

A Policy History and Analysis of the Emergency Immigrant Education Act of 1984

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This policy case study provides an analysis of the culture, values, and political context in which the Emergency Immigrant Education Act of 1984 (EIEA) was developed, passed, and amended through its most recent reauthorization and makes three contributions to the literature. First, it provides the only formal policy analysis of EIEA. Second, we confirm the broad applicability of Kingdon's (2011) model for understanding federal education policy adoption, particularly as augmented by Manna's (2006) concept of "borrowing strength." And third, this case is consistent with the observation that federal education policy largely serves a social redistribution function that addresses societal inequities.

In the past 30 years, the foreign-born population of the United States has almost tripled from 14.1 million in 1980 to almost 37 million—13 percent of the total population—with a growth rate of more than one million per year (Portes & Rumbaut, 2006; U. S. Census Bureau, 2010; Salomone, 2010). Approximately 2.7 million of these immigrants are under the age of 18 (U. S. Census Bureau, 2010), most of whom are attending or will attend American schools. Though immigrant students make up a heterogeneous group so diverse that Ruiz-de-Velasco and Fix (2000) say, "it is impossible to generalize about immigrant education" (p. 45), these students often bring with them needs that differ from needs of the general school population. This study considers one facet of a national governmental effort to assist schools in meeting some of the educational needs of new immigrant students.

EIEA is significant because it is the only federal legislation that specifically assists new immigrant students. However, EIEA has been largely overlooked by education policy analysts,

because new immigrant students are rarely considered separately from limited English proficient (LEP) students.

EIEA was passed by the 98th U.S. Congress to provide funds to states to “meet the costs of providing immigrant children supplementary educational services” (Emergency Immigrant Education Act of 1984, Title VI, Sec. 607, 1984). According to the original EIEA, immigrant children are those “who were not born in any State and who have been attending schools in any one or more States for less than three complete academic years” (Emergency Immigrant Education Act of 1984, Title VI, Sec. 602, 1984). EIEA became a part of the Elementary and Secondary Education Act (ESEA) with its reauthorization in 1988 and was again reauthorized with ESEA in 1994. With the most recent reauthorization of ESEA in 2002, EIEA was included in Title III, Part B, the Improving Language Instruction Educational Programs for Academic Achievement Act of 2002, which focuses primarily on students with limited English language proficiency and, to a lesser degree, on immigrant students. Under the act, allowable services included: English language instruction and other bilingual services; instructional and classroom materials; construction, transportation, and space; and in-service training. Once states disburse the funds to local educational agencies (LEAs), each LEA may use the funds for any or all of its students, as long as the services provided benefit new immigrant students in some way.

Local educational agencies (LEAs) qualify for Emergency Immigrant Education Program (EIEP) funds when they have a new immigrant student population of 500 or more or when their new immigrant student population comprises at least three percent of the total student population. In addition, LEAs “that are experiencing a sudden influx of immigrant children and youth and that are otherwise not eligible for assistance” may also receive monies under EIEP (Improving Language Instruction Educational Programs for Academic Achievement Act of

2002, Title III, Part B, Sec. 3244). The number of children served by EIEA in its first year was 346,287. By the 2005-2006 school year, that number had more than doubled to 731,598 (Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students, 2008, p. 14). Despite this enormous increase, many immigrant students find themselves in schools that were ineligible for EIEP funds (e.g., while less than three-quarters of a million students were served, there were more than one million new immigrant students in 2006; Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students, 2008, p. 14). Additionally, some districts choose not to request Title III monies, and some private schools do not apply for funds (Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students, 2008, p. 55). In other words, EIEA is a very large program, but it is not a comprehensive program supporting services for individual recent immigrants; it is a program designed to support schools and districts with a numerically significant new immigrant student population.

Perspectives

Within a context of federal education policy redistributing resources to address social inequities (Wong, 1999), we examine and interpret the documentary history of EIEA using three major analytic frames. We begin with Kingdon (2011), who articulated how federal policy is considered for adoption. First, issues must make it to the government agenda. Kingdon defines the agenda as the subjects that those in and close to government “are paying some serious attention at any given time” (p. 3). Three “streams” influence agenda-setting: the problem stream, which is the set of mechanisms that brings a problem to the attention of government officials and decision-makers; the policy stream, which is the set of proposals for solutions to the

problem; and the political stream, which includes public mood, organized political forces, changes of administration, and election results. According to Kingdon, policy entrepreneurs are individuals who have the time, resources, influence and willingness to advocate for policy positions in the hope that they will someday be rewarded with “material, purposive, or solidary benefits” (p. 179). Briefly, policy entrepreneurs are “people who seek to initiate dynamic policy change” (Mintrom, 1997, p. 739). Policy entrepreneurs rely on the confluence of the problem, political, and policy streams, because when these streams converge, a policy window opens, and entrepreneurs may quickly move to secure a place on the agenda.

We augment Kingdon’s framework with Manna’s (2006) insight that policy entrepreneurs “borrow strength.” Manna based his definition of agenda-setting on two important terms: interest and involvement (p. 14). Interest describes how much an issue is talked about in government, “the rhetorical commitment government officials demonstrate in a policy area” (p. 14). The amount of interest in a policy area is exhibited by its appearance in hearings, political speeches, campaigns, and party platforms. Involvement differs from interest in that it indicates the government’s willingness to act in a policy area. Thus, government involvement is demonstrated by the passage of laws or regulations or by the appropriation of funds.

Both interest and involvement are influenced by license and capacity (p. 14). License to act has to do with the government’s ability to defend its actions in a given policy area. License can come from many sources, including the “political capital that politicians cultivate, conserve, and spend at important moments of time” (p. 29); connections to other policy issues on the agenda; constitutional or statutory language; a history of policymaking; and perceived crises. Capacity refers to the ability to carry out a policy action. Capacity to act may depend on

adequate funding, the existence of bureaucratic structures, and “the knowledge, experience, and expertise of government personnel” (p. 15).

Manna (2006) posited that when capacity or license in a given policy area is low a policy entrepreneur need not abandon the policy completely. Instead, policy entrepreneurs can successfully facilitate a policy area’s rise to the agenda by using all levels of government to increase capacity and license. Manna referred to this as “borrowing strength” (p. 5). In order to increase either capacity or license, one level of government can borrow strength from another level of government.

Moving from how the policy was considered and adopted to how it functions and whether its function has changed over time, we rely on McDonnell and Elmore (1987), who described four policy functions: mandates, inducements, capacity-building, and system-changing. Policies framed as mandates govern individual and agency actions, and demand compliance, while those designed as inducements provide fiscal rewards for prescribed actions. Capacity-building policies offer funds in exchange for improvements, while system-changing policies reallocate authority in exchange for systems transformation. Understanding policy instruments can help shed light on how legislators determined the shape of EIEA and can help us establish how their choice of policy instruments was influenced by their explicit and implicit goals.

Finally, we look at the political and cultural values represented. We follow Wirt, Mitchell, and Marshall (1988), who argued that all policies are products of cultures and hence are the embodiment of values. In their content analysis of the education statutes of two states, the authors identified three distinct political cultures characteristic of regions (meritocratic, democratic, and egalitarian) and four inherent values (choice, efficiency, equity, and quality). Different political cultures prompt different value configurations. Choice emerges in policies

through permissive language, policy options, and voter/constituent choice. Efficiency tends to emphasize authority, accountability and processes. Policies that address equity serve to redress societal disadvantages, and to compel compensatory action. Last, quality-based policies represent the belief that education is critical to individuals' success, and funding of such policies is done to achieve excellence or proficiency.

Review of the Literature

While some literature about new immigrant students exists, very little of it focuses on new immigrant education, and even less on new immigrant education policy. Included on the short list of comprehensive studies of new immigrant students are those of McDonnell and Hill (1993), Ruiz-de-Velasco and Fix (2000), and Villegas and Young (1997). These three studies provide specific assessments of immigrant education policies needs.

First were McDonnell and Hill (1993) who, after a comprehensive examination of immigrant students, immigrant education policies, and immigrant student needs, suggested four areas for investment. These were: recruitment and training of bilingual teachers; instructional support, including textbooks, curricula, and assessments, particularly in languages other than Spanish; adult-education programs, especially for parents of immigrant students; and “coordinated delivery of educational, health, and social services and the provision of such services by those familiar with the language and culture of immigrant children” (p. 105). Such investments, they believe, can only take place when the education of immigrant students can be seen as a benefit to society. Second were Villegas and Young (1997), who specifically focused on immigrant education in New Jersey. Although increasing the EIEA appropriation was unlikely, Villegas and Young recommended that the government designate a portion of the appropriation to professional development for teachers and other school personnel in order to

work more effectively with immigrant students. Third, in their extensive report on new immigrant students, Ruiz-de-Velasco and Fix (2000) also suggested an increase in the resources targeted toward the education of new immigrants and emphasized, with English language acquisition, the low achievement of immigrant students and “the new ethnic and linguistic concentration of immigrant children” (p. 17) as areas of policy concern.

Although most of the literature on immigrant students focuses on what happens in schools and classrooms rather than on policy at the local, state, and federal levels, identifying the needs of recent immigrant students at the level of the students themselves is essential, because it informs the shape that policy should take. For this reason, in addition to the three studies above, we briefly review literature that examines the special needs of recent immigrant students.

To elaborate on the above, new immigrant students need well-trained teachers, administrators, and support personnel who are not only be competent in their subject area but also in the many cultures that the students represent (Smith-Davis, 2004; Lee, 2010; Bartolomé, 2010) and in appropriate instructional practices for immigrant students (Freeman, 1998). New immigrant students also require more appropriate support materials, such as appropriate English language and placement assessments (Chu, 2009) and simplified-language textbooks and support materials (McDonnell & Hill, 1993; Olsen, 2000). Schools with large influxes of new immigrant students also report space shortages that may affect the capacity for providing adequate educational services to the new population (McDonnell & Hill, 1993).

New immigrant students often require out-of-class services, such as tutoring, mentoring, and counseling (Suárez-Orozco, Pimentel, & Martin, 2009). This is often due to gaps in schooling that many immigrant students experience (Ruiz-de-Velasco & Fix, 2000; Boyson and Short, 2003; The Harvard Law Review Association, 2007). However, even if students have not

experienced academic gaps, they may still need some help adapting to the American school system (Friedlander, 1991), as well as to American culture (Olsen, 1997; Fong, 2004; Freeman, 1998). Recent immigrant students often need psychological services, due to trauma experienced in their home countries, family separation, the effects of poverty, or the strain of moving to a new place (Fong, 2004; Freeman, 1998; Perreira & Ornelas, 2011; Smith-Davis, 2004). Garrett and Holcomb (2005) stress the importance of well-trained counselors who not only understand students' needs but also their cultural differences and language barriers (also see Fong, 2004). Because new immigrant students have higher academic success when they have the support of their parents and families, clear communication between the school and the home—including materials printed in the parents' native language, parent outreach and training programs, and trained school personnel on hand to explain school procedures—is vital (Freeman, 1998; Ruiz-de-Velasco & Fix, 2000; Lipsit, 2003; Carreón, Drake, and Barton, 2005; Suárez-Orozco, et al., 2010; Suárez-Orozco, 2011; Suárez-Orozco, Pimentel, & Martin, 2009).

It is important to note, however, that new immigrant students bring more than problems and needs to a school. Suárez-Orozco, Pimentel, and Martin (2009) remind us that “they bring remarkable strengths, including strong family ties, deep-seated beliefs in education, and optimism about the future” (p. 713; also see Fong, 2004). Many new immigrant students outperform their U. S.-born peers in academic matters.

New immigrant children arrive at school with various needs. Although English language acquisition may be one such requirement, these recent immigrants and their families possess additional academic, psychological, social, and other needs. Understanding the historical path of EIEA can aid in shaping immigrant education policy that will help schools and LEAs meet these needs as they face the changing demographics of the 21st century. Following the presentation of

data, methods, and analysis, we will take up the matter of how continuing and developing needs may be met in the next reauthorization of this unique legislation.

Data Sources and Mode of Inquiry

Using the four analytic frames in conjunction with historical document and content analysis methods, we provide an articulation of the purpose and content function of the EIEA over its entire legislative history. We examine original documents, including text of the original passed legislation as well as its subsequent reauthorizations, early drafts of immigrant education legislation, congressional hearings and discussions before passage of the legislation, congressional reports, and other documentation or reports. We describe and explain how the language of the law developed and changed to reflect the political culture and values at the time.

Analysis

Problem, Policy, and Political Streams

Early problem identification. We begin with our findings about the consideration and adoption of the EIEA using Kingdon's (2011) model. EIEA arose in response to representatives from the state of Texas seeking federal funds to assist school districts overburdened with the costs of serving children of undocumented immigrants. The 1970s saw what Stewart (1993) described as a "sharp jump upward" in illegal immigration (p. 9). In 1981 and 1982, the House Committee on Education and Labor held hearings at which witnesses from Texas presented testimony about the severe economic problems in South Texas and "the tremendous impact of those conditions on the school districts struggling to educate its students" (Hearing on Emergency Immigrant Education Act, 1984, p. 14).

A new politics. However, despite the witness testimony, the entreaties from the Texas representatives were largely ignored. This changed in June of 1982, when the Supreme Court

ruled in the case of *Plyler v. Doe* that Texas may not bar children of undocumented immigrants from attending public schools. This decision was the turn in the problem stream that EIEA advocates needed. Using Manna's (2006) terminology, the involvement of the Supreme Court created license for federal involvement in what was otherwise a state-level concern.

An entrepreneurial solution makes the agenda. In July of 1983, House Majority Leader James C. Wright, Jr., from Texas, introduced a bill entitled "Special Impact Aid for Immigrant Children Education" as an amendment to a bill to extend the Rehabilitation Act of 1973. Introduced near the end of the 1st session of the 98th Congress, Wright's bill would "authorize Federal assistance for the education of immigrant children" (Special Impact Aid for Immigrant Children Education, 1983). When passed in the House by voice vote, the bill became the Emergency Immigrant Education Act of 1983.

Although P. L. 98-151 appropriated \$30 million for the Emergency Immigrant Education Assistance Program, the Comptroller General refused to release the funds because the bill had not passed the Senate and had thus not yet moved out of the Congress to the President to be signed into law. Although EIEA had finally made it to the agenda, backers still faced obstacles to further passage.

Alternatives on the new agenda. The return of EIEA on the agenda of the Subcommittee on Elementary, Secondary, and Vocational Education was marked by full and engaged hearings. At least three alternative solutions to the problem of funding immigrant education were explored by the subcommittee. The EIEA supporters sought funding specifically to relieve the cost of serving a rapidly growing population of immigrant students, especially in communities with limited wealth while opponents looked to the states, as well as local school districts, to find revenue to cover their educational costs. Additionally, some participants considered conflating

bilingual education with immigrant education and directing any additional support to bilingual education.

When the Subcommittee on Elementary, Secondary, and Vocational Education held another hearing on EIEA, supporters were again given the opportunity to state their case. In the 1984 Hearing on Emergency Immigrant Education Act, Texas witnesses cited large numbers of undocumented students imposing great financial burden on south Texas school districts. The witnesses largely attributed many of districts' financial struggles to *Plyler*. Congressman Solomon Ortiz stated,

I guess that the profession—and I am talking about the education profession—is more or less like the medical profession. When they show up in the emergency room, there's no way you can turn them down under the Constitution. You have to provide the education (Hearing on Emergency Immigrant Education Act, 1984, p. 22).

Ortiz continued, “Once they show up in Mr. Besteiro’s schools, he has to accept them. This creates problems” (p. 22).

The financial burden that many witnesses spoke about referred to the added costs incurred by having what the districts considered extra students in schools, such as the cost of buying textbooks, paying personnel, and providing facilities, and not the costs of meeting the needs of immigrant students. In fact, Raul Besteiro, Superintendent of Schools in Brownsville, Texas, testified before the subcommittee that he sought the passage of EIEA primarily to fund construction for the extra classrooms needed in his district (p. 44).

According to Sarah Weddington, speaking on behalf of Texas Governor Mark White and the Texas Education Agency, these students were only in public schools, because “the federal government fails to adequately enforce our immigration laws” (p. 24). Her statement echoed that

of Chief Justice Burger, in his dissenting opinion on *Plyler v. Doe*: “The Court makes no attempt to disguise that it is acting to make up for Congress' lack of ‘effective leadership’ in dealing with the serious national problems caused by the influx of uncountable millions of illegal aliens across our borders” (*Plyler v. Doe*, Page 457 U. S. 242, 1982). Because of this lack of enforcement, witnesses reasoned, the federal government should relieve the extra financial burden on the schools. While recognizing that the bill would benefit all recent immigrant students and not only undocumented ones, EIEA proponents made their message clear: if states were to be required to educate illegal immigrants, they would demand the federal funds to support their costs.

Policy alternatives, specifically alternative sources of funding, were proposed early in the discussion of EIEA. Some suggested that LEAs with large proportions of recent immigrant students should be responsible for their own students, instead of placing the onus on all schools in the country. These districts or even entire states could impose tax regulations to deal with the extra expenses. An exchange between Congressmen from Pennsylvania, California, and Texas underscores the idea that some believed states should manage their own problems.

Mr. Goodling: As I told the majority leader last year, we are interested in sales taxes and income taxes and all of those good things for the citizens of Texas, like those in Pennsylvania have to bear and we would encourage some of the funds to come that way since you are such a rich State, in comparison to Pennsylvania.

Mr. Hawkins: Would you deprive the other States, including California also?

Mr. Goodling: California, I believe, has all of those good taxes already going into their educational system. Texas is a little bit behind when it comes to taxation as it relates to excellence in education. I don't want to take from California when they are taxing so

heavily for education or from Pennsylvania. I just want to make sure everybody's doing their share back home.

Mr. de la Garza: Such kindness overwhelms me, but this is not a Texas measure (Hearing on Emergency Immigrant Education Act, p. 16).

Although some locales did attempt to raise funds through bonds and taxation, such means were considered inadequate, because of high unemployment and high poverty in those areas most impacted by the number of immigrants in the schools and the extra layer of hardship imposed on taxpayers. If truly limited to a local rather than state solution, people simply did not have enough wealth or income on which to be taxed. Additionally, proponents of EIEA insisted that it is the federal government's responsibility to both set and enforce immigration policy, and therefore, the federal government should also shoulder the cost.

Another alternative proposed the use of funds from Title VII of ESEA to help offset the costs of educating immigrant children. Because Title VII was concerned with bilingual education, some reasoned that most immigrant students would also fall into the category of those needing special bilingual services. However, although similar, the two groups are neither identical nor is one group a subset of the other. The potential of overlooking the needs of some students would remain. In addition, because EIEA initially provided impact aid, supporters of the bill sought relief from overcrowded classrooms and inadequate numbers of teachers and supplies, not expansion of programs—even programs that would benefit immigrant children.

Evolving politics. Illegal immigration aside, the face of legal immigration was changing in the early 1980s. The Immigration and Nationality Act of 1965 changed the focus of immigration policy from national origins quotas to family reunification and certain occupational skills. “More than 70 percent of all immigration to the United States in the early 1980s is that of

persons related to someone already admitted to this country” (Stewart, 1993, p. 7). A large proportion of these immigrants had low educational attainment, and many of them were children, which placed an extra obligation on schools that would warrant federal immigrant education aid.

More recently, Congress had passed the Refugee Act of 1980. The act provided systematic ways of admitting refugees to the United States, as well as processes for aiding refugees in their adaptation to and integration into American society (Refugee Act of 1980, Title I, 1980). It allows for those classified as refugees to be admitted over and above the limits placed on the numbers of admitted immigrants by other immigration laws (Stewart, 1993, p. 32). Stewart (1993) described three significant waves of refugee immigration to the United States in the late 1970s and early 1980s. These were: the arrival of refugees from Vietnam, Laos, and Cambodia, beginning after the fall of Saigon in 1975; the wave of the Mariel refugees from Cuba in 1980; and the influx of refugees from Southeast Asia, which was prompted by the establishment of the Orderly Departure Program in 1982 (Stewart, 1993, pp. 47-49). Thus, between the years 1975 and 1984, many more immigrant children than before arrived in U. S. classrooms, often with little schooling, psychological trauma, and low English proficiency.

Feeding the political stream was the infamous report, *A Nation at Risk*, released in 1983. American public school education became a much larger issue in the minds of citizens, who worried that their children’s schools were not doing enough to educate their children. Americans were now seeking more excellent as well as more equitable public education. Superintendent Besteiro presented the issue of illegal immigration as a quality issue. He represented the current educational situation as “watered down” and showed his concern by expressing,

It is very hard for us to understand how people that are illegally in this country have rights and how they can be educated and how we can take away from the children whose

parents are paying for their education and spread it out over everybody that is coming into our schools on a daily basis (Hearing on Emergency Immigrant Education Act, 1984, p. 26).

The state of the American economy also added to the political stream. The United States had entered a recession in 1981, characterized by the highest unemployment in 42 years and high interest rates (“Economy woes,” 1982, p. 1-11). According to an article published in Santa Fe, New Mexico’s, *The New Mexican*, “The late-arriving, hard-hitting recession meant shortfalls in recurring revenues and forced the 1983 Legislature to execute an emergency bailout including an immediate 2 percent cut in department budgets. It also passed a \$97.5 million tax hike” (Moreno, 1984, p. B-6). By 1983, the economy was showing signs of improvement and was described in Syracuse newspaper as having “rebounded from a long recession with more force than many experts had thought possible” (Currier, 1984, p. E-1). Although recovery was still ongoing, Americans could begin to think about something other than jobs, including education.

Borrowing Strength

While the state of Texas and its school districts certainly had the license to do something about the presence of undocumented immigrants in its classrooms, without a profound change in the way it financed education, Texas lacked the capacity to act. In order to gain capacity, the policymakers from Texas needed to borrow strength from the federal government. Because EIEA was proposed almost exclusively by representatives from Texas, backers faced the challenge of convincing members of Congress that their seemingly local issue was not only of federal interest but also required federal involvement.

They did so by reminding subcommittee members that illegal immigration was a national issue and not only relegated to South Texas. Congressman Ortiz emphasized this national interest by declaring,

This is a national problem. We just happen to be living on a border. We are facing Mexico. A lot of people in other States who do not have this problem cannot understand, because on a daily basis we go across and they come across and we do business with them and they do business with us and they are just our next door neighbors. But it is not fair for the school district to be paying this tremendous amount of money when this is a national problem (Hearing on Emergency Immigrant Education Act, 1984, p. 22).

Congressman Coleman added that the bill, as written, would not only give aid to states with large influxes of undocumented immigrants but also those who with high numbers of legal immigrants (p. 31). This rationale was vital to gaining the support of others in Congress who represented states that may not have been experiencing a problem with illegal immigration. Legal immigration was also on the rise, and Coleman's words would appeal to any state that was seeing an increase in the legal immigrant population, including those states highly affected by the Refugee Act of 1980. By emphasizing this point, Coleman portrayed Texas as just one member of a coalition of impacted states and not the sole supplicant in this matter.

When EIEA passed in 1984, it differed very little from the text proposed in the hearing. The primary differences were the lowering of the threshold of an LEA's eligibility for EIEA monies from five percent to three percent and the extension of the bill through 1989. Texas lawmakers were able to achieve their successful placement of a state concern onto the national agenda by borrowing capacity from the federal government while granting Congress greater license in the affairs of local schools. The convergence of the problem, policy, and political

streams were the opening that allowed EIEA not only to make it to the Congressional agenda but also to passage and signing into law.

Policy Instruments

Once EIEA had moved onto the agenda, both intent and language choice of the policy became important. EIEA was introduced to solve a present problem—that of the influx of undocumented immigrants into schools—and not a future one, which marks it as an inducement. Even the original title of the bill, “Special Impact Aid for Immigrant Children Education,” made it clear that the intent of the bill was to help states overcome what they considered the tremendous burden of educating “the added number of children” (Hearing on Emergency Immigrant Education Act, 1984, p. 16). States and LEAs were to be the direct beneficiaries of EIEA, not students.

Start with capacity-building. At first, EIEA appears to be what McDonnell and Elmore (1987) would label an inducement. That is, the policy provides funds to states that count their immigrant students and apply for monies. However, the returns on EIEA are “uncertain, intangible, immeasurable,” (McDonnell & Elmore, 1987, p. 139), which marks it as capacity-building. The main distinction between capacity-building policies and mandates and inducements is that mandates and inducements produce tangible effects, while capacity-building does not. This difference is the basis for our conclusion that EIEA is was originally primarily capacity-building.

This capacity-building classification is also based on the fact that EIEA was not passed because the federal government was attempting to create behaviors that districts were unwilling to do on their own. Rather, it came out as a response to the districts’ needs for more classrooms,

personnel, and supplies to teach large numbers of immigrant students. In other words, there were fundamental capacity shortcomings to be rectified.

Providing inducements. With each reauthorization, legislative language changed to maintain this capacity-building designation while at the same time giving the policy more inducement-like characteristics. For example, the 1988 reauthorization was the first version to include the mandate that each state submit biennial reports to both the Secretary of Education and Congress outlining EIEA expenditures and programs funded by EIEA monies (Emergency Immigrant Education Act of 1984, Title IV, Sec. 4410, 1988). With this requirement in place, the underlying expectation was that states would use EIEA funds to accomplish something instead of just providing more space, personnel, and materials.

The language of what was now called the Emergency Immigrant Education Program (EIEP) changed significantly with the 1994 reauthorization. This version of the legislation begins with an entirely new section entitled “Findings”. It states:

The Congress finds that—

- (1) the education of our Nation's children and youth is one of the most sacred government responsibilities;
- (2) local educational agencies have struggled to fund adequately education services;
- (3) in the case of *Plyler v. Doe*, the Supreme Court held that States have a responsibility under the Equal Protection Clause of the Constitution to educate all children, regardless of immigration status; and
- (4) immigration policy is solely a responsibility of the Federal Government (Improving America's Schools Act, Title VII, Part C, Sec. 7301 (a), 1994).

This new section outlined Congress's belief in the value of children, the responsibility of the federal government in immigration policy, and the responsibility of states to educate all children under *Plyler v. Doe*.

It also signifies a change in what lawmakers now saw as important. Whereas previously the emphasis was on giving aid to the states for the high impact of immigrant children, the new section put the education of children and youth at the center of the policy. States' needs are not even mentioned; instead, the new language of the legislation underscores the needs of LEAs.

In the 1994 reauthorization, EIEP included a more developed purpose. Whereas the 1984 and 1988 versions of EIEA stated that the goal of the legislation was to "meet the costs of providing immigrant children supplementary educational services" (Emergency Immigrant Education Act of 1984, Title VI, Sec. 607, 1984), the 1994 reauthorization contained an expanded purpose which included providing "high-quality instruction to immigrant children and youth" and helping immigrant students "with their transition into American society" and to "meet...challenging State academic content" (Improving America's Schools Act, Title VII, Part C, Sec. 7301 (b), 1994). Instead of merely providing the funds to meet costs, the federal government expected states and districts to provide a valuable education to students. That is, schools were not just expected to accept "warm bodies" into classrooms; if they accepted EIEP monies, they must also educate these students in some meaningful way.

Even the section in which EIEP was included demonstrates this change of emphasis. While EIEA began as a separate title in 1984, it was incorporated into the Bilingual Education, Language Enhancement, and Language Acquisition Programs in the 1994 reauthorization. Thus, instead of emphasizing impact aid, actual educational programs became the focus. It should be noted, however, that impact aid was not completely abandoned. The 1994 and 2002 versions of

the legislation included mandates that at least half of each state's funds be reserved for the LEAs with the highest numbers and percentages of immigrant students and that funds be made available to LEAs that experienced sudden influxes of immigrant students.

The "Uses of Funds" section was also expanded in 1994. The legislation now listed more specific activities that could be funded by EIEP monies, including:

- (1) family literacy, parent outreach, and training activities designed to assist parents to become active participants in the education of their children;
- (2) salaries of personnel, including teacher aides who have been specifically trained, or are being trained, to provide services to immigrant children and youth;
- (3) tutorials, mentoring, and academic or career counseling for immigrant children and youth;
- (4) identification and acquisition of curricular materials, educational software, and technologies to be used in the program;
- (5) basic instructional services which are directly attributable to the presence in the school district of immigrant children, including the costs of providing additional classroom supplies, overhead costs, costs of construction, acquisition or rental of space, costs of transportation, or such other costs as are directly attributable to such additional basic instructional services; and
- (6) such other activities, related to the purposes of this part, as the Secretary may authorize (Improving America's Schools Act, Title VII, Part C, Sec. 7307, 1994).

The emphasis was now "enhanced instructional opportunities" for immigrant children instead of the previous emphasis of "meeting the costs" of the added immigrant students in the schools (Emergency Immigrant Education Act of 1984, Title IV, Sec. 4407, 1988).

Nonetheless, during the Congressional wrangling over the 1994 reauthorization of EIEA, Senators Bob Graham and Kay Bailey Hutchison offered an amendment asking that the Congress authorize \$150 million for the EIEA appropriation. Characterizing immigrant education as “yet another example of the failed Federal-State partnership,” Senator Graham reminded his fellow Senators that “individual states have no capacity, either under law or in resources, to control access of illegal entrants to our Nation” (Cong. Rec. 140 (104), p. S10357, 1994). It is apparent that even ten years after the initial passage of EIEA, schools still needed Congress simply to lend its resource strength to the states in order to sustain programs serving immigrant students.

At the same time, it is clear that President Clinton and the 103rd Congress, by spelling out more explicitly what they expected EIEP funds would be used for, were more concerned with immediate tangible returns from subsidizing new immigrant education than simply providing reimbursement for additional costs. The policy also became more of an inducement at the state level. The 1994 and 2002 versions of the legislation included the instruction for EIEP funds to be awarded to LEAs on a “competitive basis based on merit and need” (Improving America’s Schools Act, Title VII, Part C, Sec. 7305, 1994). This competitive grant system would push LEAs to have a defensible plan for what to do with the money once they received it, thus, incentivizing more effective instruction and programs. Although this directive is somewhat vague and open to interpretation, it allows the states to hold funds to motivate LEAs to provide a better education for recent immigrants.

Values Revealed in the Language

Demands for equity. To use the language of Wirt, Mitchell, and Marshall (1988), the initial introduction of EIEA in the early 1980s came at the end of period marked by a more egalitarian culture in the Congress. Egalitarian culture is characterized by equity values “that

seek to redress the maldistribution of schooling resources” (Wirt, Mitchell, & Wirt, 1988, p. 275). Because districts with large new immigrant or undocumented immigrant populations were under a particularly heavy financial burden to educate these students, they sought a policy that achieved equity.

At the Hearing on Emergency Immigrant Education Act (1984), witnesses and members of the subcommittee expressed the sentiment that, because of *Plyler v. Doe*, states were mandated to provide services that they could not pay for. Congressman Hawkins described the issue as “a matter of simple justice” (p. 15), while Congressman Bartlett referred to it as “essentially a fairness issue” (p. 16).

Congressmen de la Garza and Ortiz both testified that the most poverty-stricken areas were along the U.S.-Mexico border and were areas with the highest concentration of undocumented immigrants. South Texas was experiencing high unemployment, a low tax base, and difficulty meeting the school districts’ fiscal needs, resulting in underfunded and poor-performing schools. The lack of good schools was keeping people from wanting to move to the area, preventing the economic situation from improving. Congressman de la Garza stated that the passage of EIEA could “break the cycle of poverty” (Hearing on Emergency Immigrant Education Act, 1984, p. 14). In other words, it could help right an economic inequity.

Congressman Ortiz appealed to the federal government’s role in education as being “historically and primarily...on behalf of the disadvantaged of this Nation” (p. 19); funding new immigrant education would be a societal good.

Supporters of EIEA did not only seek equity for states and districts. Witnesses at the 1984 Hearing on Emergency Immigrant Education Act also appealed to those who wished to address inequities that affected students directly. Congressman Ortiz asked the subcommittee to

recognize South Texas' "great need" (Hearing on Emergency Immigrant Education Act, 1984, p. 19). Majority Leader Wright emphasized the need for immigrant children to learn English in order for them to "act on equality with others in the society" (p. 28). By learning English, these students are be able to "take their rightful place in the other [non-bilingual or ESL] classrooms and are able to cope and are able to hold their own heads high and to do well" (p. 29). In a prepared statement, Gail Imobersteg, Federal Liaison Office Director of the California Department of Education, wrote that "our experience with these problems shows that there is a definite need, which is created as a result of federal immigration policies, for substantial additional funds which are needed to provide the equitable, comprehensive services for immigrant students" (pp. 49-50).

Inducements for improved quality. In the 1994 reauthorization, however, the language of the legislation changed the equity argument. Now, monies would help immigrant children and youth "meet the same challenging State performance standards expected of all children and youth" (Improving America's Schools Act, Title VII, Part C, Sec. 7301 (b), 1994). The 1994 rhetoric transforms the problem to one of achieving equality of outcomes, rather than simply redress of funding burdens and inequities, pushing quality of education toward the fore.

This possible shift in values is especially significant because, according to Wirt, Mitchell, and Marshall (1988), equity values and quality values are in opposition. Quality values seek uniformity for all students served, while equity values appeal for special or enhanced services for an underserved population. The change in emphasis became even more evident with the 2002 reauthorization of the legislation.

The 2002 reauthorization saw three significant changes to the language of EIEP. First, the "Findings" section that had been added in 1994 was removed, although the "Purpose" section

was retained. In this section, the words “performance standards” that were seen in the 1994 version were clarified as “academic content and student academic achievement” (Improving Language Instruction Educational Programs for Academic Achievement Act of 2002, Title III, Part B, Sec. 3241 (b), 2002). Also, placing EIEP and Title III in the greater context of the No Child Left Behind Act reminds us that recipients of Title III monies are held to strict accountability rules that can affect their funding. Title III itself contains several sections explaining the accountability rules that pertain to this title. This emphasis on student achievement underscores the homogeneity that President Bush and the 107th Congress valued; that is, the value of quality rather than that of equity.

Second, the 2002 reauthorization set in motion a new method of counting immigrant students. Despite the concern in 1984 that using the U. S. Census to calculate the number of immigrant students in a district or state would result in a severe undercounting in the number of eligible students, the 107th Congress decided that states should use the American Community Survey (ACS) estimates as their measuring device (Improving Language Instruction Educational Programs for Academic Achievement Act of 2002, Title III, Part B, Sec. 3241 (b), 2002). The National Research Council (2011) compared state counts to ACS estimates between 2006 and 2009 and found in 34 states the state count was actually lower than the ACS estimate. They further found that the volatility of the counts was much higher in small states than large states. However, the difference between the population accounting methods meant that the resulting funding discrepancies affects large states (penalizes them) much more than it affects small states.

Third, EIEP funds became a subgrant of the English language acquisition grant under the Improving Language Instruction Educational Programs for Academic Achievement Act. It is important to note that this was, in fact, one of the alternatives that had been rejected in 1984. As

Superintendent Besteiro had explained in the Hearing on Emergency Immigrant Education Act (1984), “If the bilingual money comes in, it is used strictly to work with bilingual education” (p. 45). However, in 2002, new immigrant education was transformed to be virtually a subset of bilingual (English language learner) education.

By highlighting quality, EIEP is in an insecure position because, according to Wirt, Mitchell, and Marshall (1988), those who seek quality will often sacrifice equity in order to achieve it. Therefore, without greater protection for the special needs of immigrant students independent of their bilingual education needs, inequities may fail to be addressed. In other words, EIEP funds may never be directed toward the specific needs of new immigrants, especially if these students are not English language learners.

Conclusions

EIEA was passed in 1984 as aid to states that were highly affected by the presence of undocumented immigrants in their schools. Primarily championed by representatives from the state of Texas, EIEA made its way to the congressional agenda after the *Plyler v. Doe* decision made immigrant education a national issue. Supporters in Texas were able to borrow capacity from the federal government by trading local license to federal intervention requirements and by arguing that *Plyler v. Doe* created a new federal category of needed capacity generation. In doing so, they were able to push EIEA onto the agenda and gain its passage. Once passed, EIEA primarily took the shape of a capacity-building policy. Throughout its subsequent reauthorizations, this capacity-building nature was maintained, even as the policy took on more characteristics of an inducement, as the language of the legislation moved from emphasizing school impact aid to programs for immigrant students. Comparing the language in the original

and reauthorized legislation also revealed a shift in values from that of equity to quality, as more emphasis was placed on student achievement.

This study of one federal policy reveals the application of Manna's (2006) concept of borrowing strength not only at the beginning of a policy issue's journey to the agenda but also as it continues throughout its history (e.g., Senator Graham's remarks quoted in Policy Instruments, Providing inducements, above). We see this as the inherent nature of federal education policy. Because of education's absence from the Constitution, states are responsible for public schooling. However, states have come to depend on the federal government for funding and other governance. Because of this dependence, states must frequently borrow capacity from the federal government, just as the federal government must borrow license from states and local governments.

In addition, there were shifts in language in the 1994 reauthorization resulted in both a change in policy instruments and in the values apparent in the rhetoric. The EIEA reauthorization occurred in the context of the full ESEA reauthorization (Improving America's Schools Act of 1994), which articulated a significant rhetorical shift for education generally. This case implies that we should further investigate how these changes in policy tools and language may have influenced each other or were part of a causal chain. These changes occurred after a widening of the problem definition to one that emphasizes student outcomes more than school capacity. So, when it comes to applying federal education policy theory, we need to consider the susceptibility of established policy to the general political tenor of the times. Further historical study of other education policies using these same theoretical frameworks is needed to determine whether these simultaneous changes occur regularly or if the EIEA case is unique.

With the reauthorization of ESEA imminent, legislators and other interested parties need to understand the reasons behind decisions concerning EIEA and which reasons are still valid today. Not only is historical analysis “an essential foundation for future study” (Debray-Pelot, 2007, p. 929), it is critical to policy-making as well. In order to create relevant and appropriate policy for a new generation of immigrant students, we must clearly distinguish the enduring challenges from transitory problems. By providing perspective on the history of EIEA, we can begin to move toward developing an Emergency Immigrant Education Program that will serve the next generation.

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