

## **The Good, the Bad, and Undocumented College Students: 2012 State and Federal Developments**

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There have been many recent changes in the college law provisions of both accommodationist and restrictionist residency policies. In fact, there have been so many that it is hard to tell the traffic without a road map or Google-map. At the bottom of this note, is such a map, current as of April 20, 2012. Recent activities at the state level include Wisconsin (repealed resident tuition statute), Maryland (passed resident tuition statute; “frozen” while certified for state ballot measure); Rhode Island (state Board responsible for residency tuition policy enacted rule allowing residency tuition in 2012); Illinois (passed state statute allowing schools to award non-state-funded scholarships to the undocumented); California (passed three state statutes: allowing schools to award non-state-funded scholarships, providing state financial assistance, and making special provisions for undocumented student leaders [A.B. 130, 131, and 844]); Connecticut (passed resident tuition statute). While Maryland has already placed the issue on the next statewide ballot, there was an effort in California to do the same before the provisions of the new laws take effect in 2013: Paloma Esquivel, Dream Act Opponents Are Pushing to Repeal It, L.A. TIMES, Dec. 18, 2011, at A41: [www.latimes.com/news/local/la-me-dreamact-repeal-20111218,0,5614278.story](http://www.latimes.com/news/local/la-me-dreamact-repeal-20111218,0,5614278.story). When the signatures were counted in early January, 2012, there were not enough legitimate signatures to certify the measure to the November, 2012 ballot: Nicholas Riccardi, Dream Act Opponents' Petition Drive Fails, L.A. TIMES, Jan. 7, 2012, at AA5; Don Thompson, Effort to Block California 'Dream Act' Falls Short, SFGATE, Jan. 6, 2012, <http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2012/01/06/state/n103501S74.DTL>.

There have been states that have done the opposite: having enacted statutes or policies to prevent the undocumented from receiving resident tuition (redundant, as 1621 and 1623 require affirmative passage of state laws to accord the status), and a small number of states ban them outright, including Alabama, Indiana, and Ohio, which did so in 2011. For these, see Table Two. Although the recent Alabama bill would have restricted even refugees from enrolling—showing how the rush to exclude the undocumented often misses the mark—it has been enjoined by the federal district judge, for now. *See HICA v Bentley* (2011) [Sec 8 (colleges)]. I wrote about this: Michael A. Olivas, Sweet Home Alabama?, [InsideHigherEd.com](http://www.insidehighered.com/views/2011/10/13/essay_on_the_alabama_immigration_law_and_higher_education), October 13, 2011, available at: [http://www.insidehighered.com/views/2011/10/13/essay\\_on\\_the\\_alabama\\_immigration\\_law\\_and\\_higher\\_education](http://www.insidehighered.com/views/2011/10/13/essay_on_the_alabama_immigration_law_and_higher_education)

New Jersey has denied state financial aid to a student who is a U.S. citizen, but whose mother is undocumented. The ACLU is representing the student. Here are links to the ACLU (which includes their June, 2011 brief) and to a news piece, albeit Fox:

<http://www.aclu-nj.org/legaldocket/a.z.-v.-h.e.s.a.a./>

<http://latino.foxnews.com/latino/politics/2011/06/13/aclu-and-rutgers-law-clinic-take-new-jersey-to-court-for-denying-college/>

On October 20, 2011, the Southern Poverty Law Center filed *Ruiz v. Robinson*, which would require Florida to extend its in-state tuition rates to citizen residents who qualify, even if their parents are undocumented.

<http://www.miamiherald.com/2011/10/19/2462421/us-citizens-denied-right-to-in.html#ixzz1bKcg4Ebl> (*Miami Herald* news story, 10/19);

<http://www.miamiherald.com/2011/10/23/2468655/us-citizen-children-of-immigrants.html> (*Miami Herald* news story, 10/24);

[http://chronicle.com/blogs/ticker/florida-lawsuit-forces-issue-of-illegal-immigrant-tuition-into-the-courts/37366?sid=pm&utm\\_source=pm&utm\\_medium=en](http://chronicle.com/blogs/ticker/florida-lawsuit-forces-issue-of-illegal-immigrant-tuition-into-the-courts/37366?sid=pm&utm_source=pm&utm_medium=en) (*Chronicle of Higher Education* news story).

Finally, in November, there were developments in the issue of Deferred Action (DA) and the extent to which the Administration would extend any form of prosecutorial discretion to DREAM Act students and others in the country without legal status. The Obama administration will review immigration cases in Baltimore and Denver with an eye toward freezing deportations of illegal residents who have no criminal records and then expanding the program nationwide; the plans are to target: the elderly, children who have been in the country more than five years, students who came to the U.S. under the age of 16 and are enrolled in a college degree program, and victims of domestic violence are among those whose deportations could be put on hold under the test program. DA, however advantageous, is not a true resolution of undocumented immigration status, and will likely leave many DREAMers unaided and ineligible. Even after the rollout in 2012, there were very few DREAM Act-eligible PD recipients, and almost none of them had been given work authorization, leaving them in a more dubious situation than before they outed themselves, as many have done.

Brian Bennett, Obama administration showing leniency in immigration cases, *Chicago Tribune*, November 18, 2011, available at:

<http://www.chicagotribune.com/news/nationworld/la-na-immigration-review-20111118,0,4285298.story>

The DREAM Act: Creating Economic Opportunities (DC: Immigration Policy Center, 2012), <http://www.immigrationpolicy.org/just-facts/dream-act-creating-economic-opportunities>

Julia Preston, Union Chief Says New U.S. Rules for Immigration Detention Are Flawed, *N.Y. Times*, Mar. 29, 2012, at A18

These appear, just in time for thoughtful Christmas gift-giving, in Michael A. Olivas, **No Undocumented Child Left Behind** (NYU Press, 2012): <http://nyupress.org/books/book-details.aspx?bookId=8271>.

**Table One: State Laws Allowing Undocumented College Students to Establish Residency, 2011**

**Texas**, H.B. 1403, 77th Leg., Reg. Sess. (Tex. 2001) [amended by S.B. 1528, 79th Leg., Reg. Sess. (Tex. 2005), relating to student financial aid]; TEX. EDUC. CODE ANN. § 54.052

**California**, A.B. 540, 2001-02 Cal. Sess. (Cal. 2001); CAL. EDUC. CODE §68130.5; A.B. 30 (2011), amending CAL. EDUC. CODE §68130.7 and adding §66021.7, relating to nonstate funded scholarships); A.B. 131, October 8, 2011 (amending Section 68130.7 of and adding Sections 66021.6, 69508.5, and 76300.5 to the Education Code, relating to state financial aid); A.B. 844, October 8, 2011 (amending Section 72023.5 and adding Sections 66016.3 and 66016.4 to the Education Code, relating to state financial aid to certain student leadership positions)

**Utah**, H.B. 144, 54th Leg., Gen. Sess. (Utah 2002); UTAH CODE ANN. § 53B-8-106

**New York**, S. B. 7784, 225th Leg., 2001 NY Sess. (NY 2002); N.Y. EDUC. LAW §355(2)(h)(8)

**Washington**, H.B. 1079, 58th Leg., Reg. Sess. (Wash. 2003); WASH. REV. CODE ANN § 28B. 15.012

**Oklahoma**, S.B. 596, 49th Leg., 1st Reg. Sess. (OK 2003) [financial assistance provisions rescinded, Oklahoma Taxpayer and Citizen Protection Act of 2007 (H.B. 1804)]; OKLA. STAT.ANN.TIT. 70, § 3242

**Illinois**, H.B. 60, 93rd Gen. Assemb., Reg. Sess. (Ill. 2003); 110 ILL. COMP. STAT. ANN. [amended by S.B. 2085, 97<sup>th</sup> Gen. Assemb., Reg. Sess. (Ill. 2011); 110 ILL. COMP. STAT. ANN.]

**Kansas**, H.B. 2145, 2003-2004 Leg., Reg. Sess. (KS 2004); K.S.A. §76-731a

**New Mexico**, S.B. 582, 47th Leg. Reg. Sess. (2005); N.M.STAT. ANN. §21-1-1.

**Nebraska**, L.B. 239, 99th Leg. 1st Sess. (Neb. 2006); NEB REV. STAT. ANN. § 85-502

**Wisconsin**, 2009 Assembly Bill 75 (2009 WISCONSIN ACT 28); WIS. STAT. § 36.27 [repealed by AB 40, June 26, 2011]

**Maryland**, S.B. 167, 2011 Leg., Reg. Sess. (Md. 2011); MD. CODE ANN. § 15-106.8 [“suspended,” pending state referendum: MD Const. XVI, Sec. 2]

**Connecticut**, H.B. 6390, 2011 Leg., Reg. Sess. (Conn. 2011); CONN. GEN. STAT. § 10a-29

**Rhode Island**, S. 5.0, R.I. Board of Governors for Higher Education, September 26, 2011

Source: <http://www.law.uh.edu/ihelg/documents/Statute2011.pdf> [current as of November 19, 2011]

### **Table Two: States Restricting Access to Postsecondary Education, 2011**

#### **By statute:**

**Alabama**, H.B. 56, 2011 Leg., Reg. Sess. (Ala. 2011); ALA. CODE § 31-13-8 [added section barring undocumented students from enrolling in or attending any institutions of postsecondary education; Enjoined by federal district court, October, 2011]

**Arizona**, S.C.R. 1031, § 3, Proposition 300, approved election Nov. 7, 2006, eff. Dec. 7, 2006 (Ariz. 2006); ARIZ. REV. STAT. ANN. § 15-1803 [amended to ban in-state tuition for undocumented students]

**Colorado**, H.B. 06S-1023, 63<sup>rd</sup> Gen. Assemb., 1<sup>st</sup> Spec. Sess. (Colo. 2006); COLO. REV. STAT. ANN. § 24-76.5-103 [added section to ban in-state tuition for undocumented students]

**Georgia**, S.B. 492, 149<sup>th</sup> Gen. Assemb., Reg. Sess. (Ga. 2008); GA. CODE ANN. § 20-3-66(d) [amended to ban in-state tuition for undocumented students]

**Indiana**, H.B. 1402, 2011 Gen. Assemb., Reg. Sess. (Ind. 2011); IND. CODE ANN. § 21-14-11 [added Ch. 11 to title 21, banning in-state tuition for undocumented students]

**Ohio**, 129th General Assembly File No. 28, HB 153, § 101.01; O.R.C. 3333.31 (D), (E) (2011),

**South Carolina**, H.B. 4400, 117<sup>th</sup> Gen. Assem. Reg. Sess. (S.C. 2008); S.C. CODE ANN. § 59-101-430 [added section 430 to bar undocumented students from attending public institutions of higher learning, and also bar them from being able to receive in-state tuition]

**By policy or regulation:**

**Georgia** Board of Regents, October, 2010

Section 4: Student Affairs

4.1.6 Admission of Persons Not Lawfully Present in the United States

A person who is not lawfully present in the United States shall not be eligible for admission to any University System institution which, for the two most recent academic years, did not admit all academically qualified applicants (except for cases in which applicants were rejected for non-academic reasons).

([http://www.usg.edu/policymanual/section4/policy/4.1\\_general\\_policy/#p4.1.6\\_admission\\_of\\_persons\\_not\\_lawfully\\_present\\_in\\_the\\_united\\_states](http://www.usg.edu/policymanual/section4/policy/4.1_general_policy/#p4.1.6_admission_of_persons_not_lawfully_present_in_the_united_states)) (affecting Georgia College & State University, Medical College of Georgia, Georgia State University, Georgia Institute of Technology, and University of Georgia)

4.3.4 Verification of Lawful Presence

Each University System institution shall verify the lawful presence in the United States of every successfully admitted person applying for resident tuition status, as defined in Section 7.3 of this Policy Manual, and of every person admitted to an institution referenced in Section 4.1.6 of this Policy

Manual. ([http://www.usg.edu/policymanual/section4/policy/4.3\\_student\\_residency/#p4.3.4\\_verification\\_of\\_lawful\\_presence](http://www.usg.edu/policymanual/section4/policy/4.3_student_residency/#p4.3.4_verification_of_lawful_presence))

**University of North Carolina** Board of Governors:

Chapter 700

700.1.4[G]

Guidelines on the Admission of Undocumented Aliens

Undocumented aliens are eligible to be considered for admission as undergraduates at UNC constituent institutions [1] based on their individual qualifications with limitations as set out below:

1. An undocumented alien may be considered for admission only if he or she graduated from high school in the United States.
2. Undocumented aliens may not receive state or federal financial aid in the form of a grant or a loan.

3. An undocumented alien may not be considered a North Carolina resident for tuition purposes; all undocumented aliens must be charged out-of-state tuition.
4. All undocumented aliens, whether or not they abide in North Carolina or graduated from a North Carolina high school, will be considered out of State for purposes of calculating the 18 percent cap on out of State freshmen pursuant to Policy 700.1.3.
5. When considering whether or not to admit an undocumented alien into a specific program of study, constituent institutions should take into account that federal law prohibits the states from granting professional licenses to undocumented aliens.

[1] The North Carolina School of Science and Mathematics admits and enrolls only legal residents of the state of North Carolina. G.S. 116-235.  
([http://www.northcarolina.edu/policy/index.php?pg=vb&node\\_id=451](http://www.northcarolina.edu/policy/index.php?pg=vb&node_id=451))

(all provisions current as of April 24, 2012)