

CALIFORNIA STATE UNIVERSITY, NORTHRIDGE

How Effective are Current CSU Administrative Policies Aimed at Protecting their  
DREAMer Students?

A Graduate project submitted in partial fulfillment  
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in Public Sector Management and Leadership

By

Marilyn Jimenez

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The graduate project of Marilyn Jimenez is approved:

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Dr. Phillip Nufrio

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Date

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Dr. Henrick Minassian

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Date

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Dr. Mylon Winn, Chair

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Date

California State University, Northridge

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## ABSTRACT

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By Marilyn Jimenez

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The complexity of the United States intergovernmental relations at both the federal, state and local levels can have a detrimental effect on how policies are executed. Furthermore, this complexity has created many legal challenges and issues for the state of California, in particular, the California State Universities (CSU's) looking to protect their DREAMer students. CSU's are forced to fill the federal administrative void left behind by the federal government in terms of finding an appropriate method for processing their DREAMer students. In this paper, I will detail what administrative measures the State of California and CSU's have taken to fill that legislative void to determine the effectiveness of those administrative measures. In addition, I will share some federal and state of California legislative historical background outlining various laws and policies that have passed both in favor and against DREAMers, examining those policies which could be potentially expanded, analyzing how they have created legal challenges and issues for CSU's thus forcing them to implement those local University administrative policies.

*Keywords:* DREAMer, DREAM ACT, DACA, DOCUALLY, FERPA, ICE, IIRIRA & PRWORA

## INTRODUCTION

In 2013, there were more than “11 million undocumented immigrants living in the United States” of those 11 million, “80,000 turned 18 and an estimated 65,000 are expected to graduate from high school” (Cisneros & Cardenas, p. 2). This population of 18-year-olds is known as the DREAMers. The State of California has one of the largest populations of immigrants in particular undocumented immigrant students. It is estimated that “California is home to more than 2.5 million undocumented students” (Perez, p. xxvi). This data demonstrates that nearly a quarter of the nation’s undocumented immigrants reside in California where they constitute more than 6% of the state’s population.<sup>1</sup> Many of these undocumented students grow up in California and attend many of the K-12 local school districts. However, once they choose to enroll and attend college they begin to face many legal challenges due to their undocumented status and due to the various conflicting federal and state laws and policies. In addition, they come across various local University administrative polices, which forces DREAMers to disclose their undocumented status. DREAMer students, also, have to take extra steps to obtain financial resources and establish in-state residency.

The federal government’s inability to enact a proper piece of legislation addressing the issue with undocumented DREAMer students has left behind an administrative void. Consequently, existing and conflicting federal and state immigration policies have forced CSU campuses, throughout the state, to take their own steps and measures to address the issue with undocumented DREAMer students. These measures in the form of University administrative policies have created various legal challenges and issues for CSU’s defending their DREAMer students,

however they have been implemented with the garnered support of various pieces of legislation, implemented by the state of California. Some of these CSU University policies include passing advocacy letters and resolutions, creating DREAMer centers, choosing to not comply with federal immigration policies, declaring sanctuary jurisdiction, offering in state or individually institutional financial resources and offering students in-state residency tuition. This research will help to analyze if the various CSU administrative policies are successfully addressing the federal administrative void and determine what else can be done to fill that void.

Some legislative historical background will be outlined, focusing primarily on the State of California. The historical background will outline the various legislative attempts at implementing policies at the federal level to address the issue with undocumented students such as the proposed DREAM Act and the recently rescinded DACA program. However, the failure of both the DREAM Act and the recently rescinded DACA program have only contributed to the legislative void. The historical background will also demonstrated how some of the state of California legislation has eased some of the challenges and issues for the CSU's and how others have created challenges by conflicting with federal immigration policies. The combined patchwork of state of California polices and CSU's efforts to fill the legislative administrative void also only continue to create challenges for undocumented DREAMer students. Lastly, the historical background will concentrate on outlining which policies addressing undocumented DREAMer students have passed in favor, in opposition and those, which could be expanded.

## **LITERATURE REVIEW**

### **Passing Advocacy Letters**

The first administrative policy CSU's have repeatedly exercised to fill the federal administrative void, with the support of State of California legislative policies, is the use of advocacy letters. Recently, CSU's have had to address how the new presidential executive orders would affect their campuses and their undocumented DREAMer students, and determine if an advocacy letter was needed. Recently, however, the Trump administration issued several executive orders which affected CSU campuses statewide, prompting a need for CSU's to pass several advocacy letters.

The first executive order, and perhaps the most controversial, is the recently rescinded DACA program by the Trump administration. This executive order, known as “Ending Unconstitutional Executives Amnesties,” states that two programs which were established by the Department of Homeland Security, “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children” (June 15, 2012, and “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Resident” (November 20, 2014), have “unlawfully provided illegal aliens with affirmative benefits.” The executive order further states that these affirmative benefits which include, “lawful presence, work authorization, access to the Social Security Trust Fund, and access to the Earned Income Tax Credit” are in “violations of the separation of powers inherent in the Constitution by usurping Congress’s plenary power.”<sup>2</sup> Critics have stated that this executive order only exacerbates policy and does not thoroughly address the issue with undocumented

DREAMer students. Shortly after the DACA program sunset and it was confirmed that the “federal government would no longer accept new applications” (Wides-Munoz, p. 320) many activists began to mobilize nationwide, including the CSU’s as they quickly realized the detrimental affect this would have on their DREAMer students.

The CSU Chancellors office raised concerns about the ending of DACA in an advocacy letter written by Chancellor Timothy White stating, “This program enabled thousands of academically qualified California’s to pursue their dreams” but he reassured the CSU’s that “Campus Human Resources Offices and AVP’s/Deans of Faculty are available to assist faculty and staff.” The letter also outlines that the current “universities enrollment and tuition policies are not based on DACA status” and that “enrollment, tuition and financial aid for students is not impacted by the ending of the program.”<sup>3</sup> In a separate statement letter addressed to the CSU’s Chancellor White stated, “We are deeply troubled by President Trumps’ recent executive order that stands in stark contrast to the fundamental tenants of the California State University”. Further stating, “When something threatens our ability to think beyond our borders and learn from the world as a whole, we will oppose it.”<sup>4</sup> CSU Chancellor, Timothy White emphasized the impact that the ending of the DACA program would have on all 23 campuses across the state of California, such as “several thousand of our students would lose the status that DACA has provided” stressing that for some students, “they would not be able to get a job or have that sort of ability to function in society once they earn their college degree.”<sup>5</sup>

CSU’s, along with the University of California and the California Community Colleges made the decision to write an advocacy letter to President-Elect Trump on November 29, 2016, voicing their concerns regarding some of the potential actions he might be considering regarding ending the DACA program. The letter urged President-

Elect Trump to “continue with this important program and allow young people to continue to pursue a college education and contribute to their communities and the nation.” This advocacy letter also stresses that undocumented DREAMer students “do not represent a public threat” and that in fact “they represent some of the best our nation has to offer.”<sup>6</sup> The letter advocates to allow DREAMer an opportunity to pursue the American dream.

### **Resolutions for DREAMers**

The second administrative policy CSU’s have repeatedly exercised to fill the federal administrative void is to pass resolutions. Around the state of California, the CSU body, individual CSU campuses and their respective faculty Academic Senates have passed resolutions supporting DREAMers. Furthermore, these resolutions were shared as a way to communicate to their DREAMer students, staff, faculty and the overall campus community that all CSU campuses are supportive in creating a safe and welcoming environment to all.

Two resolutions have passed in support of the DACA program by the Academic Senate of The California State University (ASCSU). One resolution, “AS-3287-17/FA (Rev),” passed “In Support of Students Admitted to the CSU Under Deferred Action Childhood Arrivals (DACA)” and was approved unanimously between March 16-17, 2017 by the ASCSU. This resolution states that the “ASCSU” stands in solidarity with our DACA and DACA-eligible students and work to ensure the preservation of DACA.” Further, the resolution states that ASCSU “stands ready to advocate for legal resources and material support to ensure that the rights that would otherwise be available to DACA and DACA-eligible student are preserved.”<sup>7</sup> The second resolution “AS-3303-17/FGA”

titled “In Support of the Preservation and Extension of the Deferred Action for Childhood Arrivals (DACA) program passed between September 14-15, 2017, this resolutions reaffirms the ASCSU “commitment to protecting and strengthening the campus system diversity in all its forms and promoting respect and understanding for all people” This resolution also states that ASCSU will continue to “stand in solidarity with various campuses such a CSU Fresno, Northridge, San Bernardino, San Diego, San Luis Obispo, Stanislaus, etc.”<sup>8</sup>

The CSU Board of Trustees has also passed a resolution in support of the CSU DREAMer students. This particular resolution (RBOT 11-02-17) titled “Protection for Dreamer Students, Alumni and Employees” states that “The Board of Trustees expressly recognize and commends the contributions of our DREAMer students, alumni and employees, as their unique experiences enrich CSU campuses and the pursuit of their dreams enrich the State of California.” The CSU Board of Trustees, in their resolution letter, also encourage “trustees, the Chancellor, presidents, the CSU Office of Federal Relations, CSU advocates and the many other members of the university community to coordinate with local and national partners to advocate in support of DACA.” The resolution letter also encourages “senators and the president to work together to provide a long-term bipartisan solution for DREAMers.”<sup>9</sup>

### **DREAM Resource Centers**

With the support and encouragement of State of California Assembly Bills such as AB 1366 and AB 540, CSU’s have been able to create and establish administrative polices towards the implementation of DREAMer resource centers. More specifically, Assembly Bill 1366 by Assemblywoman Patty Lopez has encouraged California colleges

and universities to establish the Development, Relief, and Education for Alien Minors (DREAM) Act Resource Centers. Most CSU campuses have moved forward, establishing and implementing those Resource Centers. Additionally, the CSU has developed the “Resources for Undocumented Students” website.<sup>10</sup>

Assembly Bill 1366 also encourages CSU’s to designate a Dream Resource Liaison at each of their campuses, as specified, to assist certain students by streamlining access to all available aid and academic opportunities for those students. In addition, under this bill, the Dream Resource Centers would offer support services, including, but not necessarily limited to, state and institutional financial aid assistance, academic counseling, peer support services, psychological counseling, referral services, and legal services.<sup>11</sup>

Most of the CSU campuses have established a DREAM Resource Center and have designated at least one staff member to be a point of contact for undocumented DREAMER students to be located in a Dream Center, servicing all AB540 students.<sup>12</sup> Individual CSU campuses have also passed resolution in favor of creating Dreamer Resource Centers. The California State University, Northridge (CSUN) campus passed a resolution in favor of the “Creation of the AB-540 Dream Center” in partnership with the Associated Students who are the voice of over 41,000 students and the Student Leadership Organization. CSUN, stated that undocumented students are in need of serious academic and financial advisement, personal support, and that there is a need to ensure that CSUN students have a sense of belonging.<sup>13</sup> California State University, Los Angeles (CSULA) Academic Senate, also passed a resolution in support of their DREAMers. In their resolution, CSULA state that their DREAMer students should be able to pursue their area of higher education without fear of being arrested, deported, or

rounded up for just trying to learn. In addition, their letter emphasizes that the current President of the United States' anti-immigrant agenda continues to terrify the undocumented students.<sup>14</sup> Similar to CSUN and CSULA, Sonoma State University (SSU) passed a senate resolution “On The Establishment Of A Dream Center At Sonoma State University.” SSU stated in their resolution that “they will work in a timely manner to provide assistance in establishing an effective Dream Center at SSU.”<sup>15</sup>

### **Protecting Undocumented Student Records**

CSU's have also received support from the state of California legislation, to establish their own University administrative policies aimed at not complying with federal immigration laws and ensuring undocumented DREAMer student records are protected. Universities including the CSU's have “ensured University records do not include information about students' citizenship status” (Huerta & Ocampo, p. 4; Braaten, p. 5). CSU's have also garnered support from their overseeing government bodies of higher education, such as the Student Aid Commission<sup>16</sup> and the State Department of Education<sup>17</sup>. Collectively, the University of California, California State University, and the Community Colleges Chancellor's offices have all “pledged to do everything within the power of the law to protect Dreamers and DACA residents from discrimination.”<sup>18</sup>

That power of the law is seen in the state of California Assembly Bill, AB 21 entitled “Public postsecondary education: Access to Higher Education for Every Student,” introduced by California Assembly Member Ash Kalra, urges universities, including the Trustees of California State University, to “refrain from releasing certain information regarding the immigration status of students and other members of the communities served by these campuses” (Newman, p. 158). AB 21 has continued to

“protect undocumented students in public colleges and universities, which are most vulnerable to defunding threats” (Newman, p. 158). While this bill at the state level supports those local Universities, such as the CSU’s, which have chosen to protect their DREAMer students by establishing their administrative policies, it may still pose legal challenges at the federal level by if federal immigration laws where ever enforced.

CSU’s are also using the power of the law by enforcing Family Education Rights and the Privacy Act (FERPA laws. All student records, whether students are documented or undocumented are protected by FERPA. FERPA also “prohibits institutions from disclosing personal information without the student’s consent” (Caballes, p. 3). Furthermore, “releasing student records without a student’s consent or a subpoena would violate federal law under FERPA” (Kelderman, p. B24).

There are, however, exceptions under FERPA laws, such as, “disclosure of directory information (the definition of which is quite broad), to comply with judicial orders or subpoenas, and health and safety emergency disclosures” (Newman, p. 163). While Universities are obligated to comply with judicial orders or subpoenas, “undocumented students may have limited protection provided by FERPA’s disclosure notification requirement” (Newman, p.63). Student records may also be obtained with a search warrant and a search warrant is not too difficult for any government agency to obtain. In this case, there is not much a university campus can do other than to “abide by FERPA” policies and ensure “the status of their students is kept confidential” (Caballes, p. 4). Consequently, any students who file for federal financial aid are not protected by FERPA as FERPA “does not prohibit institutions from disclosing the personal information of students applying for or receiving federal financial aid” (Newman, p. 142).

Lastly, any undocumented students who “apply but are unable to gain admission to institutions of higher education will remain unprotected” (Newman, p. 142).

To reinstate, the legislative void, the federal FERPA polices with their limited protection under the broad “disclosure notification requirement” and the state of California policies continue to pose challenges for CSU’s. Therefore, CSU’s have established internal administrative policies to ensure they are protecting undocumented student records under both state of California laws, AB 21 and federal FERPA laws

### **Declaring Sanctuary Jurisdiction**

CSU’s, in their decision to not comply with federal immigration laws, have also implemented their own local Universities administrative policies in the form of systemwide guidance and principles regarding “sanctuary” jurisdiction. There are some challenges with campuses using the word “sanctuary” as there is no “legal definition of what a sanctuary city is” let alone a college or university sanctuary campus (Caballes, p. 3). It is also still unclear what exactly a “sanctuary campus is supposed to look like and what will be considered a sanctuary campus regardless of its own self-categorization” (Caballes, p. 3). Therefore, CSU’s have chosen to not use the term “sanctuary” due to there “being no standard definition or common understanding and which, if used, can lead to confusion and misunderstanding.” CSU’s, rather, are choosing to use the terms “safe and welcoming.” Around the state CSU’s have established policies which “clearly articulate that individuals will not be contacted, detained, questioned, or arrested solely on the basis of being or suspected of being an undocumented immigrant, except as required by the law.” These policies have been outlined in a letter written by Chancellor Timonthy R. White regarding “U.S. Immigration and Customs Enforcement.”<sup>19</sup>

Universities, including CSU’s will” reject the presence of Immigration and Customs Enforcement (ICE) agents on campus” (Huerta & Ocampo, p. 4; Braaten, p. 5). CSU have vowed to not cooperate, accept request, or participate in any detainment, questioning, holding or arrest of any individual suspected of being undocumented.

These CSU systemwide administrative polices are enforced by two state of California pieces of legislation. On January 1, 2018, two California bills, SB 54 (2017) and Assembly bill, AB 21 (2017), passed as sanctuary jurisdiction laws. These two bills served as support to CSU’s in their decision to provide a “safe and welcoming” environment for all. The state of California Senate Bill No. 54, also known as “SB 54,” “prohibits state and local law enforcement agencies, including school police and security departments from using state resources to cooperate with federal immigration officials” (Newman, p.158). This bill further goes on to state that it “prohibits California laws enforcement agencies from inquiring into a person’s immigration status for immigration enforcement purposes” (Newman, p.158). Senate Bill No. 54 requires that, by October 1, 2018, the Attorney General, in consultation with the appropriate stakeholders, publish model policies limiting assistance with immigration enforcement to the fullest extent possible for use by public schools, public libraries, health facilities operated by the state or a political subdivision of the state, and the courthouse, among others.<sup>20</sup>

The second bill, California Assembly Bill No. 21, emphasizes equal access for higher education for every student, it further identifies all the segments of post-secondary education in the state of California. Those segments include CSU’s, under the administration of the Trustees of California State University.

Under AB21, University campuses are to “refuse to allow officers or employees of United States Immigration and Customs Enforcement to enter campuses of their respective segments on official business of that agency unless they provide specified information and at least 10 business days’ advance notice” (Newman, p. 158). More specifically, under this bill, higher education institutions are to refrain from disclosing personal information concerning students, faculty, and staff and they do not have to comply with an immigration officer under federal immigration order. Faculty and staff are urged to contact the student’s emergency contact, faculty or staff person if there is a reason to suspect that the person has been taken into custody as the result of an immigration enforcement action.<sup>21</sup>

However, the Trump Administration contends that sanctuary jurisdiction laws conflict with 8 U.S.C § 1373, which prohibits local jurisdictions from restricting their employee’s communication with immigration and customs enforcement personnel regarding a person’s immigration status. Therefore, on January 25, 2017, President Trump issued Executive Order 13768, which, among other things, grants discretion to the Secretary of Homeland Security and the Attorney General to bar sanctuary jurisdictions from receiving federal funding. This executive order, however, was appealed in a federal court.<sup>22</sup>

Unlike Senate bills, SB 54 (2017) and Assembly bill, AB 21 (2017) which support sanctuary “jurisdiction” there are bills opposition to sanctuary “Jurisdiction”. An example of such a bill is, Congressman Hunter Duncan’s (R-CA-50) who introduced bill H.R. 483 on January 12, 2017. This bill prohibits the provision of funds under such titles to institutions of higher education that violate the immigration

laws.<sup>23</sup> However, there have been arguments against this bill, as universities have begun to question the legality of such bills.

These various legal challenges and issues have created some indecisiveness, reluctance, and apprehension for other universities deciding whether or not to declare themselves sanctuary campuses “given the potential consequences of such a declaration” (Caballes, pg. 2; Newman, p. 136; Kelderman, p. 2) such as losing or endangering their federal funding. Unlike CSU’s, some universities have been apprehensive towards the sanctuary movement arguing that the “sanctuary movement supports the violation of federal law while other institutions avoid the designation but continue to support their undocumented students” (Newman, p.134) If federal laws where every enforced they would have a “much more impactful effect on a university,” as a university “to lose federal funding would have a much more debilitating effect than a city” (Caballes, p. 4).

Until a there exists clear definition of what constitutes “sanctuary jurisdiction” some universities will either continue to express apprehension while others may choose to not use the term “sanctuary” but still continue to protect undocumented DREAMer students.

### **Financial Resources for DREAMers**

DREAMer’s do not qualify for federal financial aid. In addition, the failure of both the DREAM Act and the recently rescinded DACA program have only increased the financial challenges DREAMers face. The failure of both of these programs has ended their chance at “any path towards permanent residency and access to in-state tuition (Mendez-Pounds, Nicholas, Gonzalez & Whiting, p. 443). Understanding the many barriers and challenges undocumented students face, CSU’s have established

administrative policies to ensure DREAMer received institutional and statewide financial resources. One such resource available to undocumented DREAMer students is the availability of the California DREAM Act. Under AB 540, the state of California grants the student the opportunity to apply and file for the California DREAM act. Under this act, certain students are exempt from paying non-resident tuition (higher than resident tuition) and allows them to apply for different types of California Dream Act financial aid.

There are also several grants available to DREAMer students in the state of California such as the Cal Grant. The Cal Grant is offered under the California DREAM Act. One of the main Cal Grant requirements for DREAMers includes a need to submit their GPA through the California Dream Act application. The challenge for DREAMers is that they do not have a social security number, therefore, they need to complete a “Cal Grant Non-SSN GPA verification form”<sup>24</sup>, and a school must then verify their GPA and this form must then be mailed to the California Student Aid Commission (CSAC).<sup>25</sup> Another grant available to DREAMer students is the Chafee Foster Youth Grant which is available to DREAMers under Bill 2506. Starting with the 2017-18 award year, if a student attends a school that is a qualifying institution that is eligible for participation in the Cal Grant Program they will be eligible to apply for this grant. DREAMer students must also have filed a free application for the California DREAM Act. DREAMer students must have been in foster care and be between the ages of 16 and 18 as a dependent or ward of the court. This grant qualifies students up to \$5,000 a year in aid.<sup>26</sup> Lastly, in addition to the benefits offered through the California Dream Act and various grants there is also the “Middle Class Scholarship.” This particular scholarship requires that a student have AB 540 status and meet all of the qualifications under AB

540, such as having attended a California high school for a minimum of 3 years, have obtained a California high school diploma or GED, be enrolled in an accredited California university and have an intent to legalize their immigration status as soon as possible.<sup>27</sup>

While many undocumented students do benefit from many of the financial resources available through the California Dream Act such as the grants and scholarships from the state that may not be enough. There are also some students who do not qualify for AB 540 leaving them at a disadvantage financially with no financial assistance or resources to pay for college. Those same undocumented student who do not qualify for AB 540 also do not qualify for private scholarships. DREAMer students are left having to create their own patchwork of solutions by independently having to find resources to go to college such as “working odd jobs to raise money for school, or applying for scholarships.” (Marrero, p. 146). There are many DREAMers “who are awarded prestigious scholarships for college, but these awards go unused because of their status” (MendezPounds, Nicholas, Gonzalez & Whiting, p. 443).

Many CSU’s have begun to offer internal scholarships administered by the individual campuses. At CSUN, the “Dreamers Scholarship” is available to undocumented undergraduate students with a 2.5 GPA or higher. The scholarship awards can range from \$1,250 up to \$8,800 who don’t qualify for AB 540.<sup>28</sup> Some California State Universities such as, California State, San Bernardino, California State University, East Bay and California State, Long Beach have collaborated with the “THE DREAM.US” scholarship and have made this information available to their undocumented students. This particular scholarship is a national scholarship fund for

immigrant youth without documentation.<sup>29</sup> This “THEDREAM.US” scholarship provides up to \$25,000 to DREAMers to help cover tuition, fees, books, supplies, and transportation.<sup>30</sup> This particular scholarship is also renewable for up to five years, or until a student has received the full \$29,000 award.<sup>31</sup>

Until the Federal government passes a bill allowing undocumented DREAMer student’s access to Federal Financial Aid, the State of California along with CSU’s will continue to set in place internal financial aid administrative polices for DREAMer students. There is uncertainty which lies in that fact that legislative policies both at the federal and state level can change at any time threatening financial aid resources for those who do qualify, leaving CSU to find additional financial resources.

### **DREAMers Charged In-State Tuition Prices**

With the support of the California Education Code, CSU’s have established policies to ensure they do not charge DREAMer students out of state tuition prices. A state statute of the California Education Code, Section 68050, “empowers the state of California to charge non-residents a higher rate of tuition than in-state residents” (Hernandez, p. 542). However, under California Education Code section 68130.5 state statute “undocumented immigrants are to receive in-state rates if they met certain educational requirements and intended to pursue American citizenship” (Hernandez, p. 543). This particular state statute was challenged against section 505 of Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA) in the California Supreme Court. The plaintiffs, United States Citizens, in this particular court case, alleged that at the time when they were students they had been “improperly denied an exemption from non-resident tuition under California Education Code, section

68130.5” (Hernandez, p. 544). The plaintiffs alleged that section 505 of IIRIRA “preempted the California statute because the in-state tuition rate was a benefit conferred to undocumented immigrants based on the California residency” (Hernandez, p. 544) arguing that this benefit was not made “available to all US citizens who resided outside of the State of California” (Hernandez, p. 544). However, the court disagreed that section 68130.5 “did not ignore a recipient’s immigration status” and that Section 68130.5(a)(4) requires undocumented students to “file an affidavit with the institution of higher education attesting to their application for citizenship, or their intent to do so, as soon as they are eligible” (Hernandez, p.544). Lastly, section 68062(h) of the California Education Code states that “an alien, including an unmarried minor alien, may establish his or her residence, unless precluded by the Immigration and Nationality Act (8 U.S.C. [§] 1101) from establishing domicile in the United States” (Hernandez, p. 545). These various state of California and California Education Code policies support CSU’s administrative policies to charge undocumented DREAMer student in-of-state tuition prices.

## **LEGISLATIVE HISTORICAL BACKGROUND**

In order to further understand not only the various legal challenges and issues CSU's are facing when protecting their DREAMer students, and how those challenges and issues have prompted CSU's to implement their own administrative policies, some historical legislative background will be shared. Many of the Federal policies passed have “given rise to problematic conflicts of law between the states and the federal government addressing undocumented students and their access to postsecondary education” (Stevenson, p. 568). Consequently, these conflicts have caused a division in our country, creating essentially two sets of laws, in support of and in opposition to granting undocumented student access to post-secondary education.

### **Laws and Policies supportive of Dreamers**

Legal experts in support of the implementation of laws and policies protecting DREAMer students in higher education have made several attempts to put forth those laws and policies. The Development Relief and Education for Alien Minors (DREAM) Act was first introduced into the American legislature back in 2001 and if passed would have provided, “conditional permanent residency to certain illegal alien applicants who graduated from U.S. high schools, are of good moral character, arrived in the U.S. illegally as minors and have been residing in the U.S. continuously for at least five (5) years prior to the bill’s enactment” (Feasley, p. 70; Marrero,p. 144 ;Perez, p. xxxvii; Olivas, p. 21; Wallace, p. 263). In addition, this act would address, among other issues “legalization to work and would render students eligible for all federal financial aid” (Olivas, p. 21; Wallace, p. 263). The (DREAM) Act was then introduced in Congress in 2003 but it “languished there, as comprehensive immigration reform efforts failed in late

2007” (Olivas, p. 21). It was then approved in the House in 2010 but then stalled in Senate due to “opposition by Republican Party leaders” (Wallace, p. 263). After several attempts, the DREAM Act has failed to be made into law at the Federal level. There have been several attempts shortly after to again make the DREAM Act into law, but these have also failed.

The next attempt at implementing a law in support of DREAMers was the Deferred Action for Childhood Arrivals (DACA) program. This particular program was an “executive action” established by the Department of Homeland Security (DHS) which “granted temporary relief from removal or deportation to young noncitizens who came to the United States as children” (Cisneors & Cadenas, p. 189; Kominers, p. 1). Similar to the DREAM act the DACA program would also grant these students an opportunity for postsecondary education. Unlike the DREAM Act, the DACA “Deferred Action for Childhood Arrivals” program was passed at the federal level and this program “offers conditional temporary status to previously undocumented immigrants who had resided in the United States since childhood, been educated in the U.S. Schools, had earned a GED or served in the military, and were law-abiding residents” (Cebulko & Silver, p. 1554). Under these conditions, those under the DACA act would be “granted a temporary reprieve from the threat of deportation and access to work permits” (Cebulko & Silver, p. 1554). It is unsettling for many because not only was the DREAM act never made into law but the DACA program which was only offered as a temporary solution was not renewed, leaving many fearful of deportation and uncertain as to their future.

## **The California DREAM Act**

The State of California, after realizing that the Federal government would not pass or renew an act supporting DREAMer students passed their own California DREAM Act. The California DREAM Act is composed of three Assembly bills, AB 540, AB 130, and AB 131. The bills were authorized by Assemblymember Gil Cedillo and were signed into law by Governor, Jerry Brown in 2011 becoming effective in 2012.<sup>32</sup> This act “entitles those students to the same kind of state aid that California legal residents receive” (Feasley, p. 78).

In order for undocumented students to qualify for the benefits of AB 540 they must meet the following requirements, 1.) Attend three or more full years of high school in CA or the equivalent, 2.) Graduate from a CA high school and 3.) Not hold a valid visa.<sup>33</sup> As of January 1, 2012, under AB 130, students who are attending a CSU are exempt from paying nonresident tuition and are eligible to receive scholarships from non-state funds received. In addition, AB 130 students pursuant to Section 68130.5 of the Education Code who are deemed to be in financial need shall be eligible for all financial aid.<sup>34</sup> Under AB 131 the California Dream Act also allows DREAMer students access to state-funded grants. This bill provide that student who are exempt from paying nonresident tuition are eligible to participate in any student financial aid program administered by the State of California.<sup>35</sup> The financial aid programs include the Cal Grant, the Extended Opportunity Programs (EOP) & Extended Opportunity Programs and Services (EOPS) however, in order for students to be eligible for those scholarships and grants students must meet the AB 540 requirements.

Table 1.1: Differences between California Dream Act and DACA<sup>36</sup>

### California Dream Act vs. Deferred Action for Childhood Arrivals (DACA)

Jurisdiction	STATE OF CALIFORNIA			FEDERAL (US)
Law or Policy	AB 540	AB 130	AB 131	
Title	Non-Resident Tuition Exemption	California Dream Act		
Effective Date	2001	January 2012	January 2013	DACA Deferred Action for Childhood Arrivals
What It Does	Exempts students from out-of-state tuition fees	Allows scholarships administrated by public institutions available	Allows state funded grants & programs available (including Cal grants & institutional grants; EOP & EOP&S eligibility & grants )	<ul style="list-style-type: none"> <li>· Allow students to receive employment authorization card with Social Security #</li> <li>· Confers a Stay of Deportation</li> </ul>
What It Does Not Do	Does not change their residency status	Does not make them available for federal grants or funds		Does not change their citizenship status
Eligibility Requirements	Student must: <ul style="list-style-type: none"> <li>· Attend three full years of high school in CA or the equivalency*</li> <li>· Graduate from a CA high school</li> <li>· Not hold a valid visa</li> </ul>	Student must meet: <ul style="list-style-type: none"> <li>· AB 540 requirements</li> <li>· Individual Scholarship Requirements</li> </ul>	Student must meet: <ul style="list-style-type: none"> <li>· AB 540 requirements</li> <li>· Priority Filing Deadline</li> <li>· Income Guidelines</li> <li>· GPA for Cal grants</li> <li>· Program Requirements (EOP)</li> </ul>	Individual must have or be: <ul style="list-style-type: none"> <li>· Continuously present in US since 6/15/07</li> <li>· Entered the US before 6/15/02 or had expired status</li> <li>· Under the age of 31</li> <li>· Arrived to US before 16<sup>th</sup> birthday</li> <li>· Been in school at time of application or have already graduated or attained GED</li> <li>· Not been convicted of a felony</li> </ul>
Beneficiaries	U.S. citizens & undocumented individuals that meet eligibility criteria	U.S. citizens & undocumented individuals that meet eligibility criteria, as well as U Visa Holders		Undocumented individuals who meet eligibility criteria

\*includes GED or  
CCSF Transitional Studies

Prepared by Nancy Jodaitis · AB 540 Advisor · SF State · 1600 Holloway Ave · San Francisco, CA 94132 · 415-338-6879 · [nancyj@sfsu.edu](mailto:nancyj@sfsu.edu)  
For more information and resources: [www.sfsu.edu/~finaid/](http://www.sfsu.edu/~finaid/) or [ab540www.e4fc.org](http://ab540www.e4fc.org) or [www.uscis.gov](http://www.uscis.gov)

### Laws and policies in opposition of DREAMers

Legal experts in opposition to granting DREAMer student's legal protection and access to post-secondary education have also made several attempts to propose federal laws and policies, which have created many legal challenges and issues for the State of California and for CSU's. In 1996 two bills passed at the federal level, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). While both of these bills state that undocumented students can attend colleges or university whether they be private or public they do emphasize that those states which "wish to enable these students to be eligible for in-state public college tuition must pass legislation allowing

them to establish in-state residency” (Olivas, p. 20). Another argument in opposition to granting undocumented students in-state residency benefits states that it should not be made available to them if “that same benefit is not available to non-resident citizens” (Hernandez, p. 525). The federal “restrictions challenges will continue to stall state-level efforts to accord resident status to undocumented college students” in particular in the state of California” (Olivas, p. 21).

### **Existing policies which could be expanded**

While there are laws both in support and opposition to granting undocumented students the right to higher education there are other policies which protect younger children as in K-12 but have not been expanded to protect students in postsecondary educational levels. This is the case in Plyer v. Doe, the U.S. Supreme Court held that “undocumented immigrant children could attend public schools, for which states and school districts could not charge them tuition” (Olivas, p. 20). In 1975, the State of Texas revised its laws to “empower local school districts to deny enrollment to students of questionable immigration status” (Hernandez, p. 520 & Perez, p. xxiv). In 1982, the US Supreme Court held that state school districts are “constitutionally prohibited from denying a student access to primary and secondary public-school education based on immigration status” (Hernandez, p. 525; Marrero, p. 151; Olivas, pg. 1; Stevenson, p. 562). One of the main arguments regarding IIRIRA is that it conflicts with Plyer v. Doe Supreme Court’s decision and that “reasoning should be extended to higher education because the prospect of an underclass in American society is as relevant in postsecondary education as it is in primary and secondary education” (Hernandez, p. 526).

## **Analyzing CSU administrative policies**

There currently exist federal legislative void which is failing to adequately address the issue with undocumented students. Therefore the state of California with its various legislative policies and CSU's with their various administrative polices have stepped in to fill that legislative void. The current outline of CSU administrative policies explains and examines the development of some of those policies. In addition the detailed historical legislative background will also showcase how legislation has had a part in the CSU's implementation of policies.

## **RESEARCH DESIGN**

In order to determine if the current administrative policies that CSU's have implemented are successfully addressing the legislative void regarding undocumented DREAMer students an analytical analysis will be conducted of the various CSU administrative policies. This study will help to serve as a legislative guide and as a framework for future University leaders and legislative experts to utilize in any part of an implementation of new policies addressing undocumented DREAMer students. This study will be a non-experimental design as none of the data that will be gathered will be manipulated in any way.

This study will also not seek to identify or help in the creation of a new policy addressing undocumented DREAMer students but more so to analyze existing CSU administrative policies. This study will help to examine if the administrative policies are meeting their objectives and/or goals.

### **Data Collection**

The data that will be collected will be of a qualitative form. The study will be a collection of secondary data which will consist of journal articles, scholarly reviews, books, book chapters, legislative documents, and websites. Qualitative secondary data will also be collected by searching California government division websites as they relate to the CSU policies. Data will also be incorporated from a collection of CSU educational overseeing bodies such as the CSU Academic Senate, CSU Board of Directors and CSU Chancellors Office. The data collected will be specific in a time period, dated from 2001, the time of the first introduction of the DREAM Act into the American legislature, to 2018.

## **Data Analysis**

The data that will be collected will be categorized and sorted into an Excel spreadsheet, such as data pertaining to administrative policies relating to advocacy letters, resolutions, the creation of Dream Resource Centers, protecting undocumented student records, declaring sanctuary jurisdiction, developing financial resource for DREAMers and charging in-state tuition prices. The Walt and Gilson model will be applied which brings special attention to the “context of where a policy takes place, to the content of the policy proposal, to the process for formulating and implementing the policy and the Social Actors playing a part in this process” (De Arugo Jr. & Filho pg. 1).

The secondary data will also be sorted into an excel spreadsheet by individual administrative policy and its corresponding categories of analysis, such as examining the context under which the administrative policy was implemented, providing content of the administrative policy, outlining the process of formulation and implementation of the administrative policy, noting any social actors involved in the implementation of the administrative policy. These categories of analysis will help to determine if the existing CSU administrative policy is successfully filling that legislative void or if this policy could be expanded or re-structured. The below table is an example of a qualitative secondary data that will be collected containing various variables which will be entered into an Excel database and used in policy analysis.

Table 1.2: An example of the qualitative secondary data pertaining to the administrative process of creating Advocacy Letters.

<b>Object of Analysis</b>	<b>Categories of analysis</b>	<b>Product of analysis</b>
Creating Advocacy Letters	Context in which the administrative policy was implemented	Is this administrative policy successfully addressing the legislative void?
	Content of the administrative policy	
	Process of formulation and implementation of the administrative policy	
	Social actors involved in the implementation of the administrative policy	

Lastly, the categories of analysis, more specifically the process of formulation and implementation of the administrative policy will help identify not just if the goal or objective is being met but if it is what impact that policy is having on the overall CSU campus community including this studies prime stakeholders, undocumented DREAMer students.

### **Limitations**

There is always the risk of inaccurate records however in order to ensure the data is accurate data will be analyzed for replication. A technique of corroboration will be applied by comparing secondary data sources for similar stated facts. Due to the vast quantity of secondary data, it is also important to ensure focus is primarily applied to the area of research. Due to the nature of this area of research official statistics mentioned in the secondary data may change over time as legislative laws can quickly change

depending on the economy, political climate, or current presidential office. Existing legislative policy always have the potential to be expanded or be eliminated altogether. The other major challenge with secondary data is that most of data collected was to serve a completely different study and was collected to answer a completely different question than the research question that needs to be answered. Therefore, careful analysis of the secondary qualitative data will need to be done to extract only that information appropriate for this research study.

### **Ethical Consideration**

There is a possibility that there may be some ethical challenges when examining some CSU administrative policies pertaining to protecting undocumented DREAMer student records, providing financial resources and charging DREAMers in-state tuition. In particular when analyzing if financial resource are being provided to undocumented students, FERPA laws will be greatly considered to ensure student records are being kept confidential. Those social actors involved in the implementation of the administrative policy will be consulted for request of secondary data for this study but there will be a need to ensure the data does not contain any confidential student information such as any information which can identify or locate a student. Any names, enrollment status or any identifiable information will need to be removed. Since this study is being conducted as a legislative guide or framework to any future educational or policy legislatures the data will be collected and composed in a replicable manner.

Table 1.3: An example of the qualitative secondary data that will analyze CSU's administrative policies for providing financial resources for DREAMers.

<b>Object of Analysis</b>	<b>Categories of analysis</b>	<b>Product of analysis</b>
Providing financial resources for DREAMers	Context in which the administrative policy was implemented	Is this administrative policy successfully addressing the legislative void?
	Content of the administrative policy	
	Process of formulation and implementation of the administrative policy	
	Social actors involved in the implementation of the administrative policy	

## **Findings**

The failure of the DREAM Act and the recently rescinded DACA program have created uncertainty with DREAMers. What this study hopes to analyze is the effectiveness of various CSU administrative policies created to fill the federal legislative void. As stated previously the data findings will serve as a guide and towards any further educational administrators or policy legislatures creating any new policies addressing undocumented DREAMer students. Collectively, the state of California and CSU's have implemented policies to put emphasize on the legislative void.

## **CONCLUSION**

Legislative historical background demonstrates that the failure to expand, renew and/or pass existing and proposed policies has created a legislative void at the federal level. The state of California has stepped in to fill some of that legislative void with their various assembly bills and policies and with the creation of the California Dream Act. CSU's have received the support needed from the various state of California policies and has taken steps to implement their own internal administrative policies aimed at supporting and protecting their undocumented DREAMer students. The analysis of these various administrative policies will serve as a legislative guide and framework for any future academic leaders and legislative policy makers to utilize towards the implementation of any new policies.

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## APPENDIX A

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## **APPENDIX B**

Table 1.1: Differences between California Dream Act and DACA

Table 1.2: An example of the qualitative secondary data pertaining to the administrative process of creating Advocacy Letters.

Table 1.3: An example of the qualitative secondary data that will analyze CSU's administrative policies for providing financial resources for DREAMers.

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## APPENDIX C

ASCSU: Academic Senate of the California State University

CSAC: California Student Aid Commission

CSULA: California State University, Los Angeles

CSUN: California State University, Northridge

DACA: Deferred Action for Childhood Arrivals.

DHS: Department of Homeland Security

DOCUALLY: Program created by The University of California, Berkley which offers training to their staff and faculty on how help effectively with DREAMer students.

DREAM ACT: Development, Relief and Education for Alien Minors Act was first introduced into the American legislature back in 2001.

DREAMer: Undocumented students below the age of 18yr.

EOP: Extended Opportunity Programs

EOPS: Extended Opportunity Programs and Services

FERPA: Family Education Rights and the Privacy Act

GED: Certificate of General Education

HiSET: High School Equivalent Test

ICE: Immigration and Customs Enforcement

IIRIRA: Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

PRWORA: Personal Responsibility and Work Opportunity Reconciliation Act.

TASC: Test Assessing Secondary Completion