The DREAM Act

By Janet Kier Lopez

Today, there are approximately 80,000 undocumented children reaching high school graduation age every year in the United States. Nearly 65,000 of these students will not only graduate, but have also been living in the country for five years or more. Undocumented students face various challenges as they move along the academic pipeline. Yet, a growing number of them are graduating from U.S. high schools each year prepared to enter our nation’s colleges and universities. In North Carolina an estimated 1500 undocumented students graduate from high school each year. This group of students is faced with few post-secondary options because they are not currently allowed to attend college or to work legally in the United States.

The DREAM (Development, Relief and Education for Alien Minors) Act is federal legislation which would allow undocumented students to attend college or university for in-state tuition nationwide. While this legislation has not been passed at the federal level, 9 states have allowed in-state tuition for undocumented students. The purpose of this learning unit is to educate you about the DREAM Act and to explain the following issues regarding allow undocumented students to access in-state tuition.

- What is the DREAM Act?
- Does the state I live/work in allow undocumented students to apply to college?
- What are the arguments against allowing undocumented students to access in-state tuition?
- What are the arguments for allowing undocumented students access to in-state tuition?
- For the purpose of college and financial aid, what is the difference between undocumented students, refugees and legal permanent residents, and United States citizens?
- What scholarships are available for undocumented students?
- What do I do if my students have questions about their legal status?

The purpose of this unit is to help educate teachers regarding the growing population of undocumented students in the public school systems in North Carolina. We also hope that this information can serve as resources for the students you work with each day.

What is the DREAM Act?

Since 2001 Congress has been considering bipartisan legislation that would provide an opportunity for undocumented students to attend college or university. Under the legislation, states would be permitted to offer in-state tuition rates to students who have lived in the United States for more than five years and are under the age of 21. The DREAM Act (for Development, Relief, and Education for Alien Minors), would repeal the federal provision that seeks to bar states from providing in-state tuition to undocumented immigrants and would provide students with an easier path toward legalization is currently under consideration in Congress. A vote on the DREAM Act is currently pending, as it has been for several years.

In order to qualify for the DREAM Act students must have met several requirements including:

- Lived in the United States for at least five years
- Earned a high school degree and are under 21 years of age
- Be of “good moral character” (i.e. no criminal record)
• Have applied and been accepted to a community college or university, or be accepted into one of the branches of the U.S. armed services.

Those students who qualified for the DREAM Act would be able to offer in-state tuition and allow the undocumented student the chance to adjust their status and put them on a path to U.S. citizenship.

The DREAM act would enact two major changes two the current laws:

1. Eliminate a federal provision that discourages states from providing in-state tuition without regard to immigration status; and
2. Permit some immigrant students who have grown up in the United States to apply for temporary legal status and eventually obtain permanent status and become eligible for citizenship if they meet certain conditions.

Students who qualified for the DREAM Act would be allowed to start the process of naturalization, including becoming a legal permanent resident after two years of college or after serving two years honorably in the U.S. armed forces. During this conditional period students must maintain a criminal-free record and remain off public assistance. Students who do have access to in-state tuition would not have access to Federal Financial Aid and would have to pay for their college expenses including tuition, room and board through merit scholarships or their own out-of-pocket expenses.

What are the arguments against allowing undocumented students in-state tuition?

Within the debate regarding access to higher education for undocumented immigrants those who object to the DREAM Act believe that undocumented immigrants should not be rewarded amnesty or an education for living “illegally” in the United States without getting caught. Others in opposition to the bill appear to feel threatened and claim that by allowing undocumented students to attend colleges for in-state tuition this will place undocumented immigrants in direct competition with American college students who rightfully deserve to attend public universities.

When House Bill 1183 entitled Access to Higher Education and a Better Economic Future (the state version of the DREAM Act) was introduced in North Carolina in 2005, the majority of people who denounced the bill made arguments regarding the “free ride” that would be given to law breakers at the expense of local tax payers. Along with this “free ride” many feared that access to affordable, taxpayer supported universities, a hallmark of the North Carolina college and university system might be less available to native North Carolinians who rightfully deserved those seats. People also worried that allowing undocumented immigrants access to in-state tuition would encourage more undocumented immigrants to enter the country putting further strain on the economic and social services that people perceived immigrants to be eligible for in the state.

What are the arguments for allowing undocumented students in-state tuition?

Economic benefits

While the state of North Carolina continues to deny the benefit of a college education to undocumented immigrants they do so at great costs to the state’s educational capital. Research from the National Center for Public Policy and Higher Education indicates that individuals with higher degrees can expect to earn higher income. This income then translates to more tax revenue and economic activity in the state. The research also reports that an educated population makes fewer
demands on social services such as welfare and makes more informed decisions regarding health care, personal finance, and retirement. When a state’s educational capital is high, that state saves in public resources and the educated individuals living in that state cost less than those who are uneducated. Essentially, the residents who hold college degrees are considered to be the state’s base for economic development and are responsible for the overall quality of life. Thus increasing the number of high school and college graduates can only benefit the quality and economic stability of a state (National Center for Public Policy in Higher Education, 2004).

Drop out rates

The common sense “economic and social services argument” for supporting access to higher education for undocumented immigrants is further supported by a report by the Texas House Research Organization which showed that not helping students attend college results in much greater costs to the state and further contributes to an uneducated work force. In 1986 it was estimated that 86,000 students dropped out of Texas Public schools which cost the state 17.2 billion dollars, by 1998 the dropout rate had increased to 1.2 million and cost the state an estimated 319 billion dollars (National Conference on State Legislators, 2005). We can only assume that those undocumented immigrants who do not see college as a realistic option (either because of not being allowed to even apply or more importantly being unable to afford the cost to attend) were contributing significantly to those numbers of dropouts. In conjunction with Texas dropout rates are the findings from the Illinois General Assembly Report on House Resolution No. 892 which showed that if all ethnic groups had the same educational attainment and earnings as whites, the state of Illinois would have been 9.1 billion dollars wealthier and would have had an estimated 3.2 billion in additional tax revenue (State of Illinois Board of Higher Education, 2002). The argument for having a well-educated state makes economic sense.

Scarce resources or not?

In Kansas, a state that had less than 35 undocumented students utilize the in-state tuition opportunity in 2001 (Stancill, 2005), the courts recently dismissed the charge that the in-state tuition bill unlawfully or unfairly allowed undocumented immigrants to attend Kansas State universities. The defendants, who were out-state students, charged that they were “injured” by undocumented immigrants having access to in-state residency and that Kansas state law was in violation of federal immigration law that bars undocumented immigrants from obtaining legal rights which are not granted to all United States citizens. In the response filed in July 2005, Judge Richard Rodriguez dismissed the case on the grounds that 1) the out-of-state students are not injured by allowing undocumented immigrants in-state tuition because they would have to pay out-of-state tuition regardless of what undocumented students paid; and 2) there was no evidence that showed that undocumented immigrants placed any type of upward cost pressure on tuition rates paid by all students at Kansas universities. (Kristen Day et al. v. Kathleen Sebelius, Governor of Kansas, 2005). The fact that no evidence has supported the claim that in-state tuition is creating a financial burden to U.S. citizens dispels ideas about opportunities for undocumented students causing financial burdens for “native” residents.

Common sense argument

In North Carolina the advocacy group El Pueblo Inc. has attempted to push support of the bill with the North Carolina community through a “common sense” economic argument. Among the talking points for supporting higher education for immigrant students is the point that supporting undocumented
immigrants would strengthen North Carolina’s future tax base. The immigrant students who have been educated in the public schools and who have access to higher education allow the state to have access to the long-term economic benefits that these students can provide. Along with this rational is the argument that by giving these students access to higher education, the state is better educating their work force. Since new jobs in North Carolina are predicted to increase by 20%, immigrant students will be able to fill jobs in teaching, human service, business and industry and local government, and North Carolina will not have to go outside the state to fill shortages in these particular areas. Finally, since the immigrant students, who are mostly Mexican in North Carolina, will most often be bilingual, they will also be able to fulfill demands for a workforce that must adjust to the demographic shift in the state. El Pueblo drives home the point that the demographic change is a reality, that the state has already made an investment in the education of these children, and that the passage of the DREAM Act would benefit all people who live in North Carolina.

**Does the state I live/work in allow undocumented students to apply to college?**

Currently nine states have an in-state tuition policy for undocumented high school students. This policy does not put them on a path to becoming a U.S. citizen but does allow them to access in-state tuition rates if they are accepted at a community college or university. The states have in-state tuition legislation include California, Illinois, Kansas, Nebraska, New York, Oklahoma, Texas, Utah, Washington. Students in Oklahoma and Texas also have access to state financial aid.

In North Carolina there is no state law that allows undocumented students to access in-state tuition. Last year H.B. 1183 was proposed for this purpose but was met with great opposition in the North Carolina legislature. Although undocumented students are not allowed to apply for in-state tuition the University of North Carolina system does have a policy that allows undocumented students to apply to any UNC-system school. Undocumented students who apply must compete with the out-of-state student population and are charged out-of-state tuition. While the UNC system has a blanket policy regarding applying to each UNC school, other community colleges, public universities and private schools have no such blanket policy. Students must inquire individually with every other community college or university in the state as to whether they allow undocumented students to apply to their school.

**For the purpose of college and financial aid, what is the difference between undocumented students, refugees and legal permanent residents, and United States citizens?**

**Financial aid**

Students who are U.S. citizens, legal permanent residents and have obtained refugee status (or have had asylum granted to them) are eligible to apply for in-state residency and to receive state and federal financial aid. The following categories help clarify the different categories of immigrant students.

**U.S. Citizens**

Students are U.S. citizens if they are born in the United States or if they have a parent who is a U.S. citizen. As long as a child is born in the United States they are a U.S. citizen. For example if a child has two undocumented parents but was born in a U.S. hospital the child is United States citizen.

**Legal Permanent Resident (LPR)**
In order to become a U.S. citizen a person must go through a process of naturalization. In order to do become a U.S. citizen they must be sponsored to become a LPR by an immediate relative (children, spouses and parents of a citizen of the U.S.), by a family sponsored visa, or an employment based immigration visa. Generally a child must be 21 years of age before they can sponsor their parents. Students must be a legal permanent resident for five years before they can apply to become a U.S. citizen.

Allocation for family-sponsored immigrant visas includes preference categories and numerical limits for each country of origin. This means that depending on one’s family connection and the amount of people in one country who are applying to become LPRs a person may have to wait many years for their application to be processed.

Preference categories include:

1. (highest priority) Unmarried sons and daughters of U.S. citizens
2. Spouses and unmarried sons and daughters of LPRs
3. Married sons and daughters of U.S. citizens
4. (lowest priority) Brothers and sisters of U.S. Citizens

Allocation for employment-based immigrants includes preference categories as well. Preference categories include:

1. Priority workers (extraordinary ability)
2. Aliens who are members of professions holding advanced degrees
3. Skilled workers, professionals and other workers

For most undocumented high school students who have parents who are also undocumented and who do not have college degrees yet, qualifying for legal permanent residency is difficult if not impossible.

Refugees and Asylum: Persons who have been granted asylum and refugee status have been able to prove that they would be persecuted in their country if they returned based on their race, religion, nationality, political or religious beliefs or their membership in a particular social group. Persons who have been granted refugee status are typically living in their country of origin when they are granted refugee status and are able to come to the United States. People who request asylum have typically been able to escape their country of origin and are applying for this particular status while living in the United States. In the past people who have been affected by devastating natural disasters have also been able to come to the United States on temporary protected status (TPS). Students who have TPS, refugee or asylum status may often, but not always, apply to remain in the United States as legal permanent residents.

For more details on immigrant status please see the following references:


Is it illegal for undocumented students to go to public school?

Plyer v. Doe (1982), which was a court case in Texas, holds that it is illegal for a state to deny school-aged undocumented students the right to a free public education. The courts made this decision because they believed that excluding children from a public education would prevent them from becoming literate and would greatly inhibit their ability to live in a modern society. While it is illegal for a state to deny undocumented students K-12 education, the 1996 federal immigration policy changed in a way that severely limited the options for undocumented students after high school. Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) bars undocumented students from receiving economic benefit offered by the federal government, such as financial aid for college. This means public colleges and universities must follow federal law mandating undocumented students who graduate from their state high schools be treated as non-residents and therefore charged non-resident tuition. In the majority of the United States students may apply to college but are charged out-of-state or international student tuition.

What do I do if my students have questions about their legal status?

If your students have questions about their legal status and have confided in you regarding their personal situation it is best to refer them to legal aid resources in the state of North Carolina or to one of the many Latino advocacy groups in the state of North Carolina. Remember: it is illegal to ask a student if he or she is an undocumented immigrant. Below are a list of places that your student will be able to ask questions and get more information about their legal rights and status.

North Carolina Justice Center: Engaged in advocacy and community-building on behalf of low-income residents.

El Centro Latino: Provides direct, social, and educational services, community building and advocacy for the Latino community in Orange County, North Carolina.

El Pueblo: Non-profit advocacy group committed to strengthening the Latino community in North Carolina.

League of United Latin American Citizens: Advancing the economic condition, educational attainment, political influence, health and civil rights of the Hispanic population in the United States.

Mexican American Legal Defense Fund and Educational Fund: Non-profit Latino litigation, advocacy, and educational outreach institution.

Mexican On-Line: Listing of Mexican Consulates in U.S. and Canada as well as general information regarding Mexico.

What scholarships are available for undocumented students?

There are few scholarship options for undocumented students because many require that students are U.S. citizens to apply. Currently in North Carolina the Foundation for the Carolinas (http://www.fftc.org/) has created a scholarship for Latino students who complete an early college preparatory program to attend any North Carolina community college or university. The scholarship fund is minimal but is not contingent on U.S. citizenship. The Triangle Community Foundation (http://www.trianglecf.org/) and the North Carolina Society of Hispanic Professionals
(http://www.thencshp.org/) also have scholarships for Latino students that do not require U.S. citizenship as a requirement for application.

Nationally the Mexican American Legal Defense Fund (MALDEF) also has created a listing for scholarships where U.S. citizenship is not required.

References


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