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Sybil C. Halloran

*Virginia Commonwealth University*, [schallor@vcu.edu](mailto:schallor@vcu.edu)

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Fear, Funding and Ambiguity: The Policy Dilemmas of Undocumented Students in Virginia  
Institutions of Higher Education

A dissertation submitted in partial fulfillment of the requirements for the degree of Doctor of  
Philosophy at Virginia Commonwealth University

by

Sybil Christman Halloran  
Bachelor of Arts, Northwestern University, 1993  
Master of Urban and Regional Planning, Virginia Commonwealth University, 1999

Directors

Dr. William C. Boshier, Jr.  
Distinguished Professor of Public Policy  
L. Douglas Wilder School of Government and Public Affairs

Dr. Sarah Jane Brubaker  
Associate Dean for Faculty and Academic Affairs and Associate Professor  
L. Douglas Wilder School of Government and Public Affairs

Virginia Commonwealth University  
Richmond, Virginia  
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## Abstract

### FEAR, FUNDING AND AMBIGUITY: THE POLICY DILEMMAS OF UNDOCUMENTED STUDENTS IN VIRGINIA INSTITUTIONS OF HIGHER EDUCATION

By Sybil Christman Halloran

A dissertation submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy at Virginia Commonwealth University

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Although immigration is considered the responsibility and authority of the federal government, there is no clear federal policy regarding undocumented students and higher education. This leaves the power to regulate undocumented students in higher education to state governments. In Virginia, there is no specific, state-wide policy that addresses undocumented students and admission and enrollment in public higher education. Because of this, policies and practices related to the admission and enrollment of undocumented students are created at the university level. There is, however, state policy in Virginia related to legal immigration status and eligibility for in-state tuition. This creates a complex dynamic in which immigration-related practices, which are legally regulated on the federal level, are actually determined on the state and institutional level.

Through interviews with admissions professionals at 12 Virginia, public 4-year colleges and universities, this research study uses a descriptive qualitative case study to explore the application of institution level undergraduate policies and practices related to undocumented students. The findings suggest that of the 12 institutions, five knowingly enroll undocumented students; six admit undocumented students but do not knowingly enroll undocumented students; and one institution does not admit or enroll undocumented students. None of the schools offers in-state tuition to undocumented students.

Seven themes emerged from the 12 interviews, and these themes are grouped into two categories. The themes in the first category relate to the experiences of undocumented students and include *funding challenges*, *fear*, *lack of knowledge of higher education processes*, and *post-graduation challenges*. The themes in the second category are related to policy and practice, and the professionals who create and implement those policies and practices. The themes that emerged in this category are *changing demographics*, *ambiguity*, and *professional and personal values*. These themes are interpreted and discussed through the theoretical frameworks of administrative discretion and wicked problems. Recommendations for future research are provided.



## **Chapter 1: Introduction**

Throughout the country, there are divided opinions on whether undocumented students should have access to higher education in the U.S. The National Conference of State Legislatures (2013) provides a thorough summary of the issues. Supporters of access to education point out that many undocumented students come to the U.S. as young children with their parents, and should not be punished for a decision they had no authority or power to affect. Proponents also argue that access to affordable higher education gives undocumented high school students an incentive to do well and finish high school. Advocates believe that to allow undocumented students' access to elementary and secondary education, but not to higher education, is inconsistent and short-sighted. They argue that most undocumented students are likely to remain in the U.S, so it is a benefit to the students and to society if they are educated (NCSL, 2013).

On the other hand, opponents argue that providing access to higher education provides incentives to and rewards people for breaking the law by entering the U.S. illegally. Many challengers believe that undocumented immigrants should not have access to any publicly funded benefits, including higher education. Further, they argue that allowing undocumented students to have access to in-state tuition benefits is illegal based on Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIA) of 1996 and Section 401 of the Personal Responsibility and Work Opportunity Act (PRWORA) of 1996. They also point out that granting in-state tuition to undocumented students is too costly, and that undocumented students in public colleges and universities are taking educational opportunities away from U.S.

citizens and legal immigrants. Finally, opponents argue that since undocumented immigrants are not legally employable, providing higher education is a waste of resources (NCSL, 2013).

Although immigration is considered the responsibility and authority of the federal government, there is no clear federal policy regarding undocumented students and higher education. This leaves the power to regulate undocumented students in higher education to state governments. In Virginia, there is no specific, state-wide policy that addresses undocumented students and admission and enrollment in public higher education. Because of this, policies and practices related to the admission and enrollment of undocumented students are created at the university level. There is, however, state policy in Virginia related to legal immigration status and eligibility for in-state tuition. This creates a complex dynamic in which immigration-related practices, which are legally regulated on the federal level, are actually determined on the state and institutional level.

Through interviews with admissions professionals at Virginia, public 4-year colleges and universities, the following research explored the application of school-level policies and practices related to undocumented students. The research focused on the implementation and application of undergraduate policies and practices. A descriptive qualitative case study design was used.

The research addressed “admission” and “enrollment” and “ability to qualify for in-state tuition” separately, since they can be considered distinct barriers to accessing public higher education in Virginia. The following research questions guided the study design:

- a. How do Virginia, public 4-year colleges and universities admissions officials apply their policies and practices related to undocumented students and undergraduate **admission** to their universities?

- b. How do Virginia, public 4-year colleges and universities admissions officials apply their policies and practices related to undocumented students and undergraduate **enrollment** to their universities?
- c. How do Virginia, public 4-year colleges and universities admissions officials apply their policies and practices related to undocumented undergraduate students and the ability to **qualify for in-state tuition**?

The theoretical frameworks of administrative discretion and wicked problems were used to interpret and discuss the research findings. Administrative discretion allows for flexibility in policy making, while wicked problems is a term used to describe complex, diverse, layered policy problems. Wicked problems have no single cause, and there is no one, best way to solve wicked problems (Head & Alford, 2013; Rittel & Webber, 1973; Shumavon & Hibbeln, 1986). Both of these frameworks, and their relevance to undocumented students and higher education in Virginia, are discussed in more detail in Chapters 4 and 5.

In the following chapters of this research, I will review literature related to undocumented students and higher education, as well as summarize relevant judicial decisions, legislation and administrative policies on the federal and state levels. I will describe the methodological approach that was used, including the basis for selecting a descriptive qualitative case study and strategies used to ensure the credibility of the research. Next, I will summarize the findings from interviews with admissions professionals and will explore these findings through the conceptual frameworks of wicked problems and discretion. I will end with a discussion of the research limitations and recommendations for future research.

## **Chapter 2: Literature Review**

### **Introduction**

Views on access to higher education for undocumented students vary across the country. Although immigration is considered the responsibility and authority of the federal government, there is no clear federal policy regarding undocumented students and higher education. Because of this, a variety of laws and policies have been enacted across the country to legislate and regulate access to higher education for undocumented students. In this chapter, I will review some of the key current research related to undocumented students and higher education, as well as summarize judicial decisions, legislation and administrative policies on the federal and state levels.

### **Current Research**

Lina Newton and Brian Adams (2009) reviewed state immigration policy from 2006 through 2007 and examined how this area, which traditionally has been dominated by the federal government, has expanded in recent years. The authors noted that states often create de facto immigration policy by creating legislation that is not directly about immigration, but relates to immigration. By doing this, states avoid overstepping their legislative authority (Newton & Adams, 2009).

Newton and Adams (2009) illustrated the fact that the relationship between state governments and the federal government as it relates to immigration policy is “characterized more by cooperation than conflict” (p. 426). When there is conflict between state and federal governments, it is often related generally to money and specifically to unfunded mandates. For example, the REAL ID Act was passed by Congress in 2005. This act creates standards for the

issuance and security of state drivers' licenses, including the requirement that states use the Department of Homeland Security's system to authenticate documents. The new system costs extra money, but states were given no extra funding. Some states passed resolutions expressing opposition to the act, and others passed resolutions or statutes instructing state agencies not to comply. In addition to concerns over unfunded immigration-related mandates, many states argue that they should be reimbursed for immigration costs such as the cost of incarcerating undocumented immigrants or the cost of providing elementary and secondary education to undocumented students (Newton & Adams, 2009).

The authors concluded that although state governments may be frustrated at times with the federal government, they have not responded by challenging federal laws. State and local officials claim that the need for state laws often comes from deadlock on the federal level. Rather than directly challenging the federal government's authority, states are taking the lead in defining the relationship between state and federal government (Newton & Adams, 2009).

Courtney Palmer and Theresa Davidson (2011) approached the issue of undocumented students and access to higher education by researching what determines attitudes toward access to higher education for undocumented students. The researchers analyzed data from the 1994 General Social Survey (GSS), which is conducted biennially by the National Opinion Research Center at the University of Chicago. The 1994 data set was used because it was the year that included specific variables related to immigration, including questions about bilingual education and questions about immigrants' impact on the economy, which the authors needed for their research (Palmer & Davidson, 2011).

Palmer and Davidson's (2011) literature review found that the public's view of immigrants is influenced by perceptions of economic and cultural threats caused by immigrants,

as well as opinions on immigrant access to public services, such as education. Cultural threats are the beliefs and practices immigrants bring with them from their home country that are viewed as a threat to what is perceived as American culture. For example, some believe that an increase in immigration threatens the English language. Economic threats are perceptions that impact finance-related topics, such as immigrants causing a rise in unemployment or an increase in taxes (Palmer & Davidson, 2011).

Based on analysis of the GSS survey data, Palmer and Davidson (2011) found that those who supported bilingual education were significantly more likely to support undocumented students' access to higher education. This was the only "cultural threat measure" the authors found that showed significance. The authors' remaining findings were related to economics. They concluded that while feelings about the role of immigration and unemployment do not determine attitudes toward access to higher education for undocumented students, beliefs about economic growth do affect those attitudes. Respondents who believed that immigration brings economic growth were significantly more likely to support access to higher education for undocumented students than were those who did not believe immigration brings economic growth (Palmer & Davidson, 2011).

Palmer and Davidson (2011) also found that respondents with higher family income were more likely to oppose access to higher education for undocumented students. This was the opposite of what the authors expected, since their initial literature review found that because of perceived competition for a limited number of jobs, people who were more economically disadvantaged were more likely to oppose immigration. They argued that it may be that families with higher income levels are more likely to be able to send their children to college, and

therefore more likely to see undocumented students as competition for a limited number of spaces at colleges and universities (Palmer & Davidson, 2011).

The authors did point out that a potential shortcoming in the research is that the data set used is from 1994. This is the most recent GSS data set that has the immigration-related variables required for research on attitudes toward undocumented students and access to higher education. According to Palmer and Davidson (2011), there was a significant increase in undocumented immigration in the 1990s, and respondents to a 1994 survey may not yet have felt the impact of that shift.

Leisy J. Abrego and Roberto G. Gonzales (2010) assessed the educational and occupational barriers facing undocumented high school graduates. They argued that without access to higher education and a viable career plan, these students are at risk for poverty and hardship. The authors asserted that if allowed access to higher education and legal work, undocumented high school graduates would add to the U.S. tax base and the economy overall.

Abrego and Gonzales (2010) used their previous, individual research to present this argument. From 2001 to 2006, Abrego conducted interviews with undocumented students as well as U.S.-born Latino students, all from the same neighborhoods. Interviewees were recruited through community and campus organizations. The interview data were supplemented with participant observations at community organizations over several years, as well as supporting information from teachers and administrators (Abrego & Gonzales, 2010).

Gonzales conducted 250 semi-structured interviews from 2003 through 2007 with undocumented youth and young adults, U.S.-born youth, and young adult Latinos in the greater Los Angeles area. These interviews were supported by interviews with school staff and

community members. In addition, Gonzales conducted ethnographic research in schools, churches and community organizations (Abrego & Gonzales, 2010).

The authors used the combined research to come up with a number of policy recommendations. First, they argued that a pathway to legalization, such as the DREAM Act, should be provided to undocumented students. Next, they contended that the education pipeline for undocumented students must be improved. Undocumented students should be connected with peer mentors to share their experiences and challenges. They also need a strong support system in high school. The authors also assert a need for significant community efforts among health workers, social workers, and police to build trust with the undocumented population so that undocumented immigrants can live healthy, safe lives (Abrego & Gonzales, 2010).

Abrego and Gonzales (2010) concluded by recommending more research, since current research on undocumented youth has only “scratched the surface.” The authors also warned that research on undocumented youth and young adults should not focus solely on undocumented students and access to four-year colleges. While they acknowledged that those students have compelling stories and face barriers, they argued that most undocumented young people are either in community college or out of school. These young adults also face significant challenges and should be included in the research, according to the authors (Abrego & Gonzales, 2010).

Hernandez et al. (2010) shared the stories and challenges of five undocumented students. The students’ ages when they entered the U.S. ranged from one to 14, and their experience in elementary and secondary school varied by person. Because of this diversity of experiences, economic backgrounds, and ethnicities, the authors concluded that undocumented students could



not be viewed as a homogenous group. They face similar challenges, but they all have different stories.

The authors found that the successful students were able to make use of the resources available to them. Another commonality among the interviewees is that all had the desire to “give back” to their community (Hernandez et al., 2010).

Based on their research, the authors made recommendations specifically targeting student affairs professionals. First, they recommended that colleges and universities add to the knowledge of the needs and issues faced by undocumented students and their families. Next, they recommended keeping faculty and staff up-to-date on immigration laws and policy. Finally, the authors recommended that faculty and staff actively work with undocumented students to assist them in integrating into life on campus (Hernandez et al., 2010).

The literature on undocumented students that has been reviewed highlights diverse thoughts. Some researchers have focused on attitudes toward undocumented students and others on the experiences of undocumented students. A common theme is that the lives of undocumented students are complex and impacted by multiple immigration-related issues.

## **On the Federal Level**

### **Judicial decisions.**

A number of federal judicial decisions relate directly or indirectly to undocumented students and access to higher education, including some by the Supreme Court. These court cases set a precedent for laws and policies existing in the U.S.

### *Supreme Court decisions.*

The Supreme Court has not directly addressed the issue of undocumented students and higher education, but it did review the issue of undocumented students and access to elementary and secondary education in *Plyler v. Doe* (1982) (Feder, 2008).

#### *Plyler v. Doe (1982).*

In *Plyler v. Doe* (1982), the Supreme Court found that a Texas statute that withheld state funds from localities that enrolled undocumented students in public elementary or secondary schools and allowed school districts to deny access to public education to undocumented students violated the Equal Protection Clause of the 14<sup>th</sup> Amendment to the Constitution.

In this case, the Supreme Court looked at a number of different issues. First, it determined that undocumented students are entitled to protection under the Equal Protection Clause of the 14<sup>th</sup> Amendment. Texas argued that people who are in the country illegally are not “within the jurisdiction” of the state and therefore may not claim the benefit of the Equal Protection Clause. The Supreme Court determined that the phrase “within its jurisdiction” includes anyone, citizen or non-citizen, who is present within the state’s boundaries and subject to its laws (*Plyler v. Doe*, 1982). Once the court made that determination, it went on to review whether Texas had violated the Equal Protection Clause when it denied public education to K-12 undocumented students (*Plyler v. Doe*, 1982).

The court found that the Texas statute created “a lifetime hardship on a discrete class of children not accountable for their disabling status” (*Plyler v. Doe*, 1982, p. 11). The court looked at the importance of a basic education in our society, and called illiteracy an “enduring disability” (*Plyler v. Doe*, 1982). It pointed out that while adults who enter our country illegally should face the possibility of deportation, children who have not necessarily chosen to live in the

United States, should not be treated comparably (*Plyler v. Doe*, 1982). Based on these determinations, the court went on to conclude that the Texas statute could only be upheld if the discrimination against undocumented students seeking public elementary or secondary education furthered substantial state goals (*Plyler v. Doe*, 1982).

Texas argued that one goal of the statute was to protect the state from an influx of additional illegal immigrants. In contrast, the court found that the statute was a “ludicrously ineffectual attempt to stem the tide of illegal immigration...when compared to the alternative of prohibiting the employment of illegal aliens” (*Plyler v. Doe*, 1982, p. 11). Next, Texas claimed that enrolling undocumented students increased the difficulty the state faced in offering a high-quality public education. The court, in response, found that excluding undocumented students from public education was not likely “to improve the overall quality of education in the State” (*Plyler v. Doe*, 1982, p. 14). Finally, Texas argued that it was appropriate to single out undocumented students because they were less likely to remain in Texas and thereafter use their education to improve society within the state. The court found that “even assuming such an interest is legitimate, it is an interest that is most difficult to quantify” (*Plyler v. Doe*, 1982, p. 14). The court ended with, “if the State is to deny a discrete group of innocent children the free public education that it offers to other children residing in its borders, that denial must be justified by a showing that it furthers some substantial state interest. No such showing was made” (*Plyler v. Doe*, 1982, p. 15).

While the Supreme Court did not explicitly create an entitlement for undocumented students to attend public elementary and secondary schools in *Plyler v. Doe* (1982), in practice the case has had the effect of establishing access to elementary and secondary education for undocumented students. The decision in the case precludes states from justifying laws similar to

those struck down in Texas that would have prohibited undocumented students from receiving free public K-12 education (Feder, 2008).

*Toll v. Moreno (1982).*

*Toll v. Moreno (1982)* was a challenge to Maryland policy that denied in-state tuition to non-immigrant aliens with G-4 visas, regardless of whether they showed federally approved domicile within the state.

G-4 visas are “international organization” visas issued to diplomats and other government officials for travel to the U.S. Under federal immigration law, applicants must meet specific requirements to qualify for a G-4 visa. Among other requirements, the purpose of travel to the U.S. must be for official business. Additionally, employment must be with a specifically approved international organization such as the United Nations, the International Criminal Police Organization (INTERPOL), the World Health Organization, the International Committee of the Red Cross, etc. (U.S. Department of State website).

Maryland argued that the tuition policy was justified because the salaries of the parents of the students bringing suit were from international organizations and under state law not subject to state tax. They further argued that the cost differential between in-state and out-of-state tuition charged by universities equaled the amount not paid in taxes. The district court found that the policy violated the Supremacy Clause of the U.S. Constitution, and the appellate court affirmed the district court decision. The Supreme Court agreed with the lower courts, pointing out that not only is it within the federal government’s authority to regulate the status of aliens, but that Congress had “specifically allowed nonimmigrant aliens with G-4 visas to acquire domicile” (*Toll v. Moreno*, 1982, p. 1). While the students who brought this case to the Supreme Court were here in the country legally, and therefore clearly did not fit the category of

“undocumented student,” the case was important and relevant as it emphasized that a state cannot create a law that conflicts with federal immigration laws.

***Other federal court cases.***

*Day v. Sebelius (2005).*

The plaintiffs in *Day v. Sebelius (2005)* were students (and their parents) who were U.S. citizens and classified as non-residents of Kansas for tuition billing purposes. They attempted to sue the governor of Kansas, the Kansas Board of Regents and university registrars claiming that the group “unlawfully and unfairly” allowed undocumented students to enroll at Kansas universities and pay in-state tuition (*Day v. Sebelius, 2005*). The plaintiffs were challenging a Kansas law that allows undocumented students who meet certain, specific criteria to be eligible for in-state tuition at Kansas public colleges and universities. In order to be eligible, students must have:

- attended a Kansas high school for at least 3 years,
- graduated from a Kansas high school or equivalent,
- not be a resident of another state, and
- sign an agreement to seek legal immigration status (Feder, 2008).

The plaintiffs alleged that by enacting this law, Kansas was violating Section 505 of the Illegal Immigration Reform and Immigrant Responsibility (IIRIA) Act of 1996 and the Personal Responsibility and Work Opportunity (PRWORA) Act of 1996. The court dismissed 6 of 7 claims, determining that the plaintiffs lacked standing to bring suit. The court found that the plaintiffs could not demonstrate that they were injured by the legislation because they would be paying out-of-state tuition regardless of the legislation. Furthermore, the court pointed out that even if the plaintiffs were able to prove that they had suffered injury, a favorable court decision

would not have remedied that injury, as the plaintiffs would still be required to pay out-of-state tuition (Feder, 2008).

The court found that the plaintiffs did have standing to sue with regard to the claim that the state was violating Section 505 of IIRIA; however, the claim was dismissed by the court. The court determined that the plaintiffs did not have a private right of action. This right authorizes individuals to sue. However, administrative agencies, not individuals, are usually the only entities authorized to bring lawsuits against other entities that violate the law, unless the statute expressly grants private right of action (Feder, 2008). The court emphasized that the Secretary of Homeland Security was charged with enforcing immigration laws, and they found nothing in the federal immigration statutes that indicated Congress had created a private right of action (Day v. Sebelius, 2005).

*Equal Access Education v. Merten (2004).*

In *Equal Access Education v. Merten (2004)*, the plaintiffs claimed the following Virginia public colleges and universities were in violation of the U.S. Constitution's Supremacy, Commerce and Due Process clauses by denying undocumented students the opportunity for admission: George Mason University, James Madison University, Northern Virginia Community College, University of Virginia, Virginia Commonwealth University, Virginia Tech, and William and Mary (*Equal Access Education v. Merten, 2004*). The legal suit was initiated after the Virginia Attorney General's September 5, 2002 memo to all public colleges and universities regarding "immigration law compliance update," which discouraged Virginia public colleges from enrolling undocumented students (Landry, 2002). According to Feder (2008), this is the only federal court case that has addressed the issue of whether states can restrict undocumented students from admission to public colleges and universities.

The plaintiffs were Equal Access Education and two individual students, Brian Marroquin and Freddy Vasquez. Equal Access Education (EAE) was an association whose mission was to promote the welfare of minority and immigrant populations in Virginia, and to obtain access to higher education for all, including undocumented students. The EAE alleged that some of its members who graduated from high school in 2003 or were going to graduate in 2004 had GPAs and SAT scores that would put them in an admissible range for the schools being sued, but that they would be denied admission because of their lack of legal immigration documentation (Equal Access Education v. Merten, 2004)

The court dismissed the Commerce and Due Process claims, but let the Supremacy Clause claim proceed, in part. The court ruled that since immigration regulation is a power held exclusively by the federal government, the Supremacy Clause would not be violated unless the plaintiffs proved that Virginia universities were using state, not federal, immigration standards in order to determine which students to deny based on their undocumented status. According to Feder (2008), although the Supremacy Clause claim was eventually dismissed for procedural reasons, this case indicates that undocumented students are likely to have difficulty establishing a constitutional right to the opportunity for admission to public colleges and universities.

**Federal statute: Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA) 1996 – Section 505.**

Section 505 of the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA) is one of the federal statutes most often referenced and debated in discussions about undocumented students and access to higher education (Gildersleeve, Rumann & Mondragon, 2010). In general, the act increases criminal penalties for immigration-related offenses; enhances the authority of law enforcement; increases the number of enforcement personnel; restricts

aliens' eligibility for public benefits; and sets forth a comprehensive reorganization of the process used to deport people who do not have the necessary paperwork to be in the U.S. legally (Congressional Digest). As the act relates to higher education, unauthorized aliens:

shall not be eligible on the basis of residence within a state (or a political subdivision) for any post secondary education benefits unless a citizen or a national of the United States is eligible for such a benefit (in no less amount, duration or scope) without regard to whether the citizen or national is a resident (Congressional Digest, p. 288).

The higher education debate around this act is whether it should be interpreted as a directive to states to deny undocumented students consideration for in-state tuition. While some states interpret it as not allowing undocumented students to have in-state tuition, other states disagree. Some see the word “unless” as a loophole, allowing state legislation to provide in-state tuition to undocumented students who graduate from high school within the state and can show proof of residency within the state for a specified period of time (Harmon, 2010).

### **Proposed federal legislation.**

#### ***The DREAM Act.***

The DREAM (Development, Relief and Education of Alien Minors) Act was first introduced in Congress in 2001. It was created to provide a pathway to citizenship for a targeted group of young, undocumented immigrants whose immigration status is based on their parents' lack of citizenship and legal status, and who have no process available to them to obtain legal status in the U.S. (National Immigration Law Center website). The legislation did not pass in 2001, and since then several versions of the DREAM Act have been introduced in Congress. None of these subsequent versions of the legislation has passed.



The most recent version was introduced in 2011 and would have made two significant changes to current federal law. First, it would have allowed certain undocumented immigrants who have grown up in the U.S. to apply for temporary legal status, and it would have provided a pathway to permanent legal status. Second, the legislation would eliminate the federal regulation found in Section 505 of IIRIA that discourages states from allowing undocumented students access to in-state tuition. To qualify for the 2011 version of the Act, one must have:

- entered the U.S. before the age of 15,
- been present in the U.S. for at least five consecutive years prior to the enactment of the bill,
- graduated from a U.S. high school, or obtained a GED, or have been accepted into an institution of higher education,
- met the age qualifications: a maximum of 35 in the Senate version; a maximum of 32 in the House version,
- maintained good moral character (NILC website).

People who believe they meet these qualifications would be required to submit an application. If approved, they would be granted Conditional Permanent Residency, which is similar to Permanent Residency, except that it only lasts six years with limitations on traveling abroad. Conditional Permanent Resident students would be eligible for student loans and federal work study, but not eligible for some federal financial aid programs, such as Pell Grants. If an individual applies, meets the criteria and is approved, but fails to complete the required two years of college or two years in the military, he or she would be stripped of the Conditional Permanent Residency status and returned to the previous immigration status (NILC website).

### *History of the DREAM Act.*

The DREAM Act was first introduced in 2001 by Republican Orrin Hatch and Democrat Richard Durbin in the Senate and Republican Chris Cannon and Democrat Howard Berman in the House. It initially received bi-partisan support; however, it was greatly impacted by the events of that year. After September 11, 2001, immigration reform was significantly impacted by overwhelming national security concerns (Olivas, 2010). Several versions of the act have been presented by bi-partisan leadership over the past decade, including in 2007 when, according to Michael Olivas (2010), the Senate tried a new approach.

In July 2007, the DREAM Act was attached to the Department of Defense authorization bill. Olivas (2010) describes this attempt as “quite clever and germane” since there were provisions in the legislation that allowed for pathways to legalization for undocumented members of the U.S. military. However, an Iraq timetable amendment failed, which caused Senator Harry Reid to pull the Department of Defense authorization bill to which the DREAM Act was attached (Olivas, 2010).

Later that year, the DREAM Act was voted on by the Senate as standalone legislation. Sixty votes were needed to pass it, and every vote was crucial for the success of the act (Olivas, 2010). Several key supporters did not vote: Senator John McCain (R- Ariz.) was in the middle of his presidential campaign and not available to vote; Senator Edward Kennedy (D-Mass) was dealing with significant health issues and unable to vote. Extensive fires throughout California kept Senator Barbara Boxer (D-Cal.) at home dealing with emergency situations. Senator Christopher Dodd (D-Conn.) was unavailable to vote. Finally, Arlen Specter (R-Pa.), previously a supporter of the act, voted against it. At the time of the 2007 vote, he publically stated his philosophical support of the bill, calling it “...a good act, and I believe that its purposes are

beneficial. I think it ought to be enacted.” However, when he voted against it, he cited his concern that passing the DREAM Act would negatively impact the Senate’s ability to enact a comprehensive immigration reform bill. On October 24, 2007, the bill was voted down 44-52 in the Senate (Olivas, 2010). While revised versions of the DREAM Act have been introduced since 2007, none have passed into law.

**Executive order.**

In June 2012, the Secretary of Homeland Security, Janet Napolitano, released a memo entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children.” In the memo, Secretary Napolitano (2012) states that:

...immigration laws must be enforced in a strong and sensible manner. They are not designed to be blindly enforced without consideration given to the individual circumstances of each case. Nor are they designed to remove productive young people to countries where they may not have lived or even speak the language. Indeed, many of these young people have already contributed to our country in significant ways. (p. 2)

The memo goes on to emphasize the importance of prioritizing limited immigration enforcement resources.

The intent of the memo is to describe a group of young people, similar to the young people in described in the DREAM Act, who should be “considered for an exercise of prosecutorial discretion” (Napolitano, 2012, p. 1). These people are considered low priority, and therefore the government is willing to defer any legal deportation processes, allowing the Department of Homeland Security to focus on “people who meet our enforcement priorities” (p. 1).

The criteria set forth in the Napolitano memo include requiring that the individual have entered the U.S. before age 16; have lived in the U.S. for at least five years; be currently enrolled in school, have a high school diploma (or GED), or be an honorably discharged veteran; not be convicted of a felony or significant misdemeanor; and not be more than 30 years old (Napolitano, 2012). While the criteria in the memo are very similar to the DREAM Act criteria, one primary difference is that this memo does not create a path to legal citizenship. Napolitano (2012) specifically states that the memo:

...confers no substantive right, immigration status or pathway to citizenship. Only the Congress, acting through its legislative authority, can confer these rights. It remains for the executive branch, however, to set forth policy for the exercise of discretion within the framework of the existing law. (p. 3)

So, while the memo offers a delay in deportation to many students who would have qualified for the DREAM Act, it does not offer a permanent resolution to their lack of legal U.S. citizenship.

This memo created an immigration status referred to as Deferred Action for Childhood Arrivals (DACA). It is described by the Immigration Legal Resource Center as “a form of prosecutorial discretion that provides a work permit and relief from removal for two years to certain undocumented youth” (DACA fact sheet, 2013). Youth who meet the criteria are not guaranteed DACA status; it is granted by the Department of Homeland Security on a case-by-case basis. It is a temporary status and, as stated clearly in the Napolitano memo, is not a path to citizenship. Since the creation of the status in 2012, there have been some adjustments to the program. The age cap was eliminated and the date for continuous residence in the U.S. was

adjusted. The two year renewal period was extended to three years, but that was challenged in federal court and has returned to a two year renewal period ([www.nilc.org](http://www.nilc.org)).

### **Across the Country: On the State Level**

#### **State legislation.**

Approximately half of the states in the country have considered some type of state-wide decision related to undocumented students and higher education. According to Reich and Barth (2010), state legislatures began passing laws that allowed all students who earned a high school diploma in the state to be eligible for in-state tuition in response to Section 505 of the IIRAIRA. Conversely, those on the state level who are opposed to allowing undocumented students access to in-state tuition also cite IIRAIRA as a legal basis for denying access to in-state tuition (Reich and Barth, 2010).

As of July 2013, the following 15 states extended in-state tuition eligibility to undocumented students: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Minnesota, Nebraska, New Mexico, Oklahoma, Oregon, Rhode Island, Texas, Utah, and Washington. In all of these states, there are specific requirements undocumented students must meet to qualify for in-state tuition. For example, states may require that students must attend high school in that state for a specific amount of time, or may require that students legally state their intention to file for legal immigration status. Of the states that do allow undocumented students to qualify for in-state tuition, only the following three states also allow undocumented students to qualify for state financial aid: California, New Mexico and Texas (NCSL, 2013).

Most of the states allow undocumented students access to in-state tuition through state-wide legislation. However, in Rhode Island, in-state tuition for undocumented students has been approved by a state-wide policy created by the Board of Governors for Higher Education.

Oklahoma originally had legislation allowing undocumented students to qualify for in-state tuition, but that law was later amended to allow the Oklahoma Board of Regents to decide whether undocumented students should qualify for in-state tuition. As of 2013, the Oklahoma Board of Regents has not reversed the legislature's decision to allow undocumented students to qualify for in-state tuition (NCSL, 2013)

One state, Wisconsin, passed legislation and enacted a law in 2009 that extended in-state tuition to undocumented students. Two years later, the legislature revoked the law, and undocumented students in Wisconsin no longer qualify for in-state tuition (NCSL, 2013).

Arizona, Georgia and Indiana, all prohibit undocumented students from qualifying for in-state tuition. In Georgia and Indiana these laws were created through the legislature. In Arizona, the law came out of a state-wide referendum. Alaska, North Carolina, Virginia and Mississippi all have considered legislation that would prohibit undocumented students from qualifying for in-state tuition (Ibarra & Sherman, 2012). Finally, in 2008 South Carolina was the first state in the country to deny undocumented students enrollment in state public colleges or universities (Olivas, 2010). Since then, Alabama also has prohibited undocumented students from enrolling in public colleges or universities (NCSL, 2013).

Jessica Salisbury (2003) examined access to in-state tuition across states, with a detailed focus on California and Texas. She first provided an overview of barriers to higher education that are faced by undocumented students, including state legislation and IIRAIRA. Salisbury examined the challenges that exist with a system in which the federal government has the power to regulate immigration and states set tuition rates and determine residency (Salisbury, 2003).

The author concluded that while access to in-state tuition for undocumented students is a barrier to higher education, it is not the only barrier undocumented students face. Other

challenges include not having access to federal financial aid and not having work authorization for on- and off-campus jobs. Since these issues must be resolved on the federal level, Salsbury (2003) pointed out that even states that want to ensure access to higher education for their undocumented students can only do so up to a point. Without resolving these federal issues, even undocumented students who have access to in-state tuition face significant barriers. Salsbury believes that for both the state and federal government, providing access to higher education “is the key to providing future opportunities, success and stability to both undocumented students and the communities in which they live” (Salsbury, 2003, p. 490).

Gary Reich and Jay Barth (2010) did a comparative study of in-state tuition and undocumented students using Arkansas and Kansas for research. The authors used a mixed methods approach for their analysis. Qualitative data included newspaper articles, committee hearing testimonies, and semi-structured interviews with state legislators. They used a logistic regression model of state legislative roll call votes for the quantitative analysis (Reich & Barth, 2010).

The authors argued that state policies are significantly impacted by how the policy is presented and debated within the state legislature. According to the authors, Arkansas and Kansas have similar demographics, but developed different policies around undocumented students and in-state tuition. Much of the focus in Kansas was on the contributions and positive impact undocumented high school students had on their communities. The outcome was a bill that approved in-state tuition for undocumented students. Alternatively, the debate in Arkansas focused on the state’s authority to create legislation related to undocumented students and in-state tuition. In-state tuition for undocumented students was not passed in Arkansas. The authors believe that the Arkansas bill did not pass because of concerns about the conflict

between federal immigration law and in-state tuition policies. The authors determined that the issue framing was of crucial importance in each state (2010).

**Comparison of two different state policies: Texas vs. Arizona.**

Texas and Arizona are very different examples of how states have dealt with issues related to undocumented students and higher education. Dougherty, Nienhusser and Vega (2010) provide a detailed comparison of how these two states arrived at such different policies related to undocumented students and higher education.

On September 1, 2001, Texas became one of the first states to enact legislation that allowed undocumented students to be eligible for in-state tuition. By passing HB 1403, the state not only extended eligibility for in-state tuition to undocumented students, but also allowed undocumented students to qualify for state financial aid. This was a state-wide, bi-partisan effort, passing through the House of Representatives with 130 yeas, two nays and three abstentions and passing through the Senate with 30 yeas, zero nays and one abstention (Dougherty et al., 2010).

The law does not specifically mention undocumented students. Instead, it broadens the eligibility for Texas residency so that undocumented students are included in the population that may be eligible for in-state tuition and state financial aid. In order to meet eligibility requirements, students must:

- graduate from a high school in Texas,
- reside in the state for at least three year prior to the high school graduation,
- not enroll in a college or university prior to Fall 2001,
- provide an affidavit showing intent to become a Permanent Resident as soon as he or she is eligible to do so (Dougherty et al., 2010).



In contrast, Arizona passed a very different law related to undocumented students. On November 7, 2006, Proposition 300 passed with support from more than 70% of the voters. This referendum made all undocumented students ineligible for in-state tuition in Arizona, as well as for state financial aid (Dougherty et al., 2010).

Earlier in the decade, there were several bills proposed in Arizona related to undocumented students and higher education. Two bills proposed that undocumented students be eligible for in-state tuition. Both of those failed. Bills in 2003 and 2004 were written to prohibit admission of undocumented students in state colleges and universities and to make undocumented students ineligible for in-state tuition in Arizona. Those bills also failed. In 2005, HB 2030, which made undocumented students ineligible for in-state tuition or state financial aid, passed through the legislature. However, the bill was vetoed by then Governor Janet Napolitano. The next year, Proposition 300 passed and was made into law (Dougherty et al., 2010).

Dougherty et al. (2010), presented several reasons why Texas and Arizona ended up with very different laws. First, the authors pointed out that the supporters of the Texas bill were well organized and had strong support from an active Latino community, while the opposition groups were not well organized. Several activists groups, such as the Mexican American Legal Defense and Educational Fund, the National Council of La Raza, and the League of United Latin American Citizens supported the bill. Additionally, the Latino community in Texas had political power. In 2002, 23% of registered voters in Texas were Latino, and in 2003 21% of Texas state legislators were Latino (Dougherty et al., 2010). The authors also note that the racial and ethnic climate in Texas had changed over the previous decades, allowing for more acceptance of Latinos (Dougherty et al., 2010).

Dougherty et al. (2010) also pointed out that supporters intentionally kept the proposed legislation “under the radar.” One legislative staffer said, “We tried consciously not to call attention to ourselves...we didn’t hold press conferences when we filed the bill. We didn’t send out a press release...we did it sort of on the Q-T” (p. 149). This made it difficult for the opposition to organize and gain strength.

Additionally, the Republican party is a key group in many states when it comes to support of anti-immigration law. In Texas, two of the most prominent Republicans at the time of the legislation were George W. Bush and Rick Perry. Dougherty et al. (2010) point out that both politicians made it clear that they would not support any legislation that appeared to be anti-immigration legislation. Also, Texas does not have a referendum option. Since the governor at the time, Rick Perry, had made it clear he would veto any anti-immigration legislation, opponents of the bill had few options once it passed (Dougherty et al., 2010).

Finally, Dougherty et al. (2010) point out that the proponents of the legislation benefited from timing. HB 1403 was passed before September 11, 2001. Once that terrorist event occurred, political and public views related to immigration, especially related to undocumented immigrants, changed in the U.S. (Dougherty et al., 2010).

The timing, environment and process in Arizona were very different. First, Latinos were not as politically well represented in Arizona. In 2003, 28% of the population of Arizona was Latino, but only 13% of the registered voters and 17% of the state executive and legislators were Latino. Also, prominent Latino organizations, such as the Mexican American Legal Defense and Educational Fund, were less well organized and less well established in Arizona (Dougherty et al., 2010).

Additionally, Arizona has a different state constitutional structure. Citizens may pass legislation directly through the referendum process, bypassing the state's legislative body. If enough signatures are collected, an issue can be put on the ballot, and if enough citizens vote for it, it becomes law (Dougherty et al., 2010).

Finally, proponents of Proposition 300 benefited from timing. The vote came before the public after September 11, 2001 when public sentiment against undocumented immigrants was strong (Dougherty et al., 2010).

## **Virginia**

### **General Assembly.**

Virginia's General Assembly considered 22 bills related to undocumented students and higher education between 2003 and 2013 (Virginia's Legislative Information System, 2013). The primary focus of the bills was either the prohibition of the admission and enrollment of undocumented students, or eligibility to qualify for Virginia in-state tuition and/or Virginia state financial aid. In some cases, several bills in one session were incorporated into one single bill. None of the bills passed and become law.

Delegate John S. Reid proposed the first admission-related bill in 2003. His bill would have required that Virginia's public colleges and universities "not knowingly accept for enrollment an illegal alien, and directs each institution, upon discovering an enrollment of an illegal alien, to provide for the prompt dismissal of any such person from the institution" (2003 session, HB 1562). Since then, seven other bills would have prohibited admission of undocumented students. One of the bills, HB156 from the 2004 session, specifically referenced the U.S. Supreme Court's Plyler v. Doe (1982) case. The bill pointed out that the case was limited to access to K-12 education, and did not require access to post-secondary education. An

additional bill in 2008, HB 123, did not focus on admission, but instead proposed that a student must provide “legal documentation of residence or educational status to be eligible for initial enrollment in any public institution of higher education” (2008 session, HB 123). This makes a total of nine bills related to admission or enrollment of undocumented students in Virginia’s public colleges and universities over the past decade.

The remaining 13 bills since 2003 focused on students’ ability to qualify for Virginia in-state tuition and/or Virginia state financial aid. For example, in 2007 HB 2935 proposed that undocumented students “not be eligible...for any postsecondary educational benefit including, but not limited to, in-state tuition and state financial aid” (2007 session, HB 2935). However, unlike the admission and enrollment-related bills, which all clearly aim to prohibit undocumented students from enrolling in Virginia public colleges and universities, some of the tuition and aid-related bills allowed for undocumented students to qualify for in-state tuition, if they met certain criteria. For example, Senator A. Donald McEachin’s 2013 SB 1090 “establishes that an undocumented person who is lawfully present in the United States shall not be eligible for in-state tuition unless he meets all of the following criteria...” Then, listed out are criteria that required that a student: have attended high school in Virginia while living with a parent or guardian; have lived in Virginia for at least three years before graduating from high school; have graduated from a Virginia high school or obtained a GED in Virginia; have enrolled in a Virginia public university or college; and have submitted evidence that he or she (or a parent if the student is dependent) has filed Virginia income taxes. Additionally, Delegate McEachin’s bill required that the student provide “an affidavit to the institution stating that he has been approved for Deferred Action for Childhood Arrivals by the U.S. Department of Homeland Security” (Session 2013, SB 1090).

### **Commonwealth of Virginia Attorney General's Office.**

In September 2002, the Attorney General's office sent a memo to all public colleges and universities in Virginia regarding "immigration law compliance update." Alison P. Landry, Assistant Commonwealth Attorney, issued the memo, which discouraged Virginia public colleges from enrolling undocumented students.

The memo was sent almost a year after the September 11, 2001 terrorist attack on the U.S. It referenced the attack and argued that because of it, colleges and universities must pay closer attention to foreign students and their status. Specifically, Landry (2002) stated that "vigilance is necessary to safeguard the campus, to facilitate the state and federal governments' common interest in national security, while also ensuring that educational diversity offered by international education programs continues to flourish" (p. 3).

The memo detailed several issues related to immigrants and higher education. It clarified new federal laws, explained Virginia laws and addressed the issue of undocumented students and higher education in Virginia. The changes to federal law that were addressed in the memo related to international students on specific visas in the U.S. and did not relate to undocumented students. After the visa-specific section, the memo went on to address the issue of undocumented students in Virginia's public colleges and universities. First, Landry (2002) addressed the admission and enrollment of undocumented students by discouraging public colleges and universities from allowing them to enroll. Specifically, the 2002 memo stated:

There is no federal or state statute that precludes an institution from admitting an applicant known to be an illegal alien...thus, as strictly a legal matter, institutions have broad discretion to decide what documentation they will request of applicants, and how they will treat applicants who are not lawfully present in the United States. As a matter

of policy, however, the Attorney General is strongly of the view that illegal and undocumented aliens should not be admitted into our public colleges and universities at all, especially when doing so would displace a competing applicant who is an American citizen or who is otherwise lawfully present here. (p. 5)

Next, Landry (2002) tackled the issue of in-state tuition in Virginia. Specifically, the memo stated that “under Virginia and federal law, undocumented aliens cannot qualify for in-state tuition” (p. 5). The memo explained that because an undocumented student is not in the country legally and therefore can be deported, the student does not meet Virginia’s requirements for establishing residency. The memo argued that Virginia’s tuition laws could not be reasonably interpreted “to mandate tax payer supported educational subsidies for persons illegally present within the Commonwealth” (Landry, 2002). Landry explained that domiciliary intent in Virginia is traditionally defined by a combination of presence in the state and “present intent to remain indefinitely” (Landry, 2002). She argued that it was reasonable to interpret “presence” as “legal presence.” The memo went on to explain that it was not just state law that makes undocumented students ineligible for in-state tuition. Landry also referenced IIRIA and used that to argue that it was illegal to offer tax-based subsidies, such as in-state tuition, to undocumented students if those subsidies were being denied to U.S. citizens.

### **Residency requirements in Virginia.**

Although there is no clear state-wide policy in Virginia regarding the admission and enrollment of undocumented students, there is clear direction from the State Council of Higher Education for Virginia (SCHEV) regarding eligibility for in-state tuition in Virginia. Specifically, students are responsible for providing “clear and convincing evidence of their

current legal status. Failure to provide such evidence results in classification as an out-of-state student” (SCHEV Domicile Guidelines, p. 3).

In Virginia, the burden of establishing residency is on the student. The student must prove “national” or “eligible alien” status and have “established and maintained” domicile in Virginia. Colleges and universities are instructed to first determine whether the applicant is a national or alien. “Alien” is defined as anyone not a citizen or national of the United States. If the school determines that the student is a national, then the domicile analysis continues. This analysis includes determining whether the applicant is a dependent or independent student or an emancipated or unemancipated minor, and whether domicile in Virginia has been “clearly and convincingly” established for the required year (SCHEV Domicile Guidelines).

If the applicant is an alien, then the school must determine whether the alien is eligible or ineligible to establish domicile in the state. SCHEV provides documents that list specific immigration types and give guidance on whether an alien is eligible for in-state tuition. If the alien is determined to be ineligible, or if there is no “clear and convincing evidence” of the student’s legal status, then the domicile analysis does not continue and the student is determined to be out-of-state (SCHEV Domicile Guidelines).

Initially, this out-of-state determination included students who had Deferred Action for Childhood Arrival (DACA) status as defined by Executive Order in June 2012. Since there was no permanent change to these students’ legal status, the state determined that the order did not impact eligibility for in-state tuition (Andes, 2012). In April 2014, this interpretation changed. Attorney General Mark Herring announced that his office had concluded that “no provision of the state or federal law precludes individuals approved under DACA from forming subjective domiciliary intent to remain in Virginia; they are capable of establishing domicile and qualifying

for in-state tuition in accordance with Virginia Code....” (Herring, 2014). Currently, DACA students are eligible to be considered for in-state tuition in Virginia (L. Andes, personal communication, May 8, 2015).

An additional group of students are those who are U.S. citizens (“nationals” by SCHEV guidelines), but whose parents are undocumented. A “dependent” student’s domicile is based on the parents’ domicile. Most students under the age of 24 are considered “dependent” unless they are able to prove otherwise. This provides a challenge to dependent students who themselves meet the qualification of “national” as defined by SCHEV, but whose residency is being determined by an undocumented parent. In 2008, the Virginia Attorney General confirmed that “schools must look at parents’ legal status, because students are considered dependent until they are 24 years old.” However, the memo also indicated that “state law allows exceptions on a case-by-case basis, if students 18 or older can offer convincing evidence that they should be considered separately from their parents.” (Kinzie, 2008).

### **Undocumented Students with College Degrees: What Opportunities Exist?**

Even in states that do allow undocumented students to enroll in public colleges and have access to in-state tuition rates, access does not extend to the workplace. Zota (2009) pointed out that since 2001, many have benefited in Texas from the state law that allows undocumented students to enroll in college, as well as to be eligible for in-state tuition and state financial aid. However, once these students graduate, federal law prohibits them from working.

Anna Ortiz and Alejandro Hinojosa (2010) argued that the economy of our country, as well as the economy of individual states, is negatively affected by undocumented students’ inability to gain full-time employment in their professional fields after graduation. The authors pointed out that graduate and professional schools provide a “relatively safe haven as students



optimistically wait for legislation such as the DREAM Act to become law” (p. 37). However, even these options are limited. Graduate school entry exams often require legal identification in order to take the tests, so undocumented students may be forced to choose programs based on entrance requirements. Ortiz and Hinojosa (2010) maintained that the goal of state laws that ensure access to higher education for undocumented students is not only to give individuals an opportunity to further their education, but also to let the country and state benefit from the talents and education of the graduates. Without legal reform, the country and state cannot benefit from their contributions (Ortiz & Hinojosa, 2010).

Ilan Stavans (2011) wrote about an undocumented, recent graduate facing these challenges. Jorge Arbusto (the author changed the name of the student for the article) is undocumented. In 2011, he received his Ph.D. in Hispanic studies. Stavans (2011) contended that Arbusto was among a very small group of undocumented students who had earned a Ph.D. He also pointed out that “no university that I know of will offer him a full-time, permanent position” (Stavans, 2011, p. B7).

Arbusto finished high school in California in 1999. He went on to a community college, paying for school with a combination of private scholarships, part-time work as a laborer, and tutoring Hispanic migrant children. In 2001, he transferred to a state university in California. He earned a degree in Hispanic and French studies *summa cum laude* from that university in 2004. Arbusto went on to graduate school in the Midwest on a full scholarship the next year. He graduated in 2006 and then applied and was admitted to a Ph.D. program on the East Coast (Stavans, 2011).

Throughout his years in college, Arbusto often used a fake Social Security number. When it was discovered that the number was fake, he was called into administrators’ offices.

When he was unable to present proof of legal status in the U.S., he would explain the truth: that he was an undocumented student enrolled in the college. Depending on the situation, administrators would allow him to continue or tell him he had a specific amount of time to resolve the issue. As far as he knew, they never reported him to the authorities. Stavans (2011) contended that a paradox was created when educators allowed an undocumented student to continue with his education, but did nothing to push for legal pathways to citizenship.

Shortly after Arbusto received his Ph.D., he considered two options for the future. The first was to find a job in construction; the second was to apply for a Ph.D. program in Canada. This would mean that he would have to go through a second Ph.D. program, but he hoped that if accepted, he would have legal status in Canada as a student (Stavans, 2011). Without legal reform, Arbusto's future in the United States and his ability to contribute to the community with an earned Ph.D. was severely limited.

A review of the literature on undocumented students, including academic research, court cases and legislative activity, shows that views on access to higher education for undocumented students vary widely across the country. Although immigration is considered the responsibility and authority of the federal government, there is no clear federal policy regarding undocumented students and higher education. Because of this, a variety of laws and policies have been enacted across the country on the state level to regulate access to higher education for undocumented students.

### **Chapter 3: Methodology**

This chapter begins with a restatement of the research problem and the research questions. Next, I describe the study design. I discuss the recruitment procedures and the interview participants. Subsequently, I review the data collection and data analysis. Finally, I go over the role of the researcher and the steps that were taken to ensure the credibility of the research.

#### **Restatement of the Research Problem**

Although immigration is considered the responsibility and authority of the federal government, there is no clear federal policy regarding undocumented students and higher education. This leaves the power to regulate undocumented students in higher education to state governments. In Virginia, there is no specific state-wide policy that addresses undocumented students and admission and enrollment in public higher education. Because of this, policies and practices related to the admission and enrollment of undocumented students are created at the university level. There is, however, state policy in Virginia related to legal immigration status and eligibility for in-state tuition. This creates a complex dynamic in which immigration-related practices, which are legally regulated on the federal level, are actually determined on the state and institutional level. Through interviews with admissions professionals at Virginia, public 4-year colleges and universities, the following research explored the application of school-level policies and practices related to undocumented students. The research focused on the implementation and application of undergraduate policies and practices.

#### **Research Questions**

The following research questions informed the study design. Policies and practices at Virginia, public 4-year colleges and universities regarding undocumented students and admission

and enrollment differ from institution to institution. The research focused on policies and practices related to undergraduate students. The research questions addressed “admission” and “enrollment” and “ability to qualify for in-state tuition” separately, since they can be considered distinct barriers to accessing public higher education in Virginia.

- a. How do Virginia, public 4-year colleges and universities admissions officials apply their policies and practices related to undocumented students and undergraduate **admission** to their universities?
- b. How do Virginia, public 4-year colleges and universities admissions officials apply their policies and practices related to undocumented students and undergraduate **enrollment** to their universities?
- c. How do Virginia, public 4-year colleges and universities admissions officials apply their policies and practices related to undocumented undergraduate students and the ability to **qualify for in-state tuition**?

### **Study Design**

A descriptive, qualitative case study design was used for this research. The “case” or bounded system for this research was Virginia, public 4-year colleges and universities. Through interviews with admissions professionals at Virginia, public 4-year colleges and universities, the research explored application of school-level policies and practices related to undergraduate undocumented students.

Maxwell (2013) pointed out that there are several “intellectual goals” for which qualitative studies are especially appropriate. One is gaining participants’ perspectives. With qualitative research, the meanings, intentions, and beliefs of participants are crucial to the research. While physical events and behaviors remain important, qualitative research also

examines how participants interpret events and actions and how those interpretations influence their behavior (Maxwell, 2013; Patton, 2002). In this research on undocumented students and higher education in Virginia, the perspective of admissions officials was an essential part of the research. While it was important to learn the policies related to undocumented students at each institution, it was equally important to understand the perspective of those who are responsible for implementing those policies.

A second goal for which qualitative research is appropriate is understanding the specific context in which a research participant functions, as well as understanding how that context affects the participants' actions. Unlike research in a laboratory, where the goal is to produce results that are "context free," qualitative research depends on context to inform the analysis. The circumstance or occurrence being studied must be understood as a whole (Maxwell, 2013; Patton, 2002). In order to gain an understanding of the larger picture, qualitative research depends on "nuance, setting, interdependencies, complexities, idiosyncrasies, and context" (Patton, 2002). In Virginia, each university has different admissions practices and may approach the enrollment of undocumented students differently. The political and administrative contexts in which the interview participants function help shape this research.

In order to understand the context in which a research participant functions and how the context influences the participant, research can only be conducted with a limited number of participants. This approach maintains the individuality of the participant. It also allows for an understanding of how practices may be shaped by unique circumstances (Maxwell, 2013). This research on undocumented students focused on undergraduate policies and practices at 4-year public institutions within Virginia with one interview at each institution, thus ensuring a limited

number of participants. With different universities following different policies and practices, it is important to acknowledge and understand the unique circumstances of each participant.

Another strength of qualitative research is an emphasis on the process. While outcomes remain important, qualitative research allows for a focus on the process that creates the outcome (Maxwell, 2013). For this research on undocumented students and higher education in Virginia, the focus was not on the outcome of the process. The research did not examine the number of undocumented students who enroll in Virginia public colleges and universities, but instead examined how policies are applied during the admissions and potential enrollment process.

The specific, qualitative design used was a case study. A researcher “would want to do case study research because you would want to understand a real-world case and assume that such an understanding is likely to involve important contextual conditions pertinent to your case” (Yin, 2014, p. 16). The case or bounded system in this research was the state of Virginia. The research looked at the real-world case of undocumented students and access to Virginia public colleges and universities. The context of the policy application at each institution was a key part of the research.

A case study also is appropriate when the types of research questions asked are “how” or “why” questions, when the researcher has limited impact on the behavioral events, and when the primary focus is on contemporary, rather than historical, issues. A case study’s strength is the capacity for the researcher to examine a wide variety of evidence, including interviews and documents, to gain an in-depth understanding (Yin, 2014).

“How” and “why” questions lead to more explanatory responses. Because these types of questions deal with operational issues rather than frequencies or occurrences, they are appropriate for a case study (Yin, 2014). In order to find out how policies and practices related

to undocumented students are applied in higher education, “how” questions must be asked. The goal was to find out “how” and “why” policies and practices are applied, not to learn the frequency of the admission or enrollment pattern (Yin, 2014).

This research on undocumented students also is appropriate for a case study as it looked at how policies and practices are applied now, not in the past. The act of interviewing admissions professionals should have limited impact on how these policies are applied (Yin, 2014).

The “case” or bounded system for this research was Virginia, public 4-year colleges and universities. The research focus at these institutions was on undergraduate policy. Within Virginia there are 15 public 4-year colleges and universities (see Appendix A). These institutions enroll more than 200,000 students across the state. Nearly 169,000 of these students are undergraduates. Institutions range in size from a total enrollment of fewer than 2,000 to an enrollment of nearly 34,000 at Virginia’s largest university (SCHEV website).

### **Recruitment Procedures**

I invited admissions professionals in leadership roles at 12 of the 15 Virginia, public 4-year colleges and universities to participate in an interview for the purposes of data collection and analysis. Admissions professionals were selected for their knowledge of admission, enrollment and residency policies and practices at both the institutional and state level. All 12 invitees agreed to participate. I also invited a participant from my institution, Virginia Commonwealth University, to participate in a pilot interview. Because of a potential conflict of interest, data from my institution were not included in the analysis. In order to maintain confidentiality and help ensure that data could not be attributed to specific schools, two Virginia public, 4-year institutions were intentionally excluded from the research.

Invitations to participate were sent via e-mail. The e-mails explained the purpose of the research and requested an in-person interview. Interview times were scheduled and confirmed via e-mail. Participants were told in the e-mail that the names of interviewees and individual schools would not be included in the study. In one instance, a participant requested the questions in advance, and that participant was provided sample questions via e-mail. Consent information sheets were given to each interviewee in advance of the interview, explaining the purpose of the study and confirming the confidential nature of the research.

Participants were also asked via e-mail whether there was a written policy on undocumented students that could be shared. Initially, the research design proposed reviewing and analyzing written policies. However, since only three of the 12 analyzed schools had written policies, this aspect of the initial research design was eliminated.

### **Participants**

A total of 12 admissions professionals participated in the study. They had an average of 20 years of admissions experience, and no one had fewer than ten years of experience in the field. Although specific job titles were not included in this research in order to maintain confidentiality, all of the interviewees had leadership roles which required significant administrative and management responsibility. Six of the interviewees were female, and six were male. The participants represented a diverse group of colleges and universities located throughout Virginia and serving a broad range of Virginia and non-Virginia undergraduate students.

### **Data Collection Procedures**

I collected data in person, using a semi-structured interview protocol. Each interviewee was asked similar questions, with some probes for each question determined in advance and



other probing questions asked as needed during the interview. Consistency of questions helped to ensure uniformity throughout the interviews (Patton, 2002).

Questions were created based on the literature review, which included academic articles, court cases, legislative activity and administrative policies. During the interviews, participants were asked to react to an admissions scenario, respond to opinion-based questions and discuss policies and procedures within their offices. Example interview questions are below:

*An undergraduate student applies to your university. She is not a U.S. citizen, not a Permanent Resident, not an Asylee, and is not here in the U.S. on a valid visa. How is her application handled?*

*What do you believe the biggest challenges are related to undocumented students and higher education?*

A more extensive list of the interview questions can be found in Appendix B.

A Virginia Commonwealth University participant piloted and tested the initial interview protocol. This interview was held on VCU's campus. The focus of this pilot interview was not on the data in the interview responses, but instead was on the interview protocol. The pilot interview presented an opportunity to test the interview process and interview questions. The interview questions were revised based on input from the pilot participant and review of the interview notes (Maxwell, 2013). For example, the pilot interview included questions that asked interviewees about state and federal laws. After the pilot interview, I determined that the focus of the interview should be on the participants' experiences, perceptions and opinions, not their knowledge of state and federal laws. I concluded after the pilot interview that the questions about state and federal laws could be interpreted by the participants as quiz or test questions, not interview questions, so the questions were removed.

Once the pilot interview was completed and the interview questions finalized, in-person interviews were scheduled. Participants were contacted via e-mail with an interview request, which included the topic of the research. Additionally, participants were told that neither their name nor the name of their university would be used in written analysis.

Ten interviews were held on the participants' campuses, and two interviews were held in the Greater Richmond area. As each interview was scheduled, the college or university was assigned a letter code (A–L). This allowed me to keep interview records, memos and transcripts organized without naming the college or university in the research notes.

Each participant received the consent information sheet at the beginning of the interview. The assurance of confidentiality was restated before each interview, emphasizing that neither the school nor the participant would be named in the research. Each interview was audio recorded. Participants were told that the interview would be transcribed, and that they would have the opportunity to review the interview transcription. Additionally, post-interview memos were written (Miles & Huberman, 1994). These post-interview notes or field notes were used to document information provided outside of the official, recorded interview.

Audio recordings were sent to a professional, paid transcriber for written transcription. In order to ensure confidentiality, the transcriber signed a confidentiality statement. To ensure accuracy, I read each written transcription while listening to the audio of the interview. Once the written transcription was reviewed for accuracy, an electronic copy was e-mailed to the participant for review. Each participant had the opportunity to review the transcription from the interview, make any corrections or give any additional comments. None of the participants made adjustments to the transcripts.

## **Data Analysis Procedures**

Coding and analysis methods were developed with guidance from texts by Miles and Huberman (1994) and Charmaz (2006). Coding is the most important link between data collection (in this case the interviews with admissions professionals) and the development of themes for analysis (Charmaz, 2006). An inductive coding technique as described by Miles and Huberman (1994) was used. Therefore, coding began after all the interview data were collected. This technique allowed me to review interview data as a whole, in its context, as well as to manage the wide variety of responses. Miles and Huberman (1994), described this as “essentially the ‘grounded’ approach.” They went on to note that by using this technique, the researcher gets “more of a code-in-use flavor than the generic-code-for-many uses generated by a prefabricated start list” (Miles & Huberman, 1994, p. 58).

The coding process allows the researcher to label segments of interview data while at the same time categorizing and summarizing each piece of data. In the first phase of the coding process, the researcher labels the data. In the second phase, the researcher synthesizes the data by sorting and organizing the most frequently used labels or codes (Charmaz, 2006).

I coded interviews manually without the use of a software program. Transcriptions were reviewed line-by-line, and labels were hand written in the right hand margin of the interview transcriptions. Once all interviews were coded, the labels were typed on a table that included the participant’s assigned letter code (A–L) and page number of the interview, so that the context of the information could be reviewed if necessary. More than 700 lines of data were created by coding the twelve interviews. Each line of each table, which was a separate label, was cut out so that there were more than 700 data strips. Within the hundreds of lines of data, there was often an overlap of the same codes. These strips were then organized by topic area in order to begin to

develop themes. For example, “lacking clarity from the state,” “lacking clarity from the feds,” and “conflicting direction from feds/state” were individual labels. These labels then became part of a larger topic area of “lacking clarity on policy.”

Themes began to emerge. These themes were identified from the topics admissions administrators most frequently mentioned during the interviews. Multiple themes emerged in two broad categories: 1) themes related to the experiences of undocumented students, and 2) themes related to policy and practice and the professionals who create and implement those policies and practices.

### **Role of the Researcher**

Reflexivity recognizes that the researcher is a part of the environment she studies and acknowledges that research participants will always be influenced to some degree by the researcher. Reflexivity also encourages the researcher to pay attention to the origins of her political, social, and cultural ideologies while remaining mindful of the perspectives of research participants. Sound qualitative research includes comments from the researcher acknowledging that her experiences and culture may influence research findings (Creswell, 2014; Maxwell, 2013; Patton, 2002).

I have worked in higher education for more than 20 years. During that time, I have spent more than ten years in the field of admissions. Currently, VCU’s Office of Admissions is one of the offices I oversee. My job includes recruiting and enrolling students in college. I believe that access to education is of vital importance both for individual students and for our society as a whole.

I also believe that with the vast number and diversity of 4-year and 2-year colleges in Virginia, there is space for every academically prepared student in a college or university. I do

not accept the argument that undocumented students are taking other students' spaces in higher education.

Additionally, I have participated in discussions and meetings about the creation and interpretation of policies and practices related to admitting and enrolling students at VCU. I am aware of the complexities that exist from an administrative perspective, as well as the political implications within a university that these decisions related to enrollment management, generally, and undocumented students, specifically, can have.

Finally, I have working relationships with admissions professionals in leadership roles in many of the Virginia, public 4-year colleges and universities. These relationships allowed me access to the admissions professionals whom I interviewed. I believe these relationships also meant that the participants trusted that I would use the information they shared with me responsibly, and they took seriously my assurance that the information would remain confidential. I believe that the interview participants were more forthcoming with me because of our relationships, as well as my years of experience, than they might have been with an unknown researcher. However, the relationships also meant that I brought biases about the participant and the participant's school to the interview. I maintained my respect for the interview participants' position and worked to understand their views, but also kept in mind that my goal was not to adopt their views (Charmaz, 2006).

In order to document and recognize my own biases throughout the interview process, I created a memo after every interview. This helped me to separate my own views during the data collection process and helped to remind me of these differences during the data analysis.

Although my professional experience, as well as my political and educational ideologies, meant

that I brought biases to the research, I believe that my professional experience also gave me valuable insights into the data that a researcher with a different background would not have.

### **Ensuring Credibility**

There are several strategies available to increase the credibility of qualitative research. One is triangulation, which Maxwell (2013) defined as “collecting information from a diverse range of individuals and settings, using a variety of methods” (p. 128). This approach helps limit the risk that the research conclusions will be based on the biases of one research technique and allows for the cross-validation of findings (Maxwell, 2013; Patton, 2002). In this research, initially both written policies and interviews with admissions professionals were going to be analyzed, using triangulation to increase the credibility of the research. However, after beginning the research it was determined that only three of the 12 participating colleges and universities had written policies, so this aspect of the proposed research design was eliminated.

In addition to the interviews with admissions professionals affiliated with specific Virginia colleges and universities, a representative from the State Council of Higher Education of Virginia (SCHEV) was interviewed. This interview focused on state-wide policies and practices related to undocumented students and eligibility for in-state tuition. Like the interviews with admissions professionals, this in-person interview was professionally transcribed, and the interviewee was allowed the opportunity to review the transcription and make adjustments as necessary. This interviewee did make some minor edits to the transcript. Unlike the interviews with the admissions professionals, with the consent of the interviewee, the name and organization with which the interviewee was affiliated was not kept confidential. The results from the SCHEV interview were analyzed and used to validate the accuracy of state policy-related responses in the 12 school-based interviews.

A second strategy to ensure credibility is using rich, detailed data in order to provide a true picture of the research topic. Researchers can achieve this through descriptive and comprehensive data collection. Specifically, interviews need to be transcribed word-for-word in order to capture all of the relevant information (Creswell, 2014; Maxwell, 2013). For this research, interviews were transcribed verbatim by a professional transcriber. After each interview was transcribed, to ensure accuracy, I read through the transcriptions while listening to the audio of the interview.

Respondent validation, also known as member checking, is another strategy recommended to ensure credibility. This occurs when the interviewer provides the interviewees the opportunity to provide feedback about the interview data and conclusions. Member checking helps ensure that what interview participants say and do is not misinterpreted by the researcher (Creswell, 2014; Maxwell, 2013). Maxwell (2013) also points out that the feedback from respondent validation is no more or less valid than the responses to the original questions. Both the initial interview notes and analysis and the feedback from the participants are indications of credibility.

As participants for this research were contacted via e-mail to schedule in-person interviews, they were told that the interview would be recorded and transcribed and that they would then have the opportunity to review the interview transcription. After the interview was professionally transcribed and the written transcription was reviewed to ensure accuracy, an electronic copy was e-mailed to the participant for review. Each participant had an opportunity to review the transcription from the interview, make any corrections or give any additional comments. None of the university interviewees made any changes to their transcripts. The SCHEV interviewee made minor edits to the transcript he reviewed.

Paying attention to discrepant evidence and negative cases also is a key to ensuring credibility. It is necessary to acknowledge the pressure to disregard data that do not easily and clearly support research conclusions and have a plan to deal with that pressure. All data, including data that do not appear to support the research conclusions, must be thoroughly analyzed. This could mean that research conclusions are modified. Depending on the results, the researcher may have to include contrary information and let the reader draw conclusions independently (Maxwell, 2013). In this research, themes were created based on topics routinely mentioned during the interviews. However, the findings pay attention to discrepant evidence by presenting contrary views and showing that not all interviewees agree on all of the issues associated with policies related to undocumented students.

### **Summary of Methodology**

A descriptive, qualitative case study design was used for this research, which focused on undergraduate policies and practices at Virginia, public 4-year colleges and universities regarding undocumented students and admission, enrollment, and the ability to qualify for in-state tuition. Data from in-person interviews with 12 admissions professionals were analyzed with the use of manual coding. Themes were developed from the topics administrators most often mentioned during the interviews. Credibility was ensured through triangulation; the use of rich, detailed data; respondent validation; and attention to discrepant evidence.



## Chapter 4: Findings

This chapter begins with a brief overview of the data collection. Next, I give a breakdown of the admissions, enrollment and residency (in-state tuition) policy and practice findings from the interviews. I point out the range of concerns of confidentiality among participants as it relates to the context of their policy application. Then, I discuss the seven themes that emerged from interviews with 12 admissions professionals in Virginia, public 4-year colleges and universities. These themes are grouped into two categories: 1) those related to the experiences of undocumented students including *funding challenges, fear, lack of knowledge of higher education processes, and post-graduation challenges*; and 2) those related to policy and practice and to the professionals who create and implement those policies and practices. The themes that emerged in the latter category are *changing demographics, ambiguity, and professional and personal values*.

### Overview of Data Collection

Interviews were conducted with 12 admissions professionals in leadership roles with the following research questions in mind:

- a. How do Virginia, public 4-year colleges and universities admissions officials apply their policies and practices related to undocumented students and undergraduate **admission** to their universities?
- b. How do Virginia, public 4-year colleges and universities admissions officials apply their policies and practices related to undocumented students and undergraduate **enrollment** to their universities?

- c. How do Virginia, public 4-year colleges and universities admissions officials apply their policies and practices related to undocumented undergraduate students and the ability to **qualify for in-state tuition**?

Participants were interviewed in person, and confidentiality was assured. These professionals represent a diverse group of 12 universities and colleges across Virginia. Each interviewee had significant administrative responsibility at the institution, and all interviewees had more than a decade of experience in admissions.

### **Policy and Practice Findings**

Of the 12 institutions in this study, five knowingly enroll undocumented students; six admit undocumented students but do not knowingly enroll undocumented students; and one institution does not admit or enroll undocumented students. None of the schools offers in-state tuition to undocumented students. The interview with the SCHEV representative confirmed that while individual institutions in Virginia may have differing policies and practices related to admitting and enrolling undocumented students, state policy does not allow schools to offer undocumented students in-state tuition (L. Andes, personal communication, May 8, 2015).

Schools that admit undocumented students, but do not enroll undocumented students, handle this in a variety of ways. Most place a registration hold on the students' records to ensure that they will not be able to enroll. In these cases, applicants are told that they are academically admissible, but they will need to gain the appropriate immigration status in order to enroll. Some schools also offer a time period for the resolution of the immigration status, offering admission and enrollment for a future semester if the immigration status is resolved.

## **Confidentiality**

Interviewees were guaranteed confidentiality, both in writing and in person. This confidentiality included the name of the participant and the name of the participant's college or university. The importance of confidentiality to the participants varied. One participant said "you can quote me on that" during an interview. This participant had no concerns about confidentiality. Other participants expressed apprehension about confidentiality. For example, one participant wanted to make sure that the institution would not only not be named, but also that it would not be individually described. Another participant e-mailed to confirm confidentiality after having reviewed the consent information form and receiving a verbal confirmation of the confidentiality. The wide array of opinions on confidentiality is an important finding. It shows the context in which the participants apply their institutions' policies and practices related to undocumented students and calls attention to the idea that the issue of undocumented students and access to higher education can be a sensitive topic.

## **Themes**

Analysis of the 12 interviews produced major themes based on the topics admissions administrators mentioned most frequently. Specifically, multiple themes emerged in two broad categories: 1) themes related to the experiences of undocumented students, and 2) themes related to policy and practice, and to the professionals who create and implement those policies and practices. Below, I discuss each of these broad themes and the specific components of each.

### **Themes related to the experiences of undocumented students.**

The first category focuses on themes related directly to the experiences of undocumented students. While the research questions for this study concentrate on policy and practice, the interviewees all discussed issues from the students' perspective. Specifically, administrators

cited challenges faced by undocumented students. These concerns for and views of undocumented students set the context for how the interviewees interpret and implement the policies and practices at the institutions. In this first category, which focuses on the challenges faced by undocumented students in Virginia, the interview data were categorized into four themes: *funding*, *fear*, *lack of knowledge of higher education processes*, and *post-graduation challenges*.

Interviewees consistently mentioned funding challenges. When discussing funding as a barrier to education for undocumented students in Virginia, interviewees mentioned both challenges related to the higher cost of out-of-state tuition and to the lack of access to state or federal financial aid. As of July 2013, 15 states throughout the country had extended in-state tuition eligibility to undocumented students (NSCL, 2013). Virginia is not one of those states. In Virginia, undocumented students who are allowed to enroll in public colleges and universities are not eligible to be considered for Virginia residency. Undocumented students also are ineligible for state and federal financial aid (L. Andes, personal communication, May 8, 2015), making it even more difficult for them to afford college if admitted and allowed to enroll. As three different interviewees described it:

So, for an undocumented student...where it really comes into play is for domicile and financial aid. A student can be admitted to the university [and allowed to enroll], but there will be barriers to their enrollment based on [not] receiving in-state rates and financial aid.

I've had the opportunity to meet students who don't even really want to come forth with [undocumented status], but they do to make it known that they are struggling. They're

doing well in school, they want to be able to qualify for aid, and we're not giving them a dime. And they are working as hard as any students I've met.

There are other universities in the Commonwealth who [enroll undocumented students], and say we welcome all students, but obviously it is a barrier if you're admitted and you can't pay out-of-state tuition and you can't qualify for federal need based aid.

The three quotes above are from administrators at institutions that do enroll undocumented students. According to a 2013 SCHEV report, non-resident undergraduate students enrolled in Virginia, public 4-year colleges and universities can expect to pay an average of \$15,877 more per year in tuition and fees than an in-state student pays (SCHEV, 2013). The interviewees realized that even with access to enrollment at their institutions, the cost of out-of-state tuition for an undergraduate student is significantly higher than in-state tuition. This includes, for example, an undocumented student who has lived in Virginia almost all of his or her life and attended kindergarten through 12<sup>th</sup> grade in Virginia, as described by this participant:

When you're talking about a student that has essentially spent their whole high school career, a number of years, living in a location, attending a high school just like everyone else, and probably, in many situations, not even realizing what their situation is.

Even a student in the situation described above by one of the interviewees -- without legal documentation -- who has attended Virginia schools for years, will be required to pay out-of-state tuition to attend any public, 4-year college or university in Virginia in which he or she is able to enroll.

As noted by the interviewees and reflected in the previous quotes about funding challenges, the lack of financial aid also constitutes a funding barrier for undocumented students. Across the country, undocumented students are ineligible for federal financial aid (Salisbury, 2003). As Salisbury (2003) points out, they face barriers even in states that work to ensure access to higher education for undocumented students. Without access to federal financial aid, even undocumented students in states with access to in-state tuition and state aid face funding challenges. In Virginia, with no access to in-state tuition and no access to state or federal aid (L. Andes, personal communication, May 8, 2015), the funding challenges are likely to be insurmountable for some students even at schools at which they are allowed to enroll.

A second theme in this category that relates to challenges experienced by undocumented students is *fear*. One interviewee summed it up this way:

I think there are people who are afraid to come forward and say what status they're in, that there's somehow going to be retribution.

Fear also is a common topic in the undocumented student profiles in Hernandez et al.'s (2010) research. One of the profiles in their study highlights "Cecila." As a college student, Cecila ran for student body office, a position that paid a stipend. After securing the position, she was required to submit employment paperwork in order to be paid the stipend. She feared that if she disclosed her situation, she would not only lose her position, but also possibly jeopardize her family's residence in the U.S (Hernandez et al., 2010).

During interviews with the admissions professionals, there was discussion about how undocumented students not only fear for themselves, but also fear causing harm to their family members who are often also in the country illegally. Hernandez et al. (2010) observe that often,

undocumented students must convince their families that enrolling in college is worth the risk of possible detention and deportation.

Additionally, the fear of losing an opportunity came up in interviews. One interviewee commented that:

Lack of information, misinformation, lack of funding, simply the ability to appreciate the process. I think so much of their time is spent with, ‘if I do this, what are the ramifications of me disclosing that I’m here in this status?’ I think some of the confusion about eligibility for even university funds and how much of a dream this really can be for them, and of course, the fear of being discovered and something taking place and then losing this opportunity.

This quote speaks not only to challenges due to fear, but also to the third theme within this category: *the lack of knowledge of higher education processes*. With different Virginia public colleges and universities having different policies related to admission and enrollment, interviewees commented on the impact that confusion could have on high school students, family members and even high school counselors. Some expressed concern that a lack of knowledge of higher education processes may deter undocumented students from applying for college.

I think there are even more students out there that aren’t applying, that aren’t even giving it a shot, and I think the more the door is opened the more we’ll see some students showing up.

The challenges that students face are slightly different from institutional challenges. For the student, I would say understanding the process and their school counselors

understanding the process. Being able to keep up with legislation and how it changes the rules and guidelines.

The lack of information because every state is going to handle it differently, every college is going to handle it differently...and I think it is a challenge for high school counselors. There could be a language barrier and this could be the first time they are going through the [college admissions] process. We make the admissions process complicated enough...I think there is still work to be done. I'm still getting calls from counselors. They're confused, the student is confused.

As one of the interviewees above notes, the college search and application process can be daunting enough for any U.S. high school student. The added confusion for an undocumented student who does not know which school will allow enrollment might be enough to discourage that student from even applying to college.

While challenges that undocumented students face during the college application and enrollment process were discussed during the interviews, participants also discussed concerns for undocumented students who are able to enroll and graduate, but would still likely have *post-graduation challenges*. Simply put by one interviewee,

What good does the degree do if [the undocumented student] can't put it to good use?

Other interviewees went into more detail with their observations:

Actually moving into the job market will be a problem because they don't have Social Security numbers. They can't go into the military. They can't go into law enforcement. You have a degree you can't use. Even looking at professional schools, medical schools,



pharmacy schools, there's going to be some difficulties there for them in getting into these programs depending on the rules and regulations.

Unless that student, that person who graduates, unless they get their citizenship, I think that they will be stopped along the way. There will always be a company that says 'why should I provide a job to someone who shouldn't be here as compared to someone who is a U.S. citizen?'

I'm almost certain the same ambiguousness that we have on the higher education side exists in the corporate world. So with the hiring practices...they would probably run into some of the same hurdles.

This reflects the struggles that Stavans (2011) and Hernandez et al. (2010) addressed in their work. For example, Hernandez et al. (2010) relayed "Maria's" frustrations after earning her undergraduate degree:

She soon realized that it did not matter how many degrees she had: she still would not be able to get a good job because of her residency status (Hernandez et al., 2010, p. 72).

Stavans (2011) conveyed similar frustrations in his article about "Jorge Arbusto."

Although Arbusto is a doctoral student, the challenges are similar. Arbusto has made his way through a mass of higher education barriers, only to complete his Ph.D. and have to consider construction as his most viable employment option.

While many interview participants did mention post-graduation challenges, some participants admitted that they had given little thought to what undocumented students might

face after graduation. One interviewee commented, “Wow. I don’t think I’ve really thought about it” and another,

I assume there are challenges with just getting a job....I don’t know how that works. Of course, there would be the fear of deportation if they do seek employment and they identify themselves at some point as undocumented.

For some of the interview participants, their professional focus was on the recruitment, admission and enrollment of students and therefore, the long term prospects of undocumented students had not been seriously considered. Other interviewees had previously thought about the challenges undocumented students would face post-graduation. However, when the question of employment did surface, interviewees all acknowledged that there would likely be a variety of barriers.

The themes in this first category – *funding, fear, lack of knowledge of higher education processes, and post-graduation challenges* – all relate to challenges faced by undocumented students. While each is a distinct theme, they also overlap in the lives of undocumented students. For example, a lack of knowledge of higher education processes could make funding challenges more complicated. Or, a fear of deportation might discourage undocumented students and their families from asking questions about admission and enrollment at schools across the state, which leads to a lack of knowledge of higher education processes. These four challenges do not exist in silos; they intersect in the lives of undocumented students in Virginia, creating complex challenges related to enrolling in college.

### **Themes related to policy and practice.**

While the first category of themes focuses on the student, the second category of themes to emerge is associated with policy and practice related to undocumented students and to the

policy makers and implementers. In this second category, there are three themes: *changing demographics*, *ambiguity*, and *professional and personal values*.

*Changing demographics* were frequently mentioned; in particular the growth of the Hispanic population. While interviewees often acknowledged that Hispanic students were not synonymous with undocumented students, they did believe that the growth of the Hispanic population could lead to an increase in the number of undocumented students. Virginia's public high school graduating classes are expected to continue to become more diverse. Specifically, the number of Hispanic public high school graduates is expected to increase from 5,000 in 2008-09 to nearly 14,000 in 2024-25 (WICHE's *Knocking at College Doors*). As one interviewee noted, "part of that increase will be an increase in undocumented students." Others spoke of it as an adjustment to recruitment practices:

As the population shifts to minorities becoming majorities...some of our traditional recruitment pipelines are changing. So, we have to all look at attracting Hispanic students to our campus to keep making our enrollment goals.

Others acknowledged the impact on services at the university as the enrollment of undergraduates potentially shifts:

The university needs to be able to adapt to that changing demographic...not make assumptions and have support services in place. We have Spanish speaking recruiters, but then you go to Financial Aid and we don't have anyone. So, I think we're slow...[there's] a committee to talk about changing demographics including faculty and student support...but I'm not sure that the university as a whole understands what this really might mean.

We are increasingly going to need more information and it's going to have to happen quickly because the number of these students is going to grow exponentially and we need to figure out how to serve them in the best way possible.

Whether it is a change to recruitment practices or an increase in services for enrolled students, interviewees recognized that demographic changes might lead to changes in how their offices or their universities operate. Although interviewees recognized that these operational changes were likely and often necessary, no interviewee from a school that does not currently enroll undocumented students specifically stated that the demographic change would necessarily result in a policy or practice change specifically related to the enrollment of undocumented students at the school.

*Ambiguity* related to policies and practices was a topic routinely mentioned by interviewees. As Zahariadis (2014) notes, ambiguity is not “an aberration, ambiguity is a fact of political life” (p. 50). In the following section, I first show that interviewees perceive that there is ambiguity associated with policy about undocumented students and higher education in Virginia at a variety of levels. While most of the interviewees would like more clarity, some participants pointed out that a lack of clarity enables institutions to maintain individuality. Next, I discuss the ways that ambiguity can lead to professional discretion, and the pros and cons of professional discretion. Following that discussion, I examine statutory ambiguity and how it relates to policy issues associated with undocumented students and higher education (MacIntyre, 1986; Shumavon & Hibbeln, 1986; Zahariadis, 2014). Finally, I connect the confidentiality findings mentioned earlier in this chapter to the ambiguity theme.

Many participants acknowledged that there was often political discussion on the state level about policies related to undocumented students, but little activity that brought about clarity.

The state has not been clear. It's even somewhat humorous that about every session of the state legislature, there is somebody trying to get [undocumented students] in-state rates....There's another bill saying that they need not enroll....Neither one ever passes and it stays in this ambiguous place of institution by institution. I've heard different people from different institutions say different things about their policy or practice.

There isn't any [clarity of direction given by the state]. Coming from [another state] that did really outline and have a solution for these types of situations, it's different coming to the Commonwealth and not having any type of direction on how to handle these particular students.

The guidance in terms of domicile and the benefits associated with in-state tuition and establishing domicile are the most confusing thing ever, both on the professional side and then if counseling actual students.

I don't think the state really knows what to do.

Many participants were concerned about this ambiguity and expressed interest in more clarity from the federal government, the state government or their own institution. Interviewees who sought more clarity believed that less ambiguity would lead to clearer policies, which would be helpful to them professionally and would be helpful to prospective students.

So, I think more clarity and more long term vision from the federal government would prove beneficial. You have individuals with great capacity to learn and succeed and contribute in an incredibly positive way for a society, but essentially the door is shut on them. Or, only partially opened...when you think of the country as a whole, we always need a more educated work force.

I think they have gotten the message that while we're not interested in them telling us how to do what we need to do, we're also looking for some guidance. As a public university, I think we should be a little more consistent with how we're choosing to accommodate or not accommodate.

We want to be consistent with what we do internally. But we also want to be consistent with what our sister institutions are doing. And we really should, as a public university...

While most participants expressed interest in clarity from the state, other participants focused on the positive aspects of the ambiguity. They pointed out that a lack of clarity from state and federal governments enables Virginia colleges and universities to maintain individuality. One interviewee specifically stated:

I don't know if I really would want [more direction from the state] because one size doesn't fit all.

One participant expressed concern that less ambiguous state policies on the admission and enrollment of undocumented students might lead to more oversight from the state on other admissions practices. Some students admitted to this interviewee's institution would not likely be admitted to some of the other institutions in Virginia. Other schools may be "a little bit more

strict” when it comes to high school GPAs and SATs. The participant felt that the diversity of Virginia, public 4-year colleges and universities and the diversity of the students admitted to these schools could be decreased with more direction from the state.

While ambiguity can cause confusion and a lack of coherence, it does not necessarily lead to weaker policies. Ambiguity also encourages innovation and imagination and can make new, more enlightened options possible (MacIntyre, 1986; Zahariadis, 2014). Ambiguous laws allow administrators to use their discretion to create and implement policies that are appropriate for their institutions. Just as Virginia, 4-year public colleges and universities determine academic admissibility of applicants, university administrators have the discretion to determine whether undocumented students are eligible to be considered for admission and/or enrollment.

Shumavon and Hibbeln (1986) summarized the pros and cons of administrative discretion. They pointed out that administrative discretion allows for much-needed flexibility in policy making decisions. For example, decisions can be adapted to local concerns, creating an environment in which there can be a diversity of decisions unique to specific situations. However, administrative discretion can be abused by decision makers who put private interest over the welfare of the public. It can be challenging for policy makers to control administrative discretion so that it is not abused by individuals (Shumavon & Hibbeln, 1986). In Virginia, administrative discretion has allowed universities to make determinations about undocumented students that university officials believe are best for their institutions and for the students they serve. While there was no indication of abuse of discretion in any of the interviews for this research, it is important to note that this is a potential result of discretion.

In addition to acknowledging and discussing ambiguity, several participants indicated that they believed the ambiguity was intentional.

Part of me feels like, they want to be gray. It's almost like they don't want to be held accountable for the decisions that we have to make and I think that's wrong. If they're vague and then we make decisions to the contrary, well, then we're not accountable.

The state doesn't want to say 'yes' [enroll undocumented students], but they're probably quite happy that some universities are serving these students.

MacIntyre (1986) discusses "statutory ambiguity," which he describes as "substantively vague and imprecise laws," and argues that there are several reasons for this intentional ambiguity (p. 68). Although MacIntyre focuses on Congressional ambiguity, the factors he lists as constraints to statutory specificity and incentives to statutory ambiguity can be applied to other law and policy making bodies. One of the factors MacIntyre references is "social, economic and geographic variety" (p. 69). He points out that our country is so diverse that it becomes a challenge for Congress to navigate the multitude of views and opinions. This could be argued as a challenge for federal law and policy makers as it relates to immigration, and for state-level politicians and administrators as it relates to access to higher education for undocumented students. There are so many differing opinions that it is easier to leave the policy vague and have it interpreted on an administrative level (MacIntyre, 1986).

MacIntyre (1986) also maintains that there is an "absence of compelling political reasons" for less ambiguity, specifically, that "the electoral rewards" ambiguity (p. 74). He points out that if there is dissent among constituents, then ambiguity may be a safer option than specificity for a legislator (MacIntyre, 1986). Because immigration and the rights of non-U.S. citizens are controversial topics in which there are disagreements on the federal and state level, it



may be safer for federal and state-level policy makers to maintain vague and ambiguous laws and policies.

While MacIntyre's (1986) focus was on intentional Congressional ambiguity, the interviewees also mentioned intentional ambiguity at their institutions. One interviewee talked about trying to create a written university policy. The administrator drafted a statement that reflected the university practice at the time - admission and enrollment for DACA students, but not for undocumented students. According to the interviewee, the policy was reviewed by the university president and the interviewee was told the policy would go to the university board for final approval. Before the policy was submitted to the board, the university's attorney reviewed the draft. At that point, the interviewee received a call from the attorney, who recommended that the policy not be submitted for an official board vote. The attorney described the policy as a "no win situation." The interviewee was instructed to continue the practices currently in place, but without an official university policy. A lack of university level written policies about undocumented students and admission and enrollment is not unusual at Virginia, public 4-year colleges and universities. Of the 12 colleges and universities used for this research, only three have official, written policies. Some interviewees believe the lack of a written policy is because of intentional ambiguity:

The university has kind of taken the stance that if there's no policy...we have culpable deniability.

...we do not have any specific code for [undocumented students], and again, that went back to deniability...to be able to say 'we don't know, we don't know how many of our students [are undocumented]'

Not only are participants working with policies and practices with a significant amount of ambiguity, but they are doing so with a topic that, for some, is sensitive. That can be seen in the concerns for confidentiality that were expressed by some of the interviewees and discussed earlier in this chapter.

Interviewees regularly discussed the ambiguity of policy and practices related to undocumented students and higher education in Virginia. Analysis of the interviews shows that the ambiguity has led to administrative discretion. While most interviewees were frustrated by the ambiguity and sought more guidance, others acknowledged the freedom and independence it allows individual universities.

Finally, many of the professionals expressed strong *professional and personal values* about issues related to undocumented students. These comments came from administrators both at universities that enroll undocumented students and at universities that do not enroll undocumented students. Some were personally torn about the conflict between access and legality, while others felt strongly that access to higher education is important for all academically competitive high school students in Virginia. Those that felt access was important often spoke from the perspective that an undergraduate degree helps students become contributing members of society.

Interviewees clearly felt compassion for academically strong students. The interviewees are admissions professionals who not only want intelligent, hard-working students to have access to higher education in general, but by the nature of their professions, want academically strong students to enroll at their institutions. It was hard for some to have to deny students based only on their lack of immigration status. Many saw it as a waste of talent and felt that the long-term impact of not educating these students would be negative.

...there was a little personal turmoil. I could let her slip through [even though] that's against policy, but...she's a great student.

...when you have a student, particularly as a public institution, [who] has accomplished great things in and out of the class and in every sense has achieved comparable to what their classmates have, when the only thing getting in the way of that student being able to enroll here is that...the parents brought the student here, it's very hard for me personally to see us excluding a student who has done everything they can the right way. Not to mention, it's a shame if this student isn't able to take advantage of what we have to offer, it's a missed opportunity to have a very talented individual make the most of their talents and be able to contribute.

Some interviewees focused on the issue as a national challenge. Many were familiar with the DREAM Act, or aspects of it, and they expressed hope that changes would be made at the federal level.

I would hope that the country would get to a situation where we could accept...more undocumented students...if we provide them primary and secondary education. They should be allowed to stay in this country which they look at as their home, to be educated so they can contribute positively to our nation.

I feel strongly that a student who has been in this country deserves the opportunity to be at my institution if they are so qualified....I just feel strongly about it...it's tough, the law has got to change.

Other participants focused more on students as Virginians and believed that undocumented students who grew up in Virginia should be treated as other students who have grown up in the state, including the potential for consideration for in-state tuition.

They've been here in the state, they've grown up here in the state, for some this is all they know. They've gone through the secondary school systems and some of them are quite bright. So, to not have any avenues in which to truly process them and transition them into post-secondary education is troubling.

I believe they should be afforded the rights and privileges of any student in my state. You know, if they can't get federal funding, that's a shame, because to charge them three times what we're charging an in-state student is not fair...then the challenge becomes being able to afford it, and they can't.

While there was regularly discussion about wanting deserving students to have access to higher education, there were interviewees who were torn about whether an undocumented student should be allowed to enroll in Virginia public institutions. They wavered between serving Virginians who are legal citizens of the United States and staying true to the character of our country, which was founded by immigrants.

I have mixed feelings about it. I'd like to think that this is a place, this being Virginia, and the United States, that was founded by and built by immigrants. And so where's the happy medium between regulation and security and all of those things that play into immigration and being fair to human beings? But as a steward of the public trust, we are at some level here to serve the sons and daughters of the Commonwealth. So, where's the balance?

Although the thoughts and opinions on policy implementation differed among professionals, the use of words and phrases such as “troubling,” “turmoil,” “a shame,” and “not fair” to describe policies and practices related to undocumented students shows a genuine concern from admissions professionals for both undocumented students and for the institutions at which the professionals work. The interviewees do not simply implement policy that is handed down to them. They are concerned about the impact the policies will have on students, as well as on their institutions.

### **Summary of Findings**

Admissions professionals at 12 Virginia, public 4-year colleges and universities were interviewed about practices and policies related to undocumented students. Of the 12 institutions, five knowingly enroll undocumented students; six admit undocumented students but do not knowingly enroll undocumented students; and one institution does not admit or enroll undocumented students. None of the schools offers in-state tuition to undocumented students. Seven themes emerged from the 12 interviews, and these themes have been grouped into two categories. The themes in the first category relate to the experiences of undocumented students and include *funding challenges*, *fear*, *lack of knowledge of higher education processes*, and *post-graduation challenges*. The themes in the second category are related to policy and practice, and the professionals who create and implement those policies and practices. The themes that emerged in this category are *changing demographics*, *ambiguity*, and *professional and personal values*.

## **Chapter 5: Discussion and Conclusion**

In this chapter, I first give a brief overview of the research problem, the methodology for analysis, and the findings from the analysis. Next, I describe the significance of the research. This includes how the findings can be used to illustrate the theory of wicked problems and how the research contributes to and supports public policy literature, as well as the current literature on undocumented students. In the subsequent section, I go over the research limitations. The chapter ends with suggestions for future research.

Although immigration is considered the responsibility and authority of the federal government, there is no clear federal policy regarding undocumented students and higher education. This leaves the power to regulate undocumented students in higher education to state governments. In Virginia, there is no specific state-wide policy that addresses undocumented students and admission and enrollment in public higher education. Because of this, policies and practices related to the admission and enrollment of undocumented students are created at the university level. There is, however, state policy in Virginia related to legal immigration status and eligibility for in-state tuition. This creates a complex dynamic in which immigration-related practices, which are legally regulated on the federal level, are actually determined on the state and institutional level.

This research explored the application of school-level policies and practices related to undocumented students. A descriptive, qualitative case study design explored the research questions below. The research questions addressed “admission” and “enrollment” and “ability to qualify for in-state tuition” separately, since they can be considered distinct barriers to accessing public higher education in Virginia.

- a. How do Virginia, public 4-year colleges and universities admissions officials apply their policies and practices related to undocumented students and undergraduate **admission** to their universities?
- b. How do Virginia, public 4-year colleges and universities admissions officials apply their policies and practices related to undocumented students and undergraduate **enrollment** to their universities?
- c. How do Virginia, public 4-year colleges and universities admissions officials apply their policies and practices related to undocumented undergraduate students and the ability to **qualify for in-state tuition**?

Data were collected from 12, in-person interviews with admissions professionals at 12 different Virginia, public 4-year colleges and universities. Of the 12 institutions, five knowingly enroll undocumented students; six admit undocumented students, but do not knowingly enroll undocumented students; and one institution does not admit or enroll undocumented students. None of the schools offers in-state tuition to undocumented students.

After data collection, the interviews were analyzed for themes. These themes were developed from the topics admissions administrators most often mentioned during the interviews. Multiple themes emerged in two broad categories. The first category focused on themes related to the experiences of undocumented students and included *funding challenges*, *fear*, *lack of knowledge of higher education processes*, and *post-graduation challenges*. The second category centered on themes related to policy and practice and to the professionals who create and implement those policies and practices. Themes in the second category were *changing demographics*, *policy ambiguity*, and *professional and personal values*.

## **Significance of the Research**

### **Undocumented students and access to higher education in Virginia: wicked problems.**

Rittel and Webber (1973) originally coined the term “wicked problems” to describe governmental planning problems, especially those related to social or policy planning. Challenges related to undocumented students and access to higher education can be conceptualized as wicked problems. While there is literature on wicked problems and higher education generally (Watson, 2000), the current literature does not include undocumented students and access to higher education in Virginia as illustrations of wicked problems. This research on policies and practices related to undocumented students and access to higher education provides another illustration of the concept of wicked problems, thus adding to the literature on the topic.

Rittel and Webber (1973) argued that governmental planning problems are very different from problems faced by other professionals such as mathematicians, engineers, or scientists. For these professionals, problems are definable, and there is a distinct, best solution. These definable problems are considered “tame” or “benign.” While it may be a challenge to reach the solution, it is clear what the problem is and when it has been solved (Rittel & Webber, 1973).

Governmental planning problems -- the wicked problems -- are not at all clear. It is not just that the solution to a wicked problem is not straightforward; the entire problem is not straightforward. Head and Alford (2013) explained that wicked problems “are marked by deep-rooted disagreements about the nature and significance of particular problems and possible solutions” (p. 5). Because there is no single cause for these complex, diverse problems, there is no single best approach to solving them. Every wicked problem is unique, and can be considered



the symptom of another problem. There is no way to test proposed solutions to wicked problems, and every attempt at a resolution can have major implications. The consequences of potential solutions cannot all be known or measured until the solutions have been implemented. By then, the impact of the solution has already been felt by the public, individual lives have been changed, and significant amounts of money have been spent (Head & Alford, 2013; Rittel & Webber, 1973).

Challenges related to undocumented students and access to higher education can be conceptualized as wicked problems. First, there is the challenge of determining whether there is a problem. Some believe that undocumented students should not have the opportunity to enroll in public colleges and universities, so they will argue that barriers to access are not a problem (NCSL, 2013). For policy makers who disagree with that view, defining the problem is still complex. Is this a problem that is a symptom of federal immigration laws, and therefore should be resolved by changes to federal immigration policy? Is it a state problem, since it deals directly with state funded institutions, and therefore should be resolved on the state level? Or, is it a problem that individual schools should tackle? The interviews for this research show that ambiguity on the state and university level makes it challenging and, at times, frustrating for university administrators to determine how best to make policy decisions related to undocumented students and access to higher education.

Even if one determines that there is a problem and defines the problem, the challenges remain interlocked and complicated. As has been shown in the analysis of the interview data in this research, a simple school-level proclamation that undocumented students should be allowed to enroll will not fix the problem for many students. The state determines criteria for residency, which allows consideration for in-state tuition rates. Without a change to this policy,

undocumented students from Virginia are required to pay significantly more in tuition dollars than Virginians with legal status. While a change in this practice would make an undergraduate education more affordable for undocumented students, it still would not allow for access to federal financial aid, which goes back to a change that would need to be made on the federal level. On the federal level, creation of a temporary status, such as the DACA status, does not resolve the plethora of issues. While it postpones the threat of deportation, and in Virginia allows for the consideration for in-state tuition, it does not allow a student access to financial aid, or give students a permanent, legal status. Finally, the best case scenario for an undocumented student may lead to an undergraduate degree, but without legal immigration status, the career opportunities for an undocumented person with an undergraduate degree are very limited.

The challenges related to undocumented students and higher education in Virginia create a complex, turbulent dynamic that includes federal, state, and institutional policies and practices. Because of their complexity, these challenges can be framed as wicked problems.

### **Ambiguity and discretion.**

As discussed in Chapter 4, policy ambiguity was a theme that emerged from the interviews with admissions professionals, and at times this ambiguity led to a need for administrative discretion. Examples of literature on ambiguity and discretion include Shumavon and Hibbeln (1986), who summarized the pros and cons of administrative discretion; MacIntyre (1986), who focused on intentional, statutory ambiguity; and Zahariadis (2014), who used the Multiple Streams Approach as a framework for how policies are made in an ambiguous environment. While there is an abundance of literature on discretion and ambiguity, these texts do not address undocumented students and higher education in Virginia; and therefore, this research contributes to policy literature on ambiguity and discretion.

In addition to broad overviews on discretion and ambiguity in policy literature, there also are more recent discussions of discretion as it relates to specific topic areas. For example, Flanigan (2013) explored the role that administrative discretion plays in same-sex couples' access to government resources in California. She explained that in recent years, the frequent shifts in policy in California related to same-sex marriage meant that the status of some couples was ambiguous. This led to significant discretion for administrators (Flanigan, 2013).

Flanigan (2013) described a situation in which a male, same-sex couple attempted to hyphenate their names, so they would have the same legally recognizable last name. This involved the completion of specific paperwork that had to be submitted to the Social Security Administration (SSA). Upon submission of the paperwork, the couple was told that because they were not legally married, they could not submit the paperwork they had completed. One of the partners, who had a Masters of Public Administration degree, researched SSA policy and found that the guidance they had been given was not correct. The couple went back to the SSA, where the second representative with whom they met knew of the policy and was able to help them with their name change (Flanigan, 2010).

Flanigan (2010) also argued that not only was this a clear example of policy ambiguity and discretion, it also provided an opportunity for administrative advocacy. While the author recognized that administrative advocacy does not solve broader injustices and inequalities, it can have a tremendous impact on the lives of individuals. Flanigan's (2010) analysis of the policy challenges same-sex couples in California face is a recent, real-world example of ambiguity and discretion that adds to public policy literature. Like Flanigan's (2010) work, this research on undocumented students and access to higher education in Virginia is a relevant, current illustration of the concept of policy ambiguity and discretion that contributes to the literature.

### **Support of current literature.**

In addition to contributing to policy literature, this research on undocumented students and access to education in Virginia supports some of the current policy literature, as well as the literature on undocumented students. For example, Newton and Adams (2009) found that states create immigration policy by enacting laws and policies that do not directly regulate immigration, but instead are associated with immigration. In Virginia, one can see this with regard to access to in-state tuition for DACA's, while undocumented students are not eligible for consideration for in-state tuition.

In another example of current literature that is supported by this research in Virginia, Salisbury (2003), who focused on undocumented students in California and Texas, concluded that not only is a lack of access to in-state tuition a barrier to higher education, but not having access to federal financial aid or on- and off-campus jobs are also barriers to higher education for undocumented students. More than ten years after Salisbury's (2003) research, the interviews with admissions professionals revealed these to be ongoing challenges for undocumented students. Salisbury (2003) noted that even states that want to ensure access to higher education for undocumented students are hindered by federal barriers. Interviews with admissions professionals supported that finding.

Other examples of the ways in which this research supports current literature can be seen in the studies by Abrego and Gonzales (2010) and Hernandez et al. (2010). In both of these qualitative studies, the authors provided examples of challenges faced by undocumented students. Hernandez et al. (2010) profiled undocumented students and detailed their individual, total experiences. Many of the challenges the authors described in the individual profiles, such as fear, also were mentioned by the Virginia admissions professionals. Abrego and Gonzales

(2010) focused on the broader picture of challenges faced by undocumented students, both in terms of educational access and career opportunities. The challenges they relayed also were conveyed by the interview participants.

### **Immediate policy implications.**

In addition to adding to and supporting current literature, this research can be used by admissions and enrollment professionals, especially those in Virginia, who would like to compare policies and practices at their institutions to policies and practices elsewhere in the state. The research could also be used to support changes in university policy, if so desired by administrators.

### **Limitations of the Research**

The constantly changing state and national landscape as it relates to immigration policy presented challenges for this research. The federal government created the Deferred Action for Childhood Arrival (DACA) status after this research began. In some cases, this caused confusion for interviewees. DACA students and undocumented students have some similar issues and challenges, but the terms are not synonymous. DACA students have rights and a status that undocumented students do not have. At times, interviewees used these words interchangeably and clarification was needed. Additionally, in the same semester that interviews began, Virginia's attorney general announced that DACA students should be eligible for in-state tuition. Initially, there was confusion about how to implement this new policy, and some of that confusion came out in the interviews.

This research relied on one individual from each university. While most interviewees were able to articulate their universities' practices and policies even with all of the ambiguity that exists related to the topic of undocumented students and access to higher education, some

participants were less involved in their schools' processes. At times, this meant less detailed responses, and therefore less rich data. Interviews with two or three administrators at each university might allow for a clearer picture of the practices and policies at each university.

Initially, the study design for this research included reviewing and analyzing written policies at each institution in addition to the in-person interviews, allowing for the review of multiple types of data. However, since only three of the 12 analyzed schools had written policies related to the admission and enrollment of undocumented students, this aspect of the initial research design was eliminated. This meant that the research findings relied heavily on an individual interview at each college or university.

Finally, the coding and analysis of the interview data was based on transcripts of taped interviews. At times, there was a detailed, informative discussion after the audio recorder was turned off. I believe that because of the controversial nature of this topic, some interviewees felt more comfortable when they were no longer being taped. In these situations, I would create a memo immediately after the interview, to try to capture key points from the post-interview, informal discussion. However, without a recording or hand-written notes, it was difficult to reconstruct those conversations.

### **Future Research Opportunities**

There are a number of future research opportunities related to immigration status and enrollment in Virginia public colleges and universities. First, this research focused specifically on undocumented students. The implementation of the DACA status created an entirely new group of policies and a different classification of student, which has research potential. While admission and enrollment may not be relevant to this group, a review of the residency

determination and access to (or lack of access to) financial aid would be worthy of additional research.

This research used the state as the bounded system or “case” and analyzed responses from only one professional at each 4-year college or university. Using a single university for a case study, one would have the opportunity to explore in depth the details of how policies and processes are implemented at an individual institution. Interviews could be held with staff at different levels, including front-line staff. Using Lipsky’s (1980) street-level bureaucracy theory as a lens, one could examine whether the institutional practices actually mirror the reported policies, as well as the extent of professional discretion that is used by front-line staff. At many Virginia colleges and universities, it is front-line staff who make initial residency decisions, and it would be interesting to research their actual practices related to both undocumented students and DACAs. The challenges of a closer examination of an individual school may be access to staff. While admissions professionals in leadership positions were willing to be interviewed for this research, they may be less willing to have their staff interviewed and their day-to-day operations reviewed.

Abrego and Gonzales (2010) recommended that future research include undocumented students in community colleges rather than focusing solely on students in 4-year colleges and universities. Future research in Virginia could include a study that analyzes the implementation of practices and policies at colleges that are part of the Virginia Community College System. Other options for research in Virginia could include a review of policies related to undocumented students at private colleges and universities and for-profit institutions. In both of these cases, the discussion of residency and access to in-state tuition is not likely to be relevant, since neither are public institutions. However, admission, enrollment, and financial aid policies related to

undocumented students are all research topics that could be explored at both private and for-profit institutions.

Research on practices and policies related to undocumented students could also extend beyond Virginia, with a comparison of how other nearby states, such as North Carolina or Maryland, handle the complexities of undocumented students and higher education. Additionally, an analysis could be done comparing policies related to undocumented students and higher education in states with larger immigrant populations to states with smaller immigrant populations.

There is also the opportunity to focus less on institutional policies and practices and more directly on undocumented students or DACA students. A specific area of research to consider is the challenges undocumented students face after college graduation, and how these challenges are faced. This group could include graduates of 4-year or 2-year institutions. It could also include graduates of private and public colleges and universities.

Through interviews with admissions professionals for this research, it was determined that while most Virginia institutions track DACA students, very few Virginia public colleges or universities track undocumented students. Interviews also revealed that schools that do enroll undocumented students often have student organizations created by and for DACA and undocumented students. These organizations may be able to assist with access to students for interviews. Researchers would need to be prepared for fear – fear of exposure, fear of impact on family, fear of deportation – to make locating willing interviewees a challenge.



## References

- Andes, L. (2012, June 27). E-mail subject: Obama executive order.
- Abrego, L.J. & Gonzales, R.G. (2010). Blocked paths, uncertain futures: The postsecondary education and labor market prospects of undocumented Latino youth [Electronic version]. *Journal of Education for Students Placed at Risk*, 45, 144-157.
- Charmaz, K. (2006). *Constructing grounded theory: A practical guide through qualitative analysis*, Thousand Oaks, CA: Sage.
- Creswell, J.W. (2014). *Research design: Qualitative, quantitative and mixed methods approaches*. Thousand Oaks, CA: Sage.
- Day v. Sebelius*, 376 F. Supp. 2d 1022 (D. Kan. 2005).
- Deferred Action for Childhood Arrivals (DACA) Fact Sheet. Immigrant Legal Resource Center. [www.ilrc.org](http://www.ilrc.org). (2013).
- Dougherty, K.J., Nienhusser, H.K., & Vega, B.E. Undocumented immigrants and state higher education policy: The politics of in-state tuition eligibility in Texas and Arizona [Electronic version]. *The Review of Higher Education*, 34(1), 123-173.
- DREAM Act: Summary. National Immigration Law Center. [www.nilc.org](http://www.nilc.org). (2011, May).
- Education benefits for undocumented immigrants: Overview of relevant court decisions [Electronic version]. *Congressional Digest*. (2010, November).
- Equal Access Educ. v. Merten*, 325 F. Supp. 2d 655 (E.D. Va. 2004).
- Flanigan, S. T. (2013). Bureaucratic discretion and same-sex couples [Electronic version]. *Administrative Theory and Praxis*, 35(3), 448-456.

- FAQs: The Obama administration's Deferred Action for Childhood Arrivals. National Immigration Law Center. [www.nilc.org](http://www.nilc.org). (2015, March 3).
- Feder, J. (2008, October 7). Unauthorized alien students, higher education, and in-state tuition rates: A legal analysis. *CRS Report for Congress*.
- Gildersleeve, R.E., Rumann, C., & Mondragon, R. (2010). Serving undocumented students: Current law and policy [Electronic version]. *New Directions for Student Services, 131*, 5-18.
- Harmon, C., Carne, G., Lizardy-Hajbi, K., & Wilkerson, E. (2010). Access to higher education for undocumented students: "Outlaws" of social justice, equity, and equality [Electronic version]. *Journal of Praxis in Multicultural Education, 5(1)*, 67-82.
- Head, B. W., & Alford, J. (2013). Wicked problems: Implications for public policy and management. *Administration & Society*, doi: 0095399713481601.
- Herring, M. R. (2014, April 29). Letter from the Office of the Attorney General, Commonwealth of Virginia.
- Hernandez, S., Hernandez, Jr., I., Gadson, R., Huftalin, D., Ortiz, A.M., White, M.C., & Yocum-Gaffney, D. (2010). Sharing their secrets: Undocumented students' personal stories of fear, drive, and survival [Electronic version]. *New Directions for Student Services, 131*, 67-84.
- Ibarra, H., & Sherman, R. (2012). Higher education opportunities for undocumented students in the United States: What are the policy implications for educators and legislators. *Journal of Education Policy, 1-8*.
- Kinzie, S. (2008, March 14). The university of uncertainty: Virginia children of illegal immigrants lack in-state status. *The Washington Post*. Retrieved from

[http://www.washingtonpost.com/wp-dyn/content/article/2008/03/13/  
AR2008031303674\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2008/03/13/AR2008031303674_pf.html)

- Landry, A. L. (2002, September 5). Memo on behalf of the Office of Attorney General, Commonwealth of Virginia. Immigration law compliance update.
- Maxwell, J.A. (2013). *Qualitative research design: An interactive approach*. Vol. 41. Sage publications.
- Miles, M. B., & Huberman, A. M. (1994). *Qualitative data analysis: An expanded sourcebook*. Thousand Oaks, CA: Sage.
- Napolitano, J. (2012, June 15). Memo on behalf of the Department of Homeland Security. Exercising prosecutorial discretion with respect to individuals who came to the United States as children.
- Newton, L., & Adams, B.E. (2009). State immigration policies: Innovation, cooperation, or conflict? [Electronic copy]. *Publius: The Journal of Federalism*, 39(3), 408-431.
- Olivas, M.A. (2010). The political economy of the DREAM Act and the legislative process: A case study of comprehensive immigration reform [Electronic version]. *The Wayne Law Review*, 55, 1757-1810.
- Ortiz, A.M. & Hinojosa, A. (2010). Tenuous options: The career development process for undocumented students [Electronic version]. *New Directions for Student Services*, 131, 53-65.
- Palmer, C., & Davidson, T. (2011). Entitled or excluded? Attitudes toward access to postsecondary education for undocumented students [Electronic version]. *Current Issues in Education*, 14(2), 1-14.
- Patton, M.Q. (2002). *Qualitative Research & Evaluation Methods*. Thousand Oaks, CA: Sage.

*Plyler v. Doe*, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982).

Reich, G., & Barth, J. (2010). Educating citizens or defying federal authority? A comparative study of in-state tuition for undocumented students [Electronic version]. *The Policy Studies Journal*, 38(3), 419-445.

Rittel, H. W., & Webber, M. M. (1973). Dilemmas in a general theory of planning. *Policy Sciences*, 4(2), 155-169.

Salsbury, J. (2003). Evading “residence”: Undocumented students, higher education and the states [Electronic version]. *American University Law Review*, 53(2), 459-490.

State Council of Higher Education for Virginia (2009, October 15). Domicile guidelines.

State Council of Higher Education for Virginia (2013, July). Tuition and fees at Virginia’s state-supported colleges and universities.

Stavans, I. (2011, July 1). Academic purgatory: An illegal immigrant earns a Ph.D. Now what? *The Chronicle of Higher Education*. B7-B9.

Undocumented student tuition: Federal Action. National Conference of State Legislatures. (2013, July). Retrieved from <http://www.ncsl.org/issues-research/educ/undocumented-student-tuition-overview.aspx>.

Undocumented student tuition: Overview. National Conference of State Legislatures. (2013, July). Retrieved from <http://www.ncsl.org/issues-research/educ/undocumented-student-tuition-overview.aspx>.

Undocumented student tuition: State action. National Conference of State Legislatures. (2013, July). Retrieved from <http://www.ncsl.org/issues-research/educ/undocumented-student-tuition-state-action.aspx>.

U.S. Department of State. Retrieved from <http://travel.state.gov/visa>

/temp/types/types\_2638.html#international.

Virginia's Legislative Information System. Retrieved from <https://lis.virginia.gov>.

Watson, D. (2000). Managing in higher education: The 'wicked issues.' *Higher Education Quarterly*, 54(1), 5-21.

Western Interstate Commission for Higher Education (WICHE). Knocking at the college door: Projections of high school graduates. Virginia. (2013, January 1).

*Toll v. Moreno*, 458 U.S. 1, 102 S. Ct. 2977, 73 L. Ed. 2d 563 (1982).

Yin, R.K. (2014). *Case study research. Design and methods*. (Vol. 5). Thousand Oaks, CA: Sage.

Zahariadis, N. (2014). Ambiguity and multiple streams. In P.A. Sabatier and C.M. Weible, *Theories of the Policy Process* (3<sup>rd</sup> ed., pp. 25-58). Boulder, CO: Westview Press.

Zota, S. (2009, Spring/Summer). Unauthorized immigrants' access to higher education: Fifty states, different directions. *Popular Government*. 46-54.

## Appendix A

### Virginia Public, 4-year Colleges and Universities\*

Christopher Newport University

College of William and Mary

George Mason University

James Madison University

Longwood University

Norfolk State University

Old Dominion University

Radford University

University of Mary Washington

University of Virginia

University of Virginia's College at Wise

Virginia Commonwealth University

Virginia Military Institute

Virginia State University

Virginia Tech

\*List from the State Council of Higher Education of Virginia website ([www.schev.edu](http://www.schev.edu)).

## Appendix B

### Sample Questions Used During Interviews with College and University Representatives

What is your current title, how long have you held this position? How long have you been in the admissions profession?

I'd like to share a scenario with you. An undergraduate student applies to your university. She is not a U.S. citizen, not a Permanent Resident, not an Asylee, and is not here in the U.S. on a valid visa. How is her application handled?

Probe....have these practices changed over the past year? Past three years? If so, what was the impetus for the changes?

What is your opinion of the clarity of the direction given by the state to public colleges and universities as it relates to undocumented students and admission? Enrollment? In-state tuition?

What is your opinion of the clarity of direction given by the state to public colleges and universities as it relates to DACA students and admission? Enrollment? In-state tuition?

What is your opinion of the direction given by the federal government to public colleges and universities as it relates to undocumented students (separate DACA) and admission? Enrollment? In-state tuition?

How do you feel the DREAM Act might impact admission and enrollment policies and practices at your university? (More information about the federal DREAM Act provided as needed.)

This past spring, the Attorney General released a memo approving DACA students for in-state tuition. Has this memo changed your recruitment practices? Admission practices? Enrollment practices? In-state tuition practices?

What do you believe the biggest challenges are related to undocumented students and higher education? Why do you believe these are challenges?

Do you track the number of undocumented students who apply to your university? Does this include DACA students, or are these tracked separately? Do you track the number who enroll? For how long have you tracked these students?