



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable the Members of the Board of Regents

FROM: Valerie Grey and Dennis Tompkins

SUBJECT: Proposed Regents State and Federal Legislative Priorities for 2012

DATE: November 14, 2011

STRATEGIC GOAL: Legislative Action to Implement Regents State and Federal Legislative Proposals for 2012

AUTHORIZATION(S):

Executive Summary

Issue for Decision

Regents state and federal legislative priorities for 2012.

Reason(s) for Consideration

Regents final approval for the 2012 state and federal legislative proposals.

Proposed Handling

Approval of legislative priorities.

Procedural History

Each year the Regents identify policy issues that require legislation for implementation

Background Information

The attached proposals were reviewed during the October meetings, with one proposed addition.

Recommendation

It is recommended that the Board of Regents Approve the Legislative Priorities.

Timetable for Implementation

Immediate.



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OF THE STATE
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F: 518.474.1488

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REGENTS 2012 LEGISLATIVE AGENDA

STATE LEGISLATIVE PRIORITIES

- **Board of Regents Intervention in Chronically Underperforming Schools (A.8319)** – Legislation would authorize SED to give these districts a series of tools and supports to get them back on track.
- **Quality and Excellence in Business and Trade Schools (S.4268-A/S.7859)** – Legislation would modernize the statute that governs Proprietary Schools and give SED the tools and resources it needs to oversee, support and monitor this expanding higher education sector.
- **Tenured Teacher Hearing (§3020-a) Reform (S.4629/A.6225)**- Legislation would stabilize the State’s share of the costs and more appropriately share fiscal responsibility for these hearings on all parties while putting other measures in place to help reform the process.
- **Mandate Relief and Flexibility (S.5816)** – Legislation would enact a series of mandate relief measures to promote cost savings and provide relief from reporting requirements. Legislation will be updated to reflect provisions enacted in the 2011 session and include other mandate relief items as approved by the Regents.
- **TAP for Early College High School Students (S.5647)** – Legislation would provide for Tuition Assistance Program funding to Early College High School students, and provide support for these newly created programs.
- **BOCES As Regional Leaders (Under Discussion)** – Legislation would enact a series of measures designed to expand the ability of BOCES and BOCES leadership to provide services to entities other than their component school districts and become a regional education leader.
- **Education Equity for DREAMers Act – (Under Discussion)** – Legislation would give undocumented immigrants the opportunity and access to higher education by making financial assistance available.

FEDERAL LEGISLATIVE PRIORITIES

- **NCLB/ESEA Reauthorization (Under Discussion)** – Support reauthorization through comprehensive recommendations to modernize the law so as to better align the law’s tools to meet its goals
- **WIA Reauthorization (Under Discussion)** – Support reauthorization of this critical legislation with a focus on improving collaboration among program areas and ensuring adequate funding for all parts of the system, among other provisions.
- **Development, Relief and Education for Alien Minors (DREAM Act)** – Support new federal legislation to permit certain immigrant students who came to the US through no fault of their own to become permanent citizens if they go to college or serve in the military.



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SUPPORT AND INTERVENTION IN CHRONICALLY UNDERPERFORMING SCHOOLS

SED LEGISLATIVE PROPOSAL

S.
A.8139 (Nolan)

THE ISSUE:

School boards play a crucial role in American public schools. They represent our society's firm belief in the importance of local governance. The vast majority of school boards are effective bodies that support staff, enhance instruction and promote student academic achievement. However, some school districts are continually and chronically underperforming. These few districts are characterized by years, or even decades of consistently low academic performance, rampant fiscal instability, or both.

Chronically underperforming districts typically have one or more schools identified as persistently lowest-achieving (PLA) or schools under registration review (SURR). Fiscally, these districts fail to exercise appropriate fiscal management by failing to take the actions necessary to keep the district's budget in balance and/or maintain appropriate and consistent fund balances.

Often such districts have graduation rates at or below 60% and/or have high drop-out rates. In the elementary grades, such districts have low numbers of students who are proficient and high numbers of students struggling to make grade level. Moreover, such districts consistently fail to move low performing students to proficiency.

Governance of chronically underperforming school districts is often beset with difficult and even intractable, long-standing problems. Frequently such districts lack sufficient mechanisms to hold boards of education accountable for their district's academic and/or fiscal underperformance.

THE SOLUTION:

Our proposed legislation will permit the Board of Regents and the Commissioner of Education to put school districts into three levels of Academic and/or Fiscal Restructuring Status, with tools and supports to help them get on track and remove them from oversight.

Such tools and supports would include:

- The assistance of Joint School Intervention Teams.
- Requiring these districts to develop a plan with specific, measurable goals. Removal from oversight if plan goals are met for three consecutive school years.
- Giving more troubled districts the assistance of a Distinguished Educator and/or a Fiscal Administrator to review and monitor the district's operations, including school academic and fiscal systems, structures, projects, operations and facilities, and recommend measures to the board.
- Appoint an independent review team for the most troubled school districts to review the board of education's actions and/or omissions and make a recommendation to the Board of Regents.
- Upon a determination by the Board of Regents that governance problems are a substantial factor in a district's chronic underperformance, allowing the Regents to appoint a three-member Education Oversight Board with all the powers and duties of the board of education. Such a finding would result in the removal of the board of education and, upon recommendation of the Oversight Board, the superintendent as well. An education oversight board would report directly to the Commissioner and the Board.

For more information contact John A. Frederick, State Legislative Coordinator,
Office of Governmental Relations, New York State Education Department, (518) 486-5644



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QUALITY AND EXCELLENCE IN BUSINESS AND TRADE SCHOOLS

SED LEGISLATIVE PROPOSAL

S.4268-A (LaValle)
A.7859 (Glick)

THE ISSUE:

New York State's Proprietary Schools law, last updated in 1990, needs revision. This higher education sector is expanding tremendously. It is much more than the traditional "trade and correspondence schools" of the last century. Currently, there are about 500 licensed schools, with 125 schools awaiting final approval. Many more schools operate without a license or oversight. These schools appeal to our most vulnerable citizens: the poor, unemployed, immigrants, English Language Learners and those seeking new careers.

Increasingly, SED's ability to pursue illegal schools and fraud cases is hampered by a lack of resources. More technical and educational assistance to licensed schools is needed as is better data collection and management to oversee schools' performance. The current 25 year old technology used by SED is inappropriate for today's economic and information climate. Protecting students, supporting licensed schools, shutting down unlicensed schools and investigating allegations of fraud and mismanagement must keep pace with the rapid growth of this important higher education sector.

THE SOLUTION:

SED's legislation will modernize the law and increase revenues, giving SED more effective oversight, assisting the schools, protecting students from fraudulent activity and strengthening the Tuition Reimbursement Account (TRA) which reimburses students when schools close.

It would:

- Establish "Candidate schools" to allow schools, under controlled circumstances, to operate for a limited time while their license applications are pending. This would encourage existing schools to come into compliance with the requirements of licensure.
- Increase fees to reflect the resource needs of the Department. Additional revenues would support an update of the 25 year-old computer system thus improving monitoring and enhancing the Department's ability to pursue more complex compliance cases and provide consumer information.
- Expedite student assistance when a school closes (shorten time for tuition refunds, expand expenses eligible for reimbursement, and ensure better access to student files).
- Make permanent the procedures for working with schools that are in financial distress so that unnecessary school closures are avoided, students are protected and the viability of TRA is assured.
- Limit students' loan liability and the TRA's potential liability by distributing student loan pay-outs throughout the school year rather than at the start of the school.
- Allow qualified instructors to obtain a single license so that they could teach at any licensed school. This would facilitate an adequate pool of competent teachers for students.

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Office of Governmental Relations, New York State Education Department, (518) 486-5644



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TENURED TEACHER HEARINGS (\$3020-a) REFORM

SED LEGISLATIVE PROPOSAL

S.4629 (Flanagan)
A.6225 (Nolan)

THE ISSUE:

The current tenured teacher hearing process is an ineffective process for districts, teachers and principals and does not serve the State's interests to fairly and swiftly adjudicate hearings in a cost-effective manner. Over the years, the volume of cases, the number of hearing days to resolve the cases, and the arbitrator rates have steadily increased, spiraling costs out of control. Also, these proceedings are funded entirely by the State.

The State appropriation has not met actual costs for many years. As such, arbitrators cannot be paid in a timely manner. Many are resigning or refusing to conduct further hearings due to the extraordinary delay in payments, upwards of 18 months. Upstate, for example, guilty decisions can take 2 years to resolve.

New regulations with respect to teacher and principal evaluations will cause the number of cases to continue to increase, causing even further delays. The State's education reforms are dependent upon a modernized tenured teacher hearing process.

THE SOLUTION:

Our proposed legislation will reduce the lengthy hearing process through procedural and fiscal reforms. It would:

- Stabilize the State's share of the costs and more closely align the fiscal responsibility for these types of hearings to those involving State unionized employees (like CSEA and PEF) while preserving due process rights. The State will subsidize program costs up to the appropriation amount and expenses above that will be shared equally by the school district and the employee's bargaining unit. Although school districts would now be responsible for a share of the costs, speedier hearings will decrease their expenses for the "suspended with pay" tenured teacher, by either restoring them to the classroom or removing them from the payroll.
- Streamline the process to address lack of appropriate certification by allowing for immediate suspension of an employee upon a determination by the Commissioner that the employee lacks the appropriate certification for their position.
- Limit costs by allowing the Commissioner to: set the maximum rates paid to arbitrators; place a limit on the number of study hours that can be claimed; and only pay for actual hours of service performed.
- Provide parity for both parties by implementing reciprocal discovery, similar to other administrative proceedings (like SAPA), so that schools would be informed of teachers' defenses.
- Authorize the Commissioner to disqualify an arbitrator from serving on future cases for the repeated failure to comply with statutory time frames.
- Change the appeal option from an Article 75 proceeding to an Article 78 proceeding, thus restoring a broader judicial review of arbitrator decisions.

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MANDATE RELIEF AND FLEXIBILITY

SED LEGISLATIVE PROPOSAL

S.5816 (Flanagan)
A.

THE ISSUE:

As the State's revenue condition worsens and school districts adjust to the tax cap and the loss of federal funds, mandate relief becomes vital in order to preserve funding for critical priorities.

While many mandates were originally enacted to enhance the rights, protections and performance of students and the fiscal accountability of school districts, not all mandates have produced their intended results. In these fiscal times, it is imperative that a thoughtful and targeted series of changes be made to repeal outdated mandates that have grown too burdensome and costly and which are not essential to improving results for students.

The Regents have acted within the scope of their authority to make regulatory changes to help unburden school districts while maintaining appropriate safeguards and protections for students, parents and the general public.

THE SOLUTION:

Our proposed legislation would eliminate or reduce a significant number of legislative mandates and provide greater flexibility relating to curriculum, transportation, educational management services and special education.

Among other things, the legislation would:

- Exempt school districts from the Smart Growth regulations for reconstruction, renovation and addition projects
- Allow school districts to "piggyback" on Federal General Services Administration Contracts.
- Allow procurement opportunities take advantage of "Best Value" in contracts, rather than solely on lowest price
- Initiate a feasibility study to allow districts and BOCES to save on credit card costs
- Streamline the provision of special education services to parentally-placed students with disabilities.
- Eliminate certain duplicative aging out reporting requirements.
- Reduce delays and due process costs by shortening the statute of limitations to request a special education due process hearing.
- Repeal special education space planning requirements.

Mandate relief is an on-going effort. SED will continue to examine other mandate relief provisions for review and approval by the Board of Regents.

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Office of Governmental Relations, New York State Education Department, (518) 486-5644



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TAP ELIGIBILITY FOR EARLY COLLEGE HIGH SCHOOL STUDENTS

SED LEGISLATIVE PROPOSAL

S.5647 (Flanagan)
A.

THE ISSUE:

Traditionally underrepresented students in post-secondary education need strong, innovative programs designed to boost their level of participation in college. Creating such programs that will increase underrepresented students' access to post secondary education and reduce these students' costs to obtain a college education, should be a priority for New York State.

It is well established that a postsecondary education is essential for financial and personal freedom in today's economy. A four-year college graduate earns two-thirds more than a high school graduate does. An Associate's degree translates into earnings significantly higher than those earned by an individual with a high school diploma alone.

Furthermore, even when students from traditionally underrepresented communities make the transition to college, they often need one or more remedial courses to succeed. Statistics show that the more remediation a student needs, the less likely they are to graduate college.

According to the national Early College High School Initiative (ECHSI), these schools are "based on the principle that academic rigor, combined with the opportunity to save time and money, is a powerful motivator for students to work hard and meet serious intellectual challenges." (See the ECHSI website at <http://www.earlycollege.org/>).

Finally, students who do complete a college education often leave burdened with significant financial debt. The financial hurdles that many students face are a barrier to achievement at the post-secondary level, especially for students from chronically distressed communities. Innovative programs that combine the opportunity for college level work and credit toward a diploma, while relieving students of some of the financial burdens associated with pursuing a college degree are needed.

THE SOLUTION:

The creation of Early College High Schools is an innovative strategy that has proven effective. Our proposal would:

- Provide disadvantaged students with the opportunity and structured preparation in the public school setting.
- Accelerate completion of students' high school studies while allowing them to earn up to 60 transferable college credits, tuition-free.
- Support these ECHS programs as they serve school districts with high-needs schools.
- Maintain consistency of the mission the New York State Tuition Assistance Program (TAP)
- Increase underrepresented students' access to post secondary education and reduce these students' costs for obtaining such education. The academic and social support that ECHS provide their students helps to ensure these students successfully complete college course work after high school, thereby making the investment of TAP funds in ECHS programs a sound strategy.

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BOCES AS REGIONAL LEADERS

SED LEGISLATIVE PROPOSAL

S.
A.

DRAFT

THE ISSUE:

Increasingly, students, teachers, administrators, school districts and other educational entities need to be served by a more integrated education system that creates efficiencies while bringing them world-class educational opportunities. The current system of public schools and school districts, charter schools, non-public schools, libraries and other agencies providing an education to our students needs a strong regional system to support and augment what they are able to offer.

Boards of Cooperative Educational Services (BOCES) were created to be regional providers of educational services in cooperation, affording the energies and economies of scale to a region that would be unavailable or too expensive to provide by any single district. Increasing the ability to BOCES to provide these services will strengthen regional ties, open up educational opportunities to more students and allow districts and other educational service providers to tap into the economies and efficiencies that come with a regional approach to education.

THE SOLUTION:

The proposal would:

- Help BOCES increase the effective and efficient delivery of educational services in New York State
- Allow BOCES to grow as a regional education leader *and* a regional service provider
- Expand BOCES authority to provide a broader range of services to entities other than component school districts, including charter schools, libraries, state agencies that operate schools and nonpublic elementary and secondary schools
- Re-align existing incentives to encourage districts to operate more efficiently and promote multi-district consolidations and inter-municipal cooperation
- Give districts new pathways to create regional high schools
- Authorize BOCES to provide fingerprinting services to nonpublic elementary and secondary schools, charter schools and individuals seeking teacher certification, for use in criminal history record checks
- Permit BOCES to enter into contracts with libraries and library systems to provide high-speed telecommunications
- Reduce costs by allowing BOCES to provide treasurer and purchasing agent services to school districts.
- Reduce development and overhead costs by allowing BOCES to sell services to out-of-state and international schools.

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Office of Governmental Relations, New York State Education Department, (518) 486-5644



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EDUCATION EQUITY FOR DREAMers ACT

SED LEGISLATIVE PROPOSAL

S.
A.

DRAFT

THE ISSUE:

An estimated 345,000 (11.7 percent) of K-12 public school students in New York are children of undocumented immigrants.¹ Around 2,000 undocumented immigrants who grew up in New York attend the City University of New York², mainly because they can attend public colleges at in-state tuition rates.

New York's enlightened policy enables hundreds of thousands of undocumented students to receive education through the state's public school system; our state recognizes the value of an investment in career and college readiness for these students. It makes economic sense to help these young students become fully participant in New York's economy. Yet their futures are undeniably circumscribed by current immigration law. These young people generally derive their immigration status from their parents. If their parents are undocumented, most have no mechanism to obtain legal residency, even if they have lived most of their lives in the U.S.

Current State law prohibits undocumented immigrant students from receiving State financial aid (i.e., general awards, academic performance awards and certain student loans). Denying them aid means denying them access to higher education.

Our society and our economic growth depend on a vibrant, well-educated workforce, but right now, hundreds of thousands of New Yorkers are denied the opportunity to the education they need to fully participate in our economy. Without access to higher education, these students are far too often forced into the shadows of poverty and desperate existence

THE SOLUTION:

The Regents recognize the most pressing issue that falls within their purview is providing educational opportunity. The Education Equity for DREAMers Act would change current law to:

- Eliminate Education Law provisions requiring students to be a U.S. citizen or permanent lawful resident to receive general awards, academic performance awards and/or student loans, including TAP, scholarships for academic excellence and eligibility for the Regents loan forgiveness program.
- Allow non-residents, including undocumented immigrants, who graduate from New York State high schools to receive general awards, academic performance awards and/or student loans.
- Authorize SUNY, CUNY and community colleges trustees to provide state-aided programs, scholarships or other financial assistance to undocumented aliens who graduate from New York State high schools.
- Specifically allow non-residents, including undocumented aliens, who graduate from New York State high schools to receive State funds in the higher education opportunity programs and the collegiate science and technology entry program.
- Allow undocumented immigrants who have a taxpayer identification number to open a New York 529 family tuition account.

¹ The Cost of Illegal Immigration to New Yorkers: A Report by the Federation of American Immigration Reform. (Nov., 2006)

² Op. Cit.

For more information contact John A. Frederick, State Legislative Coordinator,
Office of Governmental Relations, New York State Education Department, (518) 486-5644



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REAUTHORIZATION NO CHILD LEFT BEHIND (NCLB)/ ELEMENTARY SECONDARY EDUCATION ACT (ESEA)

SED LEGISLATIVE PROPOSAL

THE ISSUE:

NCLB is the primary statute governing the federal government's role in education. NCLB mandates a number of programs aimed at improving U.S. education in elementary, middle and high schools by increasing accountability standards and challenging our students to succeed and our schools to improve. The approach is based on outcome-based theories education that high expectations goal-setting will result in greater educational achievement for most students.

First passed during the Johnson administration as the Elementary and Secondary Education Act (ESEA) it was re-branded as part of a major overhaul in 2002. Reauthorization of NCLB is now long overdue. There remains broad based support for the high expectations set by NCLB. However, to realize the law's promise, NCLB must reflect the lessons learned during its implementation.

THE SOLUTION:

The State Education Department supports reauthorization through comprehensive recommendations to modernize the law so as to better align the law's tools to meet its goals. Recommendations address the following key areas:

- **Accountability:** permit use of growth models, improve standards and assessments
- **School improvement:** permit differentiated accountability and targeting, improve graduation rates
- **Teachers/school leaders:** improve preparation, support, rewards, equitable distribution
- **Data systems/technology:** support expansion of data systems, streamline data definitions, increase access to digital content
- **Funding:** full funding and adequate resources to fully implement the law

Each area of NCLB is important in ensuring the promise of NCLB. In many instances the law does not contain the right tools to meet its goals, but reauthorization and modernization along these five areas is especially critical.

Note: New York State Education Department is engaged in ongoing discussions regarding the recently proposed Flexibility Waivers offered by the United States Department of Education.

For more information contact Janele Hyer-Spencer, Esq., Federal Legislative Liaison, Office of Governmental Relations, New York State Education Department, (518) 473-3819



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REAUTHORIZATION WORKFORCE INVESTMENT ACT – WIA

SED LEGISLATIVE PROPOSAL

THE ISSUE:

The Workforce Investment Act is the largest single source of federal legislation for workforce development, job-training, adult education, and vocational rehabilitation programs. WIA connects postsecondary career and technical education and training, adult education and family literacy, and vocational rehabilitation for out-of-school youth and adults. These groups represent some of the nation's most educationally vulnerable and underemployed populations. Overall, WIA has been a major step forward in developing a skilled and competitive workforce. Given its success in developing human capital and creating pathways to employment, reauthorization and modernization is especially critical as we face increasingly difficult and developing economic challenges.

THE SOLUTION:

While there are several reauthorization proposals, the original WIA consists of four core Titles:

- Title I addresses the needs of job seekers who are adults, dislocated workers, and youth through a network of one-stop centers administered through state and local Workforce Investment Boards
- Title II covers adult basic education and literacy programs
- Title III addresses employment services under the Wagner-Peyser Act
- Title IV addresses vocational rehabilitation programs

The New York State Education Department administers several key programs particularly affected by proposed reauthorization of WIA; adult education and literacy, and vocational rehabilitation and independent living services. SED also administers Carl D Perkins Act postsecondary career and technical education programs that are one-stop partners under WIA. SED's experience suggests WIA reauthorization is critical and must:

- Improve collaboration among program areas
- Ensure adequate funding for all parts of the system
- Focus on the needs of special populations
- Target funding to improve postsecondary and career success
- Improve the school-to-work transition for students with disabilities
- Increase the supply of qualified vocational rehabilitation counselors

To maintain our position as the world's economic leader, we need to educate and train all our workers to fill the jobs of the new evolving economy. Congress needs to not just reauthorize WIA, but must modernize and update the Act. Reauthorization along these particular areas provides an opportunity to improve WIA for a new generation of workers.

For more information contact Janelle Hyer-Spencer, Esq., Federal Legislative Liaison, Office of Governmental Relations, New York State Education Department, (518) 473-3819



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DEVELOPMENT, RELIEF AND EDUCATION FOR ALIEN MINORS (DREAM Act)

SED LEGISLATIVE PROPOSAL

THE ISSUE:

Currently, New York's educational policy toward undocumented immigrants has enabled hundreds of thousands of such students to receive education through the state's public school systems. An estimated 345,000, or 11.7 percent, of the K-12 public school students in New York are children of undocumented immigrants.¹ Undocumented immigrants also play a large role in the college system in New York mainly because the state allows undocumented immigrant students who grew up in the state to attend public colleges at in-state tuition rates. For example, institutions of higher learning such as the City University of New York system (CUNY) enrolls about 2,000 undocumented immigrant students.²

New York has already made enormous investments in career and college readiness and these young people who grew up in the United States and graduated from our schools will undeniably have their futures circumscribed by current immigration law. These young people generally derive their immigration status solely from their parents, and if their parents are undocumented, most have no mechanism to obtain legal residency, even if they have lived most of their lives in the U.S. The Dream Act would provide such a mechanism.

SOLUTION:

The DREAM Act would enact the following major changes in current law:

- Permit immigrant students who have grown up in the U.S. to apply for temporary legal status and to eventually obtain permanent legal status and become eligible for U.S. citizenship if they go to college or serve in the U.S. military
- Students who came to the U.S. at age 15 or younger at least five years before the date of the bill's enactment and who have maintained good moral character since entering the U.S. would qualify for conditional permanent resident status upon acceptance to college, graduation from a U.S. high school, or being awarded a GED in the U.S.
- Eliminate a federal provision that penalizes states that provide in-state tuition without regard to immigration status
- Conditional permanent resident status would be similar to legal permanent residency, except that it would be awarded for a limited duration, six years under normal circumstances instead of indefinitely.
- Students with conditional permanent resident status would be able to work, drive, go to school, and be eligible for work study and student loans. They would *not* be able to travel abroad for lengthy periods and *not* be eligible for Pell Grants or certain other federal financial aid grants.

If enacted, the DREAM Act could have a life-changing impact on the students who qualify, dramatically increasing their average future earnings, and consequently the amount of taxes they would pay, while significantly reducing social services costs to taxpayers.

¹ The Cost of Illegal Immigration to New Yorkers: A Report by the Federation of American Immigration Reform. (Nov., 2006)

² *Op. Cit.*

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