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AUTHOR Markowitz, Joy
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ABSTRACT

This study attempted to identify critical issues in the provision of special education services to children of undocumented immigrants in the context of the 1982 Supreme Court decision, Plyler versus Doe, which affirmed the state's obligation to educate these children. The study developed a questionnaire which was sent to eight states having large numbers of undocumented immigrants: Arizona, California, Florida, Illinois, New Jersey, New Mexico, New York, and Texas. Findings are reported in the following areas: (1) state policies, guidelines, or directives (six states indicated they have no written policies or directives regarding undocumented students with disabilities); (2) offices/departments in the state education agency that address needs (no states have offices specifically designated to address the needs of this population); (3) challenges and concerns (e.g., limited English proficiency and high mobility of this population); (4) interagency support (in some states such support disregards residency status but in Florida such students and their families may be ineligible for support from service agencies); (5) educational needs specific to this population (mostly secondary to parents' fear of being identified as undocumented); (6) service delivery strategies (generally those serving a culturally and linguistically diverse student population); and (7) costs (no data were available). The questionnaire is appended. (Contains 11 references.) (DB)

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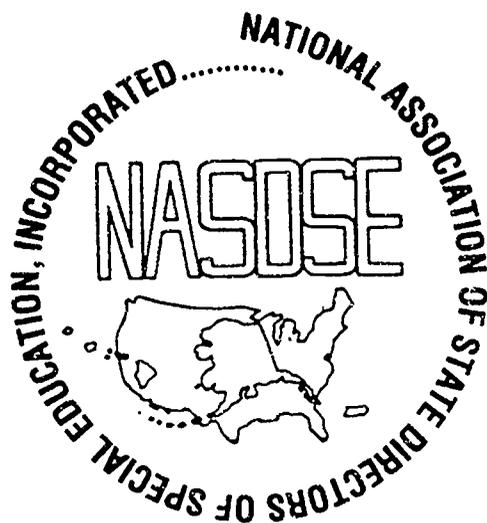
UNDOCUMENTED STUDENTS WITH DISABILITIES: A STATE INQUIRY

by Joy Markowitz, Ed.D.

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National Association of State Directors of Special Education
1800 Diagonal Road, Suite 320
Alexandria, VA 22314

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Diego Gallegos
Director of Special Education
New Mexico Department of Education

Eugene Goldman
Manager of the Bureau of Policy and Planning
New Jersey Department of Education

Jill Gray
Senior Director - Special Education Unit
Texas Education Agency

Ruth S. Jones
Supervisor of Data and Research
Florida Department of Education

Kathryn Lund
Deputy Associate Superintendent for Special Education
Arizona Department of Education

Vince Madden
Director - Research, Evaluation & Outcomes in Special Education
California Department of Education

Thomas Neveldine
Executive Coordinator for Special Education Services
New York State Education Department

Janet Tanner
Systems Supervisor, Department of Special Education
Illinois State Board of Education

ABSTRACT

In 1982, the United States Supreme Court ruled in *Plyler v. Doe* (457 U.S. 202, 102 S.Ct. 2382) that the state has the obligation to educate children of undocumented immigrants. Across the country, but particularly in the border states, teachers and administrators are challenged by undocumented students because their experiences put them at high risk for school difficulties and educational disabilities. With increasing numbers of undocumented children enrolling in our public schools and concern about disproportionate representation of culturally and linguistically diverse students in special education, there was a need to validate the critical issues involved in the provision of services to undocumented students with disabilities. To address this need, Project FORUM at the National Association of State Directors of Special Education (NASDSE) polled eight states with the largest populations of undocumented residents.

The findings from this polling panel indicate that the most salient issues are related to the limited English proficiency of the students and families, cultural differences, acute medical needs of the students, and the families' limited material resources. Although there are some background factors unique to undocumented students with disabilities, their educational needs are best examined and addressed in the broader context of a student population which is becoming more culturally and linguistically diverse.

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FORWARD

This report is the result of a study done under Project FORUM, a contract funded by the Office of Special Education Programs of the U. S. Department of Education and located at the National Association of State Directors of Special Education (NASDSE). Project FORUM carries out a variety of activities that provide information needed for program improvement, and promote the utilization of research data and other information for improving outcomes for students with disabilities. Project FORUM also provides technical assistance and information on emerging issues, and convenes small work groups to gather expert input, obtain feedback, and develop conceptual frameworks related to critical topics in special education. The purpose of this brief analysis is to validate, through direct inquiry, the critical issues involved in the provision of services to students with disabilities who are not legal immigrants.

Undocumented Students with Disabilities: A State Inquiry

Background

In 1982, the United States Supreme Court ended years of political debate and litigation in Texas when it ruled in *Plyler v. Doe* (457 U.S. 202) that the state has the obligation to educate the children of undocumented immigrants. As a result of this ruling, public school personnel are prohibited from adopting policies or taking actions that either deny, or result in the denial of, access of undocumented students to public schools on the basis of their undocumented status. In addition, school personnel are under no legal obligation to enforce U.S. immigration laws.

Across the country, but particularly in the border states, teachers and administrators are challenged by the diverse needs of undocumented immigrants, who are enrolling in public schools in growing numbers. In 1992 there were an estimated 3.4 million people living in the United States without documentation of U.S. citizenship or residency (Urban Institute, 1994; Warren, 1994). Other estimates have ranged from 2.5 to 12 million (Haney, 1987). The mean age of these new arrivals is estimated to be significantly less than 30 years (Carreara, 1989), which points to the potential impact on our public education system.

The cost of elementary and secondary education for students without documentation is said to be \$4.7 billion (Carrying Capacity Network, 1993). Although most undocumented students are concentrated in fewer than ten states, the numbers in those states and resulting expenditures draw significant attention to this issue. Recently, three states--California, Colorado and Florida--appealed to Congress for more funding to educate undocumented students (Phelps, 1994). Even in jurisdictions where the numbers are small, the challenges and concerns can be great.

Immigrant children, documented and undocumented, enter our schools with experiences very different from those of their non-immigrant peers. Many have lived through the trauma of war in their native countries and have been witness to the bloody violence and human suffering resulting from the ravages of war. Many immigrant children have been abruptly separated from close relatives and friends, without knowing if they will ever see these people again. As Carreara (1989) points out, memories of loved ones who did not survive the journey to the United States and of those who remain in war-torn countries haunt these students.

Initial encounters with American culture are at best overwhelming and confusing for immigrant children. They struggle to maintain their cultural identity, but at the same time desperately want to feel comfortable and accepted in their new home. Language barriers are also likely to exist, which increase the challenges for these children as they become students in our public schools and try to comprehend our cultural "rules." Unfortunately, immigrant

children all too often find American culture alienating and hostile. They may be subject to racial tension and cruel stereotyping, which intensify their feelings of loneliness. In addition, new immigrants often suffer the ill effects of poverty and poor medical/health care, which are also problems too many native-born American students also face.

Purpose of Inquiry

The economic, emotional, medical, and political histories of many undocumented students put them at high risk for school difficulties and educational disabilities. Therefore, in the wake of media attention to the costs of undocumented residents and increased concern about disproportionate representation of culturally and linguistically diverse students in special education, interest in the impact of undocumented students on the special education system grew. As a result, the U.S. Department of Education-Office of Special Education Programs and Project FORUM at the National Association of State Directors of Special Education (NASDSE) made the decision to validate, through direct inquiry, the critical issues involved in the provision of services to students with disabilities, who are not legal immigrants.

Method of Inquiry

Relevant literature was reviewed to ascertain the known facts about undocumented students and to identify the key educational issues. A questionnaire was developed which would allow Project FORUM to poll states with the largest populations of undocumented residents about services for undocumented students with disabilities. The following eight states were selected for this inquiry: Arizona, California, Florida, Illinois, New Jersey, New Mexico, New York, Texas. The letter to state directors of special education (or their designee) and the questionnaire can be found in Appendix A.

Findings

State Policies, Guidelines or Directives

Respondents from six of the eight states surveyed indicated that no written policies, guidelines or directives exist which address the provision of services to undocumented students with disabilities. Two states (New Jersey and New Mexico) made an explicit statement that no distinction is made between "documented and undocumented students" from a policy standpoint.

Florida forwarded three documents that reference *Plyler v. Doe* and explicitly state that all school-age children are entitled to a free public education. These documents include a 1981 interpretative memorandum from the Director of the Florida Department of Education-Division of Public Schools, a 1987 memorandum from the Deputy General Counsel-Florida Department of Education, and a 1990 Settlement Agreement from the United States District Court for the Southern District of Florida.

The section of the current Texas Education Code which addresses school admission criteria, contains an appended paragraph which references *Plyler v. Doe* and advises school districts that "age and residency of the student or the residency of his parent/parents are the sole admission criteria unless the student is receiving foster care sponsored by the State." This language is expected to be codified when the Texas State legislature convenes in January 1995 and considers proposed revisions to the Texas Education Code. This language reflects the current school admission procedures in the State of Texas.

Offices/Departments in the State Education Agency that Address Needs

None of the states surveyed have offices or departments specifically designated to address the needs of undocumented students with disabilities. Offices and department within the State Education Agency which serve undocumented students, as well as other students, are as follows: special education, migrant, homeless, and special populations.

Challenges and Concerns

Arizona, Florida, New Mexico and Texas identified challenges and concerns regarding undocumented students with disabilities. The two challenges/concerns common to those four states are: 1) undocumented students typically do not live in homes where English is spoken, and consequently have limited English proficiency, and 2) there is high mobility in this population of students. The New Jersey respondent noted that the challenges and concerns for documented and undocumented students are very similar.

When asked to identify the two biggest concerns regarding undocumented students with disabilities, the four states collectively identified the following six concerns:

- It is difficult to communicate with the families due to language and cultural differences.
- It is difficult to assess the skills of undocumented students with disabilities; this problem is exacerbated by the paucity of professionals to conduct assessment and provide instruction in students' native languages.
- Providing services to undocumented students with medical needs and multiple disabilities is costly.
- The number of undocumented students with disabilities is increasing and their arrival is often unpredictable; this makes planning very difficult.
- The families and students fear investigation and deportation.
- The families often have limited material resources.

Interagency Support

In Arizona and New Mexico, interagency support in the schools is the same for all students, regardless of a student's residency status. Arizona's Health Care Cost Containment System will address the needs of undocumented students in life-threatening situations; however, services from that state's Department of Economic Security may be difficult to obtain if the family's residency status is unknown.

In Florida, undocumented students (with or without disabilities) and their families are often ineligible for support from other agencies, such as Aid for Families with Dependent Children (AFDC), medicaid, and food stamps. However, there are some private, non-profit groups which assist undocumented students and their families.

Differences in Educational Needs

Respondents from Arizona and New Mexico noted that the differences between the educational needs of undocumented and documented students with disabilities are related to the difficulties with home-school communication. Communication is difficult due to language and cultural differences. In both Arizona and New Mexico family involvement is inhibited by the fear of deportation. Parents do not come to meetings and may not request needed services because they do not want to be identified as undocumented. If the student has multiple needs and a collaborative service delivery strategy is indicated, lack of parent involvement is a significant problem. The Florida respondent noted that undocumented students often have great difficulty finding employment. This makes the transition to productive post-secondary life roles for undocumented students with disabilities all the more challenging.

Service-Delivery Strategies

In light of the fact that the states surveyed do not ascertain the residency status of their students with (or without) disabilities, the service-delivery strategies found to be most effective were those designed to meet the needs of a culturally and linguistically diverse student population. The following strategies were provided as examples: teacher training in bilingual education, English as a second language, and services for students with limited English proficiency; provision of instructional resources for students with limited English proficiency; training and information in the area of multicultural sensitivity and education; and promotion of nondiscriminatory evaluation and placement procedures for students who speak languages other than English. In Arizona, Child Find efforts are directed at undocumented and homeless children, as well as other children.

Costs

No data on the costs associated with serving undocumented students with disabilities were available from the eight states surveyed.

Further Examination of this Topic

During the period of time that this inquiry on services for undocumented students with disabilities was being conducted, the voters in California were being called upon to cast their vote on a closely related topic--the provision of all state services to undocumented immigrants. On November 8, 1994 the California voters passed Proposition 187, expressing the view that state services should not be available to undocumented immigrants; this includes free public education. At the current time, there is no infrastructure in place to implement such a public mandate and no new directives have been given to or from the State Education Agency regarding the provision of educational services. Proposition 187 clearly contradicts the U.S. Supreme Court's 1982 decision in *Plyler v. Doe*; therefore, this issue is likely to be settled in the courts of law.

The recent vote in California is pertinent to this inquiry because an estimated 50 percent of the undocumented immigrants in the United States reside in California (Warren, 1994), and California is a large and politically powerful state. The other states with large numbers of undocumented immigrants, which are the states which participated in this inquiry, are watching to see what happens in California. In the interim, data from this inquiry suggest that the needs of undocumented students with disabilities should be examined and addressed in the broader context of a student population which is becoming more culturally and linguistically diverse, rather than separately.

References and Other Resource Material

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Appendix A

Letter and Questionnaire

Dear

Thank you for agreeing to assist us with this inquiry regarding the provision of special education programs and services to undocumented students.

Project FORUM at the National Association of State Directors of Special Education, Inc. (NASDSE), is designed to support the U.S. Office of Special Education Programs in its continuing efforts to foster and provide for the exchange of timely and relevant information among Federal, State, and local education agencies. As such, the purpose of this activity is to validate, through direct inquiry, the critical issues involved in the provision of services to students with disabilities, who are not legal immigrants.

The attached questionnaire was designed to gather pertinent information from you on this topic and solicit your recommendation regarding further examination. This information will be summarized in a Project FORUM document.

Please fax or mail your questionnaire to Joy Markowitz, at the address below, by **November 4, 1994**. Feel free to contact her if you have any questions.

Joy Markowitz, Policy Analyst
Project FORUM
National Association of State Directors
of Special Education, Inc.
King Street Station I
1800 Diagonal Road, Suite 320
Alexandria, Virginia 22314
Phone: (703) 519-3800
Fax: (703) 519-3808

Thanks again for your cooperation in this important work.

Sincerely,

Joy Hicks, Director
Project FORUM

Enclosure

cc: Martha Fields

**Project FORUM at NASDSE
Undocumented Students with Disabilities
State Inquiry**

Respondent: _____

Title: _____

The term "undocumented students" is used in this questionnaire to refer to students who are living in the United States without documentation of U.S. citizenship or residency.

1. Does your state have any written policies, guidelines or directives related to serving undocumented students with disabilities? (If yes, please attach copy.)
2. What office(s) or department(s) in your state addresses the needs of undocumented students with disabilities?
3. Our review of the literature on this topic indicates that the main challenges/concerns for states and localities serving undocumented students with disabilities are as follows:
 - A. They typically do not live in homes where English is spoken, and consequently have limited English proficiency.
 - B. Their families often have limited material resources.
 - C. It is difficult to communicate with their families due to language and cultural differences.
 - D. Undocumented students with disabilities typically have had little or no previous formal education.
 - E. It is difficult to assess the skills of undocumented students with disabilities.
 - F. There is high mobility in this population of students.
 - G. The families and students fear investigation and deportation.
 - H. Undocumented students with disabilities often have concomitant health/medical problems.

Which of the above challenges/concerns do you have in your state? Please **circle** the letter(s) above.

4. What are the two biggest concerns in your state regarding undocumented students with disabilities? Use the letters above **or** add your own.

5. Please describe the interagency support, if any, available for undocumented students with disabilities in your state.

6. How are the special education needs of undocumented students different from those of documented immigrants?

7. How does your state determine/identify effective strategies for serving undocumented students with disabilities?

8. How does your state identify the costs associated with serving undocumented students with disabilities?

9. Should this topic be examined further by Project FORUM at NASDSE? If yes, what should be the area of focus?

Thanks very much for your help.