

EDUCATION PRESENTATION

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“Nothing is more important than education. Our state’s future tax base and fiscal well-being depend directly on a highly educated work force.” -- Carole Keeton Strayhorn, Texas Comptroller, 2006ⁱ

Educational attainment is critical to an individual’s economic success, and economic and social status is increasingly conferred on the basis of access and performance in the educational system. While education largely determines earning capacity, it presents a quality of life issue. An educated populace improves the State’s economy, is more productive, and is more socially responsible and civically engaged, while the alternative presents serious, far-reaching consequences. Generally, a high school dropout is four times more likely to be jobless than a college graduate, forty-seven times more likely to be jailed than a college graduate, and has a mortality rate that is three times higher than a person with more than a high school diploma.ⁱⁱ Texas’s investment in all students, documented and undocumented, should increase overall productivity while reducing the need for redistributive services and associated expenses over the long run.

There should be a consensus that educating all children is critical, while not educating them will have a devastating impact on our future. Over the years, U.S. Supreme Court decisions and Texas law have acknowledged this proposition, but a conflicted system has developed. All children have access to K-12 public education, and in Texas, undocumented students can attend a state college or university and pay resident tuition rates, if they meet certain criteria. However, once educated, even with a college or advanced degree, undocumented students are not afforded the option to become permanent residents. After the local, state and federal government has invested thousands of dollars on an undocumented student who have shown amazing resilience and commitment to attain an education, this same person remains an outsider.

As an example, let us consider the story of Amy Chen:

Amy graduated from high school, finished college, and entered law school. She was living the American dream, but her parents brought her to the U.S. from Taiwan when she was just a child. While she aspired to be a lawyer, her dream came to a standstill when she discovered that she was required to submit a background check to sit for the state’s bar exam. Devastated, Amy dropped out of law school.ⁱⁱⁱ

Amy’s tragic story demonstrates one of the best examples of why comprehensive immigration reform is needed. We currently invest in the education of undocumented students but offer no real future. Amy wants to give back to the U.S. As an attorney, she can earn more, buy more, and pay more in taxes. However, even with a degree, she works in this country illegally and is prohibited from obtaining a professional license. While she contributes to our system in terms of talent and taxes, she is unable to reap the full benefits of U.S. citizenship. She remains neither here nor there, a part of a shadow economy and community.

The undocumented immigrant children, as well as the second generation children of undocumented immigrant parent, are often portrayed as either victims or villains in debates, and the dichotomy is disturbing demonstration of how the rhetoric of immigration reform remains polarized yet surprisingly stagnant. It is remarkably difficult to credibly blame or punish a child for being in the U.S. illegally, as the child is here due to the actions of an adult. Enlightened self-interest demands a more constructive approach to immigration reform, and as education has always been touted as the great equalizer and the key to democracy, the educational system should be constructively utilized to provide the undocumented immigrant with an opportunity to become a U.S. citizen. This is possible with the passage of the federal DREAM Act. All children, regardless of their legal status, are our future, and our future is absolutely dependent on ensuring that every child has a quality education to ensure the nation’s success and survival.

Texas

In 2006, the Texas Comptroller conducted the first comprehensive financial analysis of the impact of undocumented immigrants on the State of Texas, which concluded:

The absence of the estimated 1.4 million undocumented immigrants in Texas in fiscal 2005 would have been a loss to our gross state product of \$17.7 billion. Undocumented immigrants produced \$1.58 billion in state revenues, which exceeded the \$1.16 billion in state services they received.^{iv}

While local governments bore the burden of uncompensated health care costs and local law enforcement cost not paid by the state, the report concluded that undocumented immigrants generated more taxes and other revenue than the state paid on them, including the cost associated with public education. The report estimated that 135,000 undocumented students were enrolled in Texas public schools in the 2004-05 school year, which comprised 3% of the total public school enrollment. Applying the average state and local expenditure per student of \$7,085 in 2004-05, the Comptroller estimated the cost of educating undocumented children was less than \$957 million.

The Texas Constitution provides, ". . . it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools."^v Education constitutes the largest category of state spending by far, accounting for 41.4 percent of all appropriations and 60.7 percent of general revenue spending.^{vi} More recently, in the 82nd Texas legislative session, the State cut \$4 billion from the budget for public education in response to a \$27 billion budget deficit. This was the first decrease in per-student spending in Texas since World War II, and it translates into a loss of approximately \$537 per student over the next two years. Despite the protests and numerous pleas to dip into the State's \$9.4 billion rainy day fund, the Governor and majority stood firm. Taxes were not raised, and the inequitable and inadequate school finance system created in 2006 was not addressed. The cuts to public education come when Texas has more children entering the public school system, but the current budget assumes no growth in the number of school children.

How many undocumented students are there in Texas today? Well, we don't actually know the exact number. Any estimate of federal, state and local costs associated with the public education of undocumented immigrant children from K-12 is at best an "educated guess" because federal law prohibits the questioning of legal status of children from K-12. The current federal prohibition did not arise from legislation but rather from the 1982 U.S. Supreme Court ruling in *Plyler v. Doe*, 457 U.S. 202 (1982).

In 1975, the Texas legislature modified the Texas Education Code (TEC) to prohibit the use of state funds to educate undocumented immigrant children after complaints arose concerning the associated costs. Local school boards responded by outright banning undocumented students from attending, while others decided to charge tuition. The Tyler Independent School District's Board of Education voted to charge a \$1,000 annual tuition for undocumented students. In response, a civil rights attorney filed a federal lawsuit regarding the Tyler Board's policy on behalf of four undocumented families. U.S. District Judge William Wayne Justice issued a preliminary injunction and ordered the children readmitted, which prompted an appeal that ultimately reached the U.S. Supreme Court.

In 1982, the U.S. Supreme Court issued a 5-4 decision in favor of the children, as the majority found that the TEC's provisions withholding funds from local school districts for undocumented children and authorizing local school districts to deny educational access violated the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. The Court opined:

It is difficult to understand precisely what the State hopes to achieve by promoting the creation and perpetuation of a subclass of illiterates within our boundaries, surely adding to the problems and costs of unemployment, welfare, and crime. It is thus clear that whatever savings might be achieved by denying these children an education they are wholly insubstantial in light of the costs involved to these children, the State, and the Nation. If the State is to deny a discrete group of innocent children the free public education that it offers to other children residing within its borders, that denial must be justified by a showing that it furthers some substantial state interest. No such showing was made here.^{vii}

The Texas educational system was characterized as one "imposing special disabilities upon groups disfavored by virtue of circumstances beyond their control [and which] suggests the kind of 'class or caste' treatment that the Fourteenth Amendment was designed to abolish."

Based on the foregoing, all children have the constitutional right to attend school regardless of their immigration status from K - 12. Children may attend HISD schools if they live within the boundaries of HISD, are between the ages of 5 and 21, and have not graduated from high school. HISD also offers half-day or full-day pre-kindergarten for eligible children who are economically disadvantaged, homeless, or unable to speak and understand English. The district only requires every child to be identified as a condition of enrollment, and the parent or legal guardian must furnish documentation of the child's identity, age, and residence. If the child does not have a Social Security number, HISD assigns a Public Education Information Management System (PEIMS) number.

In 2009, researchers estimate that there were approximately 125,000 to 150,000 undocumented immigrants attending Texas public schools, still comprising only 3% of Texas public school population, costing the State approximately \$1 billion per year. On the high end, if 92% of Texas students have a social security number on file and we assume that the 8% that do not are undocumented, then the figure increases to 400,000, costing the state and local government an estimated \$3.5 billion per year.^{viii}

With the recession, there have been reports that school districts around the country have been checking the immigration status of students attempting to enroll, resulting in a chilling effect. In response, the U.S. Department of Education sent a letter reminding districts that they are federally prohibited from excluding children based on citizenship status in May 2011. At the state level, Arizona's draconian anti-immigrant measures inspired similar bills to proceed through the legislatures in Alabama, Indiana, Oklahoma, South Carolina, and Georgia.

The Alabama legislature recently passed HB 56, which earns the title of the harshest anti-immigrant law in the U.S. On education, Alabama's HB 56 requires public schools to ask students who enroll in K-12 about their immigration status. The children are to present a U.S. birth certificate; if they do not, the children are flagged in the statewide computer system, indicating that no proof of citizenship was provided. Section 28 also provides that school officials can report students and their parents who are presumed to be "unlawfully present" to the federal government. It bans undocumented immigrant students from enrolling in any state college or university.^{ix}

In the fall, U.S. District Judge Sharon Lovelace Blackburn returned her ruling for the Department of Justice's challenge to HB 56 and gave the go-ahead to a provision that demands that K-12 schools track the immigration statuses of enrolled students. After the ruling, local reports described Latino children coming to school crying and fearful. Some children withdrew from local schools while other children never returned. This law made undocumented families so fearful of deportation and being torn apart that they decided not to send their children to school.

The Eleventh Circuit later granted the Department of Justice's motion to block the portion of HB56 which requires immigration status checks of public school students but refused to block other provisions. The injunction will remain in effect until the Eleventh Circuit hears oral arguments and issues a ruling on the constitutional questions presented by the case. It will be interesting to see what the outcome of this case will be and whether the U.S. Supreme Court will address the issue of inquiring and identifying the legal status of children. While the Supreme Court has upheld elementary and secondary education as a constitutional right to all young people, regardless of immigration status, it is unclear what happens to students once they have been flagged for not providing birth certificates.

Will the children be discriminated against based on their legal status? Will their parents be deported if they report to a school field trip? How can a child attain a quality education if he or she must live in perpetual fear of their family being torn apart? What is the impact of HB 56's assault on a child's mental well being and educational future? How does a child feel to be targeted as "a criminal" or "a pest" at such a young tender age?

“I am a student, not a criminal.” – Anonymous undocumented child

In 2009, the World Health Organization conducted a study entitled, “Mental health, resilience, and inequalities,” which confirmed that mental health is a fundamental element of resilience, health, capabilities and positive adaptation. Improving mental health brings significant benefits for health and quality of life, for individuals and for communities. The study adds:

Evidence that risk from childhood contributes independently to health in adulthood reinforces the importance of conditions that support children’s mental health as well as the importance of a life span approach to mental health promotion and “early” intervention.^x

The study found overwhelming evidence that inequality is a key cause of stress and exacerbates the stress of coping with socioeconomic inequality. The chronic stress influences physiological reaction, which are triggered by both conscious and unconscious emotional and cognitive responses. The researchers also found:

Opportunities for individuals and communities to retain or achieve social recognition and to stay or become connected, contribute significantly to resilience, but social recognition and collective activity are frequent casualties of current economic and cultural trends...Capacity, capability and motivation to choose health are strongly influenced by mental health and wellbeing and there is a growing emphasis on cognitive approaches to achieving behaviour change. At the same time, the relationship between behaviour, (including rates of violence and teenage births), and relative deprivation raises serious questions about framing health behaviour in terms of individual ‘lifestyle’ choice or cognitive deficits. Health damaging behaviours may be a rational option or survival strategy in the context of material struggle that is intensified by constant reminders of low status...Greater recognition of the importance of psychological assets needs to be matched by efforts to tackle the conditions that undermine emotional resilience, especially for children.^{xi}

Many undocumented children live in “underground communities” that are insular, fearful of authorities, and detached from the larger community. The children exist in a liminal state where they are “neither betwixt nor between.” The undocumented child may feel different, is subjected to discrimination, has no true sense of ownership in the old or new country, and feels trapped in an enclave. First generation undocumented children and second generation U.S. citizens who have a parent or parents that lack legal status both live in a perpetual state of fear that their loved ones could be deported at any time. Without legal protection, undocumented families are subject to exploitation due to their vulnerability, and their children have been described as the “most vulnerable group in the United States.”^{xii}

If parents are fearful of authorities, unfamiliar with the public education system, or must work and cannot spend as much time with their children, then the undocumented child must navigate through the public education system largely on his/her own or must rely on assistance from older siblings or family members. Without strong social support at home, it is difficult for a child to gain ownership and appreciation of the importance of his/her educational experience. Further, if parents are afraid to visit schools, demand improvements, volunteer services, offer suggestions or hold HISD accountable, the individual school and entire district suffers.

A community suffers from the lack of empowerment of disenfranchised groups, as it directly impacts a child’s appreciation of his or her individual capacity, potential and future. In other words, an undocumented child may not fully understand or appreciate the importance of obtaining a high school diploma or a college degree, or this goal may seem too lofty, too expensive, or too inaccessible. When a family is struggling to make ends meet, the student may drop out to gain a minimum wage job to help out at home. Other students may drop out due to a lack of interest, a lack of support, starting a family of their own, or becoming involved in deviant activities, as coping measures.

It is critical for HISD to address the unique issues presented by undocumented immigrant children to break the cycle of poverty and class stratification. There must be an emphasis on developing an internal sense of

school culture and community within our individual campuses while creating a bridge of accessibility and accommodation for the surrounding community as well.

For instance, a child may not speak English upon entry and may not be literate in his/her native language either. Other children may have conversational English but are not fluent. As of October 27, 2011, HISD identified 60,226 students as English Language Learners (ELL) out of the 202,000 student population. Ninety-six percent (96%) of these ELL students speak Spanish as a first language.^{xiii} This percentage has not changed significantly in over the past ten years.^{xiv} The second largest language group in HISD speaks Arabic as a native language.^{xv} However, the most troubling statistic is that the drop-out rates for HISD's ELL students is at 39%, which is extraordinarily problematic and at a crisis level.^{xvi}

School-based proactive consideration of both the social-emotional and instructional needs of these students will improve educational outcomes. For instance, Latinos comprise HISD's largest minority group and are approximately 61.7% of the total student population. There are more Latino children living in poverty—6.1 million in 2010—than the children of any other racial or ethnic group.^{xvii} Among Latino children living in poverty, more than two-thirds (4.1 million) are the children of immigrant parents while the other 2 million are the children of parents born in the U.S.^{xviii}

Poverty appears to have an extraordinarily positive influence on the achievement gap, as 41% of Hispanic adults age 20 and older in the United States do not have a regular high school diploma, compared with 23% of African American adults and 14% of white adults.^{xix} Just one-in-ten Hispanic high school drop-outs has a GED credential, widely regarded as the best "second chance" pathway to college, vocational training and military service for adults who do not graduate high school.^{xx} Nearly nine-in-ten (89%) Latino young adults ages 16 to 25 say that a college education is important for success in life, yet only half that number (48%) say that they actually plan to get a college degree.^{xxi} In "Rescatando Sueños — Rescuing Dreams," Patricia Gándara and Frances Contreras further explain this developing crisis:

The largest and fastest growing minority group in the nation — Latinos — are performing academically at levels that will soon put the entire society at risk and consign these young people to a permanent underclass. From kindergarten to high school graduation and college matriculation, the gaps in achievement between Latinos and most other students are enormous, and in many cases growing. Projections are that, unchecked, this situation will continue to worsen. No other statistic better captures the plight of the Latino population than college completion rates.^{xxii}

The educational achievement gap's impact on our communities and economy is tremendous. Studies conducted in 2004 indicated that a simple 5% increase in the number of male high school graduates would lead to an annual crime-related savings of more than \$5 billion.^{xxiii} Seventy-five percent (75%) of state prison inmates, sixty-nine percent (69%) of jail inmates, and fifty-nine percent (59%) of federal prison inmates are high school dropouts.^{xxiv} Tragically, there are three times as many African American and Hispanic males in prison cells as there are in college dormitories.^{xxv}

Higher Education for Undocumented Students in Texas

“Living in our situation, at least for myself, there’s a subconscious thought of you being seen as an unwanted dissident...First, my immediate reaction was, great, I can go to college and I don’t have to lie, but an undertone that I also felt was that there was somebody out there that said ‘it’s OK you’re not that terrible of people’ because there were times where you do feel almost like a pest.” – Ramiro^{xxvi}

While all children are afforded a K-12 education, states are not prohibited from banning undocumented students from attending institutions of higher learning, as Alabama's HB56 does. However, Texas was the first state in the U.S. to treat undocumented students as residents for purposes of college education. House Bill 1403 was passed and signed into law on June 16, 2001, and it provides resident status for purposes of tuition to all students, who graduated from a public or private high school in Texas or received a GED in Texas, resided with their parents or guardians in Texas for three years prior to graduation or obtaining a GED while attending high school, and provide an affidavit stating that the student will apply for permanent legal resident as soon as eligible. Financial aid is generally not available for undocumented students as a

majority of financial aid, including federal student aid, requires the recipient to be a U.S. citizen, permanent resident or eligible non-citizen. Texas offers limited state financial aid, and undocumented students may receive private scholarships.

Over ten years ago, HB 1403 received broad bipartisan support and advocates maintained that undocumented students are long-term residents of Texas who wish to and will continue to reside in the State. The students are undocumented through no fault of their own, and it is in the State's best interest to educate all residents regardless of legal status. In 2001, there were only 393 students that attended college based on the law. Three years later, in 2004, the number increased to 3,792 with more than 75% attending community colleges. HB 1403 fulfilled its purpose; it gave undocumented high school graduates an opportunity to receive a higher education.

The Texas Dream Act provides opportunity, but it leaves the most important issue unresolved. Once an undocumented student graduates from college, he or she is still not a U.S. citizen, cannot obtain a professional license, and cannot be "legally hired." As Ramiro Luna, an undocumented college student explains, "Even with a degree, you're still invalid in a lot of ways...It doesn't matter if you have a doctorate from an Ivy League school, you wouldn't be legally able to serve burgers at a McDonalds."^{xxvii}

The DREAM Act

"You have people here, and they're trained...The state has invested in us, so why not let us be contributing members of society and our community?" – Julie^{xxviii}

The DREAM Act brings us back to Amy's story, and the hopes and dreams of countless young people who want to become contributing members of our society and community like Julie. The U.S. Supreme Court demands that Texas educates all children from K-12, and the State of Texas offers undocumented students an opportunity to attend college at resident rates. However, how can these students achieve the American dream without the culmination of years of hard work and commitment ending with citizenship? The current cases and law actually create hope without opportunity or triumph without reward. Therefore, it is difficult for many undocumented students to buy into a system when the end result remains disenfranchisement.

The DREAM Act was first introduced in 2001. It almost passed in 2010 and was again reintroduced on May 11, 2011. This bill provides conditional permanent residency to undocumented immigrants of good moral character who arrived in the U.S. as minors under the age of 16, graduated from high school in the U.S., and lived in the country continuously for at least five years prior to the bill's enactment. To obtain permanent legal status, the beneficiaries must have acquired a degree from an institution of higher learning or completed at least two years in good standing toward a bachelor's or higher degree. Those that have served at least two years in the armed services and, if discharged, have received an honorable discharge, are also eligible to qualify.

If the DREAM Act passes, there will still be a long way to go, but at least, undocumented students among us will be provided a positive end result for years of effort, and our country will have an opportunity to see a clear return on our *Plyler* investment. The DREAM Act is an immigration reform that focuses on building our nation's talent and communities via education, which has always been touted as the "great equalizer," and service. One cannot think of a more positive approach to this extraordinarily complex issue.

I would like to thank HISD's Assistant Superintendent of Special Populations, Ms. Matilda Orozco, for providing me with statistics and data concerning HISD students and her tireless efforts to improve the educational experience of all children in HISD. I also would like to thank Mr. Richard Shaw, Secretary-Treasurer, Harris County AFL-CIO Council, for introducing me to the American Jewish Committee and for his keen insight regarding issues concerning worker rights and educational opportunity in Houston.

ⁱ "News Release From Carole Keeton Strayhorn." *Susan Combs - Texas Comptroller of Public Accounts*. 20 Mar. 2006. Web. 08 Jan. 2012. <<http://www.window.state.tx.us/news/60320statement.html>>.

ⁱⁱ Sum, Andrew, et al., (2009); Woolf, Steven H., (2009).

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- ix <http://alisondb.legislature.state.al.us/acas/searchableinstruments/2011rs/bills/hb56.htm>.
- x http://www.euro.who.int/data/assets/pdf_file/0012/100821/E92227.pdf.
- xi *Id.*
- xii <http://www.immigrationpolicy.org/special-reports/study-distortion-fair-targets-immigrant-children>
- xiii HISD LEP Count, 2011.
- xiv PEIMS, 2010.
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- xxii Policy Perspectives, Gandara, Patricia, "The Latino Educational Crisis: Rescuing the American Dream." Adapted by permission from the publisher from "Rescatando Sueños — Rescuing Dreams" in *The Latino Education Crisis: The Consequences of Failed Social Policies* by Patricia Gándara and Frances Contreras, pp. 304–334, Cambridge, MA: Harvard University Press, 2009.
- xxiii Source: Alliance for Excellent Education, 2006.
- xxiv *Id.*
- xxv No Excuses University by Damen Lopez.
- xxvi Workneh, Essete. "Undocumented Students Fight for an Education." *SMU Daily Mustang*. 11 Nov. 2011. Web. 08 Jan. 2012. <<http://www.smudailymustang.com/?p=42286>>.
- xxvii *Id.*
- xxviii "Number of Illegal Immigrants Getting In-state Tuition for Texas Colleges Rises | Dallas-Fort Worth Education News - News for Dallas, Texas - The Dallas Morning News." *The Dallas Morning News*. 15 Mar. 2010. Web. 08 Jan. 2012. <<http://www.dallasnews.com/news/education/headlines/20100314-Number-of-illegal-immigrants-getting-in-9925.ece>>.