a joint letter¹³ of guidance to all public school districts reminding them of their

obligation, under federal law, to provide equal educational opportunities to all children residing in their districts, and to offer assistance to ensure they are in compliance with the law (Office for Civil Rights, 2011). The purpose of this letter was to explain the voluntary policies that will help our school system achieve new millennium diversity and thus avoid racial isolation. It is important to note that the framework for this guidance is comprised of Title IV and VI under the Civil Rights Act of 1964, the Fourteenth Amendment's Equal Protection Clause, and current case law (ED and DOJ, 2011). The letter was issued to focus attention on the review of programs that lawfully further diversity or reduce racial isolation to achieve our nation's educational as well as civic goals. In a subtle, yet direct style, the guidance for K-12 institutions reminds administrators that the United States political and cultural heritage is learned in school and that strength of education arises from different races, cultures, and creeds as united to pursue freedom for all (ED and DOJ, 2011). Guidance for post-secondary institutions aims at reminding administrators that the attainment of a diverse student body is the core of proper institutional mission. Moreover, the guidance provides reminders of principles articulated in Supreme Court opinions to assist higher education institutions meet the compelling interest of the Dear Colleague Letter (ED and DOJ, 2011).

The issuance of this letter/guidance took place around the timeframe that Alabama's HB 56 was encountering legal challenges by various entities. It is not clear, if HB 56 provisions

¹³ Dear Colleague- The United States Department of Education (ED) and the United States Department of Justice (DOJ) jointly issued guidance that explains how educational institutions can lawfully pursue voluntary policies to achieve diversity or avoid racial isolation within the framework of Titles IV and VI of the Civil Rights Act of 1964, the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, and current case law.<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201111.html>

elicited the dissemination of the Dear Colleague Letter. However, a sharp decrease in student enrollment numbers in the state of Alabama prompted close scrutiny, which revealed that the drop in enrollment stemmed from undocumented students as well as students with Latino ethnicity (Lopez, Tsitouras, and Azuma, 2012). Whether HB 56 and the Dear Colleague letter are in a relationship of causality may be left for individual interpretation. The fact is that this letter makes the irrefutable statement to school administrators and the public in general, that undocumented status of students or guardians is irrelevant to the benefit of a public education within the legal parameters of our Constitution.

2.11 Deferred Action for Childhood Arrivals Executive Order, 2012

2.11.1 What is Deferred Action?

Deferred action¹⁴ is a discretionary determination that defers removal action as an act of prosecutorial discretion which does not provide lawful status and does not add unlawful presence in the United States during the period when the action is in effect (U.S. Citizenship and Immigration Services, 2012). Deferred action does not absolve, by any means, individuals of any previous or subsequent periods of unlawful presence in the United States, and yet it grants the eligibility to receive employment authorization for the period of duration. It can be terminated or renewed at any time.

¹⁴ Deferred action- Deferred action is a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion. Deferred action does not provide an individual with lawful status.

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=f2ef2f19470f7310VgnVCM100000082ca60aRCRD&vgnnextchannel=f2ef2f19470f7310VgnVCM100000082ca60aRCRD>

DACA is not a law. Deferred Action for Childhood Arrivals policy went into effect on June 15, 2012, based on a memorandum by the U.S. Department of Homeland Security; the policy is an act of prosecutorial discretion under the Obama administration and not a law (MALDEF, 2012). Beginning on August 12, 2012, individuals who came to the United States as children and who meet the specific and narrow criteria will be eligible for obtaining affirmative action process and apply for a one time deferred action and possible employment eligibility. DACA will be granted on a case by case basis by the Department of Homeland Security (National Immigration Law Center, 2012).

2.11.2 Background of DACA Policy

Prior to DACA becoming policy, the DREAM Act bill was introduced and aimed at amending the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The DREAM Act was introduced during the 107th Congress and ended in a filibuster by the Republicans (DREAM Act Portal, 2009). Language of the original bill specifically asked that states be allowed to provide in-state residence status to undocumented students as well as temporarily adjust immigrant status for those who were college bound. In 2003, Senator Hatch R-Utah, introduced a modified bill, which then omitted “college bound” as part of the language used in describing those potentially affected by the bill (DREAM Act Portal, 2009). Since its inception, the DREAM Act has not passed despite repeated introductions, attachments to other bills, and the continuous disappointment of the 65,000¹⁵ undocumented high school graduates

¹⁵ Each year, approximately 65,000 undocumented students graduate from high school, many at the top of their classes, but cannot go to college, join the military, work, or otherwise pursue their dreams. They tend to be bicultural and fluent in English. Many don't even know that they are undocumented immigrants until they apply for a driver's license or college, and then learn they lack Social Security numbers and other necessary legal documents. <http://www.immigrationpolicy.org/just-facts/dream-act>

that year after year do not get the opportunity to further their education. Bearing the title of illegal immigrants, despite an earned American K-12 education, these students may be barred from access to higher education as well as entry to the labor market in a country whose fabric of democracy is based on education. On June 15th, 2012, DREAMERS across our country learned that President Barack Obama issued an order for administrative relief policy. DACA implementation would prevent the deportation of certain DREAM Act-eligible undocumented youth (National Immigration Law Center, 2012). Certain criteria must be met for DACA eligibility, among which is having entered the United States before age sixteen, be a high school graduate or have completed a GED, and/or be in school as a requirement (National Immigration Law Center, 2012). DACA made headlines across our country amidst the 2012 Presidential election campaign.

Currently in school and in-state tuition. If a potential DACA recipient is not a high school graduate or has not completed a GED, eligibility criteria calls for a “currently in school” requirement. Depending on the applicant, enrollment in a K-12 setting is required, whether public or private schools. Vocational schools or literacy training that leads towards postsecondary education is an accepted venue as well as alternate schools where certificates of completion or GED’s may be obtained (National Immigration Law Center, 2012). As of 2012, thirteen states allow undocumented students to access in-state tuition benefits. However, rules on tuition vary by state and sometimes by university or college system.

2.11.3 DACA and Access to Higher Education

As DACA is implemented and demand for accessible immigrant education becomes a factor of school reform, community colleges across our nation will play a key role for a workforce that will require postsecondary education to thrive in the current economy. According

to a report released by the Community College Consortium for Immigrant Education, increased access and attainment for undocumented students is found at the community college level (Lesesne, 2012). Despite schools facing financial, economical, and political barriers, accessible venues for information and assistance in the college enrollment process have been provided to allow for the opportunity to reach academic attainment at the college level. Approximately 1.76 million undocumented immigrants would benefit from the opportunity to acquire a post-secondary education (Lesesne, 2012). However, barriers faced by undocumented immigrants are beyond logistics of access and include prejudiced views from administrative staff or faculty, who may disagree with policies aimed at assisting undocumented students or simply ignore the law (Perez, 2012). Across the nation, there are forty five private institutions that provide benefits of tuition assistance for this student population and this list includes most of the Ivy League (Perez, 2012). DACA could potentially provide a gateway for increased enrollment across the nation by removing the fear of deportation for the thousands of undocumented students who were brought to the United States as children. Higher education access through DACA is perhaps the first step towards broader immigration reform.

2.12 Summary, From Plyler to DACA

Thirty years have passed since the United States Supreme Court guaranteed the benefit of a K-12 education in a statement of intent that is blind to unsanctioned-entry students. In 1982 and through the equal protection clause the Supreme Court incorporated multicultural constructs to the fabric of our democracy as based in the American experiment of education. This literature review and legal authority presentation reflect our constitutional values of fairness, justice, and equality as they have been challenged over the last three decades in attempts to marginalize undocumented students. From Plyler to the defunct Proposition 187, and IIRIRA to the ecology

of fear in Alabama, undocumented student populations continue their civil rights struggle in the 21st century. DACA and the new millennium provide a positive development of relief and future educational implications on behalf of thousand of undocumented students present in our country today.

While immigration reform will remain as a trending issue and heated debate in our country, the policy cycle for schooling and its related implications will as well continue in a cycle of hope, perseverance, and policy developments. Based on the current policy climate and immigration bills aimed at curtailing education benefits introduced in state legislatures (National Conference of State Legislatures, 2011), the research design of this study involved the analysis of each policy or legal authority to reach an understanding of education laws and legal provisions stemming from the 20th century. The historical evaluation recognized the unresolved immigration issue, which affects our K-12 compulsory education system and restricts access to higher education. The problem addressed through this comprehensive study of policy aimed at filling the gap on the lack of information on legal authority pertinent to undocumented immigrant students and their rights in our public school system. The guiding questions were answered by the proposed methodology simultaneous to creating a source of referenced material(s) that denote policy and its implementation in conjunction with the legal rights and benefits of undocumented student populations.

Chapter 3: Methodology

Introduction

This study employed qualitative research methods to capture the phenomenon embodied in legal authority, or guidelines, found in policy action aimed at a marginalized student population within our school system. The research focused on this historical study and analysis of legal authority, related to the undocumented immigrant student population, and allowed the examination of different aspects of immigration policy that have impacted student access to other programs established by the law. As a general purpose, this legal authority, or policy, through implemented guidelines has contributed to school reform in an era of changing demographics throughout the nation and in a reflection of Tyack and Cuban's policy cycle. This research study was conducted through location and analysis of specific policy, which included original documents relevant and pertinent to compulsory, public education in a K-12 American setting and in a span of a thirty year time line. Therefore, the Tyack and Cuban framework emphasized policy cycles that include this student population's trials and tribulations as policies implemented often aim at curtailing their participation and access to educational benefits.

Mahoney & Rueschemeyer (2003) describe historical analysis as a commitment to offering historically grounded explanations to important outcomes. The use of historical analysis in this research study was selected to develop a narrative on the topic of undocumented students in our public school system and the causal mechanisms that govern their benefits of education. Through the various sources of data collected, which included primary and secondary sources, the historical analysis provided different perspectives that led to the development of understanding the legal authority. Moreover, this particular interpretation allowed for the development of a narrative, which carefully details the perspective embodied through a source

and its author. The selection of a historical policy analysis in a thirty year trajectory was utilized to highlight a contemporary issue with roots in the 20th century. The data collection and analysis took place during an epoch of policy talk on potential immigration reform in our country and impending policy action with subsequent implementation.

3.1 Statement of the Problem

The problem addressed through this comprehensive study of policy, embodied by law, statutes, and inclusive of special collections of papers and other authority aimed at filling the gap on the lack of information on legal authority pertinent to undocumented immigrant students and their rights in our public school system. As a result of this gap, frequent disregard and blatant refusal of existing law reflects policy implementation through duties and responsibilities of a national public school system and its administrators. Other derivative policy aimed at immigrant students discussed derivative implications of policy action aimed at school reform. A thirty-year chronology with ideational intent, for the reader, produced a descriptive analysis of the sequential legal authority, and exhibited action by school districts and their personnel regarding these mandates (Maxwell, 1992).

A comprehensive analysis of federal and state cases as well as statutes, and school board policies, was necessary to disclose the existing legal authority for providing the benefits of education to undocumented immigrant students within our national public school system. In this case, it examined the existence of such legal authority and/or policy as it has continued to be challenged since Plyler became law. Moreover, the responsibilities of school districts across our public system of education were delineated to clarify legal and ethical obligations grounded on the law. Benefits of public education, such as extracurricular activities and other services were

also highlighted to fill the gap in literature and information regarding the education of undocumented students.

3.2 Guiding Questions

The following guiding questions were analyzed in this policy analysis study:

1. How did a revision on Texas Education Code Section 21.031 create policy changes during the early part of the 1970's and was this type of reform a notion of progress?
2. How was Plyler v. Doe a catalyst for further policy cycles of school reform on behalf of undocumented, student populations and how did it preserve democracy in schooling?
3. How have states and school entities across our nation tried to circumvent Plyler since the 1970's to the present?
4. What is the role of school districts in regards to undocumented immigrant student populations and what are the established policies, or benefits, established for this student population in our school system?
5. How is Deferred Action for Childhood Arrivals or DACA a step towards educational access for undocumented students who are products of compulsory K-12 education?
6. How does the Tyack and Cuban framework of policy cycles apply to the historical analysis of policies aimed at undocumented student(s) participation and access to education and its benefits?

3.3 Research Methodology

This historical trajectory began with Plyler v. Doe, 457 U.S. 202, (1982) (FindLaw, 1996) and concluded with Deferred Action for Childhood Arrivals, or DACA, (U.S. Citizenship and Immigration Services, 2012) as policy that may promote some access to higher education for undocumented students. The tracking of legal authority or policy was focused on implications in

K-12 schooling policies that adhere to a policy cycle. Specific proposed policy such as California's SOS initiative and Alabama's HB 56 were included due to the emphasis these policies placed on issues related to the education of undocumented students and their aim to circumvent Plyler. DACA was included in the tracking of legal authority, as this executive order affects the undocumented student population, who may be products of our K-12 compulsory educational system. Deferred Action for Childhood Arrivals embodied the demographic context of this study and created more policy talk for future policy development. Creswell (2009) defines qualitative research as inquiry that explores human or social problems. The current climate of policy talk on immigration reform provided a clear basis for inquiry on the educational policy affecting this segment of our student population. Moreover, generalizability (Maxwell, 1992) was utilized to analyze legal authority developed for the education of undocumented students in our school system. Generalizability, according to Maxwell (1992, p. 293) refers to the "extent to which one can extend the account of a particular population". In this case the policies affecting a specific demographic context can be extended to the general student population.

The research process included a review of the literature, inclusive of education associations, previous studies and dissertations as well as accepted policy analysis, namely policy cycles intended for public school reform and as presented by Tyack and Cuban (1995). It must be noted that this study did not address individual district policies related to residency within specific district boundaries. The analytic framework was used to disclose and highlight issue development with appropriate epoch significance, educational policy implication(s) as well as complex legislation and other maneuvers involved in policy cycles. The Tyack and Cuban framework was utilized to analyze Plyler as a precedent of school reform on behalf of a marginalized population and the catalyst for further policy talk and action. This historical policy

study was analyzed through the use of policy talk, policy action, and policy implementation as this provided the conceptual framework for a detailed overview of applicable legal authority for the education of undocumented immigrant students in our public schools. A specific demographic context was set and utilized to represent the demography, past and present, of undocumented immigrant students in our nation, as encapsulated within the general immigrant population of the United States.

3.3.1 Research Design and Data Collection Procedures

This proposed qualitative research and analysis of legal authority had the objective of highlighting laws/policies related to undocumented students and the scaffolding implications on the fabric of our compulsory education system as well as their impact on access to higher education. The chronological timeline and subsequent public policies in our educational system disclosed the scaffolding effect of precedents set forth by analogous cases, each in a subsequent turn of events culminating with the present day Deferred Action for Childhood Arrivals. This qualitative analysis of policy and practice issues included proposed law and established policy of relief affecting undocumented, immigrant student populations. In addition, quantitative and statistical data was used to demonstrate the presence of this immigrant population in our American system of education 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 concerning the education of immigrant students, with unsanctioned entry, in a compulsory K-12 system.

The guiding questions were answered by the proposed methodology simultaneous to creating a source of referenced material(s) that denote both policy and its implementation in

conjunction with the legal rights and benefits of undocumented student populations. For example, 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 on behalf of 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 in the context of education. Ballot initiatives and other attempts at policy action aimed at circumventing Plyler, since the 1970's to the present, were examined as failed attempts 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. The benefits of undocumented immigrant students as established policies in our school system were presented and highlighted through policy implementation that may vary as different actors attempted to establish their own precedents through independent action. Deferred Action for Childhood Arrivals or DACA provided the most current policy affecting undocumented students who may be products of compulsory K-12 education. Although DACA is not a law, it is policy that may potentially frame future reform. The inclusion of DACA in the historical timeline provided a basis for future 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 serving over twelve 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).

3.3.2 Population and Demographic Context

A specific demographic context was set and utilized to represent the demography, past and present, of undocumented immigrant children in our nation, as encapsulated within the general immigrant population of the United States. This demographic context was depicted by the immigrant population in the United States. The immigrant population in our country has increased from 9, 619, 302 million people in 1970 to 14,079,906 million in 1980. In 2010, the U.S. Census reported a total of 39,955,854 million immigrants present in the United States (Migration Policy Institute, 2012). This type of large scale immigration has had implications on educational policy. Immigrant student populations, sanctioned and unsanctioned, continue to increase enrollment in American schools across the nation. Currently, this student population accounts for approximately 25 percent of American children and by the year 2050, the projection is that immigrant students will account for over one third of 100 million children in the country (Haskins & Tienda, 2011). Public schools in our American compulsory system of education provided the site for this historical policy analysis and the undocumented student population will become the focus of study participants for this historical policy analysis. The rationale for the selection of this demographic context was based on the need to disclose existing legal authority for providing benefits of education to undocumented immigrant students within our national

public school system. This demographic context as depicted by the immigrant population in the United States has seen a substantial and steady immigrant population increase from 9, 619, 302 million people in the year 1970 to 14, 079, 906 million in 1980, while the year 2010, recorded a total of 39, 955, 854 million immigrants as reported by the Census (Migration Policy Institute, 2012). This type of large scale immigration has had implications on educational policy as immigrant student populations, sanctioned and unsanctioned, continue to diversify the American school classroom. Currently, this student population accounts for approximately 25 percent of American children and by the year 2050, the projection is that immigrant students will account for over one third of 100 million children in the country (Haskins and Tienda, 2011).

This study was guided by the Cuban and Tyack (1995) frame of school reform depicted by policy talk, action, and implementation as the embodiment of policy cycle. The demographic context of the immigrant population in the United States provided a background to the undocumented student population currently in the landscape of public schools. Enveloping the efforts for school reform is a policy analysis that highlighted backward mapping (Elmore, 1979), at the core of implementation problems prompted by administrators' personal choice. The role of public school is a driving force that constructs global citizens. Schooling was interpreted as a system where undocumented immigrant students and protected class, must be incorporated into a national institution of education that must take into consideration allocated resources as prescribed by existing law.

3.3.3 Validity

The inherent nature of validity embedded within this type of historical policy account relies on a qualitative research approach (Maxwell, 1992). Reliability of this historical policy analysis is based on a real-world and specific demographic context yielded understanding and

extrapolation of the policy cycle and credibility of results if the study is replicated. In this case, it examines the existence of such legal authority and/or policy as it has continued to be challenged since Plyler became law. Moreover, the collected data validated the responsibilities of school districts across our public system of education as they were delineated to clarify legal and ethical obligations grounded on the law. Undocumented students' benefits of public education, such as extracurricular activities and other services were also highlighted to fill the gap in literature and information regarding the education of this student population.

3.4 Data Collection Procedures

The research to produce this historical trajectory began by researching the demographic context of the immigrant student population in American schools through a search of immigrant children and their families. Quantitative data was provided in tables as well as a written summary in order to provide a clear and specific demographic context for the population studied in this policy analysis and to highlight the public school system's responsibility for protecting the educational benefits of approximately 1.8 million undocumented students under the age of eighteen (Perez, 2009). Next, the legal authority and literature review began with Plyler v. Doe, 457 U.S. 202, (1982) (FindLaw, 1996) background of legislation that includes the United States Supreme Court's ruling, which extended the 14th Amendment's guarantee of Equal Protection to unsanctioned entry immigrant students. California's Proposition 187 Save Our State Initiative of 1994 was discussed in terms of background, public education ramifications, undocumented students' rights and implications on schooling practices and administrators. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 was included in the legal authority along with an emphasis on deleted provisions that would have directly affected undocumented students in our public schools. Alabama's Immigration Law, H.B. 56 of 2011

provided information on an extreme anti-immigrant law and its language that would bar complete access to public schooling and prevent sanctioned-entry immigrants from attending public colleges or universities in the state of Alabama. K-16 Guidance in the form of the Dear Colleague Letter composed by the U.S. Department of Justice and Department of Education in 2011 highlighted the responsibilities of school districts as well as explained the voluntary policies that help our school system achieve diversity and avoid racial isolation. This legal authority emphasized that undocumented status of students is irrelevant to the benefit of a public education within the legal parameters of the U.S. Constitution. The literature review/legal authority collection concluded with the Executive Order Deferred Action for Childhood Arrivals established in 2012 to provide a background of current legal authority affecting the undocumented student population.

3.5 Data Analysis Procedures

This study used specifically selected law, statutes, court cases, and school policies related to the education and in reference to undocumented immigrant student populations. The Tyack and Cuban policy cycle of school reform is appropriate for the analysis of the legal authority as practitioners and the public in general, continue to function in a school system that offers few or no guidelines on the legal rights of undocumented students. This is due to a lack of statutes, case law, and legal authority willing to develop such a guide. Guiding questions 1-3 were answered utilizing Plyler vs. Doe- 1982, the 14th Amendment's guarantee of Equal Protection, California's Proposition 187 Save Our State Initiative of 1994 as well as The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. Questions 4 and 5 were answered by analyzing the Dear Colleague Letter composed by the U.S. Department of Justice and Department of Education in 2011 and DACA from 2012. Question number 6

involves the application of Tyack and Cuban's policy cycle and will be answered throughout the analysis and answer to each individual question. The analysis disclosed how school districts, governing boards, and politicians have attempted instituting measures and enacting unofficial policies that clearly violate the intent of existing law embodied in three decades of policy action.

Backward mapping, as an analytic strategy, was utilized with the notion that policymakers have a strong interest in affecting policy implementation. When used for analysis of policy, backward mapping explained policymakers influence over the implementation process at the last possible stage. This policy analysis used backward mapping as an analytic tool at the last possible stage of the implementation process, or the point where administrative action intersect private choice. Although backward mapping takes the policymaker's perspective on the implementation process, it does not assume that the policy itself is the only influence of behavior on the policy actors engaged in the process of implementation.

3.6 Scope of Study and Limitations

This study focused primarily on a set timeline representing approximately three decades between the years 1975 to the 21st century's thirteenth year. This study used specifically selected law, statutes, court cases, and school policies related to the education and in reference to undocumented immigrant student populations. Some of the policies included in the study may be modified if substantive bipartisan immigration reform becomes policy action during the current administration. Moreover, in a parallel accordance with Tyack and Cuban's (1995) assertion on educational forecasting, this study may not reflect a cycle of educational reform during major political shifts. Conclusions for this study were based on the body of policy analyzed.

3.7 Summary

This study employed qualitative research methods to capture the phenomenon embodied in legal authority found in policy action and aimed at a marginalized student population within our school system. The research focus on this historical study and analysis of legal authority, related to the undocumented immigrant student population, allowed for the examination of different aspects of policy that have impacted student access to other programs established by the law. A current policy climate is permeated by a continuity of immigration bills, aimed at curtailing education benefits for undocumented students and introduced in thirty seven state legislatures (National Conference of State Legislatures, 2011). In addition, the responsibilities of school districts across our public system of were delineated to clarify legal and ethical obligations grounded on the law. Benefits of public education and other services were highlighted to fill the gap in literature and information regarding the education of undocumented students. The Tyack and Cuban's policy cycle metaphor provided a framework that embodies a cyclical fashion, where progress is curtailed and solutions through policy impede true reform. The multiple data sources demonstrated how undocumented students' educational benefits are strongly rooted in Plyler's intended policy action and through its administrative mandates while attempts to bar access continue to be the topic of policy talk. In addition, the multiple sources of legal authority yielded and analysis that provide evidence to the guarantee of access to our compulsory system of education, where school staff and administrators must legitimize and acknowledge this benefit without penalty due to a student's country of origin and/or residency status.

Chapter 4: Data Collection and Analysis

Introduction

Through a comprehensive analysis of federal and state cases, statutes, and school board policy the existing legal basis for providing benefits of education to undocumented immigrant students within our national public school system was elucidated. In conjunction, other proposed policy concerning undocumented immigrant students was studied as derivative implications of policy talk and action aimed at school reform. The data collection and analysis yielded information on policy for school reform that although aimed at a basic institutional change failed to eradicate a deep social injustice (Tyack & Cuban, 1995). The study revealed a cycle of policy with scaffolding implications on the structure of our compulsory K-12 education system. The primary purpose of this study was to increase the reader's understanding of policy related to the undocumented immigrant student population in the United States. The secondary purpose revealed different aspects of immigration policy, proposed, failed, or enacted, that have impacted undocumented student access to other programs as established by the law.

The Tyack and Cuban framework of policy talk, policy action, and policy implementation revealed decades of policy cycles that encompass the relationship between public education and American society through the undocumented student population. Their trials and tribulations radiated through the cycle as attempts to curtail their access to educational benefits were present in the body of legal authority embodied by the research study. A specific demographic context was set to provide an informational background on the demography, past and present, of undocumented immigrant students in our nation. The demographic context was encapsulated within the general immigrant population of the United States and utilized to provide the reader with a general view of public school populations in a K-12 setting.

This historical policy analysis began with the U.S. Supreme Court ruling in *Plyler v. Doe* 457 U.S. 202 (1982). This law affects K-12 settings, yet has significance in regards to higher education through the court's rendering, which provides rationality that touts education as part of the national democratic fabric through compulsory schooling. Moreover, the decision rendered a specific ruling with many implications for alien children, for border barriers, for the adoption of school policies, and also for federal program requirements. The data collection and analysis began with *Plyler* and the defunct California's Proposition 187 in 1994. As policy talk and demographics changed in our country, the data collection followed IIRIRA in 1996 and on to the ecology of fear in Alabama during the year 2011 as the undocumented student population continued their civil rights struggle in the 21st century.

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 was included in the literature review and legal authority section as public schools and undocumented students before and after the 9/11 tragedy faced by our nation. This tragedy had implications on immigration and immigrant students as it promoted the development of policy talk and action through later developments in the 21st century. DACA in 2012 and the pending policy talk of comprehensive immigration reform provided data with potential development of relief and future educational implications on behalf of thousands of undocumented students present in our country today.

Data collection and analysis yielded an explanation of explicit responsibility on behalf of immigrant student populations and implicitly in the ethical duty of school districts and their personnel. Subsequent 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. Inherent to the study, the guiding questions probed on the responsibility of schools and the right of the individual student through benefits provided by specific programs. The resulting overview created a historical guide of events within the realm of legal authority as applied to a specific demographic context of our student population. The results of this historical research study of policy could potentially be used as a guide of policy related to undocumented students in our public school system. It must be noted that as a nation, our school system provides a benefit of education that is considered the most basic factor for achieving success. Moreover, this resulting guide provides information aimed at filling the gap for public school administrators and staff on their responsibilities necessary to implement policy regarding the undocumented student population. 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. In turn, future doctoral students may extend on this guide as school reform occurs and evolves and rational analysis for the policy cycle becomes necessary in the new millennium. The compilation of legal authority also created a source of referenced material(s) that denotes policy and its implementation in conjunction with the legal rights and benefits of undocumented student populations.

The research methodology followed a historical trajectory search that began with *Plyler v. Doe*, 457 U.S. 202, (1982) (FindLaw, 1996) and concluded with Deferred Action for Childhood Arrivals, or DACA, (U.S. Citizenship and Immigration Services, 2012) as policy that may promote some access to higher education for undocumented students. The tracking of legal authority and/or policy was focused on implications in K-12 schooling policies that adhere to a

policy cycle. 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 demographic context of this study and created more policy talk for future policy development. Creswell (2009) defines qualitative research as inquiry that explores human or social problems. The current climate of policy talk on immigration reform provided a clear basis for inquiry on the educational policy affecting this segment of our student population.

The research process included a review of the literature, inclusive of education associations, previous studies and dissertations as well as accepted policy analysis, namely policy cycles intended for public school reform and as presented by Tyack and Cuban (1995). The analytic framework was used to disclose and highlight issue development with appropriate epoch significance, educational policy implication(s) as well as complex legislation and other maneuvers involved in policy cycles. The Tyack & Cuban framework was utilized to analyze Plyler as a precedent of school reform on behalf of a marginalized population and the catalyst for further policy talk and action. This historical policy study was analyzed through the use of policy talk, policy action, and policy implementation as this provided the conceptual framework for a detailed overview of applicable legal authority for the education of undocumented immigrant students in our public schools. Generalizability (Maxwell, 1992) was utilized to analyze legal authority developed for the education of undocumented students in our school system. Generalizability, according to Maxwell (1992, p. 293) refers to the “extent to which one can extend the account of a particular population”. In this case the policies affecting a specific demographic context can be compared to the general student population.

4.1 Descriptive Data

A specific demographic context was set and utilized to represent the demography, of undocumented immigrant students in our nation, as encapsulated within the general immigrant population of the United States. The immigrant population in the United States increased from 9, 619, 302 million people in 1970 to 14, 079, 906 million in 1980. In 2010, the Census reported a total of 39, 955, 854 million immigrants present in the United States (Migration Policy Institute, 2012). This type of large scale immigration has had implications on educational policy. Immigrant student populations, sanctioned and unsanctioned, continue to increase enrollment in school campuses across our nation. Currently, this student population accounts for approximately 25 percent of American children and by the year 2050, the projection is that immigrant students will account for over one third of 100 million children in the country (Haskins & Tienda, 2011). Public schools in our American compulsory system of education provided the site for this historical policy analysis and the undocumented student population was the focus of study participants. The rationale for the selection of this demographic context was based on the need to disclose existing legal authority for providing benefits of education to undocumented immigrant students within our national public school system.

This study was guided by the Cuban and Tyack (1995) frame of school reform depicted by policy talk, action, and implementation as the embodiment of policy cycle. The demographic context of the immigrant population in the United States provided a background to the undocumented student population currently in the landscape of public schools. Enveloping the efforts for school reform is a policy analysis that highlighted backward mapping (Elmore, 1979), at the core of implementation problems prompted by administrators' personal choice. The role of public school, as the driving force that constructs global citizens, focused on schooling, as a

system where undocumented immigrant students, a protected class, must be incorporated into a national institution of education while taking into consideration allocated resources as prescribed by existing law. The following table depicts the trajectory of the immigrant population from 1850 to the year 2010. Within the table, it is easily observable how the percentages vary, in conjunction with waves of the policy cycle.

Table 4.2

<i>Number of Immigrants and Immigrants as Percentage of the US Population, 1850 to 2010</i>		
<i>Searching for Immigrant Population Statistics: Demographic Context</i>		
Year	Number of immigrants	Immigrants as a percentage of the U.S. population
1850	2,244,602	9.7
1860	4,138,697	13.2
1870	5,567,229	14.4
1880	6,679,943	13.3
1890	9,249,547	14.8
1900	10,341,276	13.6
1910	13,515,886	14.7
1920	13,920,692	13.2
1930	14,204,149	11.6
1940	11,594,896	8.8
1950	10,347,395	6.9
1960	9,738,091	5.4
1970	9,619,302	4.7
1980	14,079,906	6.2
1990	19,767,316	7.9
2000	31,107,889	11.1
2010	39,955,854	12.9

Note: The term "immigrants" refers to people residing in the United States who were not US citizens at birth. This population includes naturalized citizens, lawful permanent residents, certain legal nonimmigrants (e.g., persons on student or work visas), those admitted under refugee or asylee status, and persons illegally residing in the United States.

Source: The 2010 data are from the US Census Bureau's American Community Survey, the 2000 data are from Decennial Census 2000 (see www.census.gov). All other data are from Gibson,

Campbell and Emily Lennon, US Census Bureau, Working Paper No. 29, Historical Census Statistics on the Foreign-Born Population of the United States: 1850 to 1990, US Government Printing Office, Washington, DC, 1999 (Migration Policy Institute, 2012)

As depicted by table 4.2, the number of immigrants and immigrants as a percentage of the United States' total population portrays a diverse flow of migration through varied and specific patterns since 1850 to the new millennium. Around the year 1850, immigration to this country occurred as a result of poor harvests in Europe, which forced the flow of people to seek opportunities for survival (Genealogy.com, 2011). By the year 1870, approximately one-eighth of the population was foreign born while protests to free immigration continued. The slight decline observed in 1880 was perhaps a result of the Chinese Exclusion Act, which barred entry to working-class Chinese citizens (Genealogy.com, 2011). Twenty years into the 20th century, the United States established quota systems through the National Origins Acts, which remained in effect until 1965.

During the decade of the 1980's migration to the United States began to experience a new surge of trajectories from countries south of the border. According to Gzesh (2006) between the years 1981 and 1990, almost one million Salvadorans and Guatemalans made the journey across Mexico to enter the United States clandestinely. The Immigration Reform and Control Act of 1986 provided a venue for legalization programs in which about two million, formerly undocumented Mexican citizens, acquired legal status (Passel, 2004). According to a Current Population Survey from 2002, about 5.3 million undocumented immigrants from Mexico live in the United States (Passel, 2004). Contextualizing migration patterns to the United States provides a clear background for the changing demographics in our compulsory school system that continues to see the influx of new students with origins in immigrant families.

The following table represents the demography of students in immigrant families living across our nation and highlights the specific demographic context of students in immigrant families:

Table 4.3

<i>Children¹⁶ in Immigrant Families by age 0-1: Demographic Context by State</i>				
United States	Students in immigrant families-Under 18			
	All children	All children of immigrants	US-born children of immigrants	Share of All children (%)
	70,580,268	16,952,774	14,575,852	24
Alabama	1,061,972	76,141	61,759	7.2
Alaska	179,352	20,995	19,163	11.7
Arizona	1,540,577	448,455	393,819	29.1
Arkansas	659,320	69,775	57,235	10.6
California	8,846,687	4,428,916	3,924,943	50.1
Colorado	1,179,063	255,994	220,948	21.7
Connecticut	784,968	183,184	153,940	23.3
Delaware	195,644	30,012	25,426	15.3
District of Columbia	94,296	18,572	15,583	19.7
Florida	3,784,214	1,183,936	982,832	31.3
Georgia	2,358,698	452,833	383,504	19.2
Hawaii	281,265	82,191	70,965	29.2
Idaho	412,625	54,455	46,227	13.2
Illinois	2,999,454	775,328	681,116	25.8
Indiana	1,524,549	133,262	109,489	8.7
Iowa	695,575	65,785	54,502	9.5
Kansas	693,913	97,743	84,114	14.1
Kentucky	957,762	61,199	49,483	6.4
Louisiana	1,044,620	56,473	48,784	5.4
Maine	261,411	17,282	14,058	6.6
Maryland	1,284,216	309,818	258,086	24.1
Massachusetts	1,364,253	351,877	304,429	25.8
Michigan	2,227,517	248,730	205,311	11.2
Minnesota	1,241,714	189,915	159,813	15.3
Mississippi	703,974	24,815	19,379	3.5
Missouri	1,346,306	95,512	77,525	7.1
Montana	210,037	6,683	5,952	3.2

Nebraska	438,474	59,454	50,134	13.6
Nevada	631,706	234,623	204,146	37.1
New Hampshire	275,305	29,460	25,953	10.7
New Jersey	1,990,205	678,683	579,195	34.1
New Mexico	491,032	103,400	88,716	21.1
New York	4,125,110	1,409,797	1,204,067	34.2
North Carolina	2,160,646	365,304	306,930	16.9
North Dakota	145,209	8,561	6,916	5.9
Ohio	2,591,203	186,610	152,884	7.2
Oklahoma	876,325	102,692	85,329	11.7
Oregon	829,199	193,723	167,414	23.4
Pennsylvania	2,669,915	279,097	231,855	10.5
Rhode Island	217,292	52,007	45,426	23.9
South Carolina	1,017,118	93,041	76,173	9.1
South Dakota	192,875	9,398	7,033	4.9
Tennessee	1,406,588	134,924	109,875	9.6
Texas	6,560,557	2,212,871	1,905,127	33.7
Utah	845,863	127,989	110,388	15.1
Vermont	123,416	8,198	6,446	6.6
Virginia	1,769,244	373,897	318,437	21.1
Washington	1,516,710	407,869	343,401	26.9
West Virginia	358,328	7,865	6,915	2.2
Wisconsin	1,282,628	126,874	110,027	9.9
Wyoming	131,338	6,556	4,680	5

Source: US Census Bureau, American Community Survey 2010 (Migration Policy Institute, 2012).

¹⁶ Includes only children who reside with at least one parent. The term immigrant (or foreign born) refers to people residing in the United States who were not US citizens at birth. The foreign-born population includes naturalized citizens, legal permanent residents, certain legal non-immigrants (e.g., refugees and persons on student or work visas), and persons illegally residing in the United States. The terms "foreign born" and "immigrant" are used interchangeably. Immigrant families are defined here as families with at least one immigrant parent regardless of their children's own place of birth or US citizenship status. <http://www.migrationinformation.org>

Different state legislatures continue the policy talk and debate on immigration related issues. Since the Presidential inauguration and during the first quarter of 2012, 865 bills and resolutions related to immigrants were introduced in different state legislatures (National Conference of State Legislatures, 2012) as depicted by the following table:

Table 4.4

Number of Bills and Resolutions Introduced in Different States During First Quarter of 2012

Main Topics	2012		2011	
	Bills Introduced	Number of States*	Bills Introduced	Number of States**
Budget	57	24	45	20
Education	69	25	140	37
Employment	119	35	279	44
Health	64	25	168	38
Human Trafficking	25	13	39	19
ID/Driver's Licenses	83	29	171	40
Law Enforcement	125	35	267	42
Miscellaneous	47	21	118	32
Omnibus	14	9	51	30
Public Benefits	92	25	109	36
Voting	29	15	50	21
TOTAL	724		1,397	
Resolutions	141	35	141	37
TOTAL Laws and Resolutions	865	46	1,538	51

*includes District of Columbia

**includes Puerto Rico

Source: NCSL Immigrant Policy Project, 2012

The development of policy talk, passage of law(s) and policy that prevent marginalization of undocumented immigrant students guided the probing questions within this study and analysis of

each policy or body of legal authority. In addition, the guiding questions probed on the role of our school system as the venue towards progress in a democratic society, Inherent to the study, the guiding questions probed the responsibility of schools and the rights of undocumented students through benefits provided by specific policy and/or programs. The following questions were inclusive in this policy analysis study:

1. How did a revision on Texas Education Code Section 21.031 create policy changes during the early part of the 1970's and was this type of reform a notion of progress?
2. How was Plyler v. Doe a catalyst for further policy cycles of school reform on behalf of undocumented, student populations and how did it preserve democracy in schooling?
3. How have states and school entities across our nation tried to circumvent Plyler since the 1970's to the present?
4. What is the role of school districts in regards to undocumented immigrant student populations and what are the established policies, or benefits, established for this student population in our school system?
5. How is Deferred Action for Childhood Arrivals or DACA a step towards educational access for undocumented students who are products of compulsory K-12 education?
6. How does the Tyack and Cuban framework of policy cycles apply to the historical analysis of policies aimed at undocumented student(s) participation and access to education and its benefits?

The inherent nature of validity of data, as embedded within this historical policy account, relies on a qualitative research approach (Maxwell, 1992). This historical policy analysis was based on a real-world issue and specific demographic context that yielded understanding of the policy cycle and will reproduce similar results if the study is replicated. In this case, it examined

the existence of such legal authority and/or policy as it has been challenged since Plyler became law in the year 1982. Moreover, the responsibilities of school districts across our public system of education were delineated to clarify legal and ethical obligations grounded on the law. Benefits of public education, such as extracurricular activities and other services were highlighted to fill the gap in literature and information regarding the education of undocumented students.

4.2 Data Analysis

The data set was focused by time period and event or chronological development of legal authority/policy. The categorizing of information took place by identifying themes and patterns as they brought meaning to the chronology of legal authority and subsequently the analysis. A pre-set category found in the data displayed discriminatory burden on the basis of a legal characteristic on school-age children. Another category displayed as a cyclical process within the data set is the policy talk that is maintained in a continuous debate, which includes the role of education at the core of American values and a public school system that cannot punish undocumented students for their parents' actions. In Proposition 187, a statutory initiative, attempted to make undocumented immigrant students ineligible for enrollment in public schools (Melendez, 1995). The category created by this failed Proposition alluded to undocumented immigrants students as a "public burden" (Hunt, 2001), which in the context of California's mid 1990's created policy talk and a failed proposition.

In general, the process of this interpretational/qualitative analysis paralleled Tesch's (1990) interpretation, which states that a "researcher overlays a structure of his or her own making on the data as a device for rendering the phenomenon under study easy to grasp". Another category re-occurring throughout the literature review and data set of legal authority

was the legal analysis perspective, which based on Plyler, denotes only K-12 schooling as essential to the fabric of American society. Moreover, repeated policy action, represented by proposed legislation, aimed at circumventing Plyler was a theme found within the data set.

The data, although segmented by epoch throughout the timeline of the policy cycle, connected meaningful units to the research study as a whole. Another emergent category was the practice of backward mapping, which is an approach to policy implementation analysis. Backward mapping begins at the last possible stage of the implementation process, where administrative actions intersect with personal and private choice, thus making policy implementation a statement of behavior rather than a statement of intent (Elmore, 1979). In the case of House Bill 56, Alabama's Immigration Law of 2011, and specifically in terms of implementation analysis, the law intended in this bill would hinder schools and their personnel from fulfilling their professional mission of educating undocumented school-age students. This statement of behavior is the epitome of backward mapping, where the administrative action is depicted by the vital task of educating students, and the House Bill language is the behavior that precludes its implementation. Specific instances of causality between policy talk, in our country, and issuance of guidance that explain policies that will help our school system achieve new millennium diversity and thus avoid racial isolation may be left for individual interpretation. These instances of causality and development of policy/guidance were categories found within this study and may be extended in other studies. In conjunction to policy talk on immigration and its potential implications on education, the category which denoted access to a public education, as a guarantee of our compulsory system of education, is present throughout this policy study. Moreover, the professional and ethical duty of school staff and administrators was revealed as a necessary task to legitimize and acknowledge this benefit without penalty due to a

student’s country of origin and/or residency status. One final category present throughout the study of policy was that of unsettled immigration reform and its policy talk, which evoke strong feelings and jostles school reform through sluggish development and action in education policy. In conclusion the data set is organized according to a system derived from the data itself.

The following table reflects a synthesized view of the collected data set of legal authority and the resulting implications:

Table 4.1

<i>1975-2012 Policy Action Targeting Undocumented Immigrant Students in U.S. Schools</i>	
Policy Action	Purpose and *Result
Statute Revised- Texas Education Code 1975 [Section] 21.031	To prohibit the spending of state funds on students who were not U.S. citizens or legally admitted to this country... *Loss of funding and authorization to public school districts to deny enrollment in their public schools to students not legally admitted and residing in the country. Tyler ISD ignored the law and continued to enroll students of illegal immigrant status (FindLaw, 1996).
Tyler Independent School District- Board of Trustees Policy July 1977	To implement local district policy aimed at generating revenue through tuition for immigrant students- with illegal status-(school finance reform that covered the loss of funding from TEA)... *Access to a free and public education was reduced to a benefit for eligible students, who met criteria within the context of a statute. Undocumented students, residing in the country, were subjected to exclusion in a violation of the 14th Amendment (McGowan, 2011).
Preliminary Injunction by Judge Justice Doe v. Plyler September 1977	To challenge constitutionality of a portion of the Texas Education Code by seeking authorization for enrolling undocumented students that the state would not reimburse for daily attendance... *Preliminary injunction resulted in directing Tyler schools to admit all children living in the district, regardless of immigration status. Judge also ordered the TEA to release state funds to the Tyler ISD for each undocumented child (Hood, 2007).

<p>Final Ruling Doe, Roe, Boe, and Loe v. Plyler ISD September 1978</p>	<p>To prevent the Texas Education Agency from using immigrant children to deal with longstanding problems caused by a school finance system based on property taxes...</p> <p>*Undocumented immigrant students in Tyler, Texas were explicitly afforded judicial protection under the 14th Amendment's Equal protection clause of the Constitution- resulting in immediate appeal to Fifth Circuit- (Hood, 2007).</p>
<p>In re: Alien Children Litigation 628 F.2d 448, 1980</p>	<p>To take the issue of denied enrollment in a statewide fashion while raising larger issues about federal immigration law through the history and context of the state of Texas as influence on labor and migration patterns</p> <p>*Concluded that Section 21.031 of the Texas Education Code was unconstitutional and Texas Education Code was amended to protect the Mexican American population along the border (Hilkin, 2010).</p>
<p>Plyler v. Doe No. 80-1538 U.S. Court of Appeals, Fifth Circuit Decided: June 15, 1982</p>	<p>To ensure equal access to education for children regardless of immigrant status...</p> <p>*Court held that if states provide a free public education to U.S. citizens and lawful residents, they cannot deny such an education to undocumented children without "showing that it furthers some substantial state interest (FindLaw, 1996).</p>
<p>Proposition 187 (SOS) Save Our State Initiative California 1994</p>	<p>To enact an absolute ban on undocumented immigrant students from public school benefits and other services</p> <p>*Voters passed the proposed law as a referendum. Consequently, the law was challenged in a legal suit and found unconstitutional by a federal court (Martin, 1995).</p>
<p>Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) Public Law 104-208, [Section] 505, 506, 1996</p>	<p>To strengthen and streamline U.S. immigration laws...</p> <p>*Effective after 7-1-1998, notwithstanding any other provision of law, undocumented immigrant students shall not be eligible, on the basis of residence within a State, for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (Chang, 2011).</p>
<p>District Directive Elmwood Park Community Unity School District #401, Elmwood Park, Illinois</p>	<p>To circumvent Plyler by denying enrollment to a student who had overstayed the tourist visa on which he had entered the country...</p> <p>*School District ultimately permitted the student to enroll, after the Illinois State Board of Education</p>

2006	threatened to withhold funding (Immigration Policy Center, 2012).
Immigration Law, H.B. 56 Alabama 2011	To affect every aspect of an unauthorized immigrant’s daily life, from employment to housing to transportation to entering into and enforcing contracts to going to school... *A federal appellate court subsequently blocked implementation of the provision pending resolution of an appeal (Immigration Policy Center, 2012).
Joint “Dear Colleague Letter” Civil Right Division U.S. Departments of Education and Justice December 2, 2011	To remind public school districts not to discourage the participation, or exclude students based on their or their parents’ or guardians’ actual or perceived citizenship or immigration status *Letter was distributed nationally to remind public school districts of their Federal obligation to provide equal educational opportunities to all children residing within their district(s). Assistance was also offered to ensure compliance with the law (Office for Civil Rights, 2011).
Deferred Action for Childhood Arrivals (DACA) Policy 2012	To implement the discretionary determination to defer removal action of individuals as an act of prosecutorial discretion... * Individuals under 31, as of June 15, 2012 are eligible to obtain employment authorization and, under limited circumstances are eligible for reduced tuition, or other state benefits, depending on the law of their respective state of residence (Immigration Policy Center, 2012).

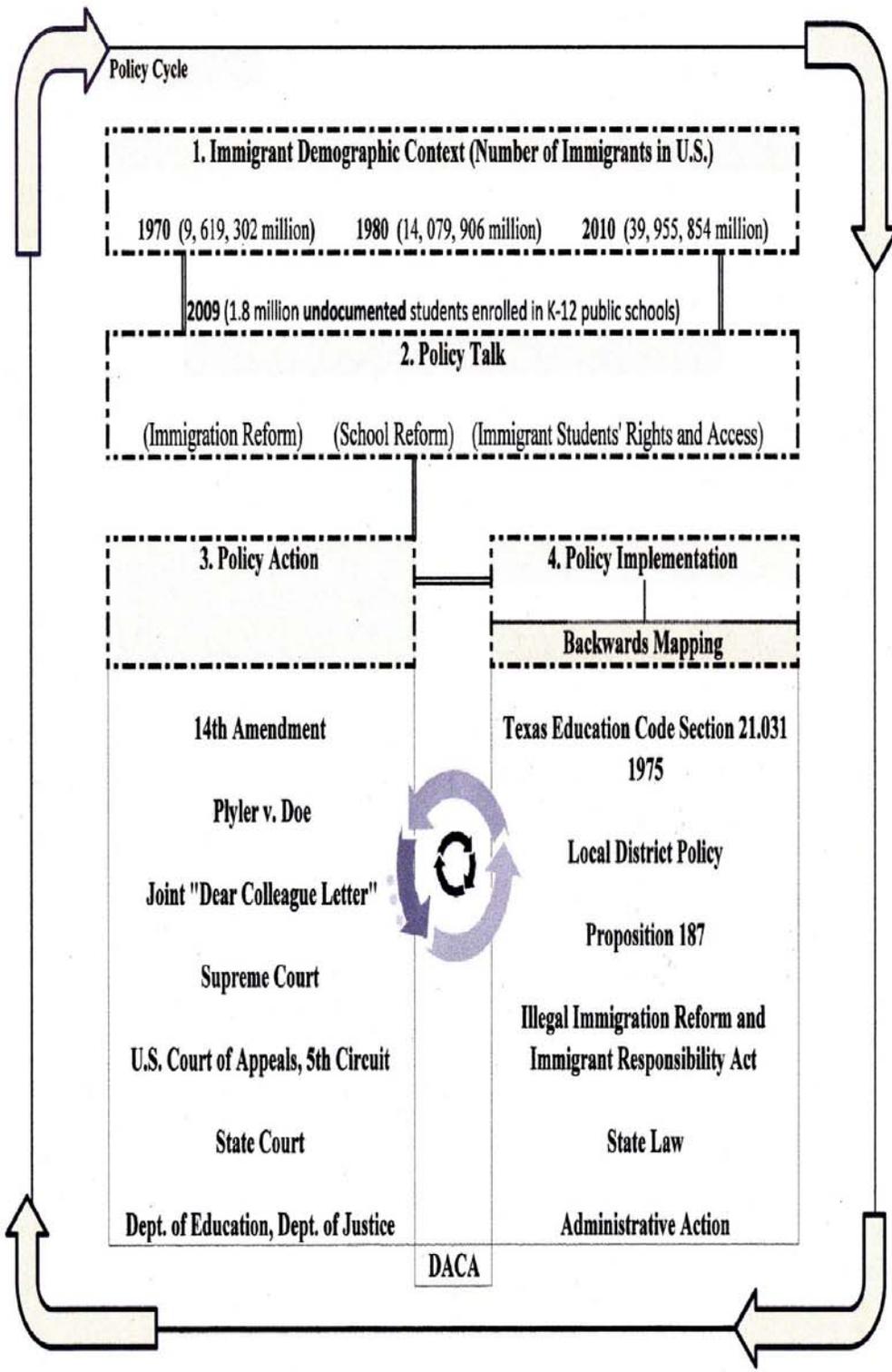
Conceptual Framework

Information and understanding of U.S. immigration issues are key elements to interpreting and understanding the framework of American education in the 21st century. Although clear and specific legal authority and guidelines exist with criteria specific to the educational rights of unsanctioned immigrant students, events related to immigration portray this student population as part of the national economic recession and relate this protected class to a perceived and/or actual threat to security. The nation’s anti-immigration climate has filtered the

policy cycle in the field of education. Nonetheless, ongoing implementation of law is often circumvented or short lived, despite the large scale and presence of immigrants in the United States since the 1970's.

Table 4.5

4.3 Conceptual Model



4.4 Results

Collected data for this research study comprised a historical review of case law, statutes, and other legal authority on the legal rights of undocumented students in the United States' public school system. The presentation, a non-traditional format, provided the review of case law and other legal authority analyzed with regards to implications on school reform through action meant to prevent marginalization of undocumented immigrant students. Using an analytical, historical framework from the Tyack & Cuban (1995) interpretation of political and institutional analysis, the chronological, historical policy analysis also reviewed the role of our school system as the venue towards progress in a democratic society. The guiding questions were sequentially organized to parallel the chronology of the literature review and legal authority development. Inherent to this qualitative research study, the guiding questions probed the responsibility of schools and the right of the individual student through benefits provided by specific programs. It must be noted that education in the context of the research study was defined as a benefit, rather than a fundamental right within the each policy reviewed. Benefits of public education presented the constant comparative analysis between each subsequent policy action that affected the undocumented student population, as a protected class.

The 20th century witnessed the passing of educational laws as efforts to revamp the American system of education and in an era of changing demographics in a widespread influx of immigration, both legal and unsanctioned. The current influx of immigrant student enrollment in our public school system provokes policy talk and debate as demographics change across the nation. Moreover, a national climate of policy talk and speculation on immigration reform represses undocumented students' inclusion into the mainstream of our society within a construct of legal restrictions. Scholarly literature on undocumented immigrant students in the 21st century

is scarce in terms of quantity and depth of studies. The same scarcity is found in the public school system's limited number of guides available to personnel responsible for implementing such policies.

Building of a demographic context for this research study revealed a growing public school population due to a large influx of students with immigrant origins. Other findings include data that denote a change in student demography as early as the early 1970's when Latino immigrant students comprised approximately six percent of the total student population (Fix & Capps, 2005). Recent data from the first decade of the new millennium recorded the presence of children of immigrants as a solid one in four of all school-aged children and a steadily growing population within our public schools (Fix & Capps, 2005). While children with immigrant origins represent ten million public school students, the number is expected to grow to a projected twenty eight million by the year 2050 (Fry & Gonzalez, 2008).

In 2009, approximately 1.8 million undocumented students under the age of eighteen (Perez, 2009) were enrolled in our public school system. The projected K-12 fall enrollment for public school year 2014 is 50,268,000 overall students across the United States (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 have the opportunity to access higher education. These figures represent the demography of undocumented students in K-12 public school, as well as reflect a marginalized student population in terms of access to higher education at the core of unsettled immigration reform in the United States.

Between June 1982 and prior to September 11, 2911, educating undocumented students entailed a clear set of duties and responsibilities on behalf of school districts across our nation

(Winograd, 2012). These duties were carried out through policy implementation and educational aspects that incorporated protections for benefits of education for undocumented students. Post 9/11, policy talk resurfaced and once again emerged expressing the possibilities of allowing states to deny benefits of a public education to undocumented students.

The chronological review of legal authority and literature review provided a clear answer as to how a revision on Texas Education Code Section 21.031 created policy changes during the early part of the 1970's by attempting to create a corrective measure designed to prevent a drain on the State's budget (458 F. Supp. 569, 575, 1978). In July 1980, the court decided that 21.031 violated the Equal Protection Clause of the Fourteenth Amendment (Alien Children Education Litigation District Court for the Southern District of Texas July, 1980). More 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 laws. The court's stance on this budgetary issue, in regards to Tyler School District's board policy, development is considered school reform despite its legal and ethical ramifications. This change to Texas Education Code Section 21.031 may not be considered a notion of progress, whether financial and moral costs to our nation are considered, and with regards to undocumented students, who were treated as a suspect class due to their immigration status.

In 1982, the United States Supreme Court in *Plyler v. Doe*, 457 U.S. 202, issued a historic ruling, which granted undocumented immigrant students access to a free K-12 public education. *Plyler* was a catalyst for further policy cycles as it emphasized that all public schools

must follow its constitutional implications in reference to privacy issues on behalf of undocumented students and their families. Therefore, public school staff cannot request that a student disclose his/her immigration status nor can they request documentation that may expose their immigrant status at any time (Hunter & Howley, 1990). Moreover, our public school system cannot require a student to apply or present a social security number for registration purposes.

By providing extended benefits previously barred to undocumented students in our public school system, Plyler preserved democracy of schooling for this student population. As public school students, undocumented immigrants are entitled to participate in the Emergency Immigrant Education Program, the Transitional Program for Refugee Children as well as Bilingual Education (Hunter & Howley, 1990). Undocumented immigrant students also have access to services in Special Education and free and 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 organization clubs, as team building and social skills occurring from participation are fundamental values addressed under the law (National School Boards Association, 2012). Through statute, regulations, and/or guidance, other services such as transportation, use of health centers at individual campuses, breakfast programs, and any other service essential to receiving a public education are guaranteed and safeguarded benefits to all student populations, as a result of Plyler v. Doe's educational policy implications.

Different states and other school entities across our nation have attempted to circumvent Plyler by proposing policy that attempts action against the undocumented immigrant student population. On November 8, 1994 Proposition 187 was on California's general election Ballot

initiative as a state initiated statute that denied undocumented immigrants state-funded services, which included a public education (Eig, 1999). Specifically, the first of five major sections in Proposition 187 intended to bar undocumented students from California's public school system in a K-16 stipulation, which also asked that school personnel verify immigration status of both pupils and parents (Migration News, 1994). Pete Wilson, then California's Republican Governor, endorsed this Proposition to deter immigration from Mexico, simultaneous to barring undocumented students from California's public schools, as reportedly this student population "did not bother to learn English" (Schugurensky, 2003). In the Spring of 1998, the primary provisions of Proposition 187 were ruled unconstitutional due to its violation of Plyler, which provides undocumented students access to the nation's public school system (Siskind & Susser, 2006).

In 1996, within IIRIRA, the Gallegly amendment sought the reversal of Plyler and would have authorized public K-12 schools to verify the status of students enrolled within the system. Estimated 1996 figures show this amendment would have barred 600, 000 to 700, 000 undocumented students from our public school system (University of California, Davis, 1996). The Gallegly amendment was deleted from IIRIRA with the support of forty seven Senators, which included five Republicans as well as then President Clinton and the attempt to circumvent Plyler failed. Nonetheless, section 505 in IIRIRA has maintained its congressional intent of absolute prohibition on conferring educational benefits of higher education for undocumented students on the basis of state residency.

Post 9/11, the United States began a period characterized by increased suspicion on foreigners in our country. Under a new policy cycle in June 9th, 2011, and in a partial response to the World Trade Center bombing by terrorists¹³, Alabama's state legislature passed HB 56, a

controversial new 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 as well as prevented sanctioned-entry immigrants from attending public colleges or universities in the state of Alabama (American Civil Liberties Union, 2011b). Embedded in HB 56, Sections 28 and 5 directly interfered with K-12 schooling access. The motivation behind enacting HB 56 was described by Representative Micky Hammon, R-Decatur as a means to save about \$200 million per school year, which is the total public education cost(s) for undocumented students in the state of Alabama (White, 2011).

By examining legal authority on policy that grounds the legal and ethical obligations of school districts in regards to undocumented students, a pattern of "corrective measures" designed to "prevent drains on state budgets" was consistent throughout the timeline in review. In September 1977, a district policy change on tuition rates aimed at keeping "illegal aliens" from entering the State of Texas (458 F. Supp. 569, 575, 1978) and subsequently attending public schools. In 1982, the Supreme Court affirmed the State of Texas and its attempt to disadvantage undocumented students by charging tuition did not prove that this policy action would serve a "compelling state interest" (OYEZ, 2012). In 1994, California's SOS ballot "proposed" to save the state approximately \$1.7 billion by barring access to 300, 000 immigrant students in their school system (Armbruster, Geron, & Bonacich, 1995). The deleted Gallegly Amendment proposed to save the state of California \$1.8 billion in educational costs by barring undocumented students from its public schools (University of California, Davis, 1996). Post 9/11, Micky Hammon, R-Decatur, described the motivation for drafting HB 56 in 2011 as a

means to “save education dollars” or about \$200 million per school year, which totals public education costs for undocumented immigrants in the state of Alabama (White, 2011).

The benefit of public education is grounded in the United States Constitution’s fourteenth amendment and its equal protection clause. In reference to undocumented students, *Plyler v. Doe* (1982) has guaranteed a free and compulsory schooling to all populations, whether citizens of the United States, legally admitted aliens, or immigrant students with unsanctioned entry status. The policy cycle seems to have turned full circle to the early years prior to *Plyler v. Doe* as individual states continue to propose policy action to deter its implementation on behalf of undocumented students. In reality, the benefit of public education for undocumented students continues to suffer from implementation issues and requires repeated and additional litigation as well as administrative vigilance to continue to enforce the ruling (Olivas, 2012). On June 15th, 2012, President Barack Obama issued an order for administrative relief policy. DACA implementation prevents the deportation of certain DREAM Act-eligible undocumented youth (National Immigration Law Center, 2012). DACA eligibility requires entry to the United States before age sixteen, a high school diploma or GED, and/or school enrollment, depending on the applicant’s age (National Immigration Law Center, 2012). DACA is a step towards educational access for undocumented students since it could potentially provide a gateway for increased enrollment across the nation by removing the fear of deportation for the thousands of undocumented students who were brought to the United States as children. There are currently forty five private higher education institutions that provide benefits of tuition assistance for the undocumented student population, a list which includes most of the Ivy League (Perez, 2012).

The historical study and analysis of legal authority focused on the undocumented immigrant student population, their benefits of an American public school education along with

other programs as established by the law. Currently, a policy climate permeated by the policy talk of potential immigration reform, continues to push for curtailing education benefits for undocumented students. The responsibilities of school districts across our public system of were also delineated to clarify legal and ethical obligations grounded on the law. Benefits of public education and other services were highlighted to fill the gap in literature and information regarding the education of undocumented students. The Tyack and Cuban's policy cycle metaphor provided a framework that embodies a cyclical fashion, where progress is curtailed by solutions that impede true reform. The multiple sources of data collection demonstrated how undocumented students' educational benefits are strongly rooted in Plyler's intended policy action, while policy action has continued to occur through proposed law that has yet to meet implementation.

4.5 Summary

Essential facts presented through the data collection provided concrete information of legal authority for providing benefits of education to undocumented immigrant students in our public school system. In addition, the data collection addressed a comprehensive study and analysis of federal and state cases, statutes, and school board policies provided a clear timeline of proposed policy, that aimed to bar this student population from our compulsory system of education. Some of the conclusions derived from this study highlight frequent disregard and blatant refusal of existing law as well as policy talk that provokes reaction in the American public's ethics and moral principles. Policy action was presented through current, proposed, and failed propositions that created implications as they continued to build the structure of public schooling. The undocumented student population in K-12 and the small pipeline to higher education continue to be susceptible to both the position of policy talk and action and the

interpretation of the law when implemented. This is the result of the intersection between personal and/or private choices that are made when administrative action is carried through.

Some of the findings, as related to the set demographic context and the guiding questions, provided information affecting the 1.8 million undocumented students (Perez, 2009) in our public school system. In Plyler, the Court focused on the benefit of education as a governmental service rather than a fundamental right. The Equal Protection Clause, as stated by the Court, protects against irrational classification, and more importantly, against discrimination originating from prejudice and hostility, in this case (study) aimed at the undocumented student population of K-12 age. The American public school system provides all students with academic knowledge, opportunities for socialization, access to affordable or free meals and eligibility for participation in school wide programs while infusing students with long term goals and aspirations despite immigration status. Nonetheless, these benefits do not suggest a general acceptance of this student population within the polity of our school system as policy cycles continue to reflect issues that require repeated and additional litigation coupled with administrative vigilance to enforce correct implementation. Moreover, post 9/11 and as 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 across our nation, while immigrant students, both sanctioned and unsanctioned will remain a protected class within our student population. The specific results emerging from this study will be presented in Chapter 5.

Chapter 5: Summary, Conclusions, and Recommendations

Introduction

This research study was conducted to understand and explain the phenomenon of educational implications stemming from legal authority aimed at immigrant students with unsanctioned entry, through a context of three decades overlapping into the 21st century. Moreover, this research study illustrated the general demographic context of the immigrant population and its impact on demographics in schools. This research study filled the gap in literature on policy related to the undocumented immigrant student population, which has also revamped aspects of policy action within the American system of education. In conjunction, this research study allowed for the examination of different aspects of immigration policy that implicate undocumented student access to other programs as established by the law.

5.1 Summary of the Study

Summarizing this research study can be described as a comprehensive analysis of federal and state cases, as well as statutes and school board policies that were utilized to disclose the existing legal authority for providing the benefits of education to undocumented immigrant students within our national, compulsory school system. Chapter 1 presented the potential framework for conducting a legal search and analysis through a historical review of case law, statutes, and other legal authority pertinent to the legal rights and benefits of undocumented students in the United States public school system. In addition to this timeline, the analytic, historical framework from the Tyack and Cuban (1995) interpretation of political and institutional analysis was introduced. This analysis tool served to interpret implications on school reform through benefits of education for undocumented students in our compulsory system.

In Chapter 2, the literature review and legal authority provided a thorough presentation of the constitutional values of fairness, justice, and perhaps most important equality, as they have been challenged through attempts to marginalize undocumented students in our school system. Each of the guiding questions was answered by the literature review simultaneous to creating a source of referenced materials that denote policy action and its implementation in conjunction with the benefits of education available for students denoted as immigrants with unsanctioned entry or undocumented. Beginning with Plyler to the defunct Proposition 187, and IIRIRA to the ecology of fear in Alabama, undocumented student populations continue the struggle for civil rights in the new millennium. Today, with DACA in place as an executive order in the midst of pending and potential immigration reform, new developments of relief and thus future educational implications will result in policy action on behalf of thousands of undocumented students present in our schools. This historical evaluation recognized the present and unresolved immigration issue that affects our K-12 compulsory educational system and recognized the restrictions on access to higher education.

Chapter 3 highlighted data collection that addresses a comprehensive study through a clear timeline and the recurring theme of frequent disregard, or blatant refusal, at correct implementation of existing law coupled with more policy talk that provokes reaction within the American public's ethics and moral principles. The presentation and analysis of current, proposed and failed propositions revealed implications that are part of the current structure of public schooling. In addition, the role of undocumented student population in K-12 and in the pipeline to higher education, were presented as susceptible to both the position of policy talk and action and the interpretation of the law when implemented. This is the result of an intersection between personal and private choices made when administrative action is carried through.

5.2 Summary of Findings and Conclusions

Findings from this research study of case law and legal authority, which guide the rights of undocumented students in the United States' public school system, were interpreted by using the Tyack and Cuban (1995) historical framework for political and institutional analysis. The chronological policy analysis also reviewed the role of our school system as the venue towards progress in a democratic society. Findings of the study disclosed implications on school reform with regard to the undocumented student population. Case law and other legal authority provided policy action that aimed at either promoting or preventing the marginalization of undocumented students. Other proposed policy aimed to bar access to educational benefits. The guiding questions were sequentially organized to follow the chronology of the literature review and legal authority development. Inherent to this qualitative research study, the guiding questions probed the responsibility of schools and the right of the individual student through benefits provided by specific programs stemming from policy action and embedded within legal authority. Education in the context of the research study was defined as a benefit within each policy reviewed. Findings and conclusions from this research study make a contribution to the scarcity of guides available to K-12 personnel regarding the responsibility of policy implementation on behalf of undocumented students in our K-12 system. Moreover, a small contribution to scholarly literature was produced as research findings overlap into policy affecting undocumented students in the pipeline to higher education in a current climate of continuous policy talk on comprehensive immigration reform. The interpretations developed from the analysis revealed common themes despite the transitory and epochal pattern of policy cycles found in the chronology of literature review and legal authority.

The first guiding question focused on disclosing policy changes, if any, stemming from a revision on Texas Education Code Section 21.031, which attempted to charge undocumented immigrant students a tuition fee of \$1,000, per school year, (OpenJurist, 2010). While this code revision was initiated by superintendents on the Texas-Mexico border, through their respective representatives, it lacked legislative history and was marked by the absence of studies. The category of discriminatory burden, on the basis of legal characteristic on school-age children is present, as the legislation created legal responsibilities and moral obligations through schooling policies that were to be implemented by K-12 administrators and staff. More specifically, backward mapping in policy implementation was exhibited as Brownsville, Dallas, and El Paso's YISD reported absolute exclusion of undocumented students, whether or not tuition was paid. Individual values were displayed by attempts to marginalize undocumented students.

Preventing financial drain on state budgets and keeping "illegal aliens" from entering the state was a category displayed as a cyclical process within the data set. Moreover, this cyclical process involved policy talk in a continuous debate, which included the role of education at the core of American values and a public school system that cannot punish undocumented students for their parents' actions. Preserving democracy in schooling was established by Plyler v. Doe in 1982 and its policy implementation created a continuous pattern of repeated litigation and administrative vigilance. This pattern was present throughout the data set and has been repeated over a span of thirty years of policy cycles of school reform involving public education benefits for undocumented students.

Another emergent category was the practice of backward mapping in policy implementation. Under Plyler's legacy undocumented students enjoy the benefit of public education as compulsory schooling provides them with a gamut of knowledge and skills,

socialization opportunities, as well as access to affordable meals. Nonetheless, this student population encounters daily roadblocks as policies implemented often curtail their participation and access to other educational benefits. Motomura (2007) argues that the undocumented student population in the United States can be interpreted as a pragmatic issue as they are faced with susceptibility to the position of policy and/or interpretation of the law. This pragmatic issue is reflected on administrative policy action that forbids the reporting of immigration status and yet intersects with personal and private choices of implementation. The theme of undocumented students' benefits of access to public colleges or universities was present throughout the data set as policy talk which continues to be a debated issue in the context of both immigration law and education. This issue is rooted in Plyler's intended policy action, which clearly spells out in its administrative mandates.

Repeated policy action, represented by proposed legislation, aimed at circumventing Plyler was a recurring theme throughout the data set. Through Proposition 187, an attempt to ban undocumented immigrant students from public school in the state of California was rooted in potential policy implementation guided by a Republican Governor's political orientation of choice. After litigation, the policy failed only to set a precedent as it was ruled unconstitutional as it interfered with the federal government's right to control matters related to immigration and most importantly for its blatant attempt at violating Plyler, which provides undocumented students with access to a compulsory public education (Siskind & Susser, 2006). Attempts to circumvent Plyler continued and in 1996, within IIRIRA and as a House bill, the Gallegly amendment sought its reversal and would have authorized public K-12 schools to verify the status of enrolled students. The Gallegly amendment was deleted from IIRIRA with the support of forty seven Senators and President Clinton. Nonetheless, section 505 in IIRIRA has

maintained its congressional intent of absolute prohibition for conferring benefits to higher education on the basis of state residency.

The latest attempt to circumvent Plyler was enacted through Alabama's state legislature controversial immigration bill, which allowed public school staff to check their students' and parents' immigration status. The "motivation" behind HB 56 was described as a means to save education dollars, or about \$200 million per school year, which is the cost to fund education for undocumented immigrants in the state of Alabama (White, 2011). Section 8 in HB 56 bars undocumented students from enrolling and/or attending public postsecondary institutions. Although this may be classified as the latest failure to challenge Plyler, it resulted in more policy talk for immigration reform, while our school system continues to function through misguided policy implementation and polarized immigration politics.

Conclusions based on the data analysis and findings resulted in a compilation of established policies and/or other policy action that allow the reader to understand the phenomenon of educational implications regarding undocumented student populations in our school system. Through a context of three decades, which overlapped into the new millennium, this research study illustrated the general demographic context of the immigrant population in the United States and its impact on school demographics. Moreover, by increasing the readers' understanding of policy related and affecting the undocumented immigrant student population, the role of school districts and their duties was defined along with information on policy talk surrounding the established policies. In today's current climate of policy talk on impending immigration reform, policy action in public schools extends beyond demands due to population increases.

Policy implementation through administrative action continues to intersect private choice or political interest as the lack of accessible guidelines on this topic remains a fact. Nonetheless, the data set revealed how public schools must conform to a specific protocol of recommendations based on Plyler's constitutional implications. In terms of privacy issues, administrators and school district staff cannot request documentation on immigration status from a student or parent, nor can they treat students differently in order to determine residency, and Social Security numbers cannot be required for registration purposes (Hunter & Howley, 1990). More importantly, this research study revealed the existence of a joint letter by the Department of Justice and the Department of Education, which developed guidance to remind all public school districts of their obligation to provide equal education opportunities to all children (Office of Civil Rights, 2011). Similar guidance issued for higher education institutions reminds administrators that the attainment of a diverse student body is the core of a proper mission.

The examination of legal authority on policy that grounds the legal and ethical obligations of school districts in regards to undocumented students, revealed a pattern of "corrective measures" designed to "prevent drains" on state budgets. The demographic context of the immigrant population in the United States provided a background to capture the impact of the undocumented student population in our public school system. It also provided a basis for understanding that bearing the title of illegal immigrant, despite earning an American K-12 diploma, these students may be barred from access to higher education in a country whose fabric of democracy is based on education. DACA's implementation has provided administrative relief for eligible undocumented youth while higher education access through this policy has yet to occur. The policy cycle for schooling will continue facing implications stemming from unsettled immigration. The results of this study created a source of referenced materials that denote policy

and its implementation in a specific timeline. As a brief summarizing statement, the study revealed our constitutional values of fairness, justice, and equality as they have been challenged over three decades of policy cycles and attempts to marginalize undocumented students.

5.3 Implications

Interpreting the findings of this research study implies that the United States fabric of democracy is based in American public education. The guiding questions for this study provided a reflection of our constitutional values in terms of fairness, justice, and equality. The challenges facing these values composed a policy cycle, where unsettled immigration created policy talk that led to action in different state legislatures and at the Supreme Court level. Recognizing that the undocumented student population throughout our school system continues their civil rights struggle is a key implication in the findings of this study.

Practical implications from this research study clearly delineate the duties and responsibilities of school administrators in a compulsory school system that aims to provide access and benefits of public education to all students. Administrative action reflected in each piece of legal authority and throughout the literature review denoted the vital task of educating all students as well as the individual interpretation that may preclude correct implementation of policy. The compilation of specific duties and responsibilities on behalf of public schools provided strength of credibility for this research study, as mandates based on the law are specified throughout. DACA provided a positive development of relief while a current climate of policy talk on immigration reform may have future implications on this student population.

As immigration reform permeates trending policy talk in our country, future research on this topic can be extended to include future developments of policy action on behalf or against the undocumented immigrant student population. Impending immigration reform may bring

changes to the current timeline of legal authority and therefore a weakness may be present under new policy development and unknown implementation on behalf of thousands of undocumented students present in our country today. The examination of this policy evaluation recognized the unresolved immigration issue present in our country, which has implications on our K-12 system of compulsory education and imposes restrictions on access to higher education. Moreover, a retrospective examination of this research study revealed continued attempts to marginalize undocumented students. These attempts were disguised as proposed policy action designed to “prevent drains” on state budgets.

5.4 Recommendations

Recommendations for future research and in terms of a policy analysis could be inclusive of all proposed legislature before and after 9/11 aimed at curtailing educational benefits for undocumented students in both K-12 compulsory education and the extension into higher education. This recommendation is being made due to the observed lapse in legislative action between 9/11 and the new millennium, as the focus appear to have shifted from saving state budget dollars to border security. Another recommendation is to look exclusively at the demographic context of immigrants and access to higher education in a similar timeline. This topic could be comprehensive of all states or particularly focus on the states with higher concentrations of immigrant populations. While this particular venue of research could lend itself for quantitative methods, it would also be able to employ a qualitative design in terms of analyzing admissions criteria for state colleges and/or universities. An ethnography based on this timeline is another possible topic of research, as it would provide a personal insight to the lives and experiences of the actors featured in each of the policies utilized for this study. A last recommendation would be to focus this project on DACA and through a qualitative methods

research study, provide insights on the trajectory of recipients as immigration reform looms in the landscape of policy action in our country.

Recommendations for future practice include a review of duties and responsibilities of administrators in public schools and on behalf of undocumented student populations. This is particularly necessary as trending media issues often highlight blatant violations of the law that include immigrant students or recent arrivals from foreign countries. A second recommendation is to include the Dear Colleague Letter in ethics classes for administration, whether it is K-12 or higher education. This is a pressing issue as ethics encompasses different ideologies, which must accommodate today's moral ecology in a new millennium of diverse demographics, where education continues to be the binding force of our democracy.

References

- Alien Children Education Litigation (District Court for the Southern District of Texas July, 1980), 2012 U.S. FindLaw 501 F. Supp. 544.
- American Civil Liberties Union. (1999, July 29). CA's Anti-Immigrant Proposition 187 is Voided, Ending State's Five-Year Battle with ACLU, Rights Groups. *American Civil Liberties Union*. Retrieved October 29, 2012, from <http://www.aclu.org/immigrants-rights/cas-anti-immigrant-proposition-187-voided-ending-states-five-year-battle-aclu-righ>
- American Civil Liberties Union. (2011a, June 13). Preliminary Analysis of HB 56 "Alabama Taxpayer and Citizen Protection Act" *American Civil Liberties Union Foundation*. Retrieved November 14, 2012, from https://www.aclu.org/files/assets/prelimanalysis_alabama_hb56_0.pdf
- American Civil Liberties Union. (2011b, July 8). ACLU and Civil Rights Coalition File Lawsuit Charging Alabama's Racial Profiling Law is Unconstitutional Share. *American Civil Liberties Union*. Retrieved November 13, 2012, from https://www.aclu.org/files/assets/prelimanalysis_alabama_hb56_0.pdf
- Armbruster, R., Geron, K., & Bonacich, E. (1995). The Assault on California's Latino Immigrants: The Politics of Proposition 187. *International Journal of Urban and Regional Research*, 19(4), 655-663. doi: 10.1111/j.1468-2427.1995.tb00533.x
- California Coalition for Immigration Reform. (2012). History of Proposition 187. *History of Proposition 187*. Retrieved October 28, 2012, from <http://www.ccir.net/REFERENCE/187-History.html>

- Cano, A., Lemus, G., Rubio, R., Escobar, M., Castillo, I., & Terrones, J. (1994). California's Proposition 187 Shows Hate and Fear. *The Tech Online Edition*, 114(56), 617. Retrieved October 27, 2012, from <http://tech.mit.edu/V114/N56/prop187.561.html>
- Capps, R., Fix, M., Murray, J., Ost, J., Passel, J., & Herwanto, S. (2005). The New Demography of America's School Immigration and the No Child Left Behind Act. *The Urban Institute*. Retrieved October 4, 2012, from http://www.urban.org/UploadedPDF/311230_new_demography.pdf
- Chang, H. J. (2011). The Illegal Immigration Reform And Immigrant Responsibility Of 1996 (IIRIRA). *AmericanLaw.com*. Retrieved October 3, 2012, from <http://www.americanlaw.com/1996law.html>
- Creswell, J. W. (2009). *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*. Los Angeles, CA: Sage.
- Decatur Daily. (2011, November 21). Thank You, Mercedes. *Decatur Daily Editorial*. Retrieved November 15, 2012, from <http://www.decaturdaily.com/stories/Thank-you-Mercedes,88006?print=1>
- ED and DOJ. (2011, December 2). Dear Colleague Letter [Letter written December 2, 2011 to K-16 Educational Institutions]. Retrieved November 16, 2012, from <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201111.pdf>
- Eig, L. M. (1999). *California's Proposition 187: A Brief Overview* (Rep.). Washington, DC: Congressional Research Service The Library of Congress. Retrieved October 27, 2012, from <http://www.congressionalresearch.com/97-543/document.php?study=CALIFORNIA%26%23146%3BS+PROPOSITION+187+A+BRIEF+OVERVIEW>

- Elmore, R. F. (1979). Backward Mapping: Implementation Research and Policy Decisions. *Political Science Quarterly*, 94(4), 601-616. Retrieved October 13, 2012, from <http://www.jstor.org/discover/10.2307/2149628?uid=3739256&uid=2&uid=4&sid=21101313920077>
- Feder, J. (2008). *CRS Report for Congress-Unathorized Alien Students, Higher Education, and In-State Tuition Rates: A Legal Analysis* (Rep. No. RS 22500). Ithaca, NY. Retrieved November 10, 2012, from http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1561&context=key_workplace&seiredir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fq%3D%2BIIRIRA%2Band%2Bhigher%2Beducation%26btnG%3D%26hl%3Den%26as_sdt%3D0%252C44%26as_vis%3D1#search=%22IIRIRA%20higher%20education%22
- FindLaw. (1996, January 9). U.S. Supreme Court/Plyler v. Doe, 457 U.S. 202. *FindLaw | Cases and Codes*. Retrieved September 2, 2012, from <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US>
- FindLaw. (2012). U.S. Constitution: Fourteenth Amendment. *14th Amendment Guaranteed Rights*. Retrieved September 18, 2012, from <http://caselaw.lp.findlaw.com/data/constitution/amendment14/>
- Fix, M., & Capps, A. (2005, November 1). Immigrant Children, Urban Schools, and the No Child Left Behind Act. *Migration Policy Institute*. Retrieved October 19, 2012, from http://lwvindy.org/files/MigrationInformationSource_-_ImmigrantChildrenUrbanSchoolsAndTheNCLB.pdf

- [Foreword]. (2012). In M. A. Olivas (Author), *No Undocumented Child Left Behind: Plyler v. Doe and the Education of Undocumented Schoolchildren*. Retrieved October 21, 2012, from http://www.amazon.com/Undocumented-Child-Left-Behind-Schoolchildren/dp/0814762441#_
- Fry, R., & Gonzalez, F. (2008, August 26). One in Five and Growing Fast: A Profile of Hispanic Public School Students. *Pew Hispanic Center*. Retrieved October 19, 2012, from http://www.ime.gob.mx/2008/edu_one_five_growing_fast_a_profile_hispanic_public_school_students.pdf
- Geertz, C. (1973). Chapter 1/Thick Description: Toward an Interpretive Theory Culture. In *The Interpretation of Cultures* (pp. 3-29). New York: Basic Books.
- Genealogy.com. (2011). Immigration and Migration in America. *Genealogy.com: Immigration and Migration in America*. Retrieved March 1, 2013, from <http://www.genealogy.com/00000389.html>
- Gibbs, J. T., & Bankhead, T. (2001). *Preserving Privilege: California Politics, Propositions, and People of Color*. Westport, CT: Praeger.
- Gzesh, S. (2006, April). Central Americans and Asylum Policy in the Reagan Era. *The Migration Information Source*. Retrieved March 1, 2013, from <http://www.migrationinformation.org/USfocus/display.cfm?ID=384>
- Haskins, R., & Tienda, M. (2011). The Future of Immigrant Children Policy Brief 2011. *The Future of Children Princeton-Brookings*, 21(1), 3-18. Retrieved October 13, 2012, from http://futureofchildren.org/futureofchildren/publications/docs/21_01_PolicyBrief.pdf

- Hilkin, E. (2010). The William Wayne Justice Papers. In *Tarlton Law Library Rare Books and Special Collections*. Austin, Texas. Retrieved October 3, 2012, from http://tarlton.law.utexas.edu/exhibits/ww_justice/biography.html
- Hood, L. (2007). Educating Immigrant Students. *Carnegie Reporter*, 4(2). Retrieved September 18, 2012, from <http://carnegie.org/publications/carnegie-reporter/single/view/article/item/174/>
- Hunt, V. F. (2001). When Institutional Boundaries Meet New Political Ideas: Courts, Congress and U.S. Immigration Policy Reform [eScholarship]. *EScholarship University of California*. Retrieved October 30, 2012, from <http://escholarship.org/uc/item/9ft9v2rs>
- Hunter, J., & Howley, C. (1990). Undocumented Children in the Schools: Successful Strategies and Policies. ERIC Digest. *Undocumented Children in the Schools: Successful Strategies and Policies*. ERIC Digest. doi: ED321962
- Immigration Policy Center. (2008, October 18). Dreams Deferred: The Costs of Ignoring Undocumented Students. *Immigration Policy Center*. Retrieved January 25, 2013, from <http://www.immigrationpolicy.org/just-facts/dreams-deferred-costs-ignoring-undocumented-students>
- Immigration Policy Center. (2012, August 17). Deferred Action for Childhood Arrivals: A Q&A Guide (Updated). *Immigration Policy Center*. Retrieved September 24, 2012, from <http://www.immigrationpolicy.org/just-facts/deferred-action-childhood-arrivals-qa-guide-updated>
- Institute for Education Sciences. (2012, May). Enrollment in Public Elementary and Secondary Schools, by State or Jurisdiction: Selected Years, Fall 1990 through Fall 2014. *Enrollment in Public Elementary and Secondary Schools, by State or Jurisdiction:*

- Selected Years, Fall 1990 through Fall 2014*. Retrieved October 19, 2012, from http://nces.ed.gov/programs/digest/d11/tables/dt11_036.asp
- Kohli, A. (2008). Educating Undocumented Students: The Legacy of Plyler v. Doe. *Northwestern Journal of Law and Social Policy*, 3(2), 184-185. Retrieved October 21, 2012, from <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1023&context=njlsp>
- LAND. (2011, June 9). Text of Alabama Immigration Law, HB 56. *Latin America News Dispatch*. Retrieved November 13, 2012, from <http://latindispatch.com/2011/06/09/text-of-alabama-immigration-law-hb-56/>
- The Law Library of Congress. (2012, August 2). Federal Statutes. *Library of Congress Home*. Retrieved September 17, 2012, from <http://www.loc.gov/law/help/statutes.php>
- Legal Information Institute. (1992). Plyler v. Doe. *Plyler v. Doe*. Retrieved September 17, 2012, from http://www.law.cornell.edu/supct/html/historics/USSC_CR_0457_0202_ZO.html
- Lesesne, C. (2012, November 2). Community Colleges Called Upon to Help Immigrant Students. *Diverse Issues in Higher Education*. Retrieved November 18, 2012, from <http://diverseeducation.com/article/49221/>
- Lopez, M., Tsitouras, D., & Azuma, P. (2012, June 16). *The Prospects and Challenges of Educational Reform for Latino Undocumented Children: An Essay Examining Alabama's H.B. 56 and Other State Immigration Measures* [Scholarly project]. In *Social Science Research Network*. Retrieved November 16, 2012, from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1987046

- Mahoney, J., & Rueschemeyer, D. (2003). *Comparative Historical Analysis in the Social Sciences*. Retrieved March 2, 2013, from http://bilder.buecher.de/zusatz/24/24724/24724327_lese_1.pdf
- MALDEF. (2012, August 17). Toolkit on Deferred Action for Childhood Arrivals. *MALDEF The Latino Legal Voice for Civil Rights In America*. Retrieved November 17, 2012, from http://maldef.org/assets/pdf/MALDEF_DACA_guide_20120817.pdf
- Martin, P. (1995). Documentation Proposition 187 in California. *International Migration Review*, 29(1), 255-263. Retrieved October 3, 2012, from <http://www.jstor.org/discover/10.2307/2547004?uid=3739256&uid=2129&uid=2&uid=70&uid=4&sid=21101233135881>
- Maxwell, J. (1992). Understanding and Validity in Qualitative Research. *Harvard Educational Review*, 62(3), 279-300. Retrieved October 5, 2012, from http://www.eric.ed.gov/ERICWebPortal/search/detailmini.jsp?_&ERICExtSearch_SearchValue_0=EJ449549&ERICExtSearch_SearchType_0=no&accno=EJ449549
- McFadyen, J. (2013). Alien. *About.com Immigration Issues*. Retrieved March 1, 2013, from <http://immigration.about.com/od/immigrationglossary/g/Alien.htm>
- McGowan, L. (2011). The Education of Undocumented Children. *Texas Bar Journal*, 838-840. Retrieved from http://www.texasbar.com/AM/Template.cfm?Section=Texas_Bar_Journal
- Melendez, M. (1995). Proposition 187 Consequences for Administrators. *Thrust for Educational Leadership*, 24(4). Retrieved November 7, 2012, from <http://web.ebscohost.com/ehost/detail?sid=cb9f898c-be77-45bc-8a90-fa47cb7216da%40sessionmgr114&vid=1&hid=118&bdata=JnNpdGU9ZWwhvc3QtbGl2ZQ%3d%3d#db=f5h&AN=9501253989&anchor=AN9501253989-5>

Migration News. (1994). Prop. 187 Approved in California. *Migration News*, 1(11).

Migration Policy Institute. (2012). MPI Data Hub Graph. *MPI Data Hub Graph*. Retrieved

October 13, 2012, from

<http://www.migrationinformation.org/datahub/charts/final.fb.shtml>

Motomura, H. (2007, April 4). Forward to the Past: The Many Meanings of Plyler v. Doe on Its

25th Anniversary. *Berkely.edu*. Retrieved October 27, 2012, from

http://www.law.berkeley.edu/files/Hiroshi_MotomuraFINAL.pdf

National Conference of State Legislatures. (2011). 2011 Immigration-Related Laws, Bills and

Resolutions in the States: Jan. 1âMarch 31, 2011. *2011 Immigration-Related Laws, Bills and Resolutions in the States*. Retrieved October 19, 2012, from

<http://www.ncsl.org/issues-research/immig/immigration-laws-and-bills-spring-2011.aspx>

National Conference of State Legislatures. (2012). 2012 Immigration-Related Laws, Bills and

Resolutions in the States: Jan. 1âMarch 31, 2012. *2012 Immigration Laws, Bills and Resolutions*. Retrieved March 1, 2013, from [http://www.ncsl.org/issues-](http://www.ncsl.org/issues-research/immig/2012-immigration-laws-bills-and-resolutions.aspx)

[research/immig/2012-immigration-laws-bills-and-resolutions.aspx](http://www.ncsl.org/issues-research/immig/2012-immigration-laws-bills-and-resolutions.aspx)

National Education Association. (2011). NEA Tribute to Justice John Paul Stevens. *Nea*

National Education Association. Retrieved October 24, 2012, from

<http://www.nea.org/tools/lessons/45352.htm>

National School Boards Association. (2012, April 12). Beliefs and Policies of the National

School Boards Association. *NSBA*. Retrieved October 8, 2012, from

<http://www.nsba.org/About/Beliefs-Policies-Resolutions/BeliefsandPolicies.pdf>

- Navarrette, R., Jr. (1995, April 30). Is This What Prop. 187 Sought? More Latino Citizens? *Los Angeles Times*, pp. 1-2. Retrieved November 7, 2012, from http://articles.latimes.com/1995-04-30/opinion/op-60542_1_latino-immigrants/2
- NCSL. (2011, May). Undocumented Student Tuition: Federal Action. *Undocumented Student Tuition: Federal Action*. Retrieved November 10, 2012, from <http://www.ncsl.org/issues-research/educ/undocumented-student-tuition-federal-action.aspx>
- Office for Civil Rights. (2011, May 6). Joint "Dear Colleague Letter" [Letter written May 6, 2011 to Public School Administrators]. Retrieved October 3, 2012, from <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201101.html>
- Olivas, M. (2009). The Story of Plyler v. Doe, The Education of Undocumented Children and the Polity. *Institute for Higher Education Law and Governance*. Retrieved October 21, 2012, from <http://www.law.uh.edu/ihelg/monograph/05-09.pdf>
- Olivas, M. (2010). Plyler v. Doe: Still Guaranteeing Unauthorized Immigrant Children's Right to Attend US Public Schools. *The Immigration Law Journal*. Retrieved October 25, 2012, from <http://theimmigrationlawjournal.wordpress.com/2010/09/22/plyler-v-doe-still-guaranteeing-unauthorized-immigrant-childrens-right-to-attend-us-public-schools/>
- Olivas, M. (2012). *No Undocumented Child Left Behind: Plyler v. Doe and the Education of Undocumented School Children*. doi: 9780814762448
- OpenJurist. (2010). 628 F. 2d 448 - Doe v. Plyler. *628 F2d 448 Doe v. Plyler*. Retrieved October 1, 2012, from <http://openjurist.org/628/f2d/448/doe-v-plyler>
- OYEZ. (2012, October 18). Plyler v. Doe [Audio blog comment]. Retrieved October 24, 2012, from http://www.oyez.org/cases/1980-1989/1981/1981_80_1538

- Passel, J. (2004). Mexican Immigration to the US: The Latest Estimates. *The Migration Information Source*. Retrieved March 1, 2013, from <http://www.migrationinformation.org/feature/display.cfm?ID=208>
- Pena, D. G. (2011, September). National Immigration Law Center Releases Important Study of Racial Profiling [Web log post]. Retrieved November 15, 2012, from <http://mexmigration.blogspot.com/2012/09/alabamas-ecology-of-fear.html>
- Perez, W. (2009). *We Are Americans: Undocumented Students Pursuing the American Dream*. Sterling, VA: Stylus Publishing.
- Perez, W. (2012, November 13). Undocumented Students and Higher Education: Institutional Contexts. *21st Century Scholar-Current Issues in Higher Education*. Retrieved November 18, 2012, from <http://21stcenturyscholar.org/2012/11/13/undocumented-students-and-higher-education-institutional-contexts/>
- Perry, A. M. (2006). Toward a Theoretical Framework for Membership: The Case of Undocumented Immigrants and Financial Aid for Postsecondary Education. *The Review of Higher Education*, 30(1), 21-40. Retrieved November 10, 2012, from http://muse.jhu.edu/login?auth=0&type=summary&url=/journals/review_of_higher_education/v030/30.1perry.pdf
- Plyler v. Doe, 457 U.S. 202 (1982b). (2012). *Plyler v. Doe, 457 U.S. 202 (1982)*. Retrieved October 24, 2012, from <http://www.cali.org/wiseman/editedUS/457/457.US.202.80-1934.80-1538.html>
- Plyler v. Doe, 457 U.S. 202 (June 15, 1982), 2012 U.S. FindLaw 457 U.S. 202.
- Public Law 104-208. (1996). Pub. L. 104-208 Illegal Immigration Reform and Immigrant Responsibility Act of 1996. *Pub. L. 104-208 Illegal Immigration Reform and Immigrant*

- Responsibility Act of 1996*. Retrieved November 10, 2012, from <http://www.uscis.gov/ilink/docView/PUBLAW/HTML/PUBLAW/0-0-0-10948.html>
- San Antonio Independent School District et al. v. Rodriguez et al. Appeal from the United States District Court for The Western District Of Texas (March 21, 1973), 2012 FindLaw 411 U.S. 1.
- Schugurensky, D. (2003). Selected Moments of the 20th Century. *History of Education: Selected Moments*. Retrieved October 28, 2012, from <http://schugurensky.faculty.asu.edu/moments/index.html>
- Shaughnessy v. Mezei (March 16, 1953), 2012 FindLaw 345 U.S. 206.
- Siskind, G., & Susser, L. (2006). California Governor Weighs Defense of Proposition 187. *VISALAW.COM The Immigration Portal*. Retrieved October 29, 2012, from <http://www.visalaw.com/99apr/13apr99.html>
- Siskind, G. (1996, November). IIRIRA 96 - A Summary Of The New Immigration Bill - November 1996. *IIRIRA 96 - A Summary Of The New Immigration Bill - November 1996*. Retrieved November 10, 2012, from <http://www.visalaw.com/96nov/3nov96.html>
- Southern Poverty Law Center. (2012, February). Alabama's Shame: HB 56 and the War on Immigrants. *Alabama's Shame: HB 56 and the War on Immigrants*. Retrieved November 15, 2012, from <http://www.splcenter.org/alabamas-shame-hb56-and-the-war-on-immigrants>
- Tesch, R. (1990). *Qualitative Research Analyses Types and Software Tools*. Abingdon, Oxon: Routledge Falmer.
- Texas Higher Education Coordinating Board. (2008). Residency and In State Tuition. *THECB*. Retrieved October 27, 2012, from <http://www.thecb.state.tx.us/reports/PDF/1528.PDF>

- Tyack, D. B., & Cuban, L. (1995). *Tinkering toward Utopia: A century of public school reform*. Cambridge, MA: Harvard University Press.
- UMKC School of Law. (2012). Plyler v. Doe. *University of Missouri-Kansas City School of Law*. Retrieved October 24, 2012, from <http://law2.umkc.edu/faculty/projects/ftrials/conlaw/plyler.html>
- University of California-Davis. (1996). Congress Works to Revise Immigration Law. *Migration News*, 3(7). Retrieved November 10, 2012, from http://migration.ucdavis.edu/mn/more.php?id=987_0_2_0
- U.S. Citizenship and Immigration Services. (2012, August 23). USCIS - Consideration of Deferred Action for Childhood Arrivals Process. *USCIS - Consideration of Deferred Action for Childhood Arrivals Process*. Retrieved September 2, 2012, from <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=f2ef2f19470f7310VgnVCM100000082ca60aRCRD>
- Vaughan, J. (2012, June 15). What Is Deferred Action? | Center for Immigration Studies. *Center for Immigration Studies*. Retrieved September 24, 2012, from <http://www.cis.org/vaughan/what-deferred-action>
- White, D. (2011, March 3). Alabama legislative panel Delays Voting on Illegal Immigration Bill. *The Birmingham News*. Retrieved November 14, 2012, from http://blog.al.com/spotnews/2011/03/alabama_legislative_panel_dela.html
- Winograd, B. (2012, June 15). After 30 Years, Plyler v. Doe Decision Survives but Remains Under Attack [Web log post]. Retrieved October 21, 2012, from <http://ethnoblog.newamericamedia.org/2012/06/after-30-years-plyler-v-doe-decision-survives-but-remains-under-attack.php>

Yates, L. S. (2004). Plyler v. Doe and the Rights of Undocumented Immigrants to Higher Education: Should Undocumented Students be Eligible for In-State College Tuition Rates. *Washington University Law Quarterly*, 585-609. Retrieved October 30, 2012, from <http://www.williamperzphd.com/articles/yates-2004.pdf>

Appendix A



U.S. Department of Justice
Civil Rights Division



U.S. Department of Education
Office for Civil Rights

December 2, 2011

Dear Colleague:

Today, the United States Department of Education (ED) and the United States Department of Justice (DOJ) are jointly issuing guidance that explains how educational institutions can lawfully pursue voluntary policies to achieve diversity or avoid racial isolation within the framework of Titles IV and VI of the Civil Rights Act of 1964, the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, and current case law. The guidance is presented in two documents, one for elementary and secondary schools and the other for postsecondary institutions. This guidance replaces August 2008 letters titled “The Use of Race in Assigning Students to Elementary and Secondary Schools” and “The Use of Race in Postsecondary Student Admissions” issued by ED’s Office for Civil Rights (OCR). Concurrent with the issuance of this guidance, the August 2008 letters are withdrawn.

The new guidance documents review three key Supreme Court rulings on the use of race by educational institutions, and provide examples of options that schools and postsecondary institutions may wish to consider in structuring programs that lawfully further diversity or reduce racial isolation. Both guidance documents provide examples of different educational contexts within which institutions may permissibly consider race to pursue their compelling objectives. For example, the elementary and secondary guidance discusses school districts’ options in areas such as student assignment, student transfers, school siting, feeder patterns, and school zoning. Similarly, the postsecondary guidance provides examples of how colleges and universities can further diversity in contexts including admissions, pipeline programs, recruitment and outreach, and mentoring, tutoring, retention, and support programs.

OCR and DOJ are available to provide technical assistance, and welcome questions about the application of this guidance to educational institutions. To submit questions or receive technical assistance, please contact the OCR regional office for your state or territory at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>. To contact DOJ for assistance, please contact the Educational Opportunities Section at (202) 514-4092, (877) 292-3804, or education@usdoj.gov.

Sincerely,

/s/

Russlynn Ali
Assistant Secretary
Office for Civil Rights
U.S. Department of Education

/s/

Thomas E. Perez
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice

Attachments

Source:

ED and DOJ. (2011, December 2).

Vita

Dr. Laura Guzman-DuVernois has over a decade of experience working in diverse settings, serving urban populations with global ethnicities, immigrants, military and high-mobility student populations. Dr. Guzman-DuVernois educational background includes a Masters of Educational Leadership, a Bachelor of Interdisciplinary Studies, and a Minor in Spanish as well as Military Science. Her professional experience includes public university Research Assistant and Professional Development Coordinator for a public school district. Throughout her teaching years, Dr. DuVernois provided services as an instructional Math coach, coordinator of an Advancement Via Individual Determination campus site in an urban setting, and home language teacher in Orlando's Orange Country Public Schools. In Yorktown, Virginia, Dr. Guzman-DuVernois wrote and taught curriculum for high school Spanish and prior to that worked intermittently for the Department of Defense Dependent Schools in Bavaria, Germany.

Dr. Guzman-DuVernois is currently Vice-President of the Board of Directors in a non-profit Advocacy Center serving immigrant populations on the border of the United States and Mexico. Other community involvement activities include membership in a District Educational Improvement Council for a public school system, previous conference coordinating at K-12 district and university level, Texas Title I Priority Schools Grant Reviewer for the Texas Education Agency and Keynote speaking. Her professional licenses include the Principal (Standard Professional) EC-12th, Bilingual/ESL-Spanish, among others in the State of Texas.

Permanent address: 5428 Cactus Hill Dr.

El Paso, Texas, 79912

This dissertation was typed by Laura Guzmàn-DuVernois.