

# **Fixing Alabama’s Public School Enrollment Requirements in H.B. 56: Eliminating Obstacles to an Education for Unauthorized Immigrant Children**

By Sean Mussey

## **I. Introduction**

In 2011, Alabama enacted a comprehensive immigration law primarily aimed at addressing unauthorized immigration in the state.<sup>1</sup> The Beason-Hammon Alabama Taxpayer Citizen and Protection Act (H.B. 56) impacts many areas of an unauthorized immigrant’s life, including law enforcement, transportation, housing, employment, and children’s participation in public schools.<sup>2</sup> The legislative findings portion of the law asserted that the state of Alabama encourages illegal immigration by providing public benefits without confirming immigration status.<sup>3</sup> Section 28 of the law mandated that children produce citizenship or immigration documentation so school districts could verify the immigration status of parents and students.<sup>4</sup> This provision of the law forced many families and children, with deep ties to their community, to move or be kept from school out of fear of deportation.<sup>5</sup> In this paper I will show that the policies in Section 28 are unconstitutional, and prove that school districts can still obtain information from students at the time of enrollment that foster a welcoming school atmosphere and ensure district resources are used efficiently.

In Section II of this article I will discuss the background of H.B. 56 and in particular Section 28. In Section III I will point out the purpose of Section 28, explain how Section 28 effected school enrollment, and detail litigation pertaining to the law. In Section IV, I will

---

<sup>1</sup> Richard Fausset, *Alabama enacts strict anti-illegal-immigration law*, (June, 10, 2011), LA TIMES, <http://articles.latimes.com/2011/jun/10/nation/la-na-alabama-immigration-20110610>.

<sup>2</sup> *Id.*

<sup>3</sup> Ala.Code 1975 § 31-13-2.

<sup>4</sup> Kevin R. Johnson, *Immigration and Civil Rights: Is The “New Birmingham The Same as The “Old” Birmingham?* 21 WM. & MARY BILL RTS. J. 367, 392.

<sup>5</sup> *Id.*

discuss why Section 28 failed and what actions public school districts are allowed to take during the enrollment process. In Section V I will conclude that schools districts cannot take steps to discourage students from enrolling in school, including requesting immigration information. In spite of limits placed on school districts, important information can still be obtained that maintains a welcoming environment for all students, and preserves our societal view that education is a crucial component to a flourishing democratic society and a successful life.

## II. Background

H.B. 56 was enacted amid economic concerns in the state of Alabama, although it is hard to dismiss the veil of racism that precedes such laws in the Deep South.<sup>6</sup> The rhetoric used along with the passage of the bill contained racial slurs and derogatory comments from legislators, including using “Hispanic” and “illegal immigrant” interchangeably.<sup>7</sup> Although the supporters of H.B. 56 say the law is meant to drive unauthorized immigrants from the state, Alabama Attorney General Luther Strange argued no child would be denied an education based on immigration status.<sup>8</sup>

H.B. 56 went into effect on September 28, 2011.<sup>9</sup> Determined by some to be the strictest anti-immigration law in the country, Section 28 of the law provided that, at the time of enrollment, every public elementary and secondary school was to determine whether the student enrolling was born outside the United States or was the child of an alien who was not lawfully present in the United States.<sup>10</sup> The law forced school districts to determine immigration status by

---

<sup>6</sup> Jeremy B. Love, *Alabama Introduces the Immigration Debate to Its Classrooms*, 38 FALL HUM. RTS. 7, 7.

<sup>7</sup> *Id.* (Further examples of racism by legislators included Senator Scott Beason using a racial slur while being secretly recorded by the FBI and State Representative Micky Hammon giving numbers of Alabama’s Hispanic population when asked about how many undocumented immigrants were in the Alabama.)

<sup>8</sup> Campbell Robertson, *Critics See ‘Chilling Effect’ in Alabama Immigration Law*, NY TIMES, (Oct. 27, 2011), <http://www.nytimes.com/2011/10/28/us/alabama-immigration-laws-critics-question-target.html?pagewanted=all>.

<sup>9</sup> *Supra* note 1.

<sup>10</sup> *Supra* note 8.

a birth certificate, other official document, or a sworn affidavit by the children’s parents.<sup>11</sup> The penalty for not producing any of the required documents, or producing forged documents, resulted in a presumption by the State that the child was an illegal immigrant.<sup>12</sup> School districts were required to pass the information along to the State Board of Education, as well as to scholars and researchers to determine the costs for Alabama to educate unauthorized immigrants.<sup>13</sup> The law did not force public schools to immediately forward the information to law enforcement officials,<sup>14</sup> however federal law superseded this provision and rendered the protection ineffective.<sup>15</sup>

### **III. Analysis**

#### ***Purpose of Section 28***

While the overarching goal of H.B. 56 was to encourage self-deportation of unauthorized immigrants,<sup>16</sup> many believed the purpose of Section 28’s reporting provisions was to collect the data necessary to advance a legitimate challenge to the U.S. Supreme Court’s finding in *Plyler v. Doe*.<sup>17</sup> The Court in *Plyler* found that Texas failed to provide compelling evidence of economic costs and other costs of undocumented student attendance in public schools to support their measure to refuse to reimburse school districts for the educational expenses of unauthorized

---

<sup>11</sup> *Id.*

<sup>12</sup> Mark Walsh, *Court Rejects Alabama’s School Immigration Checks*, EDUCATION WEEK, (Aug. 21, 2012) [http://blogs.edweek.org/edweek/school\\_law/2012/08/court\\_rejects\\_alabamas\\_school\\_.html](http://blogs.edweek.org/edweek/school_law/2012/08/court_rejects_alabamas_school_.html).

<sup>13</sup> *Supra* note 8.

<sup>14</sup> *Id.*

<sup>15</sup> *Hispanic Interest Coalition of Alabama v. Governor of Alabama*, 691 F.3d 1236, 1247 (11<sup>th</sup> Cir. 2012); *Supra* note 3. (Section 2 of H.B. 56 also required all state agencies to “fully cooperate with federal immigration authorities in the enforcement of federal immigration laws.”)

<sup>16</sup> Joey Kennedy, *This May be the Most Important Week for Immigration Reform*, AL.COM, (April, 8, 2013) [http://www.al.com/opinion/index.ssf/2013/04/this\\_may\\_be\\_the\\_most\\_important.html](http://www.al.com/opinion/index.ssf/2013/04/this_may_be_the_most_important.html); *Plyler v. Doe*, 475 U.S. 189 (1979). (In *Plyler*, the Court determined the measures enacted by the legislature to be unconstitutional and found that the State cannot erect such barriers to an education, including unauthorized immigrants, because education plays an important role in the advancement of children, the maintenance of the fabric of our society is furthered in the school system, and denying an education to blameless children is not an appropriate action. *Id.* at 223.)

<sup>17</sup> *Supra* note 8.

immigrant students and require those children pay tuition to attend public schools.<sup>18</sup> Section 2 of H.B. 56 explained that immigration status information should be collected because children unlawfully present in the United States adversely affect the availability of educational resources to children who are in the United States lawfully.<sup>19</sup> Section 2 further states that the data collected will be used to plan for the impact undocumented children have on public education in Alabama.<sup>20</sup> Scholars in support of the law believed that if the data collected by the provision determine there is no impact from educating unauthorized immigrants on public education or its costs, then Alabama would not attempt to alter what *Plyler* put in place.<sup>21</sup> If the statistics showed “education to illegal immigrants severely undermines the quality, and/or drastically increases the cost, of education for those who are lawful residents and citizens, the State will have met an important caveat in the *Plyler* decision itself.”<sup>22</sup>

### *Effects*

Just hours after a Federal District Court Judge in Birmingham upheld most of the provisions of H.B. 56, including Section 28, immigrants fled public schools and Alabama *en mass*.<sup>23</sup> School superintendents responded by claiming that nothing changed for those students who were already enrolled in school.<sup>24</sup> The impact of the law was felt even before enactment, as

---

<sup>18</sup> *Supra* note 4 at 392.

<sup>19</sup> *Supra* note 3.

<sup>20</sup> Maria Pabon Lopez, Diomedes J. Tsitouras, Pierce C. Azuma, *The Prospects and Challenges of Educational Reform for Latino Undocumented Children: An Essay Examining Alabama’s H.B. 56 and Other State Immigration Measures*, 6 FIU L. REV. 231, 237.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* (Alabama would have to show more than just a large cost associated with educating unauthorized immigrants, to challenge the ruling in *Plyler*, Alabama would need to demonstrate the costs of denying an education to unauthorized immigrants would need to be higher than future costs of crime, unemployment, welfare, and other contributions to the U.S. economy.)

<sup>23</sup> Campbell Robertson, *After Ruling, Hispanics Flee an Alabama Town*, NY TIMES, (Oct. 3, 2011), <http://www.nytimes.com/2011/10/04/us/after-ruling-hispanics-flee-an-alabama-town.html?pagewanted=all>.

<sup>24</sup> *Id.* (One superintendent even laid out the effects the law would have on already enrolled students on a Spanish language station.)

days before the passage of H.B. 56 over 5,000 students across Alabama were absent,<sup>25</sup> and on the Monday following the passage of the law, 2,285 Hispanic students were absent, approximately 6% of the statewide total.<sup>26</sup> The Alabama Department of Education listed 34,722 Hispanic students in grades Kindergarten through 12<sup>th</sup> for the school year of 2011 through 2012,<sup>27</sup> compared to 33,807 for the same grades for the 2010 through 2011 school year.<sup>28</sup> The Department listed 31,795 Hispanic students for the same grades in 2009 to 2010.<sup>29</sup> The steady increase in Hispanic students enrolling in Alabama public schools is slowing, however the reasons for the slow growth are unknown.

### ***Litigation***

The Federal government and Civil Rights groups challenged the law, and specifically Section 28, in front of Federal District Court Judge Sharon Lovelace Blackburn.<sup>30</sup> They argued that it was a violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, but Judge Blackburn upheld the section that required elementary and secondary public schools to determine the immigrant status of incoming students.<sup>31</sup> These groups responded by challenging Section 28 on the belief that it would deter students from enrolling in

---

<sup>25</sup> *Supra* note 6.

<sup>26</sup> Richard Fausset, *Alabama's immigration law prompts alarm*, LA TIMES, (Oct. 8, 2011), <http://articles.latimes.com/2011/oct/08/nation/la-na-alabama-immigration-20111009>. (That number decreased to 4% two days later, average for the state.)

<sup>27</sup> 2011-2012 Alabama Education Quick Facts for the School year 2011-2012, Alabama Department of Education, [http://www.alsde.edu/general/quickfacts\\_11-12.pdf](http://www.alsde.edu/general/quickfacts_11-12.pdf).

<sup>28</sup> 2010-2011 Alabama Education Quick Facts, Alabama Department of Education, [http://www.alsde.edu/general/quickfacts\\_10-11.pdf](http://www.alsde.edu/general/quickfacts_10-11.pdf).

<sup>29</sup> 2009-2010 Alabama Education Quick Facts, Alabama Department of Education, [http://www.alsde.edu/general/quickfacts\\_09-10.pdf](http://www.alsde.edu/general/quickfacts_09-10.pdf).

<sup>30</sup> Campbell Robertson, *Alabama Wins in Ruling on Its Immigration Law*, NEW YORK TIMES, (Sept. 28, 2011) <http://www.nytimes.com/2011/09/29/us/alabama-immigration-law-upheld.html>.

<sup>31</sup> *Id.*

schools.<sup>32</sup> The District Court judge dismissed this claim on the basis of standing and did not rule on the actual merit of the argument.<sup>33</sup>

The 11th Circuit Federal Court expedited the appeals process for a decision to be reached within two months.<sup>34</sup> The Justice Department and immigrant rights groups asked for a stay of certain provisions of the law until the appellate process could conclude.<sup>35</sup> The State of Alabama responded by stating that the bill was necessary to address a problem the federal government would not, and to protect legal citizens' employment from unauthorized immigrants.<sup>36</sup> The Appeals Court agreed to temporarily block certain portions of the bill, including Section 28.<sup>37</sup>

In *Hispanic Interest Coalition of Alabama v. Governor of Alabama*, the United States Court of Appeals for the Eleventh Circuit found that Section 28 of H.B. 56 significantly interfered with an undocumented immigrant child obtaining an education analyzed under heightened judicial scrutiny, and concluded that no substantial State interest justified the interference.<sup>38</sup> The court noted that Section 28 targeted undocumented school children in Alabama and forced them to divulge their unlawful status, which created an unreasonable hurdle to enrollment.<sup>39</sup> H.B. 56 placed unlawful immigrants in a no-win situation: either admit unlawful status, or remain silent and have your unlawful status presumed by the mechanics of the statute.<sup>40</sup> Part of the State's argument was that Section 28 affected all enrolling students equally because everyone had to provide citizenship or immigration documentation; however, the

---

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Jaclyn Belczyk, *Federal Appeals Court Blocks Alabama Immigration Law*, JURIST, (Oct. 14, 2011) <http://jurist.org/paperchase/2011/10/federal-appeals-court-blocks-alabama-immigration-law.php>.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* (In *U.S. v. Alabama*, the appellate court did not decide on the merits of Section 28 because it determined it violated the Equal Protection Clause in a companion case.)

<sup>38</sup> *Hispanic Interest Coalition of Alabama v. Governor of Alabama*, 691 F.3d 1236, 1249 (11<sup>th</sup> Cir. 2012). (The appellate court was guided by the principles outlined in the Supreme Court case, *Plyler v. Doe*.)

<sup>39</sup> *Id.* at 1246.

<sup>40</sup> *Id.*

appellate court disagreed, finding part of the impact of the section occurs when immigration information is passed from the school district to State officials, which targets undocumented school children.<sup>41</sup> Further, the appellate court found Alabama could not demonstrate how the data could be obtained in a different way, and the State conceded that the information obtained by Section 28 would not provide precise data about the impact of illegal immigrant school children on public education.<sup>42</sup> The appellate court also noted that once State officials learn of the status of immigrant children, federal law requires Alabama to disclose the information upon request.<sup>43</sup> Thus, with no ability to control the dissemination of immigration status to the federal government, providing this information to school districts could subject the children to deportation or removal proceedings, invalidating the section’s privacy provisions.<sup>44</sup> The revelation of illegal status of children can also lead to “criminal prosecution, harassment, and intimidation.”<sup>45</sup>

Ultimately the appellate court found that the interest in obtaining this information did not justify “significant interference” with a right guaranteed under *Plyer*, thus Section 28 violated the Equal Protection Clause.<sup>46</sup> The appellate court enjoined Section 28 to an injunction that included other portions of H.B. 56, finding that Alabama has no interest in enforcing a law that is unconstitutional.<sup>47</sup> The state of Alabama responded by asking the U.S. Supreme Court to hear their challenges on certain blocked provisions of the law, however the Court rejected the appeal

---

<sup>41</sup> *Id.* (The appellate court further found that while all school children were required to demonstrate birthplace, this requirement is simply the means to acquiring the information of unauthorized immigrants.)

<sup>42</sup> *Id.* at 1248-49.

<sup>43</sup> *Id.* at 1247.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 1245; *Plyer*, 475 U.S. at 203. (The U.S. Supreme Court in *Plyer* stated, “In addition to the pivotal role of education in sustaining our political and cultural heritage, denial of education to some isolated group of children poses an affront to one of the goals of the Equal Protection Clause: the abolition of barriers presenting unreasonable obstacles to advancement on the basis of individual merit.”)

<sup>47</sup> *Supra* note 37 at 1249.

to revive certain portions of the law.<sup>48</sup> The State did not ask the Supreme Court to rule on the constitutionality of Section 28.<sup>49</sup>

#### **IV. Argument**

Alabama’s school enrollment provision is unconstitutional because it imposes a “significant interference with the children’s right to education,” and Alabama’s justification of compiling data about unauthorized immigration in public is not sufficient to satisfy *Plyler*.<sup>50</sup> Disclosure of an undocumented child’s status as unlawful, leads to an increased likelihood of deportation, criminal prosecution, harassment, and intimidation.<sup>51</sup> The consequences of disclosure combine to deter undocumented children from enrolling and attending school and are thus unconstitutional under *Plyler*.<sup>52</sup> While school districts are not allowed to collect immigration data from enrolling students, school districts may gather information that ensures the government’s educational resources are appropriately directed, and a welcoming school atmosphere is fostered.

The U.S. Department of Education (DOJ) and U.S. Department of Education (DOE) disseminated a Fact Sheet entitled *Information on the Rights of All Children to Enroll in School*.<sup>53</sup> The Fact Sheet began by stating that all “children in the United States are entitled to a basic public elementary and secondary education regardless of their race...citizenship, immigration status, or the status of their parents/guardians.”<sup>54</sup> School districts that have

---

<sup>48</sup> *Supreme Court Rejects Alabama Immigration Law Appeal*, HUFFINGTON POST, (April 29, 2013) [http://www.huffingtonpost.com/2013/04/29/supreme-court-alabama-immigration\\_n\\_317757.html](http://www.huffingtonpost.com/2013/04/29/supreme-court-alabama-immigration_n_317757.html).

<sup>49</sup> *Id.*

<sup>50</sup> *Supra* note 37 at 1249.

<sup>51</sup> *Id.* at 1247.

<sup>52</sup> *Id.*

<sup>53</sup> *Fact Sheet: Information on the Rights of All Children to Enroll in School*, U.S. Department of Justice, U.S. Department of Education, <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201101.pdf>.

<sup>54</sup> *Id.*



enrollment processes that deny or discourage children from enrolling in schools because of their immigration status are in violation of the Federal law.<sup>55</sup>

The DOJ and DOE also published a *Dear Colleague Letter* on May 6, 2011, outlining the acceptable actions a school district can make during the enrollment process.<sup>56</sup> The letter first noted that enrollment practices that discourage or chill educational participation based on a student's or a parent's actual or perceived immigration status are illegal under Federal law.<sup>57</sup> Title IV of the Civil Rights Act of 1964 prohibits school districts from discriminating based on race, color, or national origin.<sup>58</sup> Title IV also prohibits school districts from "unjustifiably utilizing criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin."<sup>59</sup> Federal regulations also prevent school districts from taking actions that have the effect of stopping, or that considerably damage, the success of the objectives of a "program for individuals of a particular race, color, or national origin."<sup>60</sup>

The DOE and DOJ stated that the citizenship status of a student, their parent, or their legal guardian is not relevant to the student's entitlement to an elementary and secondary public school education.<sup>61</sup> Students cannot be barred from enrolling in public schools on the basis of their immigration or citizenship status.<sup>62</sup> Related, a school district cannot request information

---

<sup>55</sup> *Id.*

<sup>56</sup> *Joint "Dear Colleague" Letter*, U.S. Department of Justice, U.S. Department of Education, (May 6, 2011) <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201101.pdf>.

<sup>57</sup> *Id.* at 1.

<sup>58</sup> *Supra* note 55 at 1; 42 U.S.C. § 2000c-6.

<sup>59</sup> *Supra* note 55 at 1; 28 C.F.R. § 42.104(b)(2).

<sup>60</sup> *Supra* note 55 at 1; 34 C.F.R. § 100.3(b)(2).

<sup>61</sup> *Supra* note 55 at 1.

<sup>62</sup> *Id.* at 1.

from a student, parent, or legal guardian with the purpose or result of denying access to public education on the “basis of race, color, or national origin.”<sup>63</sup>

During the enrollment process public school districts are allowed to require proof of residency within the district.<sup>64</sup> In *Martinez v. Bynum* the U.S. Supreme Court upheld a Texas residency statute that denied tuition-free schooling to children who lived apart from parents or legal guardians for the purpose of attending free public schools.<sup>65</sup> In that case, Plaintiff was a U.S. citizen by birth, and after living with his parents in Mexico decided to move to the U.S. for the purpose of attending free public school.<sup>66</sup> The McAllen Independent School District denied plaintiff’s application for admission because he failed the residency requirement.<sup>67</sup> Plaintiff argued the statute was unconstitutional on its face.<sup>68</sup> A bona fide residency requirement is defined as physical presence within an area and the intent to stay.<sup>69</sup> The Court upheld the provision, stating that a bona fide residency requirement that is “appropriately defined and uniformly applied, furthers the substantial state interest in assuring that services provided for its residents are enjoyed only by residents.”<sup>70</sup> The Equal Protection Clause of the Fourteenth Amendment, and the constitutional right to interstate travel, are not violated by a permissible residency requirement.<sup>71</sup> The Texas statute only mandated a person establish residency before demanding services that are restricted to residents.<sup>72</sup> The Court also found that due to the heavily

---

<sup>63</sup> *Id.* at 2.

<sup>64</sup> *Id.*

<sup>65</sup> *Martinez v. Bynum*, 461 U.S. 321, 333 (1983). (The residency provision at issue in *Martinez* was contained in the same statute at issue in *Plyler*.)

<sup>66</sup> *Id.* at 323.

<sup>67</sup> *Id.* at 323-24.

<sup>68</sup> *Id.* at 324.

<sup>69</sup> *Id.* at 330.

<sup>70</sup> *Id.* at 328.

<sup>71</sup> *Id.* at 328.

<sup>72</sup> *Id.* at 329.

local nature of public education, bona fide residency requirements are justified.<sup>73</sup> Residency requirements also allow school districts to plan and operate the schools more effectively.<sup>74</sup> The Court held the State does have a substantial interest in mandating bona fide residency requirements to maintain the quality of public schools within local districts.<sup>75</sup>

The immigration status of an enrolling student is not relevant to establish residency in a school district.<sup>76</sup> To combat fears that a child's information will be used in deportation proceedings, an undocumented child may establish residency with a telephone or utility bill, mortgage document, or lease.<sup>77</sup> While school districts may require residency information at the time of enrollment, this requirement must be applied equally to all enrolling children.<sup>78</sup>

School districts are also allowed to require a birth certificate from enrolling students to determine whether the student meets age requirements,<sup>79</sup> however a student may not be barred from enrolling based on presenting a foreign birth certificate.<sup>80</sup> In order to negate concerns about providing a foreign birth certificate, school districts should take proactive steps to inform and educate parents the information will only be used to determine age requirements.<sup>81</sup>

A child's social security number may be requested at the time of enrollment for use as a student identification number,<sup>82</sup> but refusing to provide a social security number cannot result in the refusal to enroll a child at a public elementary or secondary school.<sup>83</sup> If a social security number is requested by the school district, the district must tell the individual that divulging the

---

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 329-30.

<sup>76</sup> *Questions and Answers for School Districts and Parents*, U.S. Department of Justice, U.S. Department of Education, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201101.pdf>.

<sup>77</sup> *Id.* at 1.

<sup>78</sup> *Id.*

<sup>79</sup> *Supra* note 52 at 2.

<sup>80</sup> *Id.*

<sup>81</sup> *Supra* note 75 at 3-4.

<sup>82</sup> *Id.* (Immunization history may also be requested at the time of enrollment.)

<sup>83</sup> *Id.*; 5 U.S.C. § 522a(note).

information is voluntary, what the basis for collection is, and what the information will be used for.<sup>84</sup> Requests for social security numbers must be made to all enrolling students and not a specific group or groups.<sup>85</sup> The DOJ and DOE stated that alternatives to requiring social security information to assign an identification number can be to give randomly selected numbers to students.<sup>86</sup> By assigning randomly selected numbers, a school district can avoid the discouragement to enrollment that requesting social security numbers can cause.<sup>87</sup>

In some situations, school districts are federally mandated to collect racial and ethnic data, however that information cannot be used to discriminate against school children.<sup>88</sup> A student whose parent or guardian declines the request for racial or ethnic data cannot be denied enrollment by the school district.<sup>89</sup> The DOJ and DOE cautioned school districts to assess compliance of enrollment procedures with the relevant law and also to analyze patterns in enrollment data to determine whether there are barriers to enrollment for a specific group of students.<sup>90</sup> The Departments also recommend that school districts acquire non-essential information after the student has enrolled, in order to create a more open environment.<sup>91</sup>

In *Brown v. Board of Education of Topeka*, the U.S. Supreme Court stated that obtaining an education has supreme importance in our society.<sup>92</sup> Obligatory attendance laws and the great sums of money the government spends on education demonstrates the value education has in our society.<sup>93</sup> Education is crucial to meaningful participation in our democratic society and without

---

<sup>84</sup> *Id.*

<sup>85</sup> *Supra* note 55 at 2.

<sup>86</sup> *Supra* note 75 at 2.

<sup>87</sup> *Id.*

<sup>88</sup> *Supra* note 52 at 2.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 2-3.

<sup>91</sup> *Supra* note 75 at 4.

<sup>92</sup> *Brown v. Board of Education of Topeka*, 347 U.S. 483, 493 (1954).

<sup>93</sup> *Id.*

it, a child cannot be expected to succeed in life.<sup>94</sup> Thus, where a state provides free public education it “is a right which must be made available to all on equal terms.”<sup>95</sup>

## V. Conclusion

Frustrating the attempt of undocumented children through enrollment policies is unconstitutional and contrary to our nation’s view on the importance of education.<sup>96</sup> Further, the DOJ and DOE affirm that school districts that have enrollment processes that deny or discourage children from enrolling in public schools because of their immigration status, or have this purpose, are in violation of Federal law.<sup>97</sup> Section 28’s requirements erected an impermissible barrier to education for unauthorized immigrant students.<sup>98</sup>

A school district may require students to meet certain residency requirements before enrolling in school,<sup>99</sup> however immigration status is not relevant to establishing residency.<sup>100</sup> Utility bills or mortgage documents are sufficient to establish residency within a school district.<sup>101</sup> Also, a school district requiring proof of residency must apply the condition on all students equally.<sup>102</sup> A school may also require students to produce birth certificates upon enrollment, but must also accept foreign birth certificates.<sup>103</sup> The production of a foreign birth certificate cannot be a basis for denying enrollment.<sup>104</sup> Social security numbers may be collected during enrollment for the purpose of issuing student identification numbers, but the district must explain to the individual that divulging the information is voluntary, what the basis for collection

---

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Supra* note 55 at 1.

<sup>97</sup> *Supra* note 52 at 1.

<sup>98</sup> *Supra* note 37 at 1249.

<sup>99</sup> *Id.*

<sup>100</sup> *Supra* note 75 at 1.

<sup>101</sup> *Id.* at 1.

<sup>102</sup> *Id.*

<sup>103</sup> *Supra* note 52 at 2.

<sup>104</sup> *Id.*

is, and what the information will be used for.<sup>105</sup> Social security number requests at the time of enrollment must be made to all students and not a specific group or groups.<sup>106</sup>

The measures encouraged by the DOJ and DOE for school districts are all legal and constitutional. The enrollment procedures recommended maintain a welcoming school atmosphere and preserve our longstanding view as a society that education is a key component to a thriving democratic society and a successful life,<sup>107</sup> which should not be denied to any child, based on their race, color, or immigration status.

---

<sup>105</sup> *Supra* note 75 at 3-4.

<sup>106</sup> *Id.*

<sup>107</sup> *Supra* note 91 at 493.