

THE END OF DACA AND THE IMPACT ON EDUCATIONAL AGENCIES: THE FACTS



On September 5, 2017, the Trump Administration announced it would phase out the Deferred Action for Childhood Arrivals (DACA) program over the next six months, affecting some 800,000 DACA recipients. The end of DACA is sure to be intensely debated across the country and raises a host of questions. Litigation over ending DACA is already in motion, while Congress attempts to enact alternative legislation. In the meantime, the phase-out of DACA impacts educational agencies and the communities of students, employees and families they serve. Here's what you need to know:

What is DACA?

President Barack Obama created DACA through a 2012 executive order, after Congress did not pass the Development, Relief and Education for Alien Minors (“DREAM”) Act. DACA allows eligible individuals who were brought to the United States illegally as children to apply for deferred action on immigration enforcement and to obtain work permits for a renewable two-year period. Applicants cannot have serious criminal histories and must have arrived in the U.S. before 2007, when they were under the age of 16. The program was enacted as a means of shifting immigration enforcement away from “low priority” individuals (“DREAMERS”) with good behavior, given that Congress did not pass the DREAM Act, which would have provided a pathway to permanent residency for unauthorized immigrants brought to the U.S. as children. According to the U.S. Citizenship and Immigration Services, more than 400,000 people living in California have applied for the DACA program since its inception.

What are the key aspects of the DACA phase-out?

- The Department of Homeland Security (DHS) will continue to consider initial DACA requests and work authorization applications that were filed and pending as of September 5, 2017.
- No new DACA applications will be processed on or after September 5, 2017.
- Work permits issued under DACA will remain valid until their expiration date.
- Work permits issued under DACA may only be renewed under two circumstances:
 - An application for renewal has been submitted by September 5, 2017 and pending a response; or
 - If a work permit expires between September 5, 2017 and March 5, 2017, an application for renewal must be submitted before October 5, 2017.

- As of September 5, DHS has stopped approving new applications for travel permits, known as “advance parole.”

Does the phase-out of DACA affect access to public education for undocumented K-12 students?

No. DACA does not affect access to public education for children in K-12 grades. All children in the U.S. have a constitutional right of equal access to education, irrespective of their immigration status. (See *Plyler v. Doe* (1982) 457 U.S. 202 [under the Equal Protection Clause of the Constitution, states may not deny any child access to a public elementary and secondary education based on immigration status].) Joint guidance on school enrollment procedures from the U.S. Department of Education’s Office for Civil Rights and the U.S. Department of Justice likewise recognizes that all children are entitled to equal access to a basic public education regardless of their actual or perceived race, color, national origin, citizenship, immigration status or the status of their parents/guardians.

In California, all children between the ages of 6 and 18 must attend school under compulsory attendance laws. California law also entitles all students to a public school learning environment free from discrimination, bullying, violence and intimidation.

Whether a student is a DACA recipient is thus irrelevant to their right to attend K-12 public schools. All students, regardless of their immigration status, must be provided equal access to school. School districts and county offices of education that prohibit or discourage children from enrolling in schools because they or their parents/guardians are not U.S. citizens or are undocumented may be in violation of state and federal law.

With DACA being phased out, can undocumented students continue to attend public colleges in California?

Yes. The DHS confirmed in a September 5 document entitled “Memorandum on Rescission of Deferred Action for Childhood Arrivals” that students with current DACA status will continue to be protected until their two-year terms expire.

Undocumented students enrolled in or wishing to apply to public colleges and universities have some protection under California law. The California Dream Act allows undocumented and non-resident documented students who meet eligibility requirements to apply for private scholarships funded through public universities, state-administered financial aid, university grants, community college fee waivers, and Cal Grants. California community college districts are required to exempt non-resident special part-time students from the requirement to pay non-resident tuition for community college credit courses.

The California Community Colleges, California State University, and University of California have affirmed their commitment to all students regardless of immigration status, as have numerous school districts and local public agencies.

What should educational institutions tell students and parents who ask about the end of DACA?

Immigration issues are complex and fact specific. While schools and colleges may certainly express support for their students and families, they should avoid giving legal advice or making predictions about the legal consequences of DACA’s rescission, or of any particular course of action in connection with an individual’s immigration status. When such legal questions are posed, students, families and employees should be encouraged to consult an immigration attorney for advice, and to seek out trusted informational resources. A list of such resources is listed at the end of this document.

Will the phase-out of DACA impact recipients' employment status?

Not right away. Rescission of DACA has no immediate impact on DACA recipients' employment rights or status. According to the DHS, work authorizations issued to DACA recipients will not be revoked and will remain valid until they expire. When a DACA work authorization expires and is not renewed, the individual (unless he or she has secured another authorization) may no longer be eligible to work in the U.S. Employers have not been authorized to take any employment action in response to the September 5 announcement. Questions about specific employment issues should be addressed to legal counsel.

Is this the end of legal protection for the Dreamers?

Not necessarily. In his September 5 statement, Attorney General Sessions described the six-month wind-down process as giving Congress time to act. Currently pending before Congress are four bipartisan bills that each would protect qualified individuals who came to the U.S. as children:

The Bridge Act – Introduced on December 9, 2016, this bill would allow individuals who are eligible for or have already received work authorization and temporary relief from deportation through DACA to continue living in the U.S. with permission from the federal government.

The American Hope Act – This bill was introduced on July 28, 2017 and would give young undocumented immigrants who were brought to the U.S. as children protection from deportation and an opportunity to obtain legal status if they meet certain requirements.

The Recognizing America's Children Act – Introduced on March 9, 2017, this bill would give Congress three years to work out a more permanent solution on immigration, preserving DACA in the interim.

The Dream Act – This bill was reintroduced on July 20, 2017; it would provide a direct path to citizenship for people who are undocumented, have DACA or temporary protected status, and graduate from U.S. high schools and then attend college, enter the workforce, or enlist in the military.

These resources may be useful to your educational community:

- <https://www.dhs.gov/news/2017/09/05/frequently-asked-questions-rescission-deferred-action-childhood-arrivals-daca> (Department of Homeland Security, FAQs)
- https://www.ilrc.org/sites/default/files/resources/if_daca_ends.pdf Immigrant Legal Resource Center – publication providing information on options available if DACA ends
- <https://west.edtrust.org/resource/fact-sheet-undocumented-students/> Ed Trust West, Undocumented Students in California, What You Should Know
- <http://undocu.ucsf.edu/> University of California, Undocumented Student Support

This resource was prepared by Atkinson, Andelson, Loya, Ruud & Romo, experts in education law, for the members of CAAASA & CALSA.

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