

ACCESS DENIED

Undocumented Students and Policy Reform in 2009



by Daniel J. Hurley

MARIA IS A HIGH SCHOOL SENIOR WITH AN OUTSTANDING GPA AND good SAT scores. Her inventory of academic accomplishments and civic contributions is well stocked and includes roles in student government and volunteering as an after-hours math tutor: all assets that would seem to set the affable 18-year-old on a path toward achieving her long held aspiration to attend college and become a pediatric nurse. Maria expresses her happiness and gives her full support to her friends and classmates as they make plans for fall arrival on college campuses across her state. Her external well wishes, however, are tempered by her own internal sorrow; Maria will be staying home this fall, unable to afford the considerably higher—but legally required—out-of-state tuition prices at the public college she had hoped to attend, a result of her being brought to the U.S. illegally by her parents at age four.

Maria's story is among an untold number, in which undocumented college student aspirants are either barred from attending or are prevented from doing so due to the increased financial barriers that come with "undocumented" status. Their stories reflect a "cancer of hopelessness," as one Colorado legislator describes it, among young adults with much ambition and aptitude, but little hope, who face the prospect of a life consigned to working menial jobs, and are destined to a permanent underclass.

Free access to public kindergarten through high school is provided to children who are in the country illegally, an entitlement affirmed in a 1982 U.S. Supreme Court decision, *Plyler v. Doe*. Federal law with respect to postsecondary education, however, is less clear. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 prohibits states from providing a "postsecondary education benefit" to undocumented students that is not also offered to any other U.S. citizens, regardless of their residency in a given state. This provision is central to the debate over postsecondary education access for undocumented

students, specifically whether they can be eligible to receive in-state, resident tuition rates.

In order to facilitate the college aspirations of motivated and academically high-achieving immigrant students, California lawmakers passed legislation in 2001 providing for in-state tuition rates for undocumented students. The stipulations: eligible students must graduate from and have attended a California high school for at least three years and sign an affidavit indicating their intent to gain permanent legal residency. Since then, nine other states have passed similar legislation: Illinois, Kansas, Nebraska, New Mexico, New York, Oklahoma, Texas, Utah and Washington.

Today, the issue of whether undocumented students should have access to enrollment in public postsecondary institutions and lower in-state tuition rates continues to be hotly contested in many states, with the debate often emotionally and ideologically charged. Critics of policies to ease restrictions charge that granting in-state rates to children of illegal immigrants will incent further illegal immigration; that these laws are in conflict with the 1996 federal immigration law; and that

these students are taking up limited classroom seats, especially in a recessionary period that has driven up enrollment demand. Further, even if these undocumented students can afford a taxpayer subsidized college education, they will not be eligible to be legally employed in the U.S. if their illegal status remains in tact, and thus it would be a waste of public dollars to educate them, they argue.

Proponents counter with both moral and economic arguments. These young adults should not be punished due to the actions of their parents, who brought them to the U.S. illegally, they say. And preventing these young adults from affordable access to postsecondary education will only exacerbate their likelihood that they will place a future burden on public services—whether through healthcare, social services

for illegal immigrants. At the federal level, President Barack Obama recently indicated his intent to initiate substantive immigration reform this year. Included in such an overhaul may be legislation that would allow, but not require, states to provide both admissions to and in-state rates at public postsecondary institutions by giving undocumented students a path to conditional permanent residency. Such was the intent of the Development, Relief, and Education for Alien Minors (DREAM) Act, which was debated in the Senate in 2006 and 2007, but failed to pass. The legislation was reintroduced this spring.

At the state level, considerable attention will be given to the first state Supreme Court case on the issue. In September 2008, a three-judge panel of the California Court of Appeals ruled

Today, the issue of whether undocumented students should have access to enrollment in public postsecondary institutions continues to be hotly contested in many states, with the debate often emotionally and ideologically charged.

or corrections—rather than contribute to the public good through eventual gainful employment, taxpayer contributions, and enhanced engagement in civic life.

These arguments are playing out in heated fashion in state houses across the country. In the first four months of this year, more than 39 bills pertaining to public college admissions and resident tuition eligibility for undocumented individuals were introduced in 20 states, according to data provided by the National Conference of State Legislatures. Among them were measures in Arkansas and Connecticut, which sought to increase college access for undocumented students, both of which were rejected by lawmakers.

While an estimated 12 million illegal immigrants live in the U.S., the number receiving in-state tuition rates is a fraction of overall enrollment. At the University of California system, a mere 271 “potentially undocumented” students received in-state tuition rates under the law in 2006-2007, among a total undergraduate student body of 173,000. At the state’s 110 community colleges, some 17,000 students are believed to have received the exemption—out of a total enrollment of 2.7 million. In North Carolina, contentious debate took place last year following advice offered by the state’s attorney general, who suggested that the state’s public postsecondary institutions stop enrolling undocumented students because doing so may be in conflict with federal law. Despite this argument, only 112 of the 297,000 degree-seeking students enrolled in the state’s community college system were illegal immigrants. And only 27 of the University of North Carolina system’s 200,000 students were thought to be undocumented.

2009 may well prove to be a banner year when it comes to federal and state policy affecting postsecondary access

that the state’s statute providing in-state tuition to nonresidents violates the 1996 federal law. The case, *Martinez v. Regents of the University of California, et al.*, was brought forward as a class action lawsuit by dozens of U.S. citizens who are paying out-of-state tuition rates at California’s three public higher education systems. A central question in the case will be whether high school attendance can legally replace the residency requirement for receiving in-state tuition. While the California court’s decision, which should be handed down this year, will not have any binding effect on other states, it may have national implications in that it could influence policymakers and the courts across the country.

Federal action clarifying states’ rights regarding admissions and resident tuition and fee charges for children of illegal immigrants would go a long way in bringing order to the current hodgepodge of inconsistent policy that exists across the 50 states. AASCU believes that states’ authority over tuition policy must be preserved and protected; therefore, the association supports clarification of existing federal immigration laws to allow states to determine the admissions eligibility and tuition status of qualified dependents of undocumented immigrants. A quest worth striving for is the creation of a clear and congruent set of federal, state and institutional policies that will give Maria and thousands like her access to an affordable college education—a prerequisite to achieving the American Dream. The months ahead may well bring hints of future success in this quest. **P**

Daniel J. Hurley is director of state relations and policy analysis at AASCU.