



# **Know Your Rights: Achieving Academic Success for Undocumented Students in the P-20 Pipeline**

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**Equity Fact Sheet**

# Know Your Rights: Achieving Academic Success for Undocumented Students in the P-20 Pipeline

While 65,000 undocumented students<sup>1</sup> graduate high school every year (Abrego & Gonzales, 2010), a depressing 49% of them drop out (Passel & Cohn, 2009). Laws and policies make education unattainable and difficult (Nguyen & Martinez Hoy, 2015), especially since all undocumented students have a right to a K-12 education notwithstanding their immigration status (*Plyler v. Doe*, 1982). President Obama's Deferred Action for Childhood Arrivals program has opened access and opportunities for undocumented students (Bono, 2015), but the recent rescinding of DACA by the Federal Administration has created questions and concerns along the education pipeline for undocumented students, their families, and the education professionals who serve them (Huerta & Ocampo, 2017).

In response many municipalities, K-12 school districts, and college campuses have either declared themselves as "sanctuaries" – adopting policies to refuse to collaborate and cooperate with federal immigration officials – or have issued statements in support of DACAmented and undocumented students. This fact sheet provides information that is accessible to students, families, and education professionals to understand the legal rights of DACAmented and undocumented students. The following discussion provides an overview of those municipalities, school districts, and college campuses that have either declared themselves as sanctuaries or issued statements of support, examines relevant literature, and reviews the legal rights of students.

## Undocumented Students vs. DACAmented Students

It is important to understand and distinguish between two very synonymous, but very antonymous groups of students. Stalemate of comprehensive and consistent immigration law and policymaking at the federal level has caused a duality among undocumented youth – those who have been able to benefit from the Deferred Action for Childhood Arrivals (DACA) program, and those not eligible or do not participate out of fear (Batalova, Hooker, Capps, Bachmeier, & Cox, 2013; Wong, García, Abrajano, FitzGerald, Ramakrishnan, and Le, 2013).

There are an estimated 11.7 million undocumented immigrants in the United States, and approximately 1.8 to 2.2 million of those are undocumented youth that are 18 years and younger (Passel, Cohn, & Gonzalez-Barrera, 2013). Since June, 15, 2012, approximately 800,000 young people were eligible, have applied, and are considered to be "DACAmented" (Krogstad, 2017). As a result, while DACAmented students are considered to be undocumented because they lack legal status, permanent residency, or citizenship. However, they have legal presence and benefits that accompany that presence that is not afforded to undocumented students without DACA.

## Deferred Action for Childhood Arrivals

President Obama's Administration announced on June 15, 2012 through an executive order a program to give temporary reprieve to undocumented youth and enable them to benefit from certain rights without fear of

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<sup>1</sup> Undocumented students collectively include students without authorization and those who are DACA recipients, unless otherwise noted.

removal proceedings (Batalova, et al, 2013). If eligible, recipients are allowed to seek employment, apply for a Social Security number, obtain driver's licenses, professional licenses, among other benefits. Eligibility depends on a variety of qualifications: (1) entering the U.S. before turning 16, (2) being older than 15 years old but younger than 31 years old, (3) having resided in the U.S. continuously for the past consecutive five years, (4) having a high school diploma or its equivalent (if not currently enrolled in high school or a GED program); and (5) neither being convicted of a felony or a significant misdemeanor nor being a threat to national security.

DACA is only a temporary solution that grants "lawful presence" through prosecutorial discretion concerning deportation and does not afford "lawful status" or provide a pathway to legal permanent residency or citizenship (Adams & Boyne, 2015). A person is unlawfully present in the U.S. if he/she entered the country without being admitted or paroled or remains in the country after an authorized stay has expired. A person has unlawful status if he/she has violated terms of his/her previously lawful status. As a result, if one has a lawful status, an individual has permission to be in the U.S. so long as he/she complies with the laws and regulations. A person who is lawfully present may not have lawful status (Adams & Boyne, 2015). The absence of a legal status presents a challenging barrier for undocumented youth to successfully integrate into the American society (Kasinitz, Mollenkoph, Waters, & Holdaway, 2003). This temporary reprieve that can be terminated by any Presidential administration has many undocumented youth weary of exposing themselves, in fear of possible deportation (Abrego, 2011).

In September 2017, President Trump announced the end of the DACA program after six months and called upon Congress to act. As of the writing of this brief, Congress made several

attempts to resolve this issue but has yet to act. At the beginning of 2018, the Regents of the University of California and University of California President Janet Napolitano filed a lawsuit against the U.S. Department of Homeland Security (DHS) and DHS Secretary Kirstjen Nielsen. On January 9, 2018, U.S. District Court Judge William Alsup issued an injunction of the DACA revocation, and DHS later reinstated the DACA renewal process.

### **Sanctuaries**

Given the anticipated change in immigration policy and its impact on education and students, some educational institutions declared themselves as "sanctuary schools" or "sanctuary campuses" to protect students' rights and become a "safe zone." Because of the political nature of "sanctuaries," while some campuses and schools declared themselves as such, others only issued statements of support for undocumented and DACAmented students and stayed clear from making any declarations that might result in any political consequences.



Similar to the idea that sanctuary cities protect and provide refuge to immigrants within its boundaries, sanctuary campuses aim to provide safe spaces and protection to its undocumented and immigrant students.

Anticipating anti-immigration policy, student-led movements and supporters reinvigorated the sanctuary movement by engaging with their school and campus administrators and faculty to develop the strongest policies to protect the hundreds of thousands of students living, studying, working, and engaging on campuses nationwide. The momentum of the sanctuary schools and campus movement stems from work already done and the path laid from advocating for the DREAM Act, state laws and policies for undocumented students, DACA, and broader immigration protections.

By declaring oneself a “sanctuary,” the school or campus may adopt and implement one or more of these various policies.

<b><u>Sampling of Sanctuary Campus Policies</u></b>
<ul style="list-style-type: none"> <li>• Refusing to voluntarily share information with federal immigration officials to the fullest extent of the law</li> </ul>
<ul style="list-style-type: none"> <li>• Refusing physical access for federal immigration officials to any and all university/college-owned land and facilities to the fullest extent of the law</li> </ul>
<ul style="list-style-type: none"> <li>• Prohibiting campus police from inquiring about an individual’s immigration status, enforcing immigration laws, intimidating undocumented activists and protests, and/or participating with federal immigration officials in immigration-related actions</li> </ul>
<ul style="list-style-type: none"> <li>• Refusing to use the federal government e-verify system</li> </ul>
<ul style="list-style-type: none"> <li>• Prohibiting discrimination in housing based on immigration status</li> </ul>
<ul style="list-style-type: none"> <li>• Supporting DREAMers’ (DACA and undocumented students) equal access to enrollment, in-state tuition, financial aid, and scholarships</li> </ul>
<ul style="list-style-type: none"> <li>• Continuing the support of the DACA program</li> </ul>
<ul style="list-style-type: none"> <li>• All contractors and subcontractors of the college/university must agree and abide to the institutional policies</li> </ul>
<ul style="list-style-type: none"> <li>• Providing distance-learning options for affected students</li> </ul>
<ul style="list-style-type: none"> <li>• Providing legal assistance to impacted students</li> </ul>

While most institutions have made public statements condemning anti-immigrant policies and support for undocumented students, only a small percentage have publicly declared themselves as sanctuary campuses. Within the thirteen-state region of the Midwest and Plains Equity Assistance Center, one campus has declared itself as a “sanctuary campus”: Drake University in Des Moines, Iowa. Other campuses and school districts have issued statements of support. Below is a chart of illustrating some of those public campuses and school districts that have published declarations of support. Please note that this chart is a sampling of public institutions and is not meant to be an exhaustive list.

**Statements of Support Issued**

<b>State</b>	<b>School District</b>	<b>College Campus</b>
Illinois	<ul style="list-style-type: none"> <li>• Oak Park Elementary</li> <li>• Oak Park - River Forest</li> <li>• Proviso Township</li> <li>• North Shore</li> </ul>	<ul style="list-style-type: none"> <li>• Northern Illinois University</li> <li>• Southern Illinois University</li> <li>• University of Illinois</li> <li>• Western Illinois University</li> </ul>
Indiana	<ul style="list-style-type: none"> <li>• South Bend</li> </ul>	<ul style="list-style-type: none"> <li>• Butler University</li> <li>• Indiana University</li> <li>• Purdue University</li> </ul>
Iowa	<ul style="list-style-type: none"> <li>• Ames Community</li> <li>• Des Moines Public</li> </ul>	<ul style="list-style-type: none"> <li>• University of Northern Iowa</li> <li>• Iowa State University</li> </ul>
Kansas	<ul style="list-style-type: none"> <li>• Kansas City</li> </ul>	<ul style="list-style-type: none"> <li>• Kansas State University</li> <li>• University of Kansas</li> <li>• Wichita State University</li> </ul>
Michigan	<ul style="list-style-type: none"> <li>• Ann Arbor</li> <li>• Detroit</li> <li>• Hamtramck</li> </ul>	<ul style="list-style-type: none"> <li>• Michigan State University</li> <li>• Eastern Michigan University</li> <li>• University of Michigan</li> </ul>
Minnesota	<ul style="list-style-type: none"> <li>• Minneapolis</li> <li>• St. Paul</li> </ul>	<ul style="list-style-type: none"> <li>• University of Minnesota</li> <li>• Southwestern Minnesota State University</li> </ul>
Missouri	<ul style="list-style-type: none"> <li>• Kansas City</li> </ul>	<ul style="list-style-type: none"> <li>• University of Missouri - St. Louis</li> </ul>
Nebraska	<ul style="list-style-type: none"> <li>• Omaha</li> </ul>	<ul style="list-style-type: none"> <li>• University of Nebraska - Lincoln</li> <li>• Creighton University</li> </ul>
North Dakota	<ul style="list-style-type: none"> <li>• N/A</li> </ul>	<ul style="list-style-type: none"> <li>• N/A</li> </ul>
Ohio	<ul style="list-style-type: none"> <li>• N/A</li> </ul>	<ul style="list-style-type: none"> <li>• Ohio University</li> <li>• The Ohio State University</li> <li>• Xavier University</li> </ul>
Oklahoma	<ul style="list-style-type: none"> <li>• N/A</li> </ul>	<ul style="list-style-type: none"> <li>• Oklahoma State University</li> <li>• Southwestern State University</li> <li>• University of Central Oklahoma</li> </ul>
South Dakota	<ul style="list-style-type: none"> <li>• N/A</li> </ul>	<ul style="list-style-type: none"> <li>• University of South Dakota</li> </ul>
Wisconsin	<ul style="list-style-type: none"> <li>• Milwaukee</li> </ul>	<ul style="list-style-type: none"> <li>• Marquette University</li> <li>• University of Wisconsin - Madison</li> </ul>

## Students' Legal Rights and Institutional Responsibilities

Whether schools and campuses declare themselves as sanctuaries or not, they continue to have legal responsibilities to protect the rights of their students. It is the charge of the Equity Assistance Centers through federal funding by the U.S. Department of Education to support public education agencies' upholding of students' civil rights in relation to race, sex, religion, and national origin; it is this last area we present as rationale for this brief, while acknowledging that any opinions presented in this brief do not necessarily represent those of the federal government. Below is a brief examination of various students' rights and institutional responsibilities to their students.



### All students have a right to education.

In *Plyler v. Doe* (1982), the U.S. Supreme Court prohibited states from denying undocumented students access to free education and school districts from charging tuition based on immigration status. In the mid-1970s, Texas passed a law that withheld funding from school districts that enrolled undocumented children. The law gave these districts the option to deny enrollment or charge tuition to such students. In 1977, a group of undocumented Mexican children attempted to enroll in the Tyler Independent School District and could not prove their lawful immigration status. U.S. Supreme Court Justice Brennan stated that denial of education would create a “lifetime of hardship” and a “permanent underclass” of individuals so

that “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity to an education” (*Plyler v. Doe*, 1982, p. 223). The Court found no “evidence ... suggesting that illegal entrants impose any significant burden on the State’s economy,” or that they exhaust public resources while not contributing to social services (*Plyler v. Doe*, 1982, p. 228). The state failed to show a substantial state interest to deny “a discrete group of innocent children” education that it offers to others residing within its borders, and as a result, the U.S. Supreme Court afforded the opportunity to K-12 education for all children, immigration status aside (*Plyler v. Doe*, 1982, p. 230). As an important note, the Court stressed that the undocumented children “can affect neither their parents’ conduct nor their own status,” and consequently, it would be unfair to penalize the children for their parents’ presence (*Plyler v. Doe*, 1982, p. 220).

As a result, it is important to note that **school districts may not ask students nor their family members about their citizenship or immigration status**. In order to determine residency, school districts may only request documentation showing proof of residency, such as a utility bill, a lease or deed, etc. **If school districts request immigration status information, students and families may withhold this information.**

**Immigration enforcement action should not be directed at schools/campuses.** The U.S. Immigration and Customs Enforcement (ICE) on October 24, 2011, addressed enforcement actions at and focused on sensitive locations, such as pre-schools, primary, secondary, and post-secondary schools, among other areas. USCIS instructed field office directors that no enforcement actions were to occur at and were not to be focused on these sensitive locations. While the memorandum is not binding law, it does provide critical guidance that immigration enforcement actions are not to occur around or on school or college campuses.

Although the memorandum has not yet been rescinded, practice could change in the future so **it is important to be alert.**

**Student records and privacy.** The Federal Educational Rights and Privacy Act (FERPA) is a federal law that applies to all primary, secondary, and postsecondary schools that receive federal funding through programs administered by the U.S. Department of Education. (20 U.S.C. § 1232(g) (2013)). Under FERPA, educational institutions must protect “educational records,” which is broadly defined to include records and information that are “directly related to the student” and “maintained by an educational agency or institution” (34 C.F.R. § 99.3 (1988)). For students to receive financial aid or in-state tuition benefits, students would have revealed their undocumented status during an admissions or financial aid process, which makes this information and those records subject to protection under FERPA. Unless students consent to the release of this information, or if there is a court order or any other exceptions under FERPA,<sup>2</sup> the law prohibits schools from disclosing student information and records to third parties. From the exceptions enumerated in FERPA, none would permit or mandate institutions to share immigration information of students with federal officials, since there is no legitimate educational interest in removing a student from school or the college campus.

As a result, under FERPA, **educational institutions must not release students’ immigration status to Immigration and Customs Enforcement (ICE)** or any other federal agency unless directed by a lawful judicial order. Even if the school has been presented with an order for a student’s immigration status, the school must make reasonable efforts to notify the student of the order and that the information may be disclosed.

It is critical that institutional staff handling public records request are properly trained to secure student privacy. Institutions might consider funneling public records request either to their legal counsel or specialized staff to ensure the utmost protection of student privacy or a specified and trained individual.

#### **Higher education attainment.**

Unfortunately, as undocumented students matriculate through high school, their status poses challenges as they consider higher education. Undocumented students face a variety of obstacles. Some are erected by the states, others are institutional to accessing higher education, including the denial of admission, a lack of financial aid, and the inability to pay just to name a few. In order to learn and understand the various laws and policies impacting undocumented student higher education attainment, please refer to the Midwest and Plains Equity Assistance Center policy brief entitled, [Examining Law and Policy for Undocumented Immigrant Students through the PK-20 Pipeline.](#)

#### **Conclusion**

It is important to address the educational needs of hundreds of thousands of undocumented and DACAmented students across the country. Although law and policy-makers work to pass legislation to address these issues, it has a direct impact on these young people’s educational attainment and success. Advocates, teachers, and student affairs professionals are critical to the educational success of these students to help advise and direct them through a maze of potential issues they may face as they traverse through education. As a result, whether a school or campus is a “sanctuary” or not, it is the resources and assistance from the institution for these students that makes the biggest difference.

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<sup>2</sup> FERPA, there are a number of exceptions that allow schools to share personally identifiable information without the students’ consent. These exceptions are: (1) if school officials have legitimate educational interest; (2) transferring school; (3) for audit or evaluation purposes; (4) financial aid purposes; (5) for research purposes; (6) accreditation bodies; (7) complying with a court order; (8) for health and safety purposes; (9) state and local authorities pursuant to state law.



## **About the Midwest & Plains Equity Assistance Center**

The mission of the Midwest & Plains Equity Assistance Center is to ensure equity in student access to and participation in high quality, research-based education by expanding states' and school systems' capacity to provide robust, effective opportunities to learn for all students, regardless of and responsive to race, sex, and national origin, and to reduce disparities in educational outcomes among and between groups. The Equity by Design briefs series is intended to provide vital background information and action steps to support educators and other equity advocates as they work to create positive educational environments for all children. For more information, visit <http://www.greatlakesequity.org>.

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## **Disclaimer**

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