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Texas Tall Tales: Supreme Court School Rulings from the Lone Star State and Their Relevance Today

Right of Students with Undocumented Immigration Status to Attend Public School

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Right of Students with Undocumented Immigration Status to Attend Public School
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All children, regardless of their immigration status, have an equal right to attend public schools in the United States. This right was established by the landmark U.S. Supreme Court case of *Plyler v. Doe*, 457 U.S. 202 (1982).

Legislative Background

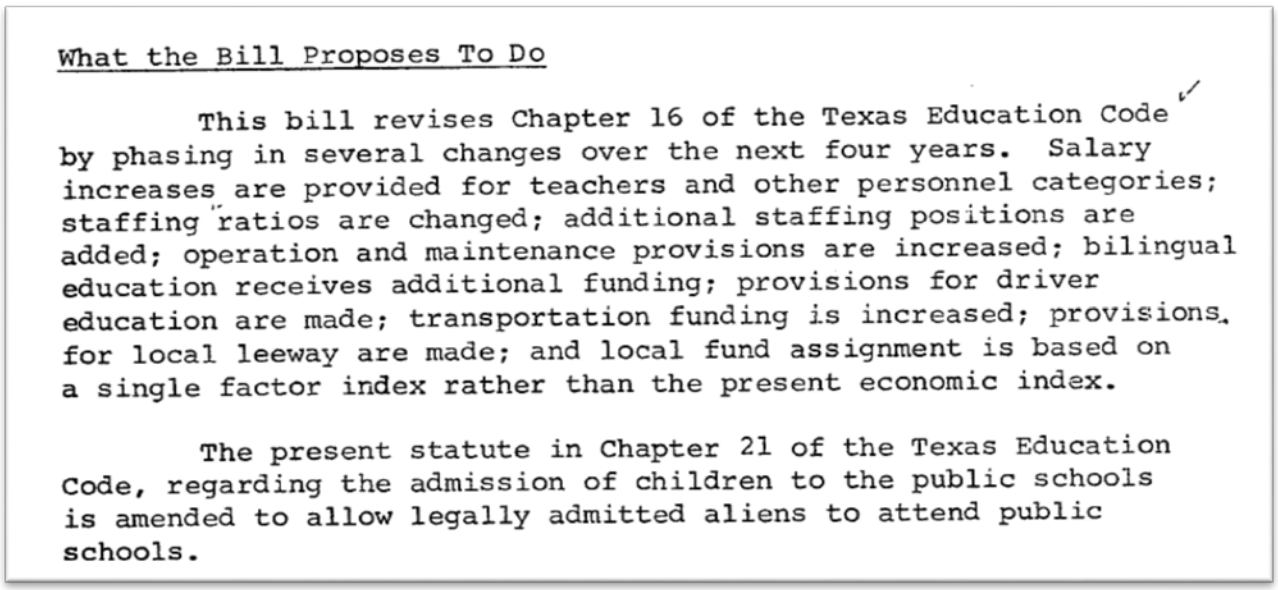
In 1975, the 64th Texas Legislature passed House Bill 1126, an omnibus school finance and reform bill. The bill limited state funds for education (known in Texas as the Foundation School Program) to children who either were citizens of or had been "legally admitted" to the United States.

Texas law still contains much of the same statutory language and structure for the Foundation School Program (FSP), which remains the state's primary means of distributing state education funds to local school districts. The FSP relies on formulas calculated by considering local property tax effort and yield, with a per-pupil basic allotment and adjustments based on student populations and additional local factors.

The Texas Legislature embraced numerous reforms in House Bill 1126: The length of the school year was raised to 180 days of instruction. The state minimum salary schedule raised teachers' starting salary from $390 to $430 per month. Autism and dyslexia were added to the special education statute, which called for the inclusive education of all "exceptional children," and bilingual education was expanded beyond kindergarten. This bill was also the dawn of public school accountability in Texas, as new text was proposed (but not yet passed) requiring the State Board of Education to articulate desired student outcomes and periodically assess student progress by subgroups with a requirement for annual public reporting.

But HB 1126 also revealed the Texas Legislature's reluctance to use state funds to support local education. In keeping with its historical pattern, the Texas Legislature took up school finance reform in 1975 only because courts had ordered it to do so. Moreover, school officials would continue to express frustration that the bill's additional funding did not fully cover the cost of the bill's mandated reforms.

With respect to the availability of state education funds for immigrant children, the stated goal in 1975 was actually to expand public education to include children who had immigrated legally, not exclude children whose status was undocumented. The House Bill Analysis included the following:

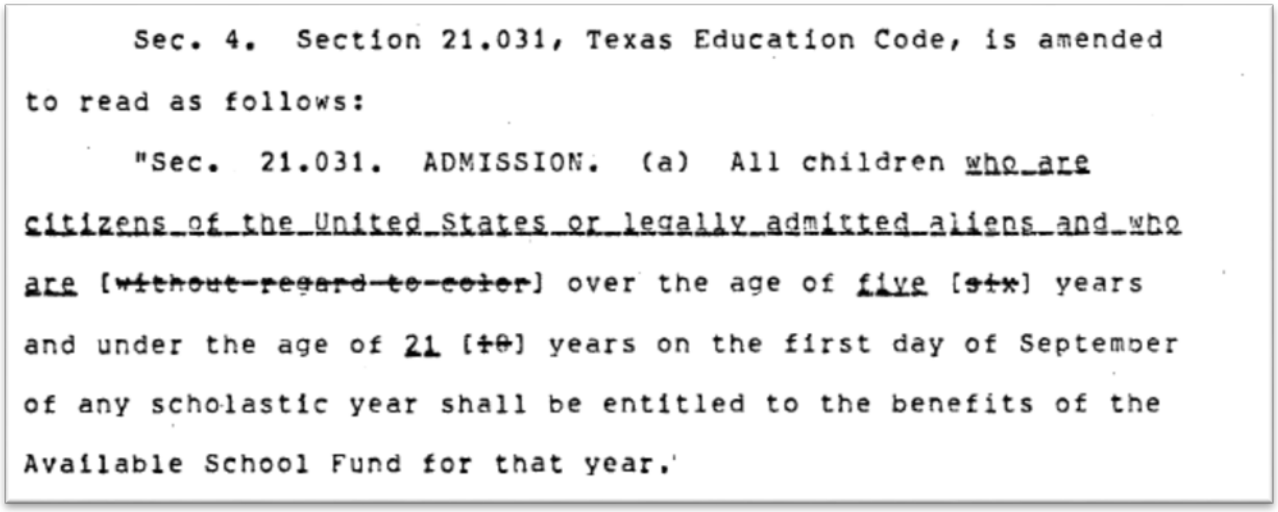


What the Bill Proposes To Do

This bill revises Chapter 16 of the Texas Education Code by phasing in several changes over the next four years. Salary increases are provided for teachers and other personnel categories; staffing ratios are changed; additional staffing positions are added; operation and maintenance provisions are increased; bilingual education receives additional funding; provisions for driver education are made; transportation funding is increased; provisions for local leeway are made; and local fund assignment is based on a single factor index rather than the present economic index.

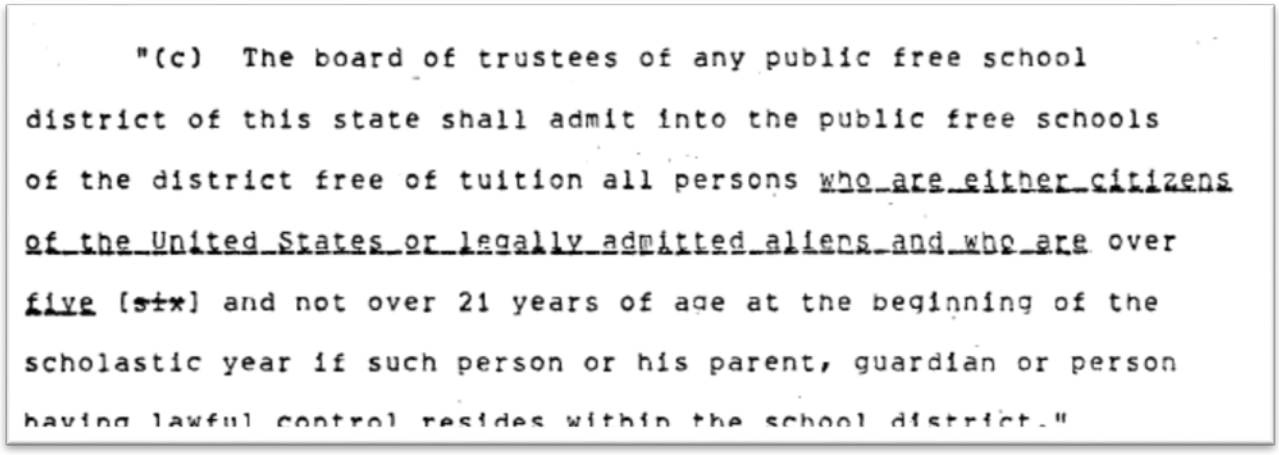
The present statute in Chapter 21 of the Texas Education Code, regarding the admission of children to the public schools is amended to allow legally admitted aliens to attend public schools.

Specifically, the bill provided the following:



Sec. 4. Section 21.031, Texas Education Code, is amended to read as follows:

"Sec. 21.031. ADMISSION. (a) All children who are citizens of the United States or legally admitted aliens and who are [~~without regard to color~~] over the age of five [~~six~~] years and under the age of 21 [~~18~~] 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."



"(c) The board of trustees of any public free school district of this state shall admit into the public free schools of the district free of tuition all persons who are either citizens of the United States or legally admitted aliens and who are over five [~~six~~] and not over 21 years of age at the beginning of the scholastic year if such person or his parent, guardian or person having lawful control resides within the school district."

Essentially local school districts could either refuse to admit students who had not been legally admitted to the U.S., admit the students and use only local funds to provide for their education, or charge tuition. By the time *Plyler v. Doe* reached the courts, any idea that the state law was an expansion, rather than a retraction, of educational opportunities had evaporated. The state and local district defended the statute on the rationale that the state and local districts should not have to assume the cost of educating students who could not demonstrate a lawful immigration status.

By 1982, Justice Brennan writing for the Court described the Texas statute as follows: "In May 1975, the Texas Legislature revised its education laws to withhold from local school districts any state funds for the education of children who were not 'legally admitted' into the United States. The 1975 revision also authorized local school districts to deny enrollment in their public schools to children not 'legally admitted' to the country." *Plyler v. Doe*, 457 U.S. 202, 205 (1982).

District Court

Despite the passage of HB 1146 in 1975, Tyler Independent School District in East Texas did not immediately change its admissions practices. Starting with the 1977-78 school year, however, the district established a policy that would require students to pay a "full tuition fee" of $1,000 if they could not demonstrate a lawful immigration status. In September 1977, a group of school-age children who had been born in Mexico and had entered Texas illegally filed suit in the federal district court for the Eastern District of Texas, seeking declaratory and injunctive relief and naming the superintendent and board of trustees as defendants. The State of Texas intervened as a party-defendant, and the United States Department of Justice appeared as Amicus Curiae.

The case came before legendary federal district court judge William Wayne Justice, who granted the plaintiffs' request for a protective order protecting their anonymity, certified the matter as a class action, and granted a preliminary, then permanent, injunction. The parties began by presenting evidence limited only to the Tyler Independent School District, but Judge Justice soon indicated his intention to enforce his order more broadly on the State of Texas.

Evidence was presented that recent surges of immigration from Mexico were creating economic strain due to overcrowding and the particular educational needs of recent immigrant children for bilingual and remedial instruction. Judge Justice was not persuaded, however, that these factors differed based on whether the affected children's families had immigrated through lawful or unlawful means. Nor was he persuaded that the incremental increase in attendance attributable to unlawful immigration was significant enough to affect overall school district operations.

On the other hand, Judge Justice was persuaded that the policy could cause irreparable harm. In language later echoed by the Supreme Court on appeal, the judge wrote: "The predictable effects of depriving an undocumented child of an education are clear and undisputed. Already disadvantaged as a result of poverty, lack of English-speaking ability, and undeniable racial prejudices, these children, without an education, will become permanently locked into the lowest socio-economic class. Furthermore, witnesses from both sides testified that the illegal alien of today may well be the legal alien of tomorrow." *Doe v. Plyler*, 458 F. Supp. 569, 577 (E.D. Tex. 1978).

The district court swiftly rejected the argument that alien individuals were not entitled to equal protection under the laws of the United States. The guarantee of equal protection is not that non-citizens will be treated exactly the same as citizens, but rather that unreasonable, arbitrary lines will not be drawn. Although the court considered application of strict scrutiny to the statute, alternatively considering whether complete deprivation of public education was the denial of a fundamental right and whether individuals without a lawful immigration status formed a protected suspect class, the court ultimately relied on the rational basis test and found no legitimate government interest to support the state law:

> The obvious unconstitutionality of such a statutory classification presents an insurmountable obstacle to its enactment into law. Nevertheless, bent on cutting educational costs and unable constitutionally to exclude all such 'problem' children, the state has attempted to shave off a little around the edges, barring the undocumented alien children despite the fact that they are no different for educational purposes from a large proportion of legally resident alien children. The expediency of the state's policy may have been influenced by two actualities: children of illegal aliens had never been explicitly afforded any judicial protection, and little political uproar was likely to be raised in their behalf. *Doe v. Plyler*, 458 F. Supp. 569, 589 (E.D. Tex. 1978).

Court of Appeals

On appeal, the Fifth Circuit affirmed the district court's holding that the application of HB 1126 to undocumented alien children was a violation of the equal protection clause. *Doe v. Plyler*, 628 F.2d 448(5th Cir. 1980). The Fifth Circuit reached essentially the same answers as the lower court regarding equal protection and the applicable standard of review. The appellate court affirmed the decision of the district court with this conclusion:

> This Court is acutely aware that Texas is suffering the local effects of a national problem. When national immigration laws are not or cannot be enforced, it is the states, most particularly the border states, that bear the heaviest burden. This Court can readily understand the problems faced by a state such as Texas. However, this Court cannot suspend the operation of the Constitution to aid a state to solve its political and social problems. *Doe v. Plyler*, 628 F.2d 448, 461 (5th Cir. 1980).

During 1978 and 1979, suits challenging the constitutionality of HB 1126 (codified as Texas Education Code section 21.031) and various local policies adopted on the authority of that legislation were filed in the United States District Courts for the Southern, Western, and Northern Districts of Texas. Each suit named the State of Texas and the Texas Education Agency as defendants, along with local officials. In November 1979, the Judicial Panel on Multidistrict Litigation consolidated the claims into a single action. In July 1980, the District Court for the Southern District of Texas entered an opinion and order holding that the state law violated the Equal Protection Clause of the Fourteenth Amendment. The district court's order was summarily affirmed by the Fifth Circuit, and the cases were consolidated on appeal by the U.S. Supreme Court. *Plyler v. Doe*, 457 U.S. 202 (1982).

Supreme Court's Holding and Rationale

When the consolidated case reached the Supreme Court, the Court posed the issue as whether, consistent with the Equal Protection Clause of the Fourteenth Amendment, Texas could deny to undocumented school-age children the free public education that it provided to children who were citizens of the United States or legally admitted aliens. The Court held that the Texas statute, which withheld from local school districts any state funds for the education of children who were not legally admitted into the United States and which authorized local school districts to deny enrollment to such children, violated the Equal Protection Clause of the Fourteenth Amendment. The Court reached several key conclusions:

The protection of the Fourteenth Amendment's Equal Protection Clause extends to all individuals present in the United States, regardless of immigration status. In the words of the Court, "the protection of the Fourteenth Amendment extends to anyone, citizen or stranger, who is subject to the laws of a State, and reaches into every corner of a State's territory." The fact that a person's initial entry into the United States was unlawful, and the fact that the person could be subject to deportation, does not change the fact that the person is present in the jurisdiction of the state and subject to the full range of legal obligations of the state. While the person is present, he or she is entitled to the equal protection of the laws that a state imposes. *Plyler v. Doe*, 457 U.S. 202, 215 (1982).

Just because all individuals present in the United States receive the protection of the Equal Protection Clause does not mean that all individuals will receive the same treatment for all purposes. State laws may impose distinctions or classifications as long as classifications show a fair relationship to a legitimate public purpose. Courts will not defer to every state classification, however. "The Equal Protection Clause was intended as a restriction on state legislative action inconsistent with elemental constitutional premises. Thus we have treated as presumptively invidious those classifications that disadvantage a 'suspect class,' or that impinge upon the exercise of a 'fundamental right.'" *Plyler v. Doe*, 457 U.S. 202, 216–17 (1982).

Individuals who entered or remain in the United States illegally should expect certain legal consequences, but their children should not be punished for their parents' actions. "At the least, those who elect to enter our territory by stealth and in violation of our law should be prepared to bear the consequences, including, but not limited to, deportation." The children of those individuals are not similarly situated, however. The Court characterized punishing children for the actions of their parents as ineffective and unjust. *Plyler v. Doe*, 457 U.S. 202, 220 (1982).

Public education is not a fundamental right named in the U.S. Constitution; nor is it a social welfare program. As established in *San Antonio Independent Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973), public education is not a right granted to individuals by the U.S. Constitution. On the other hand, public education is not merely a governmental benefit indistinguishable from other social welfare legislation. "Both the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child, mark the distinction." *Plyler v. Doe*, 457 U.S. 202, 221 (1982).

The Court's majority opinion offers soaring rhetoric in praise of public education, which provides the basic means for leading children into productive adult lives. "In sum, education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests." Denying education to a select group would put the children at a profound disadvantage. "Illiteracy is an enduring disability. The inability to read and write will handicap the individual deprived of a basic education each and every day of his life." *Plyler v. Doe*, 457 U.S. 202, 221–22 (1982).

Because of the nature of the deprivation, the Court determined that the statute must not be upheld unless the government could demonstrate a rational relationship to a *substantial* governmental goal, and the government failed to meet this standard. Because of the inestimable toll of the proposed deprivation on the social, economic, intellectual, and psychological well-being of the affected children, the Court could not 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. "In determining the rationality of Section 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 Section 21.031 can hardly be considered rational unless it furthers some substantial goal of the State." Moreover,

the Court questioned the validity of the state's economic arguments, rejecting its assertions that the cost of providing public education to children whose families did not immigrate lawfully was harmful to the state. The Court also indicated that if the point of the statute was to deter unlawful entry to the U.S., the statute was an irrational means of addressing that concern. *Plyler v. Doe*, 457 U.S. 202, 223-24 (1982).

The Court concluded the following: "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, 230 (1982).

Fractured Court

Justice Brennan delivered the Court's opinion, which was joined without further comment by only one other justice, Justice Stevens. Justices Marshall, Blackmun, and Powell joined the Court's decision, but each wrote separate concurrences to explain why heightened scrutiny was the appropriate standard of review. Justice Marshall wrote to express his opinion that education was a fundamental right that should be afforded constitutional protection. Justice Blackmun wrote to express his opinion that (although *Rodriguez* had established a necessary standard that fundamental rights were only those named in the constitution), *Rodriguez* should not be understood to foreclose other interests, like voting and education, from receiving constitutional protection. Justice Powell wrote a concurrence that suggested undocumented children should receive protection as a suspect class due to their vulnerability and lack of culpability.

Finally, Justice Burger wrote an undeniably well-reasoned dissent, which was joined by Justices Rehnquist, White, and O'Connor. The dissent agreed that equal protection of the law should be afforded to any individual within the jurisdiction of the United States, regardless of immigration status. Equal protection of the law does not confer equal treatment in all aspects, however. The dissent accused the majority opinion of being blatantly results-oriented. A majority of the court had agreed that strict scrutiny was not appropriate. Consequently, regardless of the wisdom of the Texas statute, the statute should have been upheld as long as it was not irrational, and the state had presented a reasonable economic rationale. The role of the Court was not to solve social ills, nor should the Court be asked to rank the relative value of public services. Congress, not the courts, should respond to such matters of policy.

Heightened Scrutiny

Among educators, *Plyler v. Doe* is generally accepted as an enduring and intuitively just rule prohibiting the exclusion of children from public schools based on their immigration status and further prohibiting any school district policies or practices that would tend to chill the enrollment of students lacking a documented immigration status. Among legal scholars, however, *Plyler* is better known for its puzzling, unorthodox application of a heightened or hybrid standard of review, rather than strict scrutiny or rational basis review. Under traditional

rational basis analysis, a state law classification that neither burdens a fundamental right nor targets a suspect class will be upheld as long as it bears a rational relationship to some legitimate government purpose.

Future courts refer to *Plyler* as an anomaly. The *Plyler* majority emphasized two facts justifying its higher level of review: (1) the age and innocence of the undocumented children, and (2) the importance of education to the children and society as a whole. As later courts have been able to distinguish either element from the facts presented in the cases that have followed, court after court has isolated *Plyler* to its facts. See, e.g., *Arizona Dream Act Coal. v. Brewer*, 945 F. Supp. 2d 1049, 1066–67 (D. Ariz. 2013) (distinguishing the age of licensed drivers and the relative importance of drivers' licenses to uphold state statute requiring proof of immigration status for state-issued drivers' licenses), *rev'd and remanded on other grounds*, 757 F.3d 1053 (9th Cir. 2014).

Only a handful of Supreme Court cases have applied a more rigorous form of rational basis review.

***Department of Agriculture v. Moreno*:** The U.S. Supreme Court invalidated an amendment to the Food Stamp Act that rendered ineligible for assistance any household of unrelated individuals. The Supreme Court found that the law was directed at "hippies" and was without any rational basis. The Court held that a "purpose to discriminate against hippies cannot, in and of itself and without reference to (some independent) considerations in the public interest, justify the 1971 amendment." Consequently the amendment violated the equal protection aspect of the Due Process Clause of the Fifth Amendment. *Dep't of Ag. v. Moreno*, 413 U.S. 528, 534-35 (1973).

Cleburne v. Cleburne Living Center: The U.S. Supreme Court invalidated a zoning ordinance that required a special permit for a home for the mentally disabled. The Court noted that such special permits were not required by the city for other group dormitories or nursing homes and found that the permit requirement bore no rational relationship to any legitimate interest asserted by the city. The Court determined that legislation targeting individuals with mental retardation created a "quasi-suspect" class. Because the permit requirement was based solely "on an irrational prejudice" against the mentally disabled, the Supreme Court held that it violated equal protection. C*leburne v. Cleburne Living Ctr*., 473 U.S. 432, 450 (1985).

***Romer v. Evans*:** The U.S. Supreme Court invalidated an amendment to the Colorado constitution that prohibited any action by state government to protect individuals from discrimination based on their sexual orientation. The Court found that the broad and undifferentiated treatment of an explicitly named group was not rationally related to the asserted government interests of protecting freedom of association and conserving resources to fight discrimination against other groups. The Court found that "the amendment seems inexplicable by anything but animus toward the class it affects; it lacks a rational relationship to legitimate state interests." *Romer v. Evans*, 517 U.S. 620, 632 (1996).

Reflecting on these cases, later lower courts appear to describe the Court's motivation for the application of heightened scrutiny as instances when the Court perceived the actual motivation for classifications as impermissible bias, and therefore determined that the classification failed the rational basis test. Whether the state actions in question reflected private biases, negative attitudes towards certain classes of persons, or some other perceived illegitimate basis, classifications arising from improper motives appear to have drawn a more active level of judicial review, at least in these few isolated cases. Legal scholars will continue to debate whether these cases reflected sloppy "activist" jurisprudence or necessary interventions to protect groups that did not qualify as suspect classes and yet needed equal protection of the law.

Education-Related Equal Protection Cases after *Plyler v. Doe*

Topic	Case	State Action	Holding	Related Cases
Admissions	*Martinez v. Bynum*, 461 U.S. 321 (1983).	Texas law denied tuition-free public school attendance to minors living separate from parent, guardian, or other person with lawful control if the presence was for the primary purpose of attending school.	A bona fide residence requirement, uniformly applied, for public school attendance furthers a substantial state interest and does not violate Equal Protection.	*Harris v. Hall*, 572 F. Supp. 1054 (E.D.N.C. 1983) (upholding statute allowing school-age children whose parents or guardians have made permanent homes within the district to attend school). *But see Vlandis v. Kline*, 412 U.S. 441 (1973) (invalidating a Connecticut law that created a permanent and irrebuttable presumption of nonresidency).
Admissions	*Horton v. Marshall Pub. Schs*., 769 F.2d 1323 (8th Cir. 1985).	Arkansas law denied public school admission to any minor living separate from parent or guardian, regardless of reason.	Denying education to this class of children cannot be rational absent a substantial goal of the State. The school district needs a competent adult to make educational decisions, but restricting this to only a parent or legal guardian living in the district is overly restrictive.	*Major v. Nederland Indep. Sch. Dist*., 772 F. Supp. 944 (E.D. Tex. 1991) (invalidating local policy requiring students to reside in the district with parent or legal guardian, effectively creating "a discrete class of children not accountable for their disabling status").

Topic	Case	State Action	Holding	Related Cases
Admissions	*Hispanic Interest Coal. of Ala. v. Governor of Ala.*, 691 F.3d 1236 (11th Cir. 2012).	Alabama law required verification of citizenship and immigration status for enrollment in public elementary and secondary schools, as well as institutions of higher education.	Statute regarding public school enrollment failed heightened scrutiny. The statute placed a special burden on the same population as *Plyler* and was likely to deter enrollment and deny education. State rationale of conserving funds and improving data about immigration did not justify the statute.	*League of Latin Am. Citizens v. Wilson*, 908 F. Supp. 755 (C.D. Cal. 1995) (holding that portion of Proposition 187 requiring identification and exclusion of students without documented immigration status from public schools was preempted by federal law and a violation of Equal Protection).
Tuition and Fees	*Pena v. Bd. of Educ. of City of Atlanta*, 620 F. Supp. 293 (N.D. Ga. 1985).	City policy established fee schedule charging school tuition to certain immigrants based on type of visa.	City had no valid rationale for policy charging tuition to certain categories of immigrants, including those with undocumented status; if a free public education is offered, it must be made available on equal terms to all residents.	
Tuition and Fees	*Kadrmas v. Dickinson Pub. Schs.*, 487 U.S. 450 (1988).	North Dakota statute permitted some school districts to charge a user fee for bus transportation. Plaintiffs sued regarding the disparate impact on poor students.	No strict or heightened scrutiny would be appropriate for statute having a different effect based on wealth only. Education is not a fundamental right. Heightened scrutiny has been applied only in cases with discriminatory classifications.	

Topic	Case	State Action	Holding	Related Cases
School Quality	*C.M. ex rel. Marshall v. Bentley*, 13 F. Supp. 3d 1188 (M.D. Ala. 2014).	State accountability law that allowed students in failing schools to transfer to participating non-failing schools was challenged on behalf of students who either could not afford to transfer or who lived prohibitively far from a participating school.	There is no stand-alone constitutional claim arising from the State's alleged denial of a right to receive a non-failing public education. The issue of a fundamental right to some minimal quantum of education factors only into the level of judicial scrutiny. Heightened scrutiny is not appropriate because plaintiffs are not altogether without a state-provided education, and plaintiffs do not represent a discrete class as in *Plyler*.	*Papasan v. Allain*, 478 U.S. 265 (1986) (applying *Rodriguez,* not *Plyler*, to decline heightened scrutiny in Mississippi school funding challenge). *Gwinn Area Cmty. Schs. v. State of Mich*., 741 F.2d 840 (6th Cir. 1984) (declining to extend *Plyler* analysis to challenge of state's education funding).
Higher Education	*Herrera v. Finan*, 176 F. Supp. 3d 549 (D.S.C. 2016), *aff'd*, No. 16-1496, 2017 WL 4417634 (4th Cir. Oct. 4, 2017).	South Carolina gave in-state students preferences in higher ed. State law denied lawful residency to individuals without documented immigration status and based students' residency on parents' status. Student sued after being denied in-state residency based parents' immigration status.	Case was moot after the state issued guidance specifying that the presumption of mirrored residency was rebuttable, and no U.S. citizen student who could otherwise establish domicile would be denied in-state residency on the basis of his or her parents' immigration status.	*Ruiz v. Robinson*, 892 F. Supp. 2d 1321 (S.D. Fla. 2012) (using *Plyler* analysis to invalidate state law that categorized students as in-state residents based on parents' immigration status). *Martinez v. The Regents of the Univ. of Cal.*, 241 P.3d 855 (Cal. 2010) (concluding state-law exemption from nonresident higher education tuition for local HS graduates without

Topic	Case	State Action	Holding	Related Cases
				documented immigration status did not violate federal statute prohibiting higher education benefits for undocumented immigrants if the same benefits are not available to citizens).
Licenses	*Ariz. Dream Act Coal. v. Brewer*, 945 F. Supp. 2d 1049 (D. Ariz. 2013), *rev'd and remanded*, 757 F.3d 1053 (9th Cir. 2014).	State law denied drivers' licenses to individuals without documented immigration status.	Unlike the class of undocumented children in *Plyler*, DACA recipients, and specifically the plaintiffs in this putative class action, are older—between 18 and 26; and unlike education, a driver's license does not provide "the basic tools by which individuals might lead economically productive lives to the benefit of us all."	*Doe v. Ga. Dep't of Pub. Safety*, 147 F.Supp.2d 1369 (N.D. Ga. 2001) (upholding similar Georgia law). *League of United Latin Am. Citizens v. Bredesen*, 500 F.3d 523 (6th Cir. 2007) (upholding similar Tennessee law).
Licenses	*LeClerc v. Webb*, 419 F.3d 405 (5th Cir. 2005).	Louisiana Supreme Court rule required every applicant for admission to the state bar to be a U.S. citizen or resident alien.	Because bar applicants were not a suspect or quasi-suspect class for equal protection purposes, rule was not subjected to heightened rational basis review, but was upheld as rationally related to the state's legitimate interest in regulating the practice of law.	*Van Staden v. St. Martin*, 664 F.3d 56 (5th Cir. 2011) (upholding similar limitation by Louisiana State Board of Practical Nurse Examiners).

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