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## **Unaccompanied Immigrant Children in Texas Public Schools**

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## Unaccompanied Immigrant Children in Texas Schools

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The U.S. Department of Homeland Security reports that since October 1, 2013, approximately 74,942 unaccompanied minors from Mexico and Central American countries have been apprehended at the southwestern United States border. It was estimated that the number could have risen as high as 90,000 by the beginning of the 2014-2015 school year. However, it appears that the flow has slowed. Texas is the epicenter of this mass influx of undocumented children. Regardless of the policy and political issues that surround this issue, Texas school districts must be prepared to handle issues that arise when undocumented children enroll in school.

Source: U.S. Dep't of Homeland Security, *Southwest Border Unaccompanied Alien Children*, available at <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>.

### Legal Framework

*Plyler v. Doe* is the landmark decision in which the United States Supreme Court held that states cannot constitutionally deny students a free public education based on their immigration status. Decided in June 1982 in a 5-4 split, the Court held that the statute violated the Equal Protection Clause of the Fourteenth Amendment. *Plyler v. Doe*, 457 U.S. 202 (1982).

In 1975, the Texas Legislature enacted Section 21.031 of the Texas Education Code to withhold from local public school districts any state funds for the education of children who were not legally admitted into the United States. Section 21.031 also authorized local public school districts to deny enrollment to such children. See TEX. EDUC. CODE ANN. § 21.031 (Vernon Supp. 1981). Two years later, Tyler ISD adopted a policy requiring foreign-born students to pay tuition if they were not legally admitted to the United States.

Shortly after the adoption of the policy, a group of students who could not establish that they were legally admitted brought a class action lawsuit challenging the policy. The District Court permanently enjoined the defendants from enforcing the policy and the defendants appealed. The Fifth Circuit upheld the District Court's injunction.

In analyzing the issue, the Supreme Court held that the illegal aliens who challenged the statute could claim the benefit of the Equal Protection Clause, which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." *Plyler* at 215-216.

The Court affirmed its previous decision that public education is not a right granted by the U.S. Constitution. *Plyler* at 221, citing *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973). Further, the Court determined that the undocumented students could not be treated as a suspect class "because their presence in this country in violation of federal law is not a 'constitutional irrelevancy.'" *Id* at 223. As such, Texas needed not to establish a compelling interest to justify

the variations in which education was provided. *Id.* However, the Court held that Texas could not establish a sufficient rational basis for denying the students the benefits afforded other residents. The Court analyzed the State's articulated interest which was the "preservation of the state's limited resources for the education of its lawful residents." *Id.* at 226. The Court, however, rationalized that the State must do more than "justify its classification with a concise expression of an intention to discriminate." *Id.* at 227. Accordingly, the Court discerned three separate interests that could support § 21.031. *Id.*

The Court addressed the three interests—(1) the State sought to protect itself from an influx of illegal immigrants; (2) that the undocumented children were appropriately singled out for exclusion because of the special burdens they imposed on the State's ability to provide high-quality public education; and (3) the undocumented children were appropriately singled out because as undocumented individuals, it was less likely that they would remain within the boundaries of the State, putting their education to use. *Id.* at 228-229. The Court disposed of all of these potential interests.

First, the Court determined that § 21.031 was not an effective way deterring the stem of immigrants recognizing that the dominant incentive for coming to the United States was to find employment, not free education. "We think it clear that '[c]harging tuition to undocumented children constitutes a ludicrously ineffectual attempt to stem the tide of illegal immigration...'" *Id.* at 228. The Court then dismissed the contention that exclusion of undocumented students was likely to improve the overall quality of education in the State, citing the fact that the State presented no credible evidence on that point. *Id.* at 229. Finally, the Court recognized that no state can guarantee that any student, citizen or not, will remain within its borders to put to use the education provided by the State.

The Court concluded by stating:



BUT § 21.031 IS DIRECTED AGAINST CHILDREN, AND IMPOSES ITS DISCRIMINATORY BURDEN ON THE BASIS OF A LEGAL CHARACTERISTIC OVER WHICH CHILDREN CAN HAVE LITTLE CONTROL. IT IS THUS DIFFICULT TO CONCEIVE OF A RATIONAL JUSTIFICATION FOR PENALIZING THESE CHILDREN FOR THEIR PRESENCE WITHIN THE UNITED STATES.

*Plyer v. Doe*, 457 U.S. 202, 220 (1982).

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

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