

What the DREAM Act Could Mean for Our Schools:
The Benefits of Diversity and Acceptance

On May 11, 2011, amidst a renewed call for national immigration reform, the DREAM Act (Development, Relief and Education for Alien Minors) was reintroduced to both houses of Congress. The DREAM Act is a piece of bipartisan legislation that would help create a pathway to legal residency and citizenship for undocumented residents who came to the country as youths and have proven their good moral character and commitment to higher education and service.¹ While the federal DREAM Act and its Illinois counterpart to create the “DREAM Commission” both serve our nation’s best interests in reforming a broken immigration system, the benefits of these DREAM acts are not limited to immigration policy, as they would also improve our educational institutions at every level.

I. The Federal DREAM Act:

The DREAM Act was first introduced in Congress in 2001 and has been seen in several different incarnations of proposed comprehensive immigration reform.² While some forms of the Act have had serious legislative support in the past, such as the December 2010 version introduced by Senator Dick Durbin (D-IL), the Act has failed to get through both chambers of Congress to become law.³ Every proposed version of the DREAM Act to date has provided a pathway for certain qualifying individuals who grew

¹ THE DREAM ACT: GOOD FOR OUR ECONOMY, GOOD FOR OUR SECURITY, GOOD FOR OUR NATION, 1. <http://www.whitehouse.gov/sites/default/files/DREAM-Act-WhiteHouse-FactSheet.pdf>

² National Immigration Law Center, *DREAM Act: Summary* (updated Dec. 2010). <http://www.nilc.org/immlawpolicy/DREAM/dream-bills-summary-2010-09-20.pdf>

³ *Id.* (“Senate version (S. 3992) was introduced on November 30, 2010 by Richard Durbin (D-IL). H.R. 6497 passed the House on December 8, 2010 by a vote of 216-198.”)

up in the U.S. to apply for conditional, *nonimmigrant* status.⁴ If passed, the DREAM Act is expected to have a dramatic effect on the educational opportunities for young, undocumented residents increasing their average future earning potential and therefore increasing the amount of future tax revenue from those individuals.⁵ For applicants to qualify for the conditional status provided by the DREAM Act, they must meet several requirements.

The applicant for status must have entered the country when he or she was under the age of sixteen years, have continuously resided in the U.S. for at least five years before application, have graduated from a U.S. high school (or have obtained a GED), and established that he or she is of “good moral character.”⁶ To demonstrate good moral character, the individual must show that he or she has not committed any crimes that would make them inadmissible to the country under existing immigration standards, and this status is a conditional status for a limited period.⁷

After successfully applying for the temporary conditional status, which lasts for six years, the individual must then meet another set of standards to be considered for permanent legal status.⁸ In order to pursue permanent legal status, the individual must have attended college, served in the U.S. military for at least two years, and have maintained all the requirements to demonstrate good moral character.⁹ If the applicant

⁴ *Id.*

⁵ *Id.* (“The DREAM Act would have the additional benefit of reducing the federal deficit by \$2.2 billion over 10 years”).

⁶ THE DREAM ACT: GOOD FOR OUR ECONOMY, GOOD FOR OUR SECURITY, GOOD FOR OUR NATION, 2. <http://www.whitehouse.gov/sites/default/files/DREAM-Act-WhiteHouse-FactSheet.pdf>

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

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has failed to meet any of these requirements, the temporary conditional status will be considered violated and the individual would be subject to deportation.¹⁰ Applicants for legal status under the DREAM Act are also required to pay any and all costs of processing the application as normally charged for any immigration status and, despite what politicians and pundits in opposition to the Act often say, there would be rigorous criminal background checks on applicants to both the conditional or unconditional legal permanent residence statuses.¹¹ In addition to the background checks, legal status given to DREAM Act applicants is discretionary, so any applicant deemed a security risk or otherwise undesirable would be denied legal status.¹²

The DREAM Act would create, in some form, a ten-year period of conditional nonimmigrant status after which the applicant could attain legal permanent residency, provided all other criteria are met.¹³ After three years of legal permanent residency, and a continued display of good moral character and fulfillment of any other requirement, the individual with legal status under the DREAM Act would be eligible to apply for U.S. citizenship. This Act creates a path for youths brought to this country that have proven

¹⁰ *Id.*

¹¹ *Id.* For statements in opposition, *See, Republicans Slam DREAM Act for Including Immigrants With Criminal Records*. <http://www.foxnews.com/politics/2010/12/08/republicans-slam-dream-act-allowing-immigrants-criminal-records/#ixzz1Ma7qUnHB>. (last visited 5/13/11). (“According to a memo circulated by GOP aides on the Senate Judiciary Committee, there are a host of crimes illegal immigrants would be allowed to commit and still qualify”).

¹² National Immigration Law Center. *Supra* note 2.

¹³ *Id.* at 2. (“Under the [2010] House bill, individuals must either attend a higher degree program for at least two years or serve in the U.S. armed forces for at least two years in order to extend conditional nonimmigrant status for the second 5-year period. Under the [2010] Senate bill, individuals must either attend a higher degree program for at least two years or serve in the U.S. armed forces for at least two years during the single 10-year period of conditional nonimmigrant status”).

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their character and willingness to apply themselves academically or directly in service of the United States, to become full members of the society and not have to suffer as a result of their undocumented entry as children.

II. The Illinois DREAM Commission:

Illinois Senate Bill 2185 passed the Senate on May 4, 2011 with a margin of forty-five to eleven (with three abstentions) and passed the Illinois House of Representatives on May, 31, with a slim bipartisan majority of 61-53.¹⁴ As immigration law falls in the realm of Congressional power, the state of Illinois has no power to grant legal residency or citizenship, so the Illinois DREAM Act is really tailored to supplement the benefits of a possible federal act, while still meeting policy objectives even without the passage of the federal DREAM Act.¹⁶

The Illinois DREAM Act is multifaceted in its approach to providing educational opportunities for undocumented youths in the state; it establishes a privately funded Illinois DREAM Fund, the Illinois DREAM Commission, and would open access to certain college savings programs to undocumented families.¹⁷ The DREAM Fund will be mainly composed of the DREAM Fund Commission, made up of members appointed by the Governor, with advice and consent of the Senate, to establish procedures “for

¹⁴ *Illinois DREAM Act Passes State Senate With Overwhelming, Bipartisan Majority.* http://www.huffingtonpost.com/2011/05/04/illinois-dream-act-passes_n_857754.html. (last visited 5/16/11).

¹⁵ <http://newamericamedia.org/2011/05/illinois-house-passes-state-dream-act.php>

¹⁶ *Delgado: Bill to make the DREAM Commission a reality passes Senate.* May 4, 2011. <http://www.illinoisenatedemocrats.com/index.php/sen-delgado-home/1856-delgado-bill-to-make-the-dream-commission-a-reality-passes-senate>. (“Unfortunately, the State of Illinois cannot offer legal status to youth, however, we can and should take small steps to ensure that these youth are able to go to college,” said Senator Delgado, Chairman of the Senate Public Health Committee”).

¹⁷ *Id.*

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accepting and evaluating applications for scholarships from the children of immigrants and issuing scholarships to selected student applicants,” and to establish the exact qualifications for the scholarship.¹⁸ The law will also require that the Illinois Student Assistance Commission establish an Illinois DREAM Fund to provide scholarships, funded entirely from private contributions, and make sure that any college savings program created by the Higher Education Student Assistance Act be available to anyone with a valid social security number or taxpayer identification number, regardless of immigration status in Illinois.¹⁹ The college savings instruments and programs under the Illinois Student Assistance Commission would now apply to all qualifying Illinois “residents,” as opposed to the previous language of Illinois “citizens.”²⁰

The Illinois DREAM Commission will provide scholarships and other educational services to the children of immigrants.²¹ “These scholarships and programs will be funded by private funds, not State funds.”²² Under the Illinois DREAM Act, there would be new standards for school counselors to have professional development to understand and include activities and opportunities that address the needs of children of immigrant families, particularly those newly formed opportunities in the Illinois DREAM Act itself.²³

¹⁸ Bill Status of SB2185 97th General Assembly. *Short Description: DREAM FUND COMMISSION.*
<http://www.ilga.gov/legislation/BillStatus.asp?DocNum=2185&GAID=11&DocTypeID=SB&LegID=58384&SessionID=84&GA=97&SpecSess=0>. (last viewed 5/16/11).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Delgado: Bill to make the DREAM Commission a reality passes Senate.* Supra note 15.

²² *Id.*

²³ *Id.*

The Illinois DREAM Act would ensure that undocumented youths in American schools are encouraged to succeed academically and will have reasonable aspirations to attend a college or university, and meet their full potential. While state legislatures have limited power in shaping federal policy, in passing the Illinois DREAM Act, Illinois will be taking a step in the right direction to not only show support for national immigration reform but also in addressing a particular failing of immigration reform within its own state borders.

III. The DREAM Acts and Benefit to Public Schools

While immigration reform is undeniably a necessity no matter what political ideology to which you subscribe, many see legislation like the DREAM Act as not only too liberal a move to acceptance of “illegal” residents, but also a detriment to our public school system when considering the costs of programs like ESL and the failure of some foreign language students to meet testing standards (such as those established in “No Child Left Behind”).²⁴ While the language barrier can pose unique problems to school districts with large immigrant populations, the DREAM Act and its Illinois counterpart do little, if anything at all, to exacerbate those small problems and the proposed legislation provides benefits that greatly outweigh the costs.

²⁴ For discussion on how focusing on financial costs alone misses both the educational benefit and “investment” benefits of educating undocumented immigrants, See: Nina Rabin, Mary Carol Combs, and Norma Gonzalez, *Understanding Plyler’s Legacy: Voices from Border Schools*, 37 J.L. & Educ. 15 (2008). Available at <http://www.bibdailly.com/pdfs/understanding%20plyler's%20legacy.pdf>

A. *Plyler v. Doe*

In the landmark 1982 case, *Plyler v. Doe*, the U.S. Supreme Court invalidated a Texas statute that denied undocumented children enrollment in their public schools.²⁵ The Court held that the state’s exclusion of undocumented children was a direct affront to one of the paramount goals of the Fourteenth Amendment’s Equal Protection Clause: “the abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit.”²⁶ The majority of the Court argued that this exclusion of undocumented children from public schools would not only harm those individuals excluded, but would have a larger societal impact—excluding individuals from education opportunities reduces the chances for: incorporation to the community, for the individuals to be prosperous members of society, and for immigrants to learn the values of our society.²⁷

Under the Equal Protection Clause, the Court held that education of the youth, whether citizens, immigrants with legal status, or undocumented residents, “must be made to all on equal terms.”²⁸ In the majority opinion, Justice Brennan notes that due to the high costs of excluding undocumented children from public schools, as well as to the nature of the victims of the Texas statute being “innocent children,” they applied heightened constitutional scrutiny to the statute and found that the state lacked a

²⁵ 457 U.S. 202 (1982).

²⁶ *Plyler*, 457 U.S. at 222.

²⁷ *Id.* at 223.

²⁸ *Id.* (quoting *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954)).

sufficiently substantial interest to justify exclusion based on immigration status.²⁹ Justice Brennan discussed the growing undocumented immigrant population as,

*“rais[ing] the specter of a permanent caste of undocumented resident aliens, encouraged by some to remain here as a source of cheap labor, but nevertheless denied the benefits that our society makes available to citizens and lawful residents. The existence of such an underclass presents most difficult problems for a Nation that prides itself on adherence to principles of equality under the law.”*³⁰

In order to avoid this national problem, and to give true meaning to the Equal Protection Clause, the majority held that undocumented children have a right to public education. But while *Plyler* focused on the broader, societal benefits to providing public education to all residents, there are also more specific benefits to our educational system.

B. Benefits to Elementary and Secondary Education

Passing the DREAM Acts would not only benefit our broken immigration system and allow those individuals who qualify for legal status to remain in the U.S. to study or serve in the military, but it would also improve educational opportunities for other children attending public schools and improve our public schools in general. Encouraging immigrant students to succeed through high school and possibly enter college will help keep these students from dropping out of school, but the participation in a diverse population in school is itself a benefit to our education system. It is well established from research on education that diversity has a positive effect in classrooms

²⁹ While Brennan and the majority established a heightened scrutiny standard for Equal Protection claims for undocumented children pursuing public education, it is important to note that education is not a fundamental right (to itself confer heightened scrutiny), nor are undocumented residents a suspect class, so while *Plyler* is a landmark case for immigrant rights, the extension of this high constitutional standard will likely remain confined to the exact issue of schooling for undocumented *children*.

³⁰*Id.* at 218-19.

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and offers first-hand opportunities to learn about different cultures, religions, and perspectives, ultimately bettering students' understanding and education. School personnel that participated in a survey of their experience with undocumented students noted that there are:

“distinctive contributions of undocumented students: from their appreciation and respect for education, to their work ethic, to their strong sense of culture and rich life experiences. Importantly, the impact of these contributions is not limited to the undocumented student body; it benefits students with legal status and school personnel as well.”³¹

Because the DREAM Acts encourage undocumented immigrant children to remain in school rather than dropping out to start a trade early or pursue another life, the Acts will almost certainly increase the number of immigrant students in school, and therefore increase the diversity within our school system.

C. Benefits at Colleges and Universities

While most of the research on the benefits of undocumented students is limited to kindergarten through high school education, there is reason to believe that the passing of the DREAM Acts would also benefit our institutions of higher education. The increased opportunities offered by the Illinois DREAM Act, as well as the encouragement for undocumented youths to attend college in the Federal DREAM Act as part of their path to gaining citizenship, would undoubtedly increase the number of undocumented students attending college and universities nationwide. In a nation-wide survey of students in medical school, a majority of students said that they believed that a diverse student body

³¹ Nina Rabin, Mary Carol Combs, and Norma Gonzalez, *Understanding Plyler's Legacy: Voices from Border Schools*, 37 J.L. & Educ. 15 (2008). Available at <http://www.bibdaily.com/pdfs/understanding%20plyler's%20legacy.pdf>

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enhanced their experience.³² The study showed that diversity in such a prestigious area of education benefits both the educational experience as well as the kind of cultural and social understanding necessary to be an effective doctor.³³ Understanding the value of diversity in any classroom (whether that diversity be racial, socio-economic, or cultural), the increase of immigrant students at the university level would add greater diversity and enhance the educational experience for all students.

IV. A DREAM, Not Without Political Cost

While the federal and Illinois DREAM Acts provide social and educational benefits as a part of a wider scheme of immigration reform, opponents to any liberal legislation have stalled the progress of providing opportunities for young undocumented immigrants. Since the Illinois Senate passed the DREAM Act, the Palatine Tea Party and the Illinois Tea Party organizations have gone on the offensive.³⁴ The Tea Parties major opposition is that while Illinois makes these changes to provide educational opportunities to better its social and educational institutions, it also is making itself a “sanctuary” for illegal immigrants.”³⁵ The Tea Partiers are afraid that the DREAM legislation will make Illinois into a safe haven for undocumented immigrants and will make Illinois a more

³²Dean Whitla, Gary Orfield, William Silen, Carole Teperow, Carolyn Howard, Carolyn, and Joan Reede, *Educational Benefits of Diversity in Medical School: A Survey of Students Academic Medicine*. 78.5 (2003): 460-66. Print. Also available at http://journals.lww.com/academicmedicine/fulltext/2003/05000/educational_benefits_of_diversity_in_medical.7.aspx. (“Seventy-six percent of students felt that a diverse student body helped them work more effectively with those of different backgrounds, compared with 4% who said such diversity was of little or no help”).

³³ *Id.* (“A diverse student body enables students to exchange information and share value systems of different cultures as a basic foundation for cultural sensitivity”).

³⁴ ILLINOIS DREAM ACT CONTROVERSY DRAWS REGIONAL AND NATIONAL NEWS ATTENTION.

<http://illinoisreview.typepad.com/illinoisreview/2011/05/illinois-dream-act-controversy-draws-regional-and-national-news-attention.html>. (last visited 5/16/11).

³⁵ *Id.*

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attractive state for these individuals—and that this will eventually be a great burden on the state’s social services and resources. The Tea Party of Illinois hopes to use this issue to gain more Republican seats in the Illinois legislature as well as ousting some of the more moderate Republicans already in office.³⁶ The Tea Party and other opponents to this kind of legislation are afraid that our immigration laws will have no deterrent if we provide education and a path to citizenship to children who were brought to this country at an early age.³⁷

Despite the conservative opposition, the evidence that the federal DREAM Act and Illinois DREAM Act would benefit both our communities and our educational institutions should be enough to garner the political support necessary for such a big step forward. Whether looking at this pathway to citizenship and increased educational opportunity as an extension of the Equal Protection jurisprudence of *Plyler* or simply trying to create a more diverse and successful public school system, both the federal DREAM Act and Illinois DREAM Act should be passed and implemented to enhance our current immigration policy and our education policy.

³⁶ UPDATE: ILLINOIS SENATE PASSES STATE DREAM ACT.
<http://illinoisreview.typepad.com/illinoisreview/2011/05/illinois-senate-passes-state-dream-act.html>. (last visited 5/16/11). (Provides a list of all Senate Republicans that voted for the passage of the Illinois DREAM Act).

³⁷ *Id.* (“At the same time, a growing number of Illinois taxpayers are concerned that those who've entered America illegally are not being deterred by the fear of punishment for breaking immigration law, but instead are being welcomed and therefore, their illegal behavior is encouraged”).