

# Access to Community College for Undocumented Immigrants: A Guide for State Policymakers

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An ACHIEVING THE DREAM Policy Brief

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## Table of Contents



Overview . . . . .	2
What States Are Doing . . . . .	3
Notable State Policy Actions . . . . .	6
<i>Texas: Lessons from a Policy Innovator</i> . . . . .	6
<i>California: A Negotiated Compromise</i> . . . . .	6
<i>Kansas and Arizona: The Backlash</i> . . . . .	7
Policy Options: Intuition-Level Change vs. State-Level Approaches . . . . .	8
<i>Institutional Action</i> . . . . .	8
<i>State Action</i> . . . . .	9
Barriers to Greater Access and Opportunity . . . . .	9
Federal Policy . . . . .	11
Conclusion . . . . .	11
References . . . . .	12
Endnotes . . . . .	13

# Access to Community College for Undocumented Immigrants: A Guide for State Policymakers

In 1982, the passage of federal legislation regarding undocumented students in K-12 public education set in motion dynamics that are now reaching higher education. That year, the U.S. Supreme Court ruled (in *Plyler v. Doe*) that all children were guaranteed access to public education in grades K-12, regardless of immigration and legal status. The law did not extend any such guarantee for postsecondary education. Today, as states face a growing number of undocumented immigrant students graduating from their high schools, many are assessing and revising their policies related to access and affordability of higher education for undocumented students. These policies, related primarily to tuition and financial aid, are in flux, due in part to subsequent federal legislation that has restricted states with regard to providing support undocumented students and to varying political winds blowing across the states. The future promises more uncertainty: Congress is likely to address these exact issues in 2005, and any congressional action will inevitably have a ripple effect upon states as they adjust to new federal policy.

In the meantime, states are using various approaches to help undocumented students fulfill their college aspirations. Community college systems, which typically serve as the first point of entry into postsecondary education for many of the nation's underserved and low-income populations, are key stakeholders in these approaches.

This policy brief, prepared for *Achieving the Dream*, a national initiative to increase the success of underserved groups in community colleges, explores and highlights some of the actions being taken by states

and institutions to improve the access of undocumented students to education opportunities. The brief focuses on the five states currently participating in the Initiative. These states—Florida, New Mexico, North Carolina, Texas, and Virginia—have large or rapidly growing immigrant populations, and they represent an informative mix of states' positions with regard to policies for undocumented students. At one end is Texas, the pioneer in introducing supportive legislation; at the other is Virginia, where the legislature passed legislation, subsequently vetoed by the governor, that would have barred undocumented students from being admitted to the state's public higher education institutions. The brief also looks at recent developments in several other states, including Kansas and Arizona.



## Overview

Estimates of the number of undocumented immigrants in U.S. colleges and universities vary greatly. Most discussions, including state and federal legislative reports, cite an Urban Institute estimate of 65,000 undocumented students graduating from U.S. high schools each year and enrolled in college. However, the Urban Institute later revised its estimate downward, to between 7,000 and 13,000 (Passel 2003). The actual number of undocumented students is difficult to determine, because few public higher education systems track these students, and students themselves are reluctant to divulge their status for fear of deportation or other legal consequences.

Regardless of the exact number, the problem is significant, particularly in states with the largest or fastest growing immigrant populations. As state and federal governments have begun to consider how to treat these individuals when they seek to enroll in community colleges or other postsecondary institutions, two issues are at the forefront:

- Increasing access to higher education for these students by charging them in-state tuition, which is substantially lower than out-of state tuition in most states (see Table 1); and
- Making state financial aid programs accessible to undocumented students.

Federal law does not expressly prohibit the admission of undocumented immigrants to U.S. colleges and universities.<sup>1</sup> In contrast to employment law, no federal statutes require disclosure and proof of immigration status and citizenship in order for students to enter higher education (although Virginia, Alaska, and some other states have considered such legislation). Federal law only requires states and institutions to report on the status of students applying for federal financial assistance.

However, federal law does constrain states regarding tuition and financial support for undocumented students. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 prohibits states from charging undocumented students in-state/resident rates if they do not offer the same rates to all citizens and legal residents of other states. The law also requires states to furnish information on the immigration status of students who apply for federal financial aid. This supports

**TABLE 1.**  
**Community College Tuition and Required Fees, Selected States, 2003-2004\***

	Resident	Non-Resident
Arizona	\$1,103	\$5,596
California	\$540	\$5,010
Florida	\$1,688	\$6,226
Kansas	\$1,765	\$2,851
North Carolina	\$1,136	\$6,304
New Mexico	\$ 949	\$2,115
Texas	\$1,281	\$2,580
Virginia	\$1,883	\$6,306
Washington	\$2,142	\$7,350

\* Estimated State Averages; tuition and required fees include total academic year tuition and required fees for full-time students.

Source: Washington Higher Education Coordinating Board, *2003-2004 Tuition and Fee Rates, A National Comparison*. [www.hecb.wa.gov/docs/reports/NationalTFreport.pdf](http://www.hecb.wa.gov/docs/reports/NationalTFreport.pdf)

a clause in the Higher Education Act of 1965 that prohibits undocumented students from taking advantage of federal financial aid such as Pell grants, which are the major source of federal assistance to low-income college students.

Two federal proposals—the DREAM Act and the Student Adjustment Act—seek to make existing laws governing tuition and financial support more responsive to the needs of undocumented students.

States are taking up these issues as more undocumented students are graduating from U.S. high schools. According to the National Conference of State Legislatures, more than 20 states have introduced bills addressing in-state tuition rates for undocumented immigrants since 2001 (Walton 2003). Seven states have changed their residency standards to allow undocumented immigrant students to receive in-state tuition under certain conditions.

California, Texas, and other states at the forefront of making immigrants eligible for in-state tuition have significant immigrant populations, but they are not alone. A number of states with smaller immigrant populations are also addressing limits to access through tuition policy.

Advocates of in-state tuition and other advantages for undocumented students see these as ways to improving opportunities for deserving young people who are thwarted by their low income and legal status—and raising skill levels and lowering social and economic costs for the state. Advocates also say that most of these students, who came into the United States as minors, should not be held accountable for the actions of their parents. In this view, easier access to higher education through reduced tuition and other forms of aid could motivate students to learn and help reduce high dropout rates and low post secondary attainment rates. For example, the Texas Legislature estimated that 1.2 million students dropped out of public schools in 1998, costing the state \$319 billion (Walton 2003). Supporters of a 2001 Texas law extending in-state tuition to undocumented students argued for its passage on the basis that it would give students the incentive to stay in high school and attend college. Community colleges, community college districts, and groups representing undocumented immigrants have been at the forefront of policy changes in Texas and other states.

Critics argue that making in-state tuition and state or federal financial aid available to undocumented students is unfair to taxpayers, especially to other low-income citizens and legal residents. They also argue that such policies reward illegal behavior and put additional pressures on public higher education systems, which are already struggling with limited resources. Many fear that increasing the enrollment of illegal aliens into colleges will decrease opportunities for U.S. citizens and legal residents.

As a result of these divergent views, state policy appears to be heading in two different directions:

- Improving opportunity for undocumented students in higher education; and
- Discouraging access to higher education for undocumented students in favor of protecting citizens and taxpayers in an era of fiscal challenges.

## What States Are Doing

According to the National Conference of State Legislatures (Walton 2003), the first state to make undocumented students eligible for in-state tuition charges was Texas, in 2001, followed later that year by California. In 2002, Utah and New York followed suit. In 2003-2004, Washington, Oklahoma, and Illinois enacted similar legislation. On the other hand, Alaska and Virginia introduced bills that would restrict undocumented students from entering a public college. An Arizona ballot initiative approved in 2004 restricts all public services (including tuition and financial aid) to citizens and legal residents (see Crawford, Díaz, and Wingett 2004).

Policies are quite varied in the five states where the *Achieving the Dream Initiative* funded by the Lumina Foundation for Education is concentrated (see pages 4–5). In addition to having some of the largest and fastest growing immigrant populations, these states offer a snapshot of the spectrum of state policies around state support for undocumented students.

- *Texas* has been a pioneer in adopting policies that make it easier for undocumented students who graduate from Texas high schools to afford to attend a Texas public college or university.
- *North Carolina* has expanded its admissions policies incrementally since 2001 in ways that have opened up college-going to undocumented students, first in non-credit programs and then in credit-bearing courses and programs.
- *Florida and New Mexico* have attempted to introduce policies to help undocumented students through reduced tuition, but the bills have died in committee, on the floor, or by veto.
- *Virginia* has moved in the opposite direction; legislation to bar undocumented students from eligibility for in-state tuition was vetoed by Governor Mark Warner. Even so, most Virginia community colleges have followed the guidance from the state Attorney General's office not to admit students without documentation and to charge undocumented students who are admitted out-of-state tuition. However, Northern Virginia Community College and some of other large schools near Washington, DC, have been admitting these students.

continued on page 6 ►

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## Policies Affecting Access to Community College, Tuition Charges, and Access to Financial Aid for Undocumented Students in Achieving the Dream States<sup>2</sup>

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### Florida

**Admission of undocumented students:** Yes. No law prohibits admission to undocumented students. The decision is left to the discretion of institutions and local boards.

**Eligible for In-state tuition:** No

**Eligible for State Financial Aid:** No

**Are students required to disclose immigration or residency status for admission?** Florida community colleges require students to submit information on visa and immigration status upon application.

**Status of legislation:** House Bill 119, introduced in 2003, would have permitted all students, regardless of immigration status, to be classified as residents for tuition purposes if they could demonstrate three years of consecutive residence preceding their high school diploma or GED and a signed affidavit with intent to legalize status. A proposed amendment would have made an exception for students meeting these criteria, rather than extend the definition of resident students. The bill died in the Appropriations Committee.

Senate Bill 1182, introduced in 2004, provided for out-of-state tuition exemption for dependent children of migrant farm workers who had attended a Florida high school for at least two years. That bill and its companion House version died in committee.

**Discussion:** Florida took up the issue of tuition and financial aid for undocumented students in 2003 and again in 2004, but legislation failed to pass. Florida institutions that choose to admit undocumented students must charge out-of-state tuition. These students do not qualify for state financial aid programs.

In the analysis of the 2003 bill by legislative committees, the fiscal impact of the bill was found to be indeterminate, in part because Florida specifically prohibits public schools from collecting information on the immigration status of foreign-born students.

The state has not yet estimated the number of undocumented students, even though there is general agreement that the number of students who could benefit from legislative changes may be quite large. Although Florida community colleges require students to submit information on visa and immigration status upon application, individual institutions do not necessarily report the number of undocumented students they are admitting.

In the absence of a favorable tuition policy for undocumented students, Florida could exempt certain groups of students. The “All Florida Students” program qualifies students for in-state tuition on the strength of their high school diploma attainment, possession of driver’s license, and other criteria, although undocumented students who cannot furnish proof of residence or other required information may be precluded from eligibility.

Florida has no policy on the eligibility of undocumented students for state aid.

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### North Carolina

**Admission of undocumented students:** Yes, at the discretion of institutions and local boards

**Eligible for In-state tuition:** No

**Eligible for State Financial Aid:** No

**Are students required to disclose immigration or residency status for admission?** North Carolina community colleges are required to collect visa status information to determine tuition for all students. For undocumented students, who pay out-of-state tuition, a ‘no visa’ status is entered in the student information system by a college.

**Status of legislation:** Senate Bill 987, introduced in 2003, would have made any student eligible for resident tuition rates if the student attended an in-state high school for at least four consecutive years and received a diploma from a North Carolina high school or GED in the state. The bill, referred to the Committee on Education, subsequently died. The bill may be resuscitated in the 2005 legislative session but will need new sponsorship.

**Discussion:** North Carolina began admitting undocumented students in its community colleges following a decision in December 2001 by the North Carolina Community College System office to leave the admission of undocumented students to the discretion of individual institutions and their local boards. The system office, in consultation with the state attorney general’s office, issued a memo to institutions regarding the same. However, students could only be admitted into non-credit, “basic skills” programs such as GED, adult high school diploma, continuing education, and non-credit bearing programs—programs that charge a universal fee and do not differentiate between resident and non-resident students. Students would not be eligible for state financial aid. In August 2004, the system decision was amended to include admission into credit-bearing programs at out-of-state rates.

The system does not use any qualifying conditions for admittance; students do not have to fulfill any high school attendance or other residency requirements to enter community colleges. In fact, in keeping with its open door policy, the system admits all undocumented aliens, not just those from North Carolina high schools. The system’s directive is just being implemented, so there is no data on impact. The state has yet to develop a method for calculating the number of undocumented students who would enroll in higher education if legislation passed.

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### New Mexico

**Admission of undocumented students:** Yes, at the discretion of institutions and local boards

**Eligible for In-state tuition:** No state law, but some institutions have been granting in-state tuition and the state has tuition exemptions for special non-resident populations.

**Eligible for State Financial Aid:** No

**Are students required to disclose immigration or residency status for admission?** New Mexico community colleges require all applying students to state whether they are residents of New Mexico. Institutions pursue further information on undocumented students at their own discretion.

**Status of legislation:** Senate Bill 909, introduced in 2003 but withdrawn that same year, would have redefined “resident student” to include students who were already attending postsecondary institutions in New Mexico, had graduated from a New Mexico high school, or had received a GED in New Mexico and had resided in New Mexico for at least one year. A substitute bill from the Senate Education Committee has been indefinitely postponed. The state will be revisiting the issue in the 2005 session.

**Discussion:** A major issue in the fate of the New Mexico legislation was the bill’s potential impact on state financial aid, mainly the State Lottery Fund. The proposed legislation did not clarify the matter. State legislators feared that the bill would deplete the fund, and public resistance also focused on this unknown impact.

The state attorney general’s office has ruled that federal law regarding tuition and other issues applies only to the university system and some other specified institutions but not to other public institutions. This ruling has left the law open to interpretation, and although the state commission for higher education establishes tuition rates by residence, some community colleges have been granting in-state tuition and institution-based aid for undocumented students. Further, the New Mexico Legislature has approved in-state tuition for some non-resident groups, including an “Athletes Pass” program; the 135 Mile Texas Rule, which grants in-state tuition for Texan residents living within 135 miles of the New Mexico border; and an exemption for certain Native-Americans groups living outside New Mexico but studying in New Mexico community colleges. In all, the legislature has granted up to \$28 million worth of tuition waivers to these groups.

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## Texas

**Admission of undocumented students:** Yes

**Eligible for In-state tuition:** Yes

**Eligible for State Financial Aid:** Yes

**Are students required to disclose immigration or residency status for admission?** According to the Texas Higher Education Coordinating Board, a student’s residency is declared as part of the application process. Specific questions are required about citizenship status and whether the individual is a Texas resident or not.

**Status of legislation:** House Bill 1403, enacted in 2001, allows undocumented students to pay in-state tuition and qualify for financial aid, provided they have resided in Texas for three or more years, are graduates of Texas High schools or have GEDs issued in Texas, and sign an affidavit promising to file an application to legalize status.

**Discussion:** In Texas, where local boards govern community colleges, the impetus for action began with the Dallas Community College District, a large urban district serving a rapidly growing Hispanic population. The district had been receiving applications from undocumented high school graduates, but most students were deterred from applying or were dropping out because of the cost of out-of-state tuition. In 1999, the district took up the issue with its local board, which decided to allow undocumented students who graduated from a Texas high school to pay in-state-tuition rates. The board decided that the cost of enrolling these students would be absorbed into the district’s operating budget, without any reimbursement from the state or the Texas Higher Education Coordinating Board. For financial aid, the district created a scholarship that does not exclude undocumented students, although it does not exclusively target them either. When this happened, the district went from enrolling approximately 100 undocumented students to nearly 500 within two years. The action remained a local initiative until 2000, when state Representative Rick Noriega took up this issue, first working with the Houston College District to adopt similar legislation and then making it a statewide initiative. In 2001, the bill passed the House with only one dissenting vote and was enacted into law in June. The law entitles undocumented students qualifying as residents for the purposes of tuition to also qualify for state financial aid. Visa-holding students do not qualify. The Texas Higher Education Coordinating Board has calculated that more than 2,000 students enrolled in the fall 2003 session after qualifying under HB 1403.

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## Virginia

**Admission of undocumented students:** Yes, at the discretion of local institutions

**Eligible for In-state tuition:** No

**Eligible for State Financial Aid:** No

**Are students required to disclose immigration or residency status for admission?** Institutions that do accept undocumented immigrant students do not pursue information on the status of students if they do not volunteer it.

**Status of legislation:** HB 2339, proposed in 2003, would have banned any individual illegally in the United States from being eligible for in-state tuition rates or any other postsecondary benefit. The bill passed but was vetoed by Governor Mark Warner. In 2003, the state attorney general recommended that Virginia’s public higher education institutions refuse admission to students without documentation, report students whose legal status is suspect to federal authorities, and charge undocumented students out-of-state tuition.

**Discussion:** Most institutions have been following the attorney general’s recommendation and are not enrolling undocumented students. However, Northern Virginia Community College and a few other schools have questioned the memo. They have accepted the recommendation with regard to tuition, but not regarding reporting students who legal status is suspect and charging out-of-state tuition.

Further, programs that are in higher demand than Northern Virginia Community College can meet, serve citizens and residents before enrolling undocumented students. Students are accepted on the basis of having a high school diploma or a GED. Residency for three to four years in Virginia is preferred but not necessary.

The college does not pursue information on the status of students if they do not volunteer it. Since undocumented students are required to pay out-of-state tuition and are not eligible for state or federal aid, the college has taken another step to make higher education more accessible for this population. It has recently instituted scholarships funded with private dollars, designated specifically for students without proper documentation, to help bridge the difference between in-state and out-of-state tuition. Funding for these New American Scholarships does not meet the need, but awareness and interest is growing. Current estimates indicate that about 300 undocumented students attend the college, and that the number of students who could enroll if the state changed its legislation would increase substantially.



## Notable State Policy Actions

Policy developments in several states deserve attention:

- As the pioneer in developing and enacting legislation improving the access of undocumented students to community colleges, Texas provides important insights and lessons into the legislative process and organizing efforts for states considering similar legislation.
- In California, recent developments balancing the divergent views on serving undocumented students have particular relevance to other states with large populations of undocumented residents and students.
- In Kansas and Arizona, citizen backlash against easier access and more state support for undocumented students is playing out in lawsuits and ballot initiatives.

### Texas: Lessons from a Policy Innovator

Texas's policy on tuition support for undocumented students, introduced as HB 1403, was spearheaded by State Representative Rick Noriega, whose office expanded a local Dallas initiative to a statewide policy effort. One of the first steps taken by Rep. Noriega and his legislative team was to work with the Texas Education Agency (the administrative entity for primary and secondary education) to arrive at an estimate of the number of students involved. This was accomplished through data from public schools that assign tracking numbers to students who do not have social security numbers.<sup>3</sup>

The legislative team in Senator Rick Noriega's office also undertook an education campaign with the Texas Higher Education Coordinating Board to determine and communicate the need for statewide legislation. This effort highlighted the staggering dropout rates among immigrants in Texas, the low rates of postsecondary attainment, and the long term costs to the state. The argument was an economic not a social one: Noriega introduced a bill that would increase enrollment of, and fees from, students who would otherwise not enroll or drop out. At every stage of the process, the legislative team worked to bring in key stakeholders—colleges, schools, minority groups, community-based organizations, and businesses—to create grassroots support for the bill. The bill moved easily through the legis-

lature, although the Senate debates added two qualifying criteria for residency: the three-year residency clause and an affidavit stating intent to legalize status.

A critical factor in the legislative process was the calculation of fiscal impact. In Texas, proposed legislation must project fiscal impact for two years. Projected costs are based on prior year costs; with no data for prior years, costs in this case were predicated on prior enrollments of that population. Because the number of such students had not been counted previously, the fiscal note gave no immediate impact, which made the legislation resource neutral for one fiscal year. Further, the bill stipulated that only those students enrolling after the enactment of the law would qualify as residents for purposes of tuition. By not grandfathering in existing undocumented students, the legislation once again limited its fiscal impact.

With the enactment of the law in 2001, the Texas Higher Education Coordinating Board created a system to inform institutions of the policy changes which helped to smooth their implementation. The board now collects and publishes data on the enrollment of students qualifying under the new legislation. According to the THECB, more than 2,000 students enrolled in the fall 2003 session after qualifying under HB 1403.

As a pioneer in helping improve postsecondary access for undocumented immigrants, the Texas experience provides the two important implementation lessons for other states. The first is the need for substantial staff education at institutions, without which a fragile student population can be further confused and deterred from pursuing post secondary education. Second, there is a continuing sense of risk and fear in the undocumented student population associated with divulging status. Because the onus is on students to come forward to avail themselves of benefits, further outreach is needed for the policy to be truly effective in increasing access.

### California: A Negotiated Compromise

In California, AB 540, introduced and enacted in 2001, soon after Texas passed its law, permits undocumented students to qualify for in-state tuition. They have to meet three conditions: attend a California high school for three or more years, graduate with a California high school diploma, and sign an affidavit providing intent to legalize status at the earliest opportunity.

Unlike Texas, where the legislation passed easily, California's journey required substantial negotiation. The original legislation called for qualifying students to be able to access state financial aid, but that provision was later dropped. The affidavit clause was added when critics called for students to submit more rigorous documentation of their intent to establish permanent residency. In the final version, only California high school diplomas were accepted, and not GEDs or equivalency certificates.

Since 2001, some institutions have tracked students qualifying for in-state tuition under the legislation (as "AB 540 kids") but without reporting these numbers to the state. Thus, there is no statewide tally of the number of students or the impact of the legislation.

At the local level, though, individual institutions have devised innovative ways to estimate demand, for example, by working closely with high schools to develop pathways into higher education for local students. In Santa Ana County, every high school senior fills an application for the community college and a federal financial aid form from which a student's status can be inferred. Santa Ana Community College and other local institutions use the information to estimate enrollments and provide services. SACC is also designing scholarships that do not exclude students who lack documentation.

### **Kansas and Arizona: The Backlash**

In Kansas, a bill, first introduced and passed in the House in February 2003, would allow undocumented students to pay in-state tuition on the basis of high school attendance. The bill was signed into law in 2004 by Governor Kathleen Sebelius. However, the state now faces a lawsuit filed on behalf of 24 U.S. citizens paying out-of-state tuition to Kansas' public higher education institutions (Hebel 2004). The outcome of the suit may have national significance if it goes to the U.S. Supreme Court. According to observers, the case decision may focus on the Equal Protection Clause of the Constitution, as did the decision in *Plyler v. Doe*. It will also likely overturn state laws, regardless of whether they provide in-state tuition to illegal immigrants or ban it: the authority to regulate immigration belongs exclusively to the federal government. It might also find that offering reduced in-state tuition to state residents is unconstitutional.



The backlash has been more direct in Arizona. Proposition 200 or the Protect Arizona Now (PAN) Ballot Initiative, requires Arizonans to provide proof of citizenship and legal residency in order to vote and receive state and local public services. Approved by the voters in November 2004, the initiative also makes it a crime for state and local government employees to fail to report suspected illegal immigrants seeking public services. Although not targeted at undocumented students exclusively, Proposition 200 is bound to have substantial impact on the undocumented student population. Launched by an Arizona citizen group, but primarily funded by national interests, Proposition 200 was the most controversial issue on the ballot in 2004, dividing the state sharply across party lines.

However, the final outcome of initiative is still pending, with the promise of even more controversy. In late November, a federal judge issued a restraining order, temporarily barring the state from implementing the initiative, after a lawsuit was filed by the initiative's opponents who raised questions about its constitutionality, on the grounds that it usurped the federal govern-

ment's power to regulate immigration (Associated Press 2004). In December 2004, the restraining order was lifted, clearing the way for Proposition 200, but implementation is expected to be difficult since the measure does not clearly define "public services" (Schodolski 2004).

The initiative is expected to become a catalyst for similar measures in other states and a bellwether in the ongoing national debate on immigration reform.



### Policy Options: Institution-Level Change vs. State-Level Approaches

Since the 1996 passage of federal legislation regarding undocumented students in K-12 public education, states have moved in different directions in seeking to respond to the economic needs of the state, the concerns of taxpayers, and the interests of undocumented residents. These debates are becoming more politically charged, as the Kansas and Arizona experience indicate.

Thus far, policies on undocumented students have moved forward in one of two ways:

- A the level of individual institutions; or
- Through state action.

In some states, including some *Achieving the Dream* states, institutional action has preempted, even superseded, state action.

### Institutional Action

Many community colleges have used the absence of definitive federal or state legislation as an opportunity to take an independent stance on the admission of undocumented students. The lack of reporting requirements from either the state or federal government has also allowed institutions to act on their own accord. In Virginia, one of the few states that has attempted to ban the admission of undocumented students, some institutions have questioned and even rejected the state's recommendation to refuse admission to undocumented students. In Florida, North Carolina, Texas, and New Mexico, institutions have been admitting and in some cases, even granting financial support to undocumented students at their own discretion.

Moreover, the governance structure for higher education often gives considerable autonomy to institutions to act on their own accord. In Texas, a number of community colleges, which are governed by local boards, offered in-state tuition to undocumented students long before it became a state law. A New Mexico state ruling deemed that federal laws regarding tuition and other issues applied only to the university system and some specified institutions but not to other public institutions. This left the law open to interpretation; as a result, some two-year community colleges began charging undocumented students for in-state tuition.

Further, community colleges have also acted independently on the subject of financial aid. In states where undocumented students may be admitted but are not allowed access to tuition and financial support, colleges have devised their own means of support. Northern Virginia Community College has created community- and privately funded scholarships for undocumented students, recognizing that access without financial aid is too high a barrier for many undocumented immigrants. In California, Santa Ana Community College has created scholarships that do not exclude students who lack documentation.

## State Action

At a minimum, states can remove barriers to access for undocumented students. States that are considering passing legislation favorable to increased access and opportunity for undocumented students may want to consider the Texas model, as some states already have done.

A few common platforms have evolved in designing such legislation. Here are some of the ways that states are working to promote greater access for undocumented students:

- *Most states focus educational policies on residency rather than immigration status* (e.g., basing eligibility for in-state tuition on attendance at an in-state high school and the awarding of a high school diploma or GED from the state). This makes it possible for undocumented students who have already attended U.S. schools to have access to in-state resident benefits. The three most commonly used criteria for qualifying students for in-state benefits are consecutive high school attendance for three years or more; a high school diploma or equivalent from the state; and an affidavit providing intent to legalize status and pursue legal residency.
- *States are redefining the resident student population through exemptions and waivers, rather than targeting legislation expressly at undocumented students.* Many are building on a system of providing waivers for special populations. Texas had 17 waivers in place before adding undocumented high school graduates to the list. New Mexico also used a similar approach in crafting its bill.
- *For states where such policy is controversial, policymakers have chosen to leave decisions about undocumented students' access to institutions' discretion,* although some are more explicit about tuition and aid. Florida does not have explicit legislation around the admission of undocumented students, but it does prohibit financial aid and reduced tuition.
- *States can decide whether to allow undocumented students to access all programs equally.* In Virginia, in programs where demand exceeds capacity, citizens and legal residents have precedence over undocumented students. Only recently has North Carolina permitted undocumented students to enroll in credit-bearing programs and courses. This question has also come up in California.

- *States can offer tacit support for expanded access by not requiring documentation on undocumented students and by not reporting cases where documentation is suspect.* In this, they are aided by federal legislation which does not expressly demand that states do so.



## Barriers to Greater Access and Opportunity

States must be aware of the barriers that can and have surfaced around policies designed to improve access to community colleges for undocumented students. Without careful consideration of the challenges, well-meaning efforts to assist undocumented students may fail, or worse, generate a dangerous backlash.

*Cost to the state:* Cost is an important determinant of the success of legislation. In New Mexico, legislation failed because the impact on state financial aid funds was perceived to be too high. In Florida, one of the reasons for the legislation's failure was that the cost to the state was indeterminate. In Texas, a key factor in getting HB 1403 passed proved to be the fact that the legislation was fiscally neutral, at least in the short term.

*Data on undocumented students:* Issues of cost and data are closely related. The acknowledged lack of data on undocumented students at both state and federal levels has an impact on states' and institutions' ability to estimate the demand on services and/or fiscal impact. Cost aside, colleges and states may be afraid to pursue information due to fear of violating federal student privacy laws. As a result, there are only vague estimates of the demand for, and impact of, proposed legislation. Among the AtD states, only Texas, where public schools assign tracking numbers to students without social security numbers, has the state had a



reasonably clear idea of the impact of proposed legislation. In the absence of data, states can arrive at the estimated impact by using some common criteria—for example, the number of students without social security numbers in high schools, minority representation in high schools, high school minority graduation rates, rate of postsecondary attendance in the state for minority groups, and GED awards in the state.

*Impact on financial aid funds:* Does qualifying as residents for tuition also qualify students for state financial aid? States may institute policies to qualify students for in-state tuition but not financial aid, as California has, or follow the Texas example, by allowing students to access both in-state tuition and state financial aid. Of course, in-state tuition is a plus, but for many undocumented immigrants, financial aid is central to their ability to attend and stay enrolled. Low take-up rates in some states can be attributed to the lack of access to financial aid.

*Outreach to the affected population:* States need to reach out to undocumented students and their families to overcome the fears and insecurities of new immi-

grants. Fear of disclosure of status may prevent students from taking advantage of available benefits. Because of the lack of a clear federal directive on the admission of these students, there is considerable variation among and within states with regard to admission of undocumented students. This further confuses low-income immigrant students (legal and illegal) who are often already marginalized from opportunities due to inadequate information. In Washington State, the target population remained unaware of the legislative changes favoring them (Iwasaki 2003). In states that have passed legislation, the onus is still on students to come forward to benefit from the new policies. Even in Kansas, where the law permitting in-state tuition for undocumented students has generated so much controversy, only 30 undocumented students have enrolled in higher education under the new legislation; far less than the estimated 370 that were expected (Fischer 2004). States can help institutions implement favorable policies. The Texas Higher Education Coordinating Board launched an education campaign to assist institutions in the implementation of HB 1403.

*Rules for eligibility:* Clear definitions of the affected population and who qualifies for tuition waivers are important. In Washington, a loose definition of a resident student has made it possible for some visa-holding students to qualify for in-state tuition rates at the expense of the target population, even though that was not the intent of the law.<sup>4</sup> This question has been raised in New Mexico as well: would proposed legislation classify aliens with a visa permitting permanent residence as in-state for residency/tuition purposes at higher education institutions?

*Backlash:* A citizen/taxpayer backlash can have severe implications on policy. Arizona's Proposition 200 prevents undocumented aliens from availing themselves of any public benefits including education. And Arizona's precedent is expected to lead to similar measures in other states. States where the issue has the potential to become controversial may consider waiting for federal policy decisions before taking action.

## Federal Policy

Two bills pending in Congress address the two matters central to the access of undocumented immigrants to college: charging in-state tuition to undocumented students who meet state residency criteria and making them eligible for aid. Both the Development, Relief and Education for Alien Minors (DREAM) Act (S 1545) in the Senate and the Student Adjustment Act (SAA) in the House (HR 1684) have bipartisan support and would be steps toward improving postsecondary opportunities. The outcome of these proposals will be critical for many states where legislation is pending and state policymakers are debating how to address these issues.

The DREAM Act, introduced in 2003 by Senators Orrin Hatch (R-UT) and Richard Durbin (D-IL), would amend Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act. The bill aims to restore state authority over higher education and to leave tuition to the discretion of states. If the DREAM Act becomes law, undocumented minors who arrived in the United States before the age of 16 and who have lived in this country for at least five years would be eligible to earn their conditional resident status upon acceptance by an institution of higher learning or upon graduation from high school. The bill provides for permanent resident status if the student graduates from a two-year college or certain vocational colleges, studies for at least two years toward a Bachelor's or higher degree, serves in the U.S. armed forces for at least two years, or performs at least 910 hours of volunteer community service (National Immigration Law Center 2003).

The Student Adjustment Act was introduced by Representatives Chris Cannon (R-UT) and Howard Berman (D-CA). The SAA has three main provisions. States would set their own residency rules for the purposes of public tuition costs. Junior high and high school students who have lived in the United States for at least five years and are of "good moral character" could obtain immigration relief and go to college without the fear of being deported. Third, undocumented aliens applying under the act would become eligible for other higher education benefits such as student loans and Pell grants. The legislation awaits action in Congress (National Immigration Law Center 2003).



## Conclusion

The process set in motion through the 1982 federal ruling calling for a national guarantee of basic education to all students regardless of immigration status is now surfacing in the debates on state policies around postsecondary admission, tuition, and financial aid for undocumented students. As a generation of undocumented students has come of age, graduating from U.S. high schools, they are seeking the next level of opportunity. The merits of policies favoring in-state tuition and financial aid for improving this group's access to higher education are clear, especially at a time when postsecondary credentials are increasingly linked to economic success but the cost of education keeps increasing.

Nevertheless, the debate in higher education cannot be separated from the debate around immigration—a much larger and more contentious topic. States also need to consider what happens to students once they graduate from postsecondary institutions—when they face federal employment laws that explicitly preclude them from employment opportunities.

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Information for the brief was collected through secondary research and interviews with state officials, state higher education authorities, and community college leaders.

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### Interviews

California: Santa Ana Community College

Florida: Florida Department of Education

Kansas: Kansas Association of Community Colleges

North Carolina: North Carolina Community College System

New Mexico: New Mexico Association of Community Colleges

Texas: Austin Community College, Texas Association of Community Colleges, Texas Higher Education Coordinating Board, Representative Nick Noriega's Office

Virginia: Northern Virginia Community College, State Council for Higher Education in Virginia, Virginia Community College System, Virginia State Attorney General's Office

## Endnotes

<sup>1</sup> “No *federal* law prohibits undocumented aliens from attending public colleges or universities. As this article demonstrates, it is not easy to understand when and how undocumented aliens may attend U.S. colleges and universities. No *state* law prohibits undocumented aliens from attending public colleges or universities. California is the only state to have attempted this so far, in Proposition 187. Among other things, section 8 of that proposition would have denied post-secondary education to undocumented aliens. But a federal court struck down Proposition 187, holding that the state law contradicted federal law and thus was ‘preempted’ by federal law. . . . IIRIRA section 507 requires states and higher education institutions to transmit to the INS copies of documents they accept from individuals verifying the individuals’ citizenship or alienage status, or information from such documents. But this is only for applicants for post-secondary financial assistance. It does not concern enrollment issues, so it’s not really relevant to the matter of undocumented aliens (Badger and Yale-Loehr n.d.).”

<sup>2</sup> A number of sources were used to develop this table. The primary source for the status of legislation in each state is “State Proposed or Enacted Legislation Regarding Immigrant Access to Higher Education,” from the National Immigration Law Center, updated November 11, 2003, available at [www.nilc.org/immlawpolicy/index.htm](http://www.nilc.org/immlawpolicy/index.htm). Additional information for the table comes from interviews with state officials and documents downloaded from state websites, including: Florida Residency Guidelines for Tuition Purposes Adopted by Articulation Coordinating

Committee, May 19, 2000, [www.facts.org/html\\_sw/residencyGuidelines.html](http://www.facts.org/html_sw/residencyGuidelines.html); Texas Higher Education Board, Policy Concerning Noncitizens Who Are Texas residents—Non-Citizens Who Are Residents of Texas (Provisions effective since Fall 2001), [www.theccb.state.tx.us](http://www.theccb.state.tx.us); and North Carolina Community College System Academic & Student Services, “Hot Topics,” September, 2003, <http://www.ncccs.cc.nc.us>.

<sup>3</sup> It is widely acknowledged that Social Security Numbers are not the best measure of immigration status because they may be stolen or faked. However, they may be the best proxy available.

<sup>4</sup> In Washington, HB1079, signed into law in 2003, redefined “resident student” to include students who had completed their senior year and obtained a high school diploma or its equivalent in Washington, had resided in the state for three consecutive years prior to receiving the diploma and after receiving the diploma, and displayed an intent to legalize residency through a signed affidavit. The state found that that visa-holding students were the prime beneficiaries, applying for the waiver, whereas only one undocumented student reportedly applied. Registrars said the state attorney general’s office advised them not to deny in-state tuition rates to visa-holding students who had met the requirements of the law, because the statute did not specify that it applied solely to undocumented aliens. Undocumented students were unaware of the policy.