



## State Policies Regarding Undocumented College Students: A Narrative of Unresolved Issues, Ongoing Debate and Missed Opportunities

by Alene Russell  
Senior State Policy Consultant

### Context

According to the Pew Research Center, the United States has about 11.2 million unauthorized immigrants—a number that has more than tripled since 1990—and undocumented persons now make up 3.7 percent of the nation’s population and 5.2 percent of its labor force. The Urban Institute has estimated that nearly 30 percent of the immigrant population in this country is undocumented.

Given this high rate of unauthorized immigration, there have been widespread calls for an overhaul of the federal immigration system. Year after year, however, Congress has failed to enact the needed reform legislation, and over time, the climate for discussion has become increasingly partisan. With frustration growing, states across the nation have sought their own solutions, responding with record numbers of immigration laws. In spring 2010, for instance, the Arizona legislature passed and Governor Jan Brewer (R) signed into law SB1070, legislation requiring Arizona law enforcement officials to fully comply with and assist in the enforcement of federal immigration laws. This legislation is one of the most controversial state-level immigration laws in the

country and set off a frenzy of legal challenges and backlash in the Hispanic community. According to the National Conference of State Legislatures (NCSL), more than 1,400 immigration bills were introduced in 2010 alone. Forty-six states—every state in regular session in 2010—enacted 208 immigration-related laws and adopted 138 resolutions, for a total of 346 measures last year.

As the nation engages in heated debate about the costs of immigration versus the rights and needs of immigrants, the future of one segment of immigrants—those brought here by their parents, through no choice of their own—hangs in the balance. Roberto G. Gonzales, University of Washington faculty member, describes the plight of the undocumented children of the “1.5 generation,” those children who fit between first-generation immigrants who chose to migrate here and second-generation immigrants who were born here. These bicultural individuals straddle two worlds—born elsewhere and having spent time elsewhere, but whose primary identification is affected by experiences growing up as Americans. They may have high aspirations, and even high levels of achievement, but are forced to live in the margins. They cannot work legally in the U.S. and can

be deported to a country they do not know. Each year, an estimated 65,000 undocumented students graduate from American high schools, but only about 5 to 10 percent of them go to college, usually to a community college.

Current federal law leaves much to be desired, in terms of the future of these students. There are three critical elements that create for them a kind of legal paradox:

- **Mandatory provision of K-12 education.** In *Plyler v. Doe* (1982), the U.S. Supreme Court ruled that all children, regardless of immigration status, are guaranteed access to public education from kindergarten through 12<sup>th</sup> grade. The Court held that denying such an education would punish children for the acts of their parents and would perpetuate the formation of an underclass of citizens. This decision did not address postsecondary education.
- **Ambiguity of federal law with respect to state ability to offer in-state tuition.** Without access to in-state tuition rates, college is out of reach for most undocumented students whose parents have limited earning power. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Section 505, attempted to clarify the status of undocumented students with respect to in-state tuition eligibility, but instead led to greater confusion. The law states that undocumented aliens “shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national in the United States is eligible for such a benefit. . .” That is, the law does not prohibit states from offering in-state tuition to undocumented students, but it requires that other citizens, including nonresidents, be eligible to receive the same benefit. Without formal regulations that provide guidance, there have been differing legal interpretations of this law, particularly about what the term “residence” signifies, how it may be applied and what “postsecondary benefit” suggests.

- **Failure to pass the DREAM Act and provide a path to citizenship for qualified individuals.** The Development, Relief, and Education for Alien Minors Act (DREAM Act) has been introduced in Congress in various forms since 2001, but it has never made it through both chambers of Congress. The most recent scaled-down version, failing in the Senate in December 2010, would have provided a mechanism for undocumented students to apply for legal permanent residency status if they met certain requirements.<sup>1</sup> For example, they must show good moral character, have come to the United States by age 15, have graduated from a U.S. high school, have been here at least five years, and must complete two years of college or military service.<sup>2</sup> This act would make undocumented students eligible for federal work-study and loans, but not eligible for Pell or other grants. Earlier, stronger versions of the DREAM Act included language making it legal for states to offer in-state tuition on the basis of residency, though states would retain the right to make this decision.

As a result of these factors, state legislatures across the nation must deal with critical questions of higher education access and affordability in a legally unclear environment. Over the past decade—and as part of their attention to overall immigration issues—state policymakers have introduced hundreds of bills designed to expand or restrict the educational opportunities of undocumented students. Such legislation revolves around three main topics:

---

<sup>1</sup>Eligible youth under the DREAM Act would initially apply for conditional nonimmigrant status for a period five years, during which time the military service or education requirements could be met. If the military service or education requirements are not met within five years, eligible students may apply for an extension of conditional nonimmigrant status for five years to meet these requirements. After eligible students have met all requirements outlined under the DREAM Act, eligible individuals may apply for permanent legal status.

<sup>2</sup>The Migration Policy Institute (MPI) estimates that about 1.9 million individuals would meet the age, time-in-country and age-at-arrival requirements for conditional status under the latest version. MPI estimates that about 755,000 (38 percent) individuals would likely satisfy the DREAM Act’s postsecondary or military requirements to obtain permanent legal status.

- **In-state tuition for undocumented students.** This has been the primary issue for a decade, with each side citing both moral/equity and financial/economic arguments to support its position.
- **Ability of undocumented students to enroll in college.** This issue emerged more recently and on a more limited basis. It raises questions about the role of institutions in enforcing federal immigration law.
- **Eligibility for financial aid.** Activity on this is quite limited, but it remains an important access/affordability issue.

This paper describes what has happened in the states around each of these issues and provides an update on recent and ongoing activities. It presents arguments—pro and con—about these heated topics, and describes how states are assessing, re-evaluating and sometimes reversing their policies as federal solutions remain elusive, political environments shift, partisanship grows and budgetary pressures mount. The paper concludes with a brief advocacy statement, indicating AASCU’s support of federal and state laws that promote college access and affordability for all.

## Observations

**Over the past decade, the majority of states have considered legislation to offer in-state tuition to undocumented students, but in recent years, momentum has slowed. Ten states currently have such a measure in place.**

Generally speaking, these laws assert that in order to be eligible for in-state tuition rates, undocumented students must reside in or attend a state high school for a specified number of years, complete a high school diploma or earn a GED in the state, and sign an affidavit stating intent to file for legal residency. In 2001, Texas became the first state to pass such a measure, and California followed that same year. In 2009, Wisconsin became the most recent state to offer in-state tuition benefits to undocumented students. Other states with such a law are Illinois, Kansas, Nebraska, New Mexico, New York, Utah and

Washington. Together, these 10 states are home to about half of the nation’s undocumented immigrants.

Policymakers in many more states have attempted to pass such legislation but have not succeeded. The Education Commission of the States (ECS) has identified 32 states that have considered or passed such legislation, indicating widespread national interest in this policy option.<sup>3</sup> In the 2011 legislative session, the National Immigration Law Center (NILC) has identified 10 states that currently have bills providing access to in-state tuition for students—though this list is constantly in flux.<sup>4</sup>

For example, lawmakers in Colorado are currently debating SB 126, a measure that would extend in-state tuition rates to undocumented students; a similar bill was defeated in 2009. Two lawmakers in Rhode Island have proposed a bill to grant in-state tuition to undocumented students, something they have previously introduced several times. In Oregon, SB 742 represents the state’s fourth attempt to pass an in-state tuition law. Maryland is expected to face a tough battle on in-state tuition for undocumented students this year, also after previous failures.

Supporters of in-state tuition for undocumented students present a variety of arguments, asserting the following:

- **Moral and humanitarian concerns.** It is a matter of fairness. These children did nothing wrong and should not be penalized for their parents’ actions. Without in-state tuition, most undocumented students could not afford college.

<sup>3</sup>These states are: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Iowa, Kansas, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New Hampshire, New York, North Carolina, Oklahoma, Oregon, Rhode Island, Texas, Utah, Virginia, Washington and Wisconsin.

<sup>4</sup>These states are: Colorado, Connecticut, Florida, Maryland, Massachusetts, Missouri, Nevada, New York, Oregon and Rhode Island.

### State Approaches to Undocumented Students

Allows in-state tuition for some undocumented students and makes them eligible for state aid	New Mexico, Texas
Allows in-state tuition for some undocumented students but not state aid	California, Illinois, Kansas, Nebraska, New York, Utah, Washington, Wisconsin
Does not specifically allow in-state tuition for undocumented immigrants but has other tuition policies that result in many undocumented students paying in-state rates	Minnesota, Nevada
Explicitly prohibits undocumented immigrants from being granted in-state tuition	Arizona, Colorado, Georgia, Oklahoma
Bans admission of undocumented immigrants at some or all public colleges	Alabama (banned at two-year colleges), South Carolina (banned at all publics). <b>Note:</b> Effective fall 2011, undocumented students will be banned at selective Georgia institutions (those that have turned away academically qualified students in the past two years)
No statewide policy	Alaska, Arkansas, Connecticut, Delaware, Florida, Hawaii, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wyoming
<b>Sources:</b> <i>Chronicle of Higher Education</i> (2010, July 25), "States Take Varying Approaches to Immigration and Higher Education," <a href="http://chronicle.com/article/States-Take-Varying-Approaches/123683">http://chronicle.com/article/States-Take-Varying-Approaches/123683</a> , and AASCU research.	

- Economic and social benefits.** The nation's future depends on the development of intellectual capital and a more educated workforce. If college is within reach, students will be encouraged to excel in high school, and families will be encouraged to make the sacrifices needed to pay for college. In the absence of in-state tuition rates, students may underperform in high school and drop out. Without educational opportunities, they are more likely to become part of a permanent underclass in society with added social costs.

in-state tuition is not free tuition. Where such laws exist, tuition revenues tend to increase because most of these students would not otherwise be able to attend college. Second, in-state tuition helps fully realize the investment already made in these individuals; it is counterproductive to invest in K-12 education but not higher education—a waste of talent and money. Finally, if and when federal immigration reform provides a path to citizenship for these individuals, they will be able to earn more and pay more in taxes.

- Financial considerations.** In-state tuition has not proven to be a financial drain on public dollars. First,

As an example of these views, Colorado senator Angela Giron recently noted: "It has always been

the right thing to do, and now, it is the economically smart thing to do. We can't and must not allow another generation of young immigrants to struggle for the chance to contribute to American society."<sup>5</sup>

Opponents to in-state tuition for undocumented students have a very different case to make. They assert:

- **Illegality.** In-state tuition rewards illegal activity and encourages future illegal immigration. It is a step toward amnesty for people who broke the law. Many argue that in-state tuition violates federal law.
- **Financial issues.** It is a waste of taxpayer money, especially during tough economic times. There is no point in investing in college because these individuals cannot legally work.
- **Hurts legal residents.** Lower tuition makes it easier for illegal students to attend college, thus taking slots away from legal residents.

These views are exemplified by Anthony O'Donnell, a member of the Maryland House of Delegates: "I'm a grandson of immigrants. I champion immigration, but we shouldn't encourage law breaking in this country. We should discourage it, and as a state our policy is saying, 'Come here. We have plenty of money. Come here and we'll do what we need to make your life easier.' And I just think that's bad policy."<sup>6</sup>

On the whole, momentum for the passage of state laws providing in-state tuition for undocumented students has been slipping. Enthusiasm was greater when the DREAM Act was first introduced, and state lawmakers were somewhat optimistic about its passage. However, with the repeated failure of DREAM Act legislation and continued ambiguity

as to the legal status of in-state tuition laws, state policymakers are reluctant to move forward with such legislation. The economic recession and financial constraints also make it more difficult to pass legislation perceived as adding cost in the short run, regardless of potential long-term benefits.

### **There have been several court challenges to state laws offering in-state tuition to undocumented students, but no challenge has been upheld.**

In 2005, a group of out-of-state students filed suit in Kansas, arguing that they were denied benefits that were offered to undocumented students, thereby violating the 1996 federal IIRIRA law, as well as the equal protection clause of the 14th Amendment. The court upheld the state law in favor of undocumented students, but did not address the merits of the law. Instead, it ruled that the plaintiffs did not have standing to sue, that the out-of-state students were not "injured" when the state offered in-state benefits to undocumented students, and that equal protection was not violated because the plaintiffs could receive in-state tuition benefits in their home states. A U.S. District Circuit Court of Appeals denied a request to rehear the challenge, and in 2008, the U.S. Supreme Court refused to hear the case.

A class-action lawsuit filed in 2005, *Martinez v. Regents of the University of California*, was the first real test of an in-state tuition law, and the most significant case to date. The California law in question (AB 540) allows students who attended a California high school for at least three years and graduated to be eligible to pay in-state tuition; there is no requirement for current residency in the state. The plaintiff's case rested on the argument that using high school attendance as a proxy for a residency requirement for in-state tuition violates IIRIRA. The court upheld the California law, ruling that it does not violate IIRIRA, nor does it violate equal protection. In 2008, a California appeals court reversed the original ruling, a move that precipitated some ripple effects across the country as other states questioned the legality of their laws. However, in a unanimous decision in 2010, the California Supreme Court reversed the appeals court decision and ruled that AB

<sup>5</sup>Hanel, J. (2011, February 3). Senate Debates Illegal Immigrant Tuition. *Durango Herald*. <http://www.durangoherald.com/article/20110203/NEWS01/702039934/Senate-debates-illegal-immigrant-tuition>

<sup>6</sup>Witte, B. (2011, February 1). Miller: Immigrant Tuition Vote Will Be Tough Battle. *Hometown.Annapolis.com*. <http://www.hometownannapolis.com/news/gov/2011/02/01-11/Miller-Immigrant-tuition-vote-will-be-tough-battle.html>

540 does not violate federal immigration law because in-state tuition benefits are not based on residence. Cited in the ruling were data that the majority of students who qualify for in-state tuition under AB 540 are not undocumented immigrants, but rather students who graduated from high school in California and moved elsewhere. Therefore, the law does not provide undocumented residents with a “benefit” that is not available to legal residents who meet the same requirements.

A third high-profile case was rejected at the end of 2010, this time in Nebraska. Similar to the Kansas suit, this action was not related to the merits of the case. In Nebraska, plaintiffs are permitted to file lawsuits related to the use of public funds for alleged illegal purposes, but they must first seek a determination by the proper legal authority. In the case of immigration matters, it was ruled, they should first have sought help from the U.S. Department of Homeland Security. Because they did not follow proper procedures, the lawsuit could not be heard.

In Texas, still pending is a similar lawsuit filed in 2009 by the Immigration Reform Coalition of Texas. Like the California law, the Texas law applies to those who have graduated from a high school in the state, regardless of where they currently live. Though the California Supreme Court ruling does not directly apply to other states, it does give more secure legal footing to similar state laws. However, because of the ambiguity inherent in IIRIRA and the variation in the wording of state laws, the matter is not yet settled, and there will likely be continued challenges to the legality of these laws.

**Countering earlier support of in-state tuition for undocumented students, there is increasing interest in passing legislation to prohibit in-state tuition for these students. This includes attempts to repeal existing laws favorable to undocumented students.**

Four states now prohibit undocumented students from receiving in-state tuition: Arizona (through Proposition 300 in 2006), Oklahoma (2007), Colorado (2008) and Georgia (2008). To date, Oklahoma is the only state that has succeeded in

repealing an existing law of this type. This occurred when the state passed a broad anti-illegal immigration law that had the effect of reversing the original law.

Several other state legislatures have attempted, but failed, to repeal legislation offering in-state tuition to undocumented students, sometimes failing multiple times. For example:

- Utah has attempted to repeal its 2002 law at least half a dozen times, with several bills failing by narrow margins. State representative Carl Wimmer recently commented: “If Congress isn’t going to pass the DREAM Act—which the American people didn’t want—it doesn’t make sense for Utah to have that same law on the books.”<sup>7</sup>
- In Nebraska, the in-state tuition law was passed in 2006 over the governor’s veto; this law continues to be controversial. State senator Charlie Janssen put it succinctly: “It’s illegal. It’s illegal for us to give benefits to illegal immigrants. It doesn’t matter if they came here as infants or if they came here at 16.”<sup>8</sup> The repeal issue arose most recently in February 2011—unsuccessfully—when the legislature’s Education Committee rejected a bill to repeal in-state benefits for undocumented students.
- The issue has arisen in Texas as well, where, following the California appeals court decision against its in-state tuition law, a House member sought the state attorney general’s opinion on the legality of the Texas law. This effort to overturn Texas’ law was unsuccessful, however, as the AG opinion stated that “given the paucity of judicial precedent,” it’s not possible to determine with certainty the legality of the law.

---

<sup>7</sup>Montero, D. (2010, December 22). Wimmer’s Bill Would Deny Undocumented Students In-state Tuition. *The Salt Lake Tribune*. <http://www.sltrib.com/sltrib/home/50926751-76/wimmer-utah-state-undocumented.html.csp>.

<sup>8</sup>Stoddard, M. (2009, December 31). Immigrant Law Faces Challenge. *Omaha World Herald*. <http://www.omaha.com/article/20091231/NEWS01/712319917>.

Legislation to repeal in-state tuition laws is pending in at least two states. Discussion is underway once again in Kansas, after numerous attempts have been made to repeal its law. In February 2011, the Kansas House of Representatives approved a repeal of the existing in-state tuition law, and the next step is consideration by the Senate. However, Governor Sam Brownback (R) has indicated that he is not supportive of the repeal effort. In Washington, a bill was introduced in the Senate in February that would prevent undocumented students from qualifying as residents for in-state tuition purposes.

In addition to these repeal efforts, many states that do not have immigrant tuition laws on the books have considered legislation seeking to prevent undocumented students from receiving in-state tuition. NCSL notes that in 2010 alone, 15 states considered such legislation, but none had passed by the end of that year. Currently, Arkansas, Indiana, and Maryland have such bills pending, according to NILC.

**A limited but growing number of states are debating the fundamental issue of whether undocumented students can legally enroll in public colleges and universities. More extreme than banning in-state tuition eligibility, several states and systems have implemented policies to this effect in recent years.**

In June 2008, South Carolina became the first state to prohibit undocumented students from enrolling in any public college or university. This occurred as part of the state's comprehensive "Illegal Immigration Reform Act," described at that time as one of the strongest in the nation. Also in 2008, the Alabama State Board of Education passed a new policy barring undocumented students from the state's two-year colleges.

Other states—including Arizona, Iowa and Missouri—have tried, but failed, to bar undocumented students from enrolling in public colleges. This issue also arose in Arkansas where the attorney general ruled that state and federal law do not prohibit undocumented students from attending state institutions. Most recently, a Virginia Senate subcommittee rejected a bill that would have required colleges to have written

policies prohibiting the enrollment of undocumented students. This bill had been approved by the House of Delegates in February 2011, as part of a package of bills designed to crack down on illegal immigration.

Undocumented students may now enroll in community colleges in North Carolina, but only after the North Carolina Community College System went through a series of stunning policy reversals that made news repeatedly over a decade:

- A 2001 board policy barred undocumented students from enrolling.
- A 2004 board policy allowed colleges to decide individually whether to consider applicants' immigration status in college admissions.
- A 2007 directive required that all 58 community colleges admit undocumented students, sparking a major controversy. At that time, at least 20 colleges had written or unwritten policies barring admission of these students.
- In May 2008, the state attorney general's office advised that the community college system should drop the policy of admitting undocumented students.
- Despite federal guidance to the contrary (see below), the community college system decided to follow the advice of the attorney general and no longer admit undocumented students.
- The following month, the board decided to do a comprehensive study on the matter.
- In 2009, the state board reversed its policy once again, allowing institutions to admit undocumented students.

An important result of these debates was federal clarification of the legality of enrolling undocumented students in public colleges and universities. In response to a request from North Carolina for this clarification, the U.S. Department of Homeland Security, Immigration and Customs Enforcement

(ICE), issued two letters in 2008 indicating that: (1) Enrollment of undocumented students does not violate federal law; (2) It is a matter left to the states to decide; and (3) In the absence of state law, it is a matter left to institutions to decide. The exact wording is as follows:

*The Department of Homeland Security (DHS) does not require any school to determine a student's status (i.e., whether or not he or she is legally allowed to study). DHS also does not require any school to request immigration status information prior to enrolling students or to report to the government if they know a student is out of status, except in the case of those who came on student visas or for exchange purposes and are registered with the Student Exchange and Visitor Program.<sup>9</sup>*

*... individual states must decide for themselves whether or not to admit illegal aliens into their public post-secondary systems. States may bar or admit illegal aliens from enrolling in public post-secondary institutions either as a matter of policy or through legislation...In the absence of any state policy or legislation addressing this issue, it is up to the schools to decide whether or not to enroll illegal aliens . . .<sup>10</sup>*

This matter is still not settled in North Carolina, however, and the state is once again in the news in 2011. In January, HB 11, a bill that would bar undocumented students from both community colleges and universities in the state, was introduced in the General Assembly.

In 2010, Georgia became the second state to ban admission to public four-year institutions—albeit with a compromise policy that applies only to

selective institutions. Though long a hot-button issue in the state, it was a simple traffic violation by an undocumented college student that provoked media attention to the issue. Several state senators then called on the Board of Regents of the University System of Georgia to bar undocumented students from any public institution, and insisted that institutions check citizenship status of all students. Others believed that institutions should not be put in the position of enforcing federal law, nor have to bear the additional cost of verification. In response, the Board of Regents formed a “Special Committee on Residency Verification” and ordered institutions to take inventory of how many undocumented students they had. They found just 472 students in the state who could not provide proof of legal residency, mostly enrolled at two-year colleges. Debate continued, and the state attorney general weighed in, stating that admittance to public colleges is not barred by federal law (consistent with the ICE letters), but providing in-state tuition would be a public benefit and thus is prohibited. In October 2010, the Board of Regents adopted a compromise policy that, effective fall 2011, will deny undocumented students from admission to any public colleges that have had to turn away academically-qualified applicants in the past two years.<sup>11</sup> Only 27 undocumented students were enrolled at the five affected institutions in fall 2010, so the practical effect of this policy will be minimal. However, this policy could serve as a precedent for other states that are addressing similar issues.

Georgia remains a state to watch, despite the policy adopted last year. A bill was introduced in late 2010 that would ban all state public two-year and four-year institutions from enrolling undocumented students. The bill passed the House Higher Education Committee in February 2011.

---

<sup>9</sup>U.S. Department of Homeland Security, Immigration and Customs Enforcement (2008, May 9). Letter sent to Jim Hackenburg. <https://salsa.democracyinaction.org/o/371/images/ICE%20Statement%20on%20Enrollment%20of%20Undocumented.pdf>

<sup>10</sup>U.S. Department of Homeland Security, Immigration and Customs Enforcement (2008, July 9) Letter sent to Thomas J. Ziko. <http://www.nilc.org/immlawpolicy/DREAM/DHS-letter-re-undoc-students-2008-07-9.pdf>

---

<sup>11</sup>Although these institutions may change from year to year, when the policy goes into effect in the fall, it will apply to the University of Georgia, the Georgia Institute of Technology, Georgia State University, Georgia College and State University and the Medical College of Georgia.

**For the most part, states are not considering policies that would make undocumented students eligible for state student financial aid. However, there are a few notable exceptions.**

Currently, only Texas and New Mexico offer state financial aid for undocumented students. Oklahoma did offer it, but the 2007 law that repealed in-state tuition benefits also eliminated all state financial aid. Two other states, Arizona and Georgia, prohibit offering aid to undocumented students.

There is a new push in California to allow undocumented students to receive financial aid. Two bills have been introduced this year, the first of which would not cost anything to the state. AB 130 would enable undocumented students to apply for financial aid from a pool of money that is private, but administered by institutions; it would also allow community colleges to waive fees for low-income immigrants who meet the requirements. AB 131 would permit such students to apply for taxpayer-funded aid, such as Cal Grants. Three times in the past, the Senate and Assembly have passed legislation that would allow undocumented students to qualify for financial aid; these attempts were ultimately vetoed by Governor Arnold Schwarzenegger (R). Governor Jerry Brown (D) is expected to be more favorably inclined toward such legislation.

## Conclusion

As the nation's immigration system remains in disarray, with the repeated failure to pass federal DREAM Act legislation, and in the absence of federal laws clarifying states' rights with respect to in-state tuition for undocumented students, statehouses across the nation will continue to struggle with issues related to the educational opportunities of undocumented students. Indeed, the past decade has witnessed intense debate on these issues, led by vocal and persistent state lawmakers with strong opinions on both sides. As frustration mounts, however, and as state dollars remain tight, anti-immigrant sentiment has grown, and momentum has slipped

for the passage of laws in support of undocumented students. Unfortunately, the future of these young people—those who themselves did nothing illegal—hangs in the balance.

AASCU supports federal DREAM legislation that would provide a path to citizenship for qualified young people and that would clarify that states may legally offer in-state tuition to qualified undocumented students. Further, AASCU encourages state laws that promote higher education access and affordability for the next generation. Indeed, there is clear judicial precedent from the state of California in support of the legality of state laws making undocumented students eligible for in-state tuition. There is also clear guidance from the U.S. Department of Homeland Security that clarifies states' rights to legally enroll undocumented students. It is time for state lawmakers to stop making the erroneous argument that providing educational opportunities for undocumented students violates federal law. It is time for states to do right by all deserving young people who wish to attend college to better their futures—and ours.

## Resources

Congressional Research Service (2010, January 13). *Unauthorized Alien Students, Higher Education, and In-State Tuition Rates: A Legal Analysis*. [http://assets.opencrs.com/rpts/RS22500\\_20100113.pdf](http://assets.opencrs.com/rpts/RS22500_20100113.pdf)

Education Commission of the States (2008, March). *In-state Tuition for Undocumented Immigrants*. <http://www.ecs.org/clearinghouse/75/53/7553.pdf>

Gonzales, R.G. (2007, October). *Wasted Talent and Broken Dreams: The Lost Potential of Undocumented Students*. Immigration Policy Center. <http://icirr.org/sites/default/files/IPC%200710%20wasted%20talent.pdf>

Gonzales, R.G. (2009, April). *Young Lives on Hold: The College Dreams of Undocumented Students*. College Board. <http://professionals.collegeboard.com/profdownload/young-lives-on-hold-college-board.pdf>

Immigration Policy Center (2010, December 8). *The DREAM Act: Creating Economic Opportunities*. [http://www.immigrationpolicy.org/sites/default/files/docs/DREAM\\_Act\\_Economic\\_Fact\\_Sheet\\_120810.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/DREAM_Act_Economic_Fact_Sheet_120810.pdf)

Migration Policy Institute (2010, July). *DREAM vs. Reality: An Analysis of Potential DREAM Act Beneficiaries*. <http://www.migrationpolicy.org/pubs/DREAM-Insight-July2010.pdf>

Migration Policy Institute (2010, December 14). *MPI Updates National and State-Level Estimates of Potential DREAM Act Beneficiaries*. <http://www.migrationpolicy.org/pubs/DREAM-Update-December2010.pdf>

National Conference of State Legislatures (NCSL). NCSL's Immigration issue site and its Education issue site contain several reports and resources. <http://www.ncsl.org/>

National Immigration Law Center (NILC). NILC's DREAM Act site contains resources related to the DREAM Act and in-state tuition issues. <http://nilc.org/immlawpolicy/DREAM/index.htm>

Pew Research Center (2011, February 1). *Unauthorized Immigrant Population: National and State Trends, 2010*. <http://pewhispanic.org/files/reports/133.pdf>

University of Houston Law Center, Institute for Higher Education Law and Governance. This site contains resources related to undocumented college students. <http://www.law.uh.edu/ihelg/>

Contact:

Alene Russell, Senior State Policy Consultant • [russella@aascu.org](mailto:russella@aascu.org)  
ph 202.293.7070 • [congressweb.com/aascu](http://congressweb.com/aascu)