

# Unauthorized Youths And Higher Education: The Ongoing Debate

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When policymakers discuss the unauthorized population in the United States, the focus is mainly on immigrants who crossed the border as adults. Less frequently discussed are the children brought into the country illegally.

The presence of unauthorized children creates a unique set of policy problems, mainly because of their numbers. These children make up a large portion of the unauthorized population — 16 percent (2 million individuals) of the estimated 12 million unauthorized, according to analysis by the Pew Hispanic Center of US Census Bureau data.

The Forum for Youth Investment, a nonprofit dedicated to helping young people, has found that children of immigrants are the fastest growing component of the youth population, composing 44 percent of children in the United States, with an estimated quarter to a third of them unauthorized. The Urban Institute has reported that 65,000 of these unauthorized students are graduating from US high schools each year (based on estimates of the unauthorized population from the 2000 census).

These numbers and the country's emphasis on higher education make it difficult, if not impossible, for policymakers to avoid the debate on whether these students should be granted access to publicly funded higher-learning institutions.

Various state legislatures have proposed, adopted, or rejected measures to grant or deny access. In general, these bills mandate that a determination of a student's immigration status must be made before they are permitted to participate in public higher education programs. Some bills provide in-state tuition for immigrants who meet certain qualifications; other bills bar unauthorized immigrants from qualifying for in-state rates.

On the federal level, recent immigration-reform proposals in Congress have included provisions to regularize immigrant students that meet certain criteria.

## **Background**

The federal government first addressed the issue of unauthorized students and their access to education in the 1982 Supreme Court case *Plyler v. Doe*. In a 5-4 decision, the Supreme Court ruled unconstitutional a Texas statute that authorized local school districts to deny enrollment to children who were not legally admitted to the country. The court found that the statute violated the Equal Protection Clause of the Fourteenth Amendment.

In his opinion for the court, Justice William J. Brennan wrote that the statute "imposes a lifetime hardship on a discrete class of children not accountable for their disabling status. These children can neither affect their parents' conduct nor their own undocumented status."

However, this ruling applied only to unauthorized children enrolled in kindergarten through 12th grade; it did not address public education beyond the 12th grade.

Fourteen years later, Congress included post-high school education in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Specifically, Section 505 of IIRIRA mandates that unauthorized immigrants "shall not be eligible on the basis of residence within a State for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit without regard to whether the citizen or national is such a resident."

While Section 505 does not explicitly prohibit states from offering unauthorized students in-state tuition, only 10 states have chosen not to apply the IIRIRA provision to tuition rates at public colleges and universities (see Table 1).

Some analysts see Section 505 as problematic because it sets a federal mandate for state residency requirements, a determination states typically make. Thus, some critics view Section 505 as an infringement on states' rights.

Furthermore, public colleges and universities generally use graduation from an in-state high school as the main criteria for residency. This is one way that the 10 states who do not apply the IIRIRA provision defend their policies to grant admission and in-state tuition to unauthorized students.

In addition, "granting" states maintain that their policies are not discriminatory or in violation of federal law because individuals from other states are also eligible for the tuition benefit once they meet the residency requirements. Many public colleges and universities simply do not determine residency based on a student's immigration status.

States that do not permit access or in-state tuition argue that unauthorized students are residents of another country, per federal law, and are ineligible to receive postsecondary education benefits based on state residence. Institutions in these states typically require students who seek resident tuition to provide evidence of US citizenship or legal immigration status. Students whose eligibility cannot be verified are classified as nonresidents for tuition purposes.

Some "denying" states, such as Arizona, also claim that, in contrast to out-of-state students, students eligible for in-state tuition do not pay the full cost of their education, which taxpayers must in turn subsidize. These states argue that US citizens should receive taxpayer subsidies before unauthorized students who are violating federal law.

Either type of law, whether its purpose is to grant or deny in-state tuition, is enforceable

because both focus on legitimate arguments within the debate. "Granting" states often cite their state's residency requirements to qualify their laws; "denying" states cite Section 505 to support their policies.

These varied interpretations have resulted in discrepancies and conflicts within states and between federal and state laws. In recent years, cases on the legality of the in-state tuition issue were brought before courts in Kansas and California, both "granting" states. The Kansas federal district court and the California state court upheld the legality of each state's law. However, both cases are awaiting decision on appeal.

## **The Debate**

At the heart of the state- and national-level debate is a conflict between pragmatism, compassion, and fairness. Most of the students in question have lived in the United States for a number of years. In nearly all cases, it was not their decision to come to the United States illegally. Yet, once they arrive, they adapt to American life, and most become fluent in English. Sociologist Richard Alba has found that English dominates among all immigrant groups by the third generation (see **Bilingualism Persists, But English Still Dominates**).

As graduation nears, those who want to attend state colleges or universities find they must overcome many obstacles. According to The College Board, a nonprofit membership association of education institutions, the current average cost for in-state tuition and fees at a four-year public university is \$5,836; the average cost for an out-of-state resident is \$9,947. In some cases, the out-of-state tuition rate is three times higher than the in-state rate.

Due to rising tuition costs, two-thirds of all college students graduate with student loan debt. Unauthorized students, however, are not eligible for federal and state loans, grants, or federal work study, and cannot legally work to support themselves while in college.

On one side of the issue are those who believe students should be permitted to attend at the in-state rate despite their status, provided they meet certain criteria. On the other side are those who actively seek to prevent unauthorized immigrants from receiving in-state tuition or attending public higher-learning institutions.

Colleges and universities generally do not take stances on political issues, but the American Association of State Colleges and Universities, an association representing over 400 public colleges, universities, and systems of higher education throughout the United States, believes that states' authority over tuition policy must be preserved and respected; the association encourages states to offer in-state tuition to qualified unauthorized students.

Other proponents of in-state tuition believe that everyone should have access to public education and access to in-state tuition if they meet residency requirements, regardless of their immigration status.

This group, which includes organizations such as the Center for Community Change and the National Council of La Raza, often argues that it is inconsistent to educate unauthorized immigrants through high school, only to deny them access to a higher education that can lead to greater social and economic mobility. They also argue that unauthorized students may be less inclined to complete high school if they believe that post-secondary education is not a feasible option.

Opponents of in-state tuition, such as the Federation for American Immigration Reform (FAIR), hold the view that tax dollars should not be used to support those in the country illegally, and argue that unauthorized immigrants should not have access to any publicly funded benefit, including higher education. Opponents also claim that granting in-state tuition encourages more illegal immigration, incurs costs to individual states, and takes enrollment slots away from citizens and legal residents.

In some "granting" states, the debates include a third side: those who do not want state and school personnel to be forced into the role of "immigration police." Some opponents of Arizona's Proposition 300 used this reason to justify their position. Proposition 300, which Arizona voters approved in November 2006, denies in-state tuition to the unauthorized.

### **Analyzing Arguments on Both Sides**

Those who support granting in-state tuition benefits to the unauthorized believe that doing so can lead to greater social and economic mobility for this group. The available data back up this argument.

Earnings increase significantly as a worker's level of education rises. According to the US Census Bureau, people with a bachelor's degree earn nearly twice as much on average than those with only a high school diploma.

Based on estimates by the Census Bureau's Current Population Survey 2007 *Annual Social and Economic Supplement*, college graduates (those with a bachelor's degree and higher) in 2006 earned an average of 263 percent more than high school graduates. The median annual earnings for college graduates (bachelor's degree and higher) in 2006 were \$66,828, compared to \$27,384 for high school graduates.

In addition, the Department of Labor's Bureau of Labor Statistics reports that the unemployment rate among people who hold professional degrees is significantly lower than that of people with only a high school diploma. In 2006, the average unemployment rate was 4.3 percent for high school graduates and 2.3 percent for those with a bachelor's degree.

The primary barrier to higher education is the cost. Unauthorized students who do not have the financial means (or permission) to attend college are left with few career options. It is likely that many eventually join the workforce as unauthorized workers (see

the Pew Hispanic Center's report "**The Size and Characteristics of the Unauthorized Migrant Population in the U.S.**").

Those who oppose granting in-state tuition benefits to unauthorized students contend that doing so costs state schools too much. Yet, for a number of reasons, it is difficult to determine the cost to public colleges and universities of educating unauthorized students.

First, because of their unauthorized status, it is virtually impossible to determine a precise figure for the unauthorized immigrant population, including those who are students.

Second, many schools tend to lump noncitizen students into one category that encompasses both authorized and unauthorized noncitizens. This practice does not allow schools or states to separate unauthorized students for the purpose of calculating costs of their education.

Third, because tuition costs at public institutions vary across the country and within individual states, it is impossible to determine an "average" cost of educating unauthorized students, even if colleges and universities were to keep figures on these students specifically.

### **State Action**

The "granting" states generally require unauthorized immigrants to establish residency by attending a local high school for two to four years (with most requiring three), graduating or earning a high-school equivalency in that state, and signing an affidavit promising to legalize their immigration status as soon as they are eligible. Nebraska was the most recent state to enact such legislation, passing a measure in late 2006.

According to the National Conference of State Legislatures, several states have recently considered or are considering bills to grant in-state tuition for immigrants who meet certain qualifications, while others would bar unauthorized immigrants from receiving in-state tuition (see Table 1). In late August 2007, Republican state legislators in Virginia introduced a bill that would prohibit Virginia's public colleges and universities from admitting unauthorized immigrants altogether, even if they attended a public high school.

Since Proposition 300 passed, unauthorized students in Arizona are no longer eligible for in-state tuition rates and are barred from accessing state-subsidized programs for adult education. As of December 2006, Arizona's public college and university students seeking in-state tuition rates must prove they are citizens or legal residents through a verification process.

<b>Table 1. Unauthorized Students and the 50 States: Who Grants and Who Denies In-State Tuition?</b>								
State	Grants	Denies	Pending	State	Grants	Denies	Pending	

			Action <sup>1</sup>				Action <sup>1</sup>
Alabama				Montana		X	
Alaska		X		Nebraska	X		
Arizona		X		Nevada		X	
Arkansas		X	L	New Hampshire		X	
California	X		C, L	New Jersey		X	L
Colorado		X		New Mexico	X		L
Connecticut		X	L	New York	X		L
Delaware		X		North Carolina		X	L
District of Columbia		X		North Dakota		X	L
Florida		X	L	Ohio		X	
Georgia		X		Oklahoma	X		
Hawaii		X		Oregon		X	L
Idaho		X	L	Pennsylvania		X	L
Illinois	X		L	Rhode Island		X	L
Indiana		X	L	South Carolina		X	L
Iowa		X	L	South Dakota		X	
Kansas	X		C, L	Tennessee		X	L
Kentucky		X		Texas	X		L
Louisiana		X		Utah	X		L
Maine		X		Vermont		X	
Maryland		X	L	Virginia		X	L
Massachusetts		X	L	Washington	X		L
Michigan		X	L	West Virginia		X	L
Minnesota		X	L	Wisconsin		X	L
Mississippi		X	L	Wyoming		X	
Missouri		X	L				

Note: "Grant" indicates pending legislation would grant access or in-state tuition, "deny" indicates pending legislation would deny access or in-state tuition. I. L indicates legislation is pending, C indicates a court case is pending. Source: National Conference of State Legislatures, [www.ncsl.org](http://www.ncsl.org).

## **Federal Action**

Repealing Section 505 of IIRIRA would restore the rights of states to determine residency for public education benefits and allow them to decide whether to offer resident tuition rates to unauthorized students.

The Development, Relief, and Education of Alien Minors (DREAM) Act, introduced in Congress several times since 2005, would repeal Section 505. It would also provide immigration relief to unauthorized students by permitting adjustment to lawful permanent resident (LPR) status "certain long-term residents who entered the United States as children" (prior to the age 16), provided they meet the criteria.

According to analysis by the Migration Policy Institute, 715,000 youth between the ages of 5 and 17, as well as 360,000 high school graduates ages 18 to 24, would become eligible for adjustment of status sometime in the future under the Dream Act. In fact, most immigrant students who have grown up and graduated from US high schools would be eligible.

Adjustment to LPR status, in addition to placing students on a path to citizenship, would make these students eligible for resident tuition benefits (provided they meet the state's residency requirements) and federal financial aid. This would include Pell grants, Stafford education loans, federal work study, and other entitlements that fall under the Higher Education Act of 1965.

The Dream Act of 2007 was reintroduced in the Senate earlier this year by Senator Richard Durbin (D-IL), one of the provision's original sponsors, and was incorporated into the Comprehensive Immigration Reform Act of 2007 (see Table 2). Since the Senate was unable to reach consensus, the bill died on the Senate floor in June. Subsequent attempts to attach the Dream Act to pending legislation also failed; no further debate on the Dream Act is currently scheduled in the Senate.

Members of the House of Representatives have also included Dream Act provisions in House proposals, such as the Security Through Regularized Immigration and a Vibrant Economy (STRIVE) Act, the Education Access for Rightful Noncitizens (EARN) Act, and the American Dream Act. All three proposals were referred to the appropriate committees. The House is unlikely to bring the Strive Act to a floor debate; the other bills with Dream Act provisions currently remain in committee and await further action.

Dream Act opponents do not want the government to grant a public benefit to a group that violated federal law. The terrorist attacks of 9/11, as well as the federal government's perceived inability to secure the border and reach a consensus on comprehensive

immigration reform, have created considerable anti-immigrant sentiment throughout the country, particularly toward unauthorized immigrants. This is apparent from an increase in unauthorized immigrant-targeted proposals throughout the country.

Supporters of Dream Act proposals argue that, without in-state tuition rates, talented students will not be able to pursue the American dream. These supporters contend that for most unauthorized students, in-state tuition is the only affordable way to attend college, and since many of these students could eventually gain legal residency, it makes sense to allow them to further their education in the interim.

Some supporters, including the National Association for College Admission Counseling, argue that the Dream Act would provide a powerful incentive for unauthorized students to stay in school, since the tuition and citizenship benefits would only be available to high school graduates.

**Table 2. Bills with Dream Act Provisions in the 110th Congress\***

Senate	House
S 774 Development, Relief, and Education for Alien Minors (DREAM) Act	HR 1221 Education Access for Rightful Noncitizens (EARN) Act
S 1639 Unaccompanied Alien Child Protection Act	HR 1275 American Dream Act
S 1348 Comprehensive Immigration Reform Act	HR 1645 Security Through Regularized Immigration and a Vibrant Economy (STRIVE) Act

\*Proposals include language that would:  
 1) amend the IIRIRA to permit states to determine state residency for higher education purposes, and  
 2) authorize the cancellation of removal and adjustment of status of certain unauthorized students who are long-term US residents and entered the United States as children.  
 Source: The Library of Congress THOMAS.

### Looking Ahead

The Supreme Court in *Plyler* established a precedent that unauthorized youths should not be held accountable for their status, nor do they have the means to affect their status. The question is whether college-aged youths should be granted access to higher education

under the same precedent.

Passage of the Dream Act would put eligible unauthorized students on a path to legal residency, which would in many cases negate the resident/nonresident argument.

However, it is likely that, if the Dream Act passed, individual states and public education institutions within those states would still determine the residency requirements that a student must meet in order to receive resident tuition.

If a Dream Act provision is not passed, state legislatures will likely continue to propose legislation to grant or deny in-state tuition to unauthorized students, and the federal-versus-state power struggle will remain unresolved.

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