

Update: State Policies Regarding In-State Tuition for Undocumented Students

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In JFF's January 2005 brief, *Access to Community College for Undocumented Students: A Guide for State Policymakers*, we reported on trends and developments in Achieving the Dream states around tuition and financial aid for undocumented students. We noted that, according to the National Council of State Legislatures, since 2001, about twenty states had introduced bills around providing in-state tuition to undocumented immigrant students, and seven states had passed legislation awarding in-state tuition to these students. In 2006, the number of states that had introduced legislation rose to thirty (Krueger 2006).

Recent Trends

In a 2007 tally, ten states had passed legislation awarding in-state tuition to students: California, Illinois, Kansas, Nebraska, New Mexico, New York, Oklahoma, Texas, Utah, and Washington (Robinson 2007). In addition, Delaware passed a House Resolution (H.R. 59) in 2004 to support the federal Development, Relief and Education for Alien Minors ("DREAM") Act, which would have allowed, among other things, in-state tuition for undocumented students meeting certain criteria. Despite supporting the DREAM Act, however, Delaware did not enact state legislation to allow in-state tuition for undocumented students.

Since 2004, six states, including Connecticut, have proposed legislation that would enable undocumented immigrant students to pay in-state tuition: Missouri, North Carolina, New Jersey, Oregon, and Rhode Island.

Some state legislatures have responded to public backlash with attempts to restrict the access of undocumented immigrants to higher education benefits. In Alaska, Arizona, Colorado, North Carolina, Utah, and Virginia, legislation was introduced to ban undocumented immigrants from receiving in-state tuition. So far, none of these efforts have succeeded (Krueger 2006).

Since 2003, at least four states—Kansas, California, New York, and Washington—have faced lawsuits or have had complaints lodged against them with the

U.S. Department of Homeland Security around legislation to make in-state tuition available for undocumented students. In Kansas in 2004, the jury dismissed a high-profile lawsuit but opponents of the legislation have filed an appeal. A similar case in California was defeated in court in October last year; the court upheld the state law (AB 540) granting in-state tuition and other benefits to undocumented students (Bernstein 2006). Homeland Security, which oversees immigration violations, has announced no decision regarding the complaints against New York and Washington.

A crosswalk of proposed or enacted legislation reveals similarities across the various states. As noted in our 2005 brief, some criteria for an undocumented student to be eligible for in-state tuition are typical among states:

- Attend a state high school from two to four years;
- Complete a high school diploma or GED in the state;
- Enroll in a public postsecondary institution; and
- File an affidavit stating intent to legalize status and become a permanent U.S. citizen.

As states have proposed or passed legislation, they have adopted one of two models (Robinson 2007):

- Redefining residency for the purposes of tuition, such as defining residents as those who have studied in and graduated from a state high school, usually for a minimum of three years; or

- Making exemptions for payment of out-of-state tuition for certain categories of students that include undocumented students who fulfill criteria similar to those in the first model.

Of the ten states that have passed legislation, six—Illinois, Kansas, Nebraska, New Mexico, Texas, and Washington—have redefined residency for the purposes of tuition. Four states—California, New York, Oklahoma, and Utah—have placed undocumented students in the exempted category.

Variation Within Recently Proposed Legislation

A review of the proposed legislation in Connecticut and other states shows that these states are following the same criteria and choosing between the two models.

Connecticut

H.B. 6793 (2005): A person, other than a nonimmigrant alien as described in 8 USC 1101(a)(15), (A) who attended any educational institution in this state for at least three years immediately prior to the determination of status pursuant to this section, (B) who graduated from a high school in this state, (C) who is seeking admission as an entering student or is currently enrolled at a public institution of higher education in this state, and (D) if such person is a person without legal immigration status, who has filed an affidavit with the institution of higher education stating that he or she has filed an application to legalize his or her immigration status, or will file such an application as soon as he or she is eligible to do so, shall be *eligible for classification as an in-state student for tuition purposes* (italics added).

Source: *Connecticut General Assembly Bill Tracker, Connecticut OLR Research Report, May 2005*

Missouri

S.B. 296 (2005): The Missouri In-state Tuition Act. Under this act, students who meet certain qualifications shall be eligible for in-state tuition rates for higher education, regardless of such student's immigration status, if

- [he or she] has attended high school for two or more years in Missouri and has graduated from a Missouri high school or
- achieved the equivalent of a high school diploma in-state, and,
- if an immigrant alien, has filed an affidavit stating intent to become a permanent resident of the United States at the earliest opportunity, the student qualifies for in-state tuition. Student information obtained in implementing the act must be kept confidential. Students may transfer between institutions and keep their in-state tuition status.

A student *exempt from non-resident tuition under this section* (italics added) may be reported by a community college district as a full-time equivalent student.

Source: *Missouri State Senate Journal and General Assembly Bill Tracker*

North Carolina

H.B. 1183 (2005): AN ACT to provide that a person who meets certain qualifications *shall be accorded resident tuition status* (italics added) if the person enrolls as a student in a constituent institution or a community college. . . . Other than a nonimmigrant . . . who meets all of the qualifications . . . shall be accorded resident tuition status. The student information obtained in the implementation of this subsection is confidential.

- (1) The person received a high school diploma from a secondary or high school within North Carolina.
- (2) The person attended North Carolina schools for a minimum of four consecutive years immediately prior to high school graduation.
- (3) If the person does not have lawful immigration status, then the person shall also file an affidavit with the constituent institution to which the person is enrolled stating that the person has filed an application to legalize his or her immigration status or will file an application as soon as he or she is eligible to do so.
- (4) The person satisfies the admission standards for the constituent institution to which the person applied and has secured admission and enrolled as a student at the constituent institution.

Source: *North Carolina General Assembly Bill Tracker*

New Jersey

S.B. 78 (2004): A student . . . other a student, other than a nonimmigrant alien . . . *shall be exempt* (italics added) from paying non-resident tuition at a public institution of higher education if the student:

- (1) attended high school in this State for three or more years;
- (2) graduated from a high school in this State or received the equivalent of a high school diploma in this State;
- (3) registers as an entering student or is currently enrolled in a public institution of higher education not earlier than the fall semester of the 2002-03 academic year; and
- (4) in the case of a person without lawful immigration status, files an affidavit with the institution of higher education stating that the student has filed an application to legalize his immigration status or will file an application as soon as he is eligible to do so. . . .

Student information obtained in the implementation of this section shall be confidential.

Source: *New Jersey General Assembly Bill Tracker Online*

Oregon

S.B. 769 (2005): A student who is not a citizen of the United States or who is not a legal resident alien of the United States *shall be considered a resident of this state for the purpose of determining tuition and fees* (italics added) at a state institution of higher education if . . .

- (a) The amount of tuition and fees charged by the institution is based on the state residency of the student;
- (b) The student resided in this state with a parent or legal guardian for at least three consecutive years while attending a secondary school;
- (c) The student received a high school diploma or its equivalent from a secondary school in this state; and
- (d) The student plans to become a citizen or a legal resident alien, as determined by the board by rule.

Source: *Oregon Legislative Assembly 2005 Regular Session Online*

Rhode Island

H.B. 6184 (2005): For *purposes of this section, "resident" shall mean a person who has resided in this state* (italics added) for a period of at least one (1) year and in the county, city, town, or school district, as the case may be, for a period of at least six (6) months prior to registration at a public institution of higher education. . . .

[T]he payment of tuition and fees by any student who is an undocumented immigrant . . . shall be paid at a rate or charge no greater than that imposed on students who are residents of this state, provided that such student:

- (1) has attended an approved Rhode Island High School for three (3) or more years; or
- (2) has graduated from an approved Rhode Island high school or received a high school equivalency diploma from the state of Rhode Island; or
- (3) has registered as an entering student or is currently enrolled, in an accredited public institution of higher education in Rhode Island not earlier than the fall semester or quarter of the 2003-2004 academic year; or
- (4) has filed an affidavit with the public institution of higher education stating that such student has filed an application to legalize his or her immigration status, or will file such application as soon as he or she is eligible to do so.

Source: *Rhode Island General Assembly Bill Text*

Conclusion

Since the publication of our brief, a number of states have moved toward introducing and enacting legislation that would award in-state tuition and other benefits to undocumented students who meet common criteria. States appear to be following one of two models set by the early states in determining eligibility for in-state tuition of these students (i.e., by redefining residency for the purposes of tuition, or by exempting students from paying at non-resident tuition rates). The popularity of these criteria and the two models indicates that states view them as effective strategies for responding to opponents who have cited Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Section 505 restricts states from offering any postsecondary education benefits to illegal or undocumented immigrants unless a citizen or national of the United States was also eligible for such a benefit (Bernstein 2006).

Legislation in most states continues to be supported by policy-makers and constituents of state higher education systems and by immigrant advocacy groups, especially Hispanic Latino advocacy groups, even when public opinion is divided or opposes such legislation. At the same time, public opinion is largely hostile to undocumented immigrants. In Utah, where a bill to repeal the law granting in-state tuition to undocumented students was narrowly defeated, a public opinion poll showed over half the population was against providing in-state tuition. In Nebraska, the latest state to join the bandwagon in favor of granting in-state tuition, public opinion has been even less positive: a poll administered by the University of Nebraska-Lincoln showed 72 percent opposed to granting in-state college tuition to undocumented immigrants, while only 17 percent supported that idea (Tomkins et al. 2006). Opponents of legislation are self-defined immigration reform groups that place the issue of undocumented students in the larger debate around illegal immigration.

Proponents continue to argue that legislation will benefit states by allowing more individuals to pursue higher education, and that this policy will ultimately benefit individuals, communities, and the states. Opponents argue that the law is discriminatory and rewards illegal behavior at the expense of taxpayers, citizens, and legal immigrants.

Perhaps the most important development on this front is that neither of the two high-profile lawsuits—against Kansas and New York—has succeeded (Bernstein 2006). Some observers and supporters see this as a positive sign that will help states move forward: in both cases, the courts ruled that the states were not in conflict with federal law.

At the national level, the possibility exists of a new backlash—both grassroots and orchestrated—against supportive legislation at a time when immigration policy is enormously controversial. The national

debate around immigration might affect congressional action on the DREAM Act.

On the other hand, some immigrant advocates sense a more tolerant attitude among policymakers toward immigrants and immigration issues. There are signs, particularly after the 2006 election, that a practical immigration reform platform that includes a guest worker program and legalization status for undocumented workers may be gaining traction. In Maryland, for example, a bill granting in-state tuition has surfaced, after having been passed in 2003 but then vetoed by the governor. Advocates think that this time the bill has a good chance of enactment, since a new administration has pledged support. In this environment, according to one reporter, “[S]ome lawmakers seeking to clamp down on illegal immigration have taken notice and have pushed few get-tough provisions this session” (Brewington 2007).

The legal victories in Kansas and California, and the shifting landscape in the national immigration debate, may make political considerations more salient than legal ones, which is a departure from two years ago when the Kansas lawsuit was introduced. In Utah, for instance, the state attorney general’s office put forth an opinion supporting the legislation to create exemptions for undocumented students after the state sought testimony from the attorney who had filed the lawsuits against Kansas and California (Bulkeley 2006).

State policymakers must remember that passage of supportive legislation is only a first step. In Utah, for example, as in other states, the number of undocumented students using the exemptions in the law to qualify for in-state tuition is small (only 169 individuals), although take-up is slowly increasing. As indicated in our 2005 brief (Biswas 2005), more than legislation is needed (i.e., strong institutional supports and community outreach) to help this population gain access to and succeed in higher education.

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