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Plyler Children: 21st Century Challenges with Judicial-Policy Implementation Affecting Immigrant Children in New Jersey

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Denying unauthorized immigrant children access to a free public education through incomplete judicial policy implementation may lead to an illiterate underclass. Communicating, implementing, and enforcing Plyler v. Doe school registration documentation requirements continue to be difficult at the district level. In 2008, an ACLU study in New Jersey found that 187 of 516 school districts were mandating inappropriate documentation from parents registering their children. Separation of powers requires that executive agencies proactively implement transformative judicial decisions.

In 1982, the United States Supreme Court prohibited public schools from denying immigrant students access to a public education (*Plyler v. Doe*). Under the Fourteenth Amendment, “Plyler Children” must receive the same protections and rights granted to US citizens and legal permanent residents. As a result, K-12 school districts and personnel may not deny educational opportunities to immigrant children and may not request, either formally or inadvertently, documentation of their immigrant status (NJAC 6A:22-3.4). However, not all school districts follow this requirement.

In the United States there are one million foreign-born and unauthorized children of unauthorized immigrants (Pew Hispanic Center 2010). The enforcement of *Plyler v. Doe* ensures that schools do not contribute to the plight of unauthorized children who face myriad challenges integrating into community life. Apart from obvious cultural differences and family-separation issues, being unable to communicate in English, the language of the

dominant culture, compounds their anxieties. Access to educational opportunities not only alleviates fears, but also positions immigrant children to contribute to American society.

This paper addresses the concerns of denying unauthorized children access to a free public education through incomplete judicial policy implementation in New Jersey. In 2008, an ACLU study found that 187 school districts in New Jersey were mandating inappropriate documentation from parents registering their children (N=516) (ACLU, 2006).

Legal Context

Review and summary of Plyler v. Doe Opinion

In 1982, the United States Supreme Court held that it was illegal for “local school districts to deny access to free public K-12 education to unauthorized children” (*Plyler v. Doe*, 457 US 202 1982). Justice William J. Brennan, Jr., said depriving education to unauthorized children takes an “inestimable toll on the social, economic, intellectual and psychological well-being of the individual.” He held that Texas Education Code 21.031 (Tex. Ed. Co. 21.031) represented irrational discrimination. (*Plyler v. Doe*, 457 US 202 1982).¹

This class-action lawsuit successfully contested the 1975 Texas Education Code 21.031, which withheld funding to school districts that enrolled children not “legally admitted” to the country (*Plyler v. Doe*, 457 US 202,1982). In effect, by passing the code, Texas attempted to enfeeble federal immigration policy. School-aged children live in the US not through their own unlawful conduct (*Plyler v. Doe*, 457 US 202 1982). Therefore, Texas Education Code 21.031 ran counter to equitable principles by penalizing the child for parents’ misconduct. Although education is not a “fundamental right,” the code unnecessarily burdened unauthorized children with a “lifetime illiteracy disability” and prevented children from becoming “self-reliant” and successful citizens (*Plyler v. Doe*, 457 US 202 1982).²

In summary, *Plyler v. Doe* prohibited states from denying free K-12 education to unauthorized children. The decision effectively positioned enrollment as a function of residency within a school district’s geographic jurisdiction as opposed to immigration status. Yet, in the twenty-six years since the Court’s opinion, many jurisdictions still effectively cast a shadow over immigrant rights.³

Public agencies should guarantee unauthorized children’s access to education. Indeed NJ statues annotated (NJSA 18A:38-1), stipulates “domicile and age are the only factors used to determine eligibility for a free public education and immigration/visa status shall not affect eligibility to attend school.” A 2006 study of NJ compliance “revealed that one in four New Jersey public school districts illegally requested social security numbers or asked for other information that would reveal the immigration status of children” (ACLU 2006). In 2008, the American Civil Liberties Union–New Jersey chapter (ACLU-NJ) communicated directly with the NJ Department of Education informing them that several school districts’ enrollment requirements violated the law (*ACLU letter 2008*).

New Jersey Administrative Codification of Plyler

The laws and regulations on implementing *Plyler v. Doe* are unambiguous.⁴ Yet, some school districts continue, either inadvertently or intentionally, to deny unauthorized children access to free public education. Additionally, non-compliance “raises the specter of a permanent caste of undocumented resident aliens, encouraged by some to remain here as a source of cheap labor, yet denied the basic benefits,” as noted in Justice Harry Blackmon’s

concurring opinion (Bernstein 2010.)

Twenty-first century Plyler v. Doe concerns in New Jersey

ACLU-NJ demanded corrective action from the Blue Ribbon Panel on Immigrant Integration, created in 2007 by Governor Jon Corzine's Executive Order 78.⁵ Corzine's Blue Ribbon Panel held public hearings between December 2007 and June 2008 in New Brunswick, Bridgeton, and Jersey City. Advocates complained that schools denied children admittance when parents did not have Social Security numbers.⁶ Parents related rude treatment when they lacked documents. According to Maynard-Moody and Musheno's (2003), when street-level workers judge the moral character of parents, the quality of service changes.

Engesbak and Stubbe find that bureaucrats' interpretation of legislative (or Court) decisions is influenced by "their own agenda, moral standard, interest" (2008,19). Not only are the attitudes of street-level bureaucrats important (Lipsky 1980), but also the training and oversight that principals and district superintendents provide to staff. The NJ State Department of Education did send reminders to prompt action by district-level academic leadership, but changes in personnel and the large number of administrative rules resulted in uneven implementation. Engesbak and Stubbe (2008) found two responses to federal legislative change in their study of Norwegian adult education. The first was "proactive, results-oriented and generous," while the other was "passive, act-oriented and restrictive" (Engesbak and Stubbe 2008, 19). The importance that administrators place on *Plyler* also plays a role. It is not enough to formulate a right; how it is formulated and how it is interpreted may affect implementation (Engesbak and Stubbe 2008,19). If leaders see unauthorized children as adding a financial burden, straining classroom size, or demanding specialized programs, such as English Language Learning, then they may follow more passive or restrictive enrollment strategies. If other leaders view immigrants as enriching classroom diversity and globalizing the curriculum, they may choose more proactive and generous strategies.

The Blue Ribbon Panel recommended strategies to educate all children who live in New Jersey. The Panel proposed monitoring to deter *Plyler* violations, training for school bureaucrats who handle enrollment, and consistent information for immigrants (2008, 92).⁷ The Panel wanted to simplify the process for reporting *Plyler* violations and for reporting by surrogate advocates to aid the families of children being denied enrollment.

On January 12, 2010, Governor Corzine signed Executive Order 164 charging a Commission for New Americans (CONA) with developing a strategy for implementing Blue Ribbon Panel's recommendations, advising the Governor how to integrate immigrants, and creating a guide for New Jersey's immigrant population.⁸ Meanwhile, change in leadership at the State Department of Education delayed a *Plyler*-compliance reminder to districts before school opening in Fall 2010.⁹ Additionally, the Division of Civil Rights in the Attorney General's office also sent no letter. A CONA member asked the NJ State Principals and Superintendents for their independent action to ensure implementation of *Plyler*. Each of these contacts was fruitless.

One of Hendricks's early actions as acting commissioner was to issue the *Plyler* reminder letter on October 25, 2010—after the critical late August-early September enrollment period.¹⁰ Hendricks said, "It was the right thing to do" (conversation with author, October 26, 2010).

Seeking Federal Action

The *Plyler v. Doe* ruling is only one manifestation of broken federal immigration policy. In *Lozano et al. v. Hazelton* (2010), the US Court of Appeals for the Third District ruled who can enter the country:

This power to effectively prohibit residency based on immigration status . . . [is] clearly within the exclusive domain of the federal government. However, within the . . . government, primary responsibility for education of the nation's youth is within state purview with actual service delivery designated a local responsibility. (07-3531, 146)

During the September 2010 National Immigrant Integration conference in Boston, the author, in her role as NJ Commissioner of New Americans, consulted representatives of the US Department of Justice (USDOJ) about New Jersey's blindness to *Plyler*. The USDOJ attorneys had just met with ACLU representatives in New York City about alleged *Plyler* non-compliance in New York as well.

The plight of undocumented children blocked from public schools bore striking similarity to the exclusion of minority youth earlier. In late September and early October, USDOJ attorneys spoke with CONA and NJ immigrant advocates—including Catholic Charities, NJPIN, the Statewide Parent Advocacy Network, and union representatives. The USDOJ encouraged states' proactive role in ensuring local school-district compliance with *Plyler*.

DOJ wanted to document specific cases of school-admittance denial in New Jersey. Immigrant advocacy groups knew families who had experienced hostile treatment; however, none was willing to speak with the DOJ attorneys.¹¹ So while federal interest encouraged CONA and immigrant advocacy groups, they feared lack of a test case might delay federal action.

On May 6, 2011, the US Departments of Justice and Education issued a joint letter to the nation's school districts: "Under Federal law, State and local educational agencies . . . are required to provide all children with equal access to public education... Enrollment practices may discourage the participation... of students based on parents'... actual or perceived citizenship... These practices contravene Federal law" (US DOJ and DOE 2011, 2). This was the first guidance issued to school districts regarding the 1982 *Plyler* decision (*NY Times*, May 6, 2011). It specified when and for what purpose schools could solicit enrollment data and highlighted "the types of information that may not be used" (US DOJ and DOE 2011, 2). The letter cited the pivotal *Brown v. Board of Education*: "It is doubtful that any child may reasonably be expected to succeed in life if he [or she] is denied the opportunity of an education" (347 US 483 1954).

Literature Review

Unauthorized Children in Poverty

The 2000 US Census counted 2.5 million unauthorized youth under the age of 18. In 2008, the Pew Hispanic Center estimated 1.5 million unauthorized children under the age of 18 living in the United States (Passel and Cohn 2009). Unauthorized youth under the age of 18 may be between 15 to 20 percent of the total unauthorized population (Gonzalez 2007; OECD 2007, 15). There is a real and significant population, which could become an "illiterate underclass," if they were denied access to free education (Massey 2007; Wilson

1987, 1993).

The majority of these children live in poverty. The effects of poverty on child welfare are well documented. Poverty-related issues manifest themselves in behavior, such as increased likelihood of unwanted pregnancy, gang association, drug abuse, and dropping out of school (Wadsworth et al. 2008). Van Der Berg argues that “inadequate education can thus be considered a form of poverty” in that it reduces enrollment, reinforces isolation from the mainstream, and compounds inability to reap the economic benefits of education (2008, 10). The implications of poverty are problematic for unauthorized children, as denying them educational opportunities *realize* these negative outcomes.

Current Antagonistic State Legal Environment

Restrictive state policies driven by security concerns or fear of “otherness” limit protections for unauthorized children (Gonzales 2009). Green (2003) identifies as problematic the state policy to deliver education only in English and national standard proficiency tests, for which unauthorized students are linguistically unprepared.

Several states have moved to *override* the *Plyler v. Doe* decision. In 1994, California’s Proposition 187 charged school officials with verifying the legal status of students and their parents (Suárez-Orozco 2009). Although eventually struck down, Proposition 187 signaled anti-immigrant attitudes. To stem the flow of immigration, Arizona Senate Bill 1070 directs local law enforcers to request the immigration status of “suspected” illegal immigrants, criminalizes the act of not carrying legal-status documentation, and requires immigration documentation for any public service or benefit (Manuel, Garcia, and Eig 2010). Legal status as a prerequisite for enrollment undermines *Plyler*. The federal court enjoined Arizona from enforcing several provisions of S.B. 1070, lending some protection to unauthorized children (US Court of Appeals for 9th District 2011). During 2011, the courts also challenged similar legislation in Georgia, Indiana, South Carolina, and Utah (National Council for State Legislatures 2011).

In September 2011, Federal District Court Judge Sharon Lovelace Blackburn upheld several portions of the Alabama immigrant-related legislation, “and most controversially a section that requires elementary and secondary schools to determine the immigration status of incoming students” (Robertson 2011). The chilling decision led many unauthorized parents to withdraw their children from Alabama schools (*Tuscaloosa News* 2011) and prompted the state to clarify the law (AL DOE 2011). While Alabama schools will not turn away students without a US birth certificate, schools will report the number of students who lack US citizenry, creating an increasingly hostile environment

Finally, unauthorized children may receive some protection from the Development Relief and Education for Alien Minors (DREAM) Act first introduced in Congress in 2001. It would grant conditional authorized immigration status to unauthorized high school graduates through post-secondary school or military service (Olivas 2004). However, antagonism and political posturing defeated the bill during the past twelve federal legislative sessions.

Education Demands of the New Economy

The emerging “New Economy”—global in scope, entrepreneurially driven, and knowledge dependent—challenges all children within our educational system, especially immigrant and unauthorized youth. “Education and skill are central to the performance of a modern economy. . . . Emergence of new technologies has raised the demand for highly skilled workers who are qualified to use them” (Heckman and Masterov 2007: 4).

The New Economy puts a premium on educational attainment (Heckman and

Masterov 2007; Irwin 2011). Americans have a high regard for educational attainment, and education is paramount to our economic sustainability, social cohesion, and democracy (*Plyler v. Doe* opinion, pp. 221). Competing in the “New Economy” will require investment in the “New American” demographics of the twenty-first century.

As Carnavale (1991) says, an undereducated population will not contribute to the *human capital* shortage we face. The New Economy has resulted in a “global concentration of wealth” (Lysandrou 2011, 16), where “real capital gains are transferred to small segments of wealth-capturing groups” (Blakely & Green-Leigh 2010, 10). As the Solow Model Growth production function suggests, wealth-capturing groups can reinvest in themselves and accumulate human capital through education and increase inequitable social stratification (Solow 1956, 1957).

According to Blakely and Green-Leigh, the “New Economy is contributing to structural shifts in environmental and *social systems* that are a significant cause for concern” (2010, 26). Choosing *not* to invest in the New American demographic will reduce the likelihood of developing knowledgeable workers who generate ideas and prompt innovation, create knowledge jobs (Friedman 2005 in Brown, Lauder, and Ashton 2007). Therefore, denying unauthorized immigrant children a free secondary school education serves only to institutionalize social inequality and reduce the country’s global competitiveness.

Plyler v. Doe Implementation Strategies

At the national level, school-district officials generally comply with *Plyler v. Doe*. However significant non-compliance persists. “Every day, school level, board level and district level implementation issues . . . pose the more significant threat [to *Plyler* compliance]” (Olivas n.d., 32). “Monitoring compliance” subsequent to policy diffusion is essential to ensuring that school districts do not engage in practices that “chill or hinder the right of access to public schools” by unauthorized children (ACLU-NJ 2008, McDermott 2007, NJDOE 2002). Given the diverse localized nature, monitoring implementation is difficult at the local-level (Olivas n.d.). School administrators and board executives in Illinois, Maryland, Nebraska, New Jersey, and New York all received “communication” from state departments of education (Bernstein 2010). As Van Der Berg (2008) suggests, successful interventions by policy advocates tend to be contextual and localized to specific schools. Effective adherence to the legal requirements requires localized monitoring and classic bottom-up implementation strategy (e.g. Hjern and Hull, 1983).

The law is clear-cut. All resident children between the ages of 5 and 18 are eligible for a free public education; however, some school districts continue to inadvertently (or intentionally) deny their enrollment. *Plyler* ensures that we do not create an illiterate underclass (*Plyler v. Doe*, opinion, 1982; Wilson 1987, 1993).

Policy Dissemination Issues

NJ policy requires all school districts comply with current and decisional law. The Department of Education normally communicates Court decisions in the same year, citing the anticipated impacts on local school districts. The *Plyler* case, however, was originally decided in 1982, yet issues surrounding its implementation continue into the twenty-first century.

According to the NJ Department of Education: School districts must abide by the decisions of the Commissioner of Education, the School Ethics Commission, and the State

Board of Examiners. The state code says, “Determinations of the Commissioner are deemed final agency actions and are appealable to the Appellate Division of the Superior Court. Decisions of the State Board of Examiners to suspend or revoke teaching certificates and decisions of the School Ethics Commission finding violation of *the School Ethics Act* are appealable to the Commissioner” (State of New Jersey, Department of Education 2011).

Who then is responsible for the effective implementation of settled case law? The State of New Jersey bears the responsibility to keep its school districts, which are subnational units of the state, not only informed, but also to maintain oversight of the implementation process. The state can choose to identify personnel in the department or delegate the responsibility to county superintendents, but in either case the burden ultimately falls to the state. The state does have an office that responds to parental complaints against local districts; however, it is difficult to access, understaffed, and slow to respond.¹² Concerns must come from parents, who may fear bureaucracy, and there is no provision for advocates to protest declined enrollment.

Implementation Theory and Plyler: Top down or bottom up?

The debate in implementation theory literature represents the tension between scholars who find the top-down approach is critical for its success (e.g., Sabatier and Mazmanian 1980; Sabatier 1986), and those who favor the pressure from the bottom up to reinvigorate and ensure compliance (e.g., Ball and Bowie 1992; Hjern and Hull 1982; Spillane, Reiser, and Reimer 2002). New Jersey’s advocacy community pressed for top-down reaffirmation of the *Plyler* decision and sought clear guidance for compliance (Spriggs 1996). In this, they largely succeeded. Both the NJ Commissioner of Education and the US Departments of Justice and Education sent reminders to local school superintendents regarding the judicial requirement for the enrollment of ALL children residing in a school district, regardless of immigration status.

Court decisions provide guidance; however, they are not self-implementing (Spriggs 1996). Abel and Hacker found that “The extent to which the duties imposed by public policy are properly discharged, and individuals are able to exercise their concomitant rights, and depends in large part upon the decisions made by administrative bodies and civil servants” (2006, 358). Indeed the variability of responses focuses on the pivotal role of local responsiveness to judicial decisions, and as Fitz notes, “The periphery has considerable power to reinterpret and frustrate the center’s objectives” (1994, 60).

This impact on unauthorized children reflects the pre-*Brown v. Topeka Board of Education* (1955) climate when African-American youth were, as Saddler finds “de-educated,” meaning they were “systematically excluded from the education system and/or being systematically destroyed within that system” (2005, 44). The Court’s broad implementation language, “with all deliberate speed,” thwarted the *Brown* decision in many local districts. Chief Justice Warren urged District Courts “to take such proceedings . . . to admit to public schools on a racially nondiscriminatory basis *with all deliberate speed*” (349, US 294 1955). Evaluations of *Brown* implementation, especially in the South, found “all deliberation and no speed” (Malone 2005).

Plyler echoes the *Brown* decision noting that “What we said 28 years ago in *Brown v. Board of Education*, (1954) still holds true: ‘Today, education is perhaps the most important function of state and local governments. . . . It is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.’” (*Plyler v. Doe*, 457 U.S. 202 (1982).

However, unlike *Brown*, *Plyler* did not impose even a vague timeline such as “all

deliberate speed,” but rather the majority opinion affirmed the Court of Appeals: “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*.” (*Plyler v. Doe*, 457 U.S. 202 (1982)).

The public school system develops young minds, shapes future leaders, and prepares for economic rewards (Wilson 2011). As Van Der Berg states, “For education to offer a route out of poverty . . . requires special interventions[:]. . . remedial education measures, social work in the community, attempts by school authorities to involve poor parents . . . , anti-poverty policies, and advocacy” (2008, 20). Early childhood intervention allows children to develop (UNESCO EFA 2006).

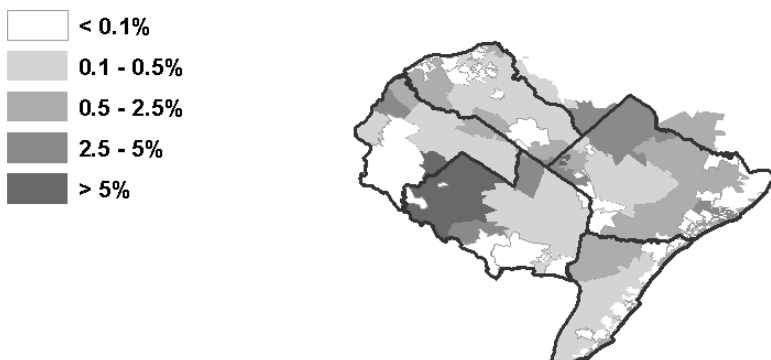
We now move the study methodology that shows how we explored these issues in a New Jersey context. Deleon and Deleon argue that a “democratic approach to policy implementation warrants a place at the table” (2002, 489). Our study methodology and findings provide important insights into the democratization of *Plyler* across southern New Jersey.

Methodology

Selection of Study Area

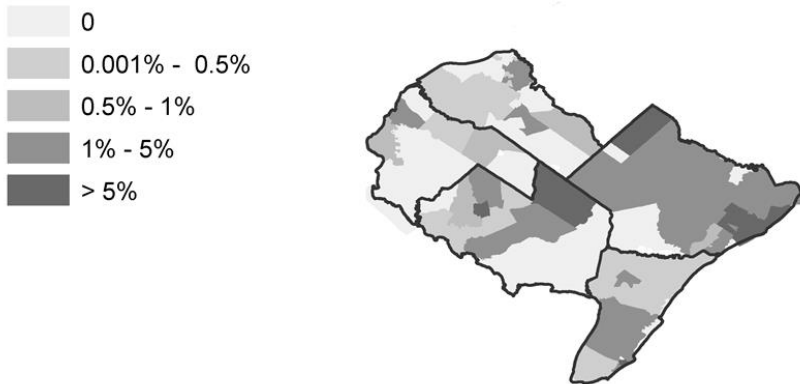
This study focuses on school districts located in the five southern New Jersey counties: Atlantic, Gloucester, Cumberland, Salem, and Cape May that potentially contain unauthorized school-age youth. The presence of substantial numbers of persons who pay income tax with an individual taxpayer identification number (ITIN) rather than with a social security number is one surrogate measure of the presence of unauthorized persons in a geographic area. The Internal Revenue Service (IRS) issues ITINs to individuals not eligible for a Social Security Number (SSN), but need an identification number to pay federal taxes. ITINs are tax-processing numbers issued regardless of immigration status so that resident and nonresident aliens can comply with US tax laws. Figure 2 shows the percentage of persons who pay income tax with an ITIN rather than a Social Security number. Many unauthorized immigrants use ITINs, so concentrations of ITINs filers often indicate unauthorized workers, who may have unauthorized school-aged children.

Figure 1. *ITINs as a percentage of total returns by zip code in southern New Jersey*



The second surrogate measure for potential presence of unauthorized youth is the level of limited English language proficiency (LEP) in a school district. For a placed-based context of *Plyler v. Doe* implementation, I retrieved the districts' student enrollment in Limited English Proficiency (LEP) and dual-diagnosed LEP-Special Education Needs (SPED) programs from the State Department of Education database. LEP and SPED data served as a further proxy for where unauthorized students enrolled. One in five school-aged children in New Jersey is a non-native English speaker. New Jersey mandates that schools offer special instruction for non-native English-speaking students when a district enrolls 20 or more LEP students of any single language. Districts with diverse student population who speak multiple languages offer English as a second language (ESL) as opposed to bilingual education. Figure 3 shows concentrations of LEP students in the five counties. While some LEP students may be US citizens born into a non-English-speaking home, there is a high probability that some youth lack immigration status.

Figure 2. Reported levels of limited English proficiency by school district in southern NJ



The five counties selected for inclusion in this study show concentrations of both ITINs tax filers and limited English proficient students. Therefore these counties present characteristics that suggest a high likelihood of the presence of unauthorized immigrant youth. We find Atlantic, Gloucester, Cumberland, and Cape May counties are logical places to examine *Plyler* issues.

Characteristics of the Study Area

The five contiguous southern New Jersey counties have a total population of 1,128,157 and 103 school districts with a student population, ages 5 to 17, of 153,800. I explored two other surrogate variables to affirm the selection of these five counties.

Poverty data

I drew poverty-level data from the US Census Bureau's Small Area Income and Poverty Estimates (SAIPE).¹³ In New Jersey on average, 12 percent of school-aged children live in poverty (SAIPE 2009). According to the US Census Bureau, the five southern NJ counties have 20,974 children living in poverty, representing roughly 14 percent of the school-aged population.

Student Body Characteristics

The 2010 NJ DOE Application for School State Aid (ASSA) listed 4,979 children in the five counties as Limited English Proficient (LEP), representing 8.9 percent of the total state LEP enrollment and 3.2 percent of counties' school-aged population.

From the demographics this second surrogate variable for potential unauthorized students, overlapping poverty levels with LEP/SPED enrollment indicated the geophysical presence of the target population.¹⁴ We then moved to specific data collection with a high degree of confidence that our surrogate measures of the potential presence of unauthorized immigrant youth identified the same five New Jersey counties.

Website review

School districts and personnel in these and other New Jersey counties may not deny education to immigrant children and may not request documentation on immigrant status (NJAC 6A:22-3-4). Inappropriate documentation includes "income tax returns, Social Security numbers, compliance with housing ordinances or conditions of tenancy, or immigration/visa status" (NJAC 6A:22-3.4). This study uses the NJ education code definition of inappropriate documentation for data collection from the websites of the 103 school districts.

This study recorded admissions and enrollment criteria on available school websites and any discrepancies between the NJ education code and enrollment requests. We observed the school websites for a minimum of three times after the initial ACLU letter advising districts to prevent "chilling" of enrollment based on prohibited documentation, and once after the May 2011 federal letter to all US school districts regarding mandatory *Plyler* compliance. Multiple observations for each district allowed us to see if the state and federal notices had any impact on the web posting of the individual districts.

Findings

"For people who aren't fluent in English the difference between 'required' and 'requested' is often misunderstood. . . . Information that districts might see as 'optional' could easily be viewed as 'mandatory' by someone new to our education system" (NJ Department of Education 2006). Misinterpretations are compounded when 26 percent of children in New American families are "linguistically isolated where no one over the age of thirteen speaks English (Hernandez, Denton and McCartney 2008, 7). First, registration requirements need to be clear and unambiguous. Second, for the purposes of determining eligibility, schools should ask only legally required questions and should mark any non-required questions as voluntary.

Type and number of violations

One quarter of the school districts in Southern New Jersey observed for this study had compliance issues with *Plyler*. Of the 96 school districts in the five-county study area, 24 have violated enrollment requirements per NJAC 6A:22 which specify how school districts are required to implement the provisions of the *Plyler* decision. Overall, there were a total of 53 violations across all districts (Table 1).

Table 1. Web analysis of *Plyler* non-compliant documentation and information requests for student enrollments in five southern New Jersey counties, 2011

Information Requested at Registration	Count
Child Birth Certificate	18
Child Social Security Number	1
Child Passport	2
Child Citizenship	1
Parent Citizenship	1
Child Place/ Country of Birth	10
Parent Place of Birth	2
Non-voluntary Race Categorization	9
Migrant Status	3
Proof of residency	6

Authors' own analysis of district websites enrollment and registration procedures.

The most frequently cited violation observed across school districts was requiring a student's birth certificate in order to register for classes. Eighteen school districts requested a birth certificate. New Jersey education code specifies that schools may not deny enrollment based upon the absence of a certified copy of a birth certificate (NJSA 18A: 36-25.1), provided parents supply proof of the student's identity within 30 days of enrollment (NJAC 6A:22-4.1(g)).

The second most frequent violation was school districts requiring place or country of birth from prospective students. Ten school districts demanded this information before enrolling students. School districts requested a child's place of birth and country of birth 10 times. New Jersey education code (6A:22-4.1.1, 15) as implemented in standard sample state-wide forms from the commissioner never referred to a child's birthplace anywhere in the document (www.state.nj.us/education/code/current/title6a/chap22/sample.pdf). School districts requiring information regarding place or country of birth have imposed additional local requirements not supported by state code.

Non-voluntary racial categorization was noted in nine districts. This may be the work of overzealous front line bureaucrats who understand the implications of racial and ethnic categorization for targeted federal and state funding. We find this highly problematic in an era of growing multiracial populations who have the right to self-identify their race for federal data collection purposes (e.g. U.S. Census).¹⁵

Social security numbers being required for enrollment were central to earlier complaints by the ACLU. In our study we found only one district still requiring a social security number for enrollment. We take this an encouraging finding that may demonstrate the effectiveness of the ACLU monitoring and reporting enrollment discrepancies to the Commissioner.

Conclusion and Policy Recommendations

Local implementation of *Plyler* is difficult. Making sense of Court decisions involves an "interactive web of actors, artifacts, and situation" (Spillane, Reiser, and Reimer 2002, 404). The local environment reflects the community's social, cultural and political heritage and its social construction of immigrant-related issues (Schneider and Sidney 2009). The values of local administrators and/or front-line bureaucrats may also play into a district's action (Wheeler 2008). Although twentieth-first-century American education organizations aim to support equality of access, those norms do not function universally regarding *Plyler* implementation (Cannon and Johnson 1999, Spriggs 1996). Despite the variables, our

research yields several recommendations.

Consistent with the Blue Ribbon Panel, this study suggests Administrative Code Training for local school superintendents, principals, and personnel responsible for policy and specifically for “street-level bureaucrats” directly engaged in enrollment and registration. Additionally, local personnel should use state forms, procedures, and checklists for enrollment. Requiring local staff to use state-developed routines reduces street-level discretion (Kaufman 1973, in Elmore 1980).

Advocacy by third party community and faith-based groups is critical for children from mixed status families. Immigrant parents may hesitate to assert their children’s rights. Immigrant families may not be able to navigate the US educational system (Hernandez et al. 2008). Furthermore, many youth live in mixed-status immigration families, where one or both parents are unauthorized; one sibling might be unauthorized, while other siblings are citizens.¹⁶ The entire family suffers if there is just one unauthorized member. The Department of Education’s Division of Civil Rights reporting requirements may have negative consequences on any vulnerable student group, including unauthorized youth.

Community and faith-based advocates should be able to complain regarding non-compliance with the *Plyler* (Sabatier 1986). Families frequently fear deportation when dealing with authorities, including schools. State complaint procedures should be amended to make this possible.

Given immigrants’ fear of deportation, it is likely that more cases occur than are reported. A national study could attempt to quantify the actual number of unauthorized children being denied access to public education. This New Jersey case study suggests one method of conducting such a study.

College courses and annual seminars should train school leaders to conform to judicial decisions, especially *Plyler v. Doe*. Although administrators may be recalcitrant (Wheeler 2008), incorporating key cases into the curriculum establishes a foundation for administrative action. Proactive action by informed local administrators would go a long way to preclude Justice Brennan’s constitutional fear that “Denial of education to some isolated group of children poses an affront to one of the goals of the Equal Protection Clause” (*Plyler v. Doe* 1982).

This study points to the importance of local-level monitoring of compliance with court decisions. Effective implementations of administrative policies in support of judicial decisions points to the critical role of grass roots oversight. Reform of institutions to permit all children equal educational access calls for collaborative work by many actors (e.g. Warren 2011). Top down reiteration of the importance of court decisions impacting local school districts is pivotal, and there is a clear role for the state department of education as well as county and local superintendents; however, vigilant grass roots monitoring by parents, community and faith-based advocacy groups ultimately is necessary for full local compliance.

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Notes

1. Brennan delivered the opinion of the Court, in which Marshall, Blackmun, Powell and Stevens, joined. Marshall, Blackmun and Powell filed concurring opinions. Burger filed a dissenting opinion, in which White, Rehnquist, and O'Connor joined.
2. States hold three primary colorable rights concerning immigration regulation relative to Tex. Ed. Co. 21.031.¹ First, the Court understood that a state may protect itself from economically burdensome demographic shifts. Yet, the Court concluded that the evidence suggested no stress on the State's economy and charged that controlling the influx of immigrants through restricting educational opportunities was "ineffectual." Second, appellants acknowledge that states may single out "some arbitrary chosen class . . . because of some special [economic] burdens they impose on the State's ability to provide high-quality education" (*Plyler v. Doe*, 457 US 202 1982); however, the minimal increase in student population from unauthorized children caused no "grave impact" on education delivery, and did not hurt state budgets. The Court countered the state's claim that unauthorized children may move out of state, arguing that they will likely stay within the jurisdiction and seek to become lawful residents. The Court questioned why the state would seek to "create a class of illiterates . . . potentially contributing to unemployment, crime and welfare" (*Plyler v. Doe*, 457 US 202 1982).
3. A federal memo in May 2011 said, "The unauthorized or noncitizen status of a student (or his or her parent or guardian) is irrelevant to that student's entitlement to an [free] elementary and secondary public school education" (US Department of Justice, Civil Rights Division and US Department of Education, Office for Civil Rights, 2006).
4. NJ Administrative Code (NJAC 6A:22-3.4) provides regulations and guidelines for implementing statute NJSA 18A:38-1. The code clearly states "immigration/visa status shall not affect eligibility to attend school," and it outlines documents that demonstrate a student's eligibility. A school district may not request documents that may indicate immigration status, including:
 - a. Income tax returns,
 - b. Documents on citizenship or immigration status,
 - c. Documents relating to compliance with local housing ordinances or tenancy, and
 - d. Social security numbers.

5. In August 2006, Acting Education Commissioner Lucille Davy had sent a reminder letter on registration mandates (NJ Department of Education 2006). That NJDOE letter specifically directed school districts to inform “staff members whose work involved enrollment issues that they cannot ask parents for Social Security numbers when registering children for school” (NJDOE 2006). Davy told districts their websites and registration forms should not request Social Security numbers (NJDOE 2006). ACLU-NJ sent letters to non-compliant school districts. Two-thirds promised to amend their forms or retrain their staff; the remaining districts failed to respond or denied they had asked for Social Security numbers.
6. New Jersey’s 1875 constitution guarantees public-school education: “The Legislature shall provide . . . a thorough and efficient system of free public schools for the instruction of all the children . . . between the ages of five and eighteen years” (NJ Constitution Article VIII §IV ¶1). (See Mazzei 2007 for discussion of the *thorough and efficient* clause.) Denying entrance to unauthorized children not only contravened *Plyler*, but also the NJ constitution and administrative code, which states, “A district board of education shall not require or request, as a condition of enrollment in school, any information or document protected by law, . . . which are not legitimate bases for determining eligibility” (6A:22-3.4).
7. Subsequently in 2008, ACLU-NJ requested then Education Commissioner Davy to require school districts to “revise all registration forms, including information posted on websites, to ensure compliance” (*ACLU letter 2008*).
8. CONA’s education subcommittee gave top priority to the Panel’s recommendation that “prior to the district enrollment period, the NJDOE should send a memo on an annual basis reminding districts that they cannot request Social Security numbers from parents who are seeking to enroll their children in the district” (Panel Report 2009). In August 2010, the subcommittee received input from the NJ Immigrant Policy Network. Diana Autin, executive director of the Statewide Parent Advocacy Network of New Jersey, offered to maintain an 800-hotline on school-registration requirements. Dr. Anastasia Mann, CONA commissioner and director of Rutgers University’s Eagleton Institute Program on Immigration and Democracy, asked that the NJ Commissioner of Education send the annual *Plyler* reminder letter to NJ school districts and supported an 800-hotline. The *Plyler* reminder was essential: “In light of the current backlash against immigrants caused by a lack of action at the federal level and the Arizona-style legislation, the committee determined that Summer 2010 presented a perfect opportunity for the state to clarify and reaffirm the school enrollment law for districts” (NJCONA 2010).
9. Governor Christie fired the Commissioner of Education Bret Schundler over problems with the state’s application for Race to the Top funding (Otterman 2010).
10. On August 27, 2010, newly elected Governor Chris Christie appointed Rochelle Hendricks as Acting Education Commissioner (Friedman 2010). That fall, frustrated by inaction, CONA sent formal letters of concern to Hendricks and Attorney General Paula Dow.
11. Based on testimony received at public hearings for the Blue Ribbon Panel on Immigrant integration and personal conversations with advocacy group leaders in New Jersey.

12. Based on conversations with representatives of the New Jersey law firm of Lowenstein and Sandler, pro-bono attorney advisors to the Blue Ribbon Panel on Immigrant Integration.
13. Since county special services and vocational schools did not include LEP or SPED data, I omitted ten schools to standardize the data set.
14. The initial dataset was based on Application for School State Aid (ASSA) data regarding the number of Limited English Proficient (LEP) children who were also classified as (SPED). From this dataset, I disaggregated the LEP/SPED totals for each district to gather the total student enrollment for LEP and SPED. I gathered state-level enrollment data for LEP/SPED from the NJ Department of Education.
15. Racial categorization in the U.S. Census has permitted self-identification of racial categories since 1970. Prior to the 1970 Census, third party census takers marked racial identification based on phenotype, last names, or other largely subjective indicators of the individual being enumerated.
16. In the US, seven in ten children of unauthorized parents are citizens by birth (Galarneau 2011, 423).

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