



Policy Trend: In-state Tuition for Undocumented Students

Overview

Conservatives seek to cut all services to undocumented immigrants, including education. The 1996 Illegal Immigration Reform and Immigrant Responsibility Act prohibits states from providing “any post-secondary education benefit” to undocumented immigrants “on the basis of residence.”¹ One progressive response has been to support the federal DREAM (Development, Relief and Education for Alien Minors) Act to provide educational access. The DREAM Act, originally introduced in 2003, would repeal the part of the 1996 federal immigration law that makes it difficult for states to offer in-state tuition and create expanded opportunity for undocumented college students to obtain legal residency.

Since 2003, the DREAM Act has repeatedly stalled in Congress. However the effort to attain educational access for undocumented students continues at the state level. In 2001, Texas and California became the first states since the 1996 federal immigration law to offer in-state tuition rates, regardless of immigration status, for students at state and community colleges.

In-state Tuition for Undocumented Students

The California version of in-state tuition legislation has largely been the template for legislation passed in other states. In general, these laws permit undocumented students in-state tuition rates provided that they:

- Have attended an in-state high school for three years.
- Have graduated from an in-state high school or achieved the in-state equivalent.
- Are willing to sign an affidavit that they will pursue citizenship.

In-state tuition laws are considered in compliance with the 1996 federal immigration law because they do not offer in-state tuition rates based on state residence, rather on having attended and graduated from a state high school or its equivalent. Some variations in these laws are:

- Texas and New Mexico offer undocumented students access to state financial aid. Federal law denies undocumented students access to federal loans and grants.
- New Mexico is the only state that does not require undocumented students to sign an affidavit that they will pursue citizenship.
- Only California has a clause in its in-state tuition law that makes student information obtained through the citizenship affidavits confidential.²

In-state Tuition Laws

| | California | Illinois | Kansas | Nebraska | New Mexico | New York | Oklahoma | Texas | Utah*** | Washington |
|------------------------------------|------------|----------|---------|----------|------------|----------|----------|---------|---------|------------|
| Year Passed | 2001 | 2003 | 2004 | 2006 | 2005 | 2002 | 2003 | 2001 | 2002 | 2003 |
| Attend HS | 3 Years | 3 Years | 3 Years | 3 Years | 1 Year | 2 Years* | 2 Years | 3 Years | 3 Years | 3 Years |
| GED Eligible | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Reside with Parent/Guardian | No | Yes | No | Yes | No | No | Yes | No | No | No |
| State Financial Aid | No | No | No | No | Yes | No | No | Yes** | No | No |
| Affidavit Required | Yes | Yes | Yes | Yes | No | Yes | Yes | Yes | Yes | Yes |
| Affidavit Confidential | Yes | No | No | No | n/a | No | No | No | No | No |

* Must apply for postsecondary school within 5 years of graduation.

** The Texas law conveys state resident status on eligible students, which establishes eligibility for state financial aid.

*** 2006 legislature is considering a repeal.

Challenges to In-state Tuition Laws

The first attempts by state legislatures to explicitly forbid in-state tuition rates began in 2003 as the national movement to support the DREAM Act was in full swing. Six states have so far introduced this legislation: Alaska, Arizona, Colorado, North Carolina, Utah and Virginia. To date, none of these bills have passed.³ In Utah in 2006, the effort to repeal the state's 2002 in-state tuition law was recently revitalized: the bill's original sponsor, Republican David Ure, did not win the primary election to retain his seat in the state legislature.⁴ This effort was temporarily defeated at the end of January 2007, but is expected to continue.⁵

Additional challenges to in-state tuition laws include:

A federal district lawsuit in 2004 in Kansas challenged in-state tuition for undocumented students. The court dismissed this case in summer 2005, noting that the plaintiffs did not have standing to challenge the law, but not did not decide whether or not the Kansas law was in violation of the 1996 federal immigration law. As of mid-2006, this decision is under appeal.⁶

In late 2005, Republican candidate for congress Brian Bilbray filed a challenge to California's in-state tuition law. The basis for this challenge is similar to the 2004 challenge filed in Kansas.⁷

The conservative Washington Legal Foundation has also filed separate complaints with the Department of Homeland Security charging that the New York and Texas in-state tuition laws violate the civil rights of U.S. citizens who live outside those states. The Department of Homeland Security is responsible for investigating possible federal immigration law violations, but to date has not taken any action on these complaints.⁸

Although passing the DREAM Act would fully clarify federal law in all challenges being brought against in-state tuition laws, the DREAM Act does not specifically convey any in-state tuition benefits. However, until federal courts or legislation decides the legal standing of in-state tuition laws, the long-term durability of these laws remains unclear.

¹ United States Code, Title 8, Section 1623.

² California, Assembly Bill 540, Chapter 814 (2001).

³ Krueger, Carl, "In-state Tuition for Undocumented Immigrants." Denver, eState Notes, April 2006.

⁴ Baker, Celia and Walsh, Rebecca. “In-state tuition for immigrants may be in peril,” Salt Lake Tribune, 10 July 2006.

⁵ Johnson, Nathan, “In-state tuition fails on tie vote,” Utah Daily Herald, 31 January 2007.

⁶ National Immigration Law Center, *Immigrants’ Rights Update*, vol.19, issue 5, 5 October 2005.

⁷ Kaplan, Jonathan E., “Bilbray takes universities to court over pro-immigrant bias.” The Hill, 24 May 2006.

⁸ Op. cit., National Immigration Law Center.