

NACAC Issue Focus:

State and Federal Efforts to Assist Qualified Undocumented Students Obtain Postsecondary Education

David Hawkins, NACAC Director of Public Policy

In the February and August/September 2001 issues of the NACAC Bulletin, we illustrated the legal quandary facing students who arrived in the United States as minor children, obtained a high school diploma, and have been accepted for admission to an institution of higher education.

A subsequent article in the Winter 2002 Journal of College Admission by Ellen Badger and Stephen Yale-Loehr provided a detailed report on the legal issues involved with providing admission and financial aid to undocumented students.

In this final article of the series on undocumented students, we will elaborate on efforts mentioned by Badger and Yale-Loehr currently underway at the state and federal levels to provide a remedy for the legal inconsistency created by the Supreme Court's 1982 decision in Plyler v. Doe and the Illegal Immigration and Immigrant Responsibility Act of 1996 (IIRIRA). As a brief review, the Plyler decision allows minor children to obtain a free, public K-12 education because, as minors, they are not legally liable for their immigration status. However, the IIRIRA prevents undocumented students from obtaining any form of federal financial assistance for higher education, which has discouraged states from providing in-state tuition and other benefits in deference to federal immigration law.

State Legislation

Even as debate surrounds the issue of student visa abuse due to the Sept. 11 attacks, two states, California and Texas, lead the nation in provisions made for undocumented immigrant high-school graduates. Legislation passed in 2001 in both of these states guarantees undocumented students who graduate from high schools in-state (and have attended schools in-state for a certain number of years) access to in-state tuition when going to college.

Under the law passed in California,

students qualify for in-state tuition rates at community colleges and the California State University system, provided that they attended a California high school for at least three years, and that they enroll in a state institution within one year of graduation. The students would also qualify for state financial-aid programs. Students must also prove that they have applied for legal immigration status.

Signed in June 2001 by Governor Rick Perry, the Texas legislation would allow an undocumented graduate of a state high school to pay in-state tuition rates, provided the individual has lived in Texas for at least three years and agrees to seek legal permanent resident status.

As a result of the passing of these two bills, similar bills and studies related to undocumented students have been proposed in Georgia, Minnesota, North Carolina, Utah, and Washington. While states consider their legislative options, the nation's governors, through the National Governor's Association, have asked the federal government to assist in assessing the costs of providing education and other services to undocumented children. To date, there has been no federal action on this request.

Federal Legislation

In Congress, Representatives Luis Guterrez (D-IL) and Chris Cannon (R-UT) have introduced separate, but nearly identical, bills that would modify IIRIRA to allow qualified undocumented students to become eligible for federal financial aid. Representative Guterrez's legislation is numbered HR 1582, while Representative Cannon's bill is numbered HR 1918.

This legislation would provide two key relief measures for undocumented students who meet certain legal criteria. First, both bills would allow "qualified" undocumented students to adjust their

immigration status to become legally documented. In each bill, "qualified" students are defined as:

- Under the age of 21
- Physically present in the U.S. (and of "good moral character") for not less than five years immediately previous to application for adjustment of status
- Enrolled in secondary or postsecondary education, or is in the process of applying to postsecondary education

HR 1582 provides an additional "grandfather" clause that would provide the same "adjustment of status" benefit to those between ages 21 and 25 and who meet the criteria defined above.

Both bills also include components that would allow states to define residency status for purposes of determining eligibility for in-state tuition. Although Texas and California forged ahead of the federal government in this area, federal legislation, once codified, would provide clear legal precedent for legislation in other states.

As of press time, neither of these bills had received consideration in Congress, although Representative Cannon's legislation (HR 1918) had received some attention from House and Senate foreign relations committee chairs.

Conclusion

The National Immigration Law Center estimates that between 50,000 and 75,000 undocumented students graduate from U.S. high schools each year.

Legislators active on behalf of this issue believe that rewarding academic achievement of these graduates serves a greater national interest than maintaining laws that effectively prohibit them from participating at a higher level in education and the economy.