

In-State Tuition for Undocumented Students in Tennessee

Andrew Cox, under UT MPPA Faculty Guidance

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Issue at a Glance

- Tennessee does not have a statute concerning undocumented students' access to higher education or eligibility for in-state tuition.
- Public colleges and universities in Tennessee have different policies regarding the acceptance and classification of undocumented students; Board of Regents schools consider undocumented students as out-of-state students; the UT system does not knowingly accept undocumented students.
- There may be as many as 18,000 undocumented immigrants residing in TN who would be affected by a policy to extend in-state tuition for higher education.¹
- Under federal law, it is unclear whether states have the authority to grant in-state tuition rates to undocumented students.

The Policy Challenge

In recent years, state lawmakers have debated whether to permit undocumented (illegal alien) students living in Tennessee to be classified as residents for purposes of paying in-state tuition. Like half the states in the nation, Tennessee does not have a statute that directly addresses the status of undocumented students with respect to access to or tuition classification for post-secondary education.² At the time of this report, 21 states treat undocumented youth as residents and extend in-state tuition rates to them.³ At least seven of these states also allow undocumented students to receive state financial aid.⁴ Three states, Arizona, Georgia, and Indiana treat undocumented youth as out-of-state residents and charge them out-of-state tuition. Two states, South Carolina and Alabama prohibit undocumented individuals from enrolling in any post-secondary institutions.⁵

Since Tennessee law is silent on whether students whose parents brought them to the U.S. illegally as children can claim in-state residence for tuition purposes, the state's higher education systems set applicable policy. Schools in the Board of Regents system treat undocumented students as out-of-state applicants and accordingly charge these individuals out-

¹ "Immigrants in Tennessee," American Immigration Council, June 1, 2015, <https://www.americanimmigrationcouncil.org/research/immigrants-in-tennessee>.

² "Tennessee Policy," uLEADNet.org, January 11, 2018, <https://uleadnet.org/map/tennessee-policy>.

³ Robert Bozick, "Should Undocumented Immigrant Youth Pay In-State Tuition to Attend College?," July 28, 2015, <https://www.rand.org/blog/2015/07/should-undocumented-immigrant-youth-pay-in-state-tuition.html>;

"Undocumented Mainers Eligible for In-State Tuition at UMaine Schools," *Bangor Daily News* (blog), accessed March 23, 2018, <https://bangordailynews.com/2017/07/15/education/umaine-schools-offer-in-state-tuition-to-undocumented-immigrants-in-federal-program/>.

⁴ "Basic Facts About In-State Tuition," *National Immigration Law Center* (blog), accessed March 23, 2018, <https://www.nilc.org/issues/education/basic-facts-instate/>.

⁵ "Debate Over In-State Tuition for Students in U.S. Illegally," *Fortune*, accessed March 23, 2018, <http://fortune.com/2017/04/08/in-state-tuition-illegal-students/>;

"Undocumented Student Tuition: Overview," accessed March 23, 2018, <http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx>.

of-state tuition. The campuses in the University of Tennessee system do not “knowingly accept” any undocumented students.⁶

In the 2017 session of the 110th General Assembly, a proposal to permit undocumented students who graduate from a Tennessee high school to pay in-state tuition failed by one vote in the House Education Administration and Planning Committee. The Tuition Opportunity Bill would have allowed undocumented students to pay in-state tuition if they attended a Tennessee high school for the two years immediately preceding graduation, earned a high-school diploma or equivalent certificate in the state, and have been accepted to a public college or university.⁷

Sides of the Debate

Proponents of extending in-state tuition to undocumented students who graduate from a Tennessee high school contend that they want to make college more accessible and affordable for students who reside in the state. They suggest that giving undocumented students in-state tuition rates provides an incentive for them to complete high school, attend college, and eventually make a positive contribution to the state’s society and economy. Another commonly articulated rationale by supporters is that immigrants with college degrees will earn higher incomes and pay more in state taxes. They believe that undocumented students who came to the United States with their parents as young children should not be deprived of a higher education just because their parents’ chose to enter the country illegally.⁸

Opponents of extending in-state tuition to undocumented students contend that they want to avoid making the state a magnet for illegal immigrants. They suggest that granting in-state tuition rewards undocumented students and their families for breaking the law and punishes legal citizens and immigrants by taking away enrollment slots for them. Opponents think that since college age students are nearly adults, they should be held to the same level of accountability as other adults; they reject the idea that children of illegal immigrants should escape the consequences of their parents’ decision to enter the U.S. illegally.⁹ Opponents also hold that allowing undocumented students to pay in-state tuition provides a benefit not available to legal residents of other states. They contend that even if the illegal aliens do complete college, they will not be employable if they remain undocumented after graduation.¹⁰

⁶ “Tennessee Policy.”

⁷ “Debate Over In-State Tuition for Students in U.S. Illegally.”

⁸ “Undocumented Student Tuition: Overview”; “Debate Over In-State Tuition for Students in U.S. Illegally”; “Debate over In-State Tuition for Students in U.S. Illegally,” PBS NewsHour, April 8, 2017, <https://www.pbs.org/newshour/education/state-tuition-students-illegally>; “Basic Facts About In-State Tuition,” *National Immigration Law Center* (blog), accessed March 23, 2018, <https://www.nilc.org/issues/education/basic-facts-instate/>.

⁹ “Undocumented Student Tuition: Overview”; “Should Illegal Immigrants Qualify for In-State Tuition?,” *CommunityCollegeReview.com*, accessed March 23, 2018, <https://www.communitycollegereview.com/blog/should-illegal-immigrants-qualify-for-in-state-tuition>.

¹⁰ “Undocumented Student Tuition: Overview.”

Do states have the authority to grant undocumented students in-state tuition for higher education? Federal law specifies that "...an alien who is not lawfully present in the United States 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 of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident."¹¹ The states that permit undocumented students to receive in-state tuition carefully word their statutes so that this practice is contingent upon high school attendance and graduation, not based on state residency. Since legal U.S. residents also are entitled to in-state tuition rates based on the same criteria, these states claim that their statutes do not violate federal law. Federal courts have yet to adjudicate the issue.¹²

Outlook

Only a few empirical studies have investigated the specific impacts of extending in-state tuition benefits to undocumented individuals. The research results are mixed. An early study examined the effect of in-state tuition as a type of subsidy for undocumented students on the college enrollment and educational attainment for a sample of noncitizen Mexican young adults who arrived in the U.S. after 1987 and who lived in the states that offered in-state tuition during the 1997 through 2005 period.¹³ This study found that offering in-state tuition to this undocumented population resulted in a 2.5% increase in their college enrollment, a 3.5% increase in the proportion of noncitizen Mexicans with at least some college education, and a 1.3% increase in the proportion that has at least an associate's degree.¹⁴ The study found no evidence that an in-state tuition policy for undocumented students adversely affected the educational outcomes for U.S.-born young adults.

A subsequent study found that foreign born non-citizen Latinos were 1.54 times more likely to enroll in college in the years after enactment of an accommodating tuition policy than in the years prior to enactment.¹⁵ The most recent analysis found that state policies to extend in-state tuition to undocumented youth had no direct effect on the rate of college enrollment. This large sample national study also found that Mexican born non-citizen youth who resided in states that deny them in-state tuition have a 12.1 percentage point lower probability of being enrolled in college than their peers who lived in states with no such policies.¹⁶ Given the mixed findings

¹¹ Austin T. Fragomen, "The Illegal Immigration Reform and Immigrant Responsibility Act of 1996: An Overview," *The International Migration Review* 31, no. 2 (1997): 438–60, <https://doi.org/10.2307/2547227>.

¹² Zenen Jaimes Perez, "Removing Barriers to Higher Education for Undocumented Students," *Center for American Progress*, December 2014, 59, <https://www.luminafoundation.org/files/resources/removing-barriers-for-undocumented-students.pdf>; "Undocumented Student Tuition: Overview"; "Undocumented College Students: The DREAM Act and Other Legal Issues - FindLaw.Com," accessed March 23, 2018, <http://education.findlaw.com/higher-education/undocumented-college-students-the-dream-act-and-other-legal-issu.html>;

Charles Stimson, "Providing In-State Tuition for Illegal Aliens: A Violation of Federal Law," The Heritage Foundation, accessed March 23, 2018, </immigration/report/providing-state-tuition-illegal-aliens-violation-federal-law>.

¹³ Kaushal Neeraj, "In-state Tuition for the Undocumented: Education Effects on Mexican Young Adults," *Journal of Policy Analysis and Management* 27, no. 4 (September 29, 2008): 771–92, <https://doi.org/10.1002/pam.20366>.

¹⁴ Kaushal Neeraj.

¹⁵ Stella M. Flores, "State Dream Acts: The Effect of In-State Resident Tuition Policies and Undocumented Latino Students," *The Review of Higher Education* 33, no. 2 (2010): 239–83, <https://muse.jhu.edu/article/365585>.

¹⁶ Bozick Robert, Miller Trey, and Kaneshiro Matheu, "Non-Citizen Mexican Youth in US Higher Education: A Closer Look at the Relationship between State Tuition Policies and College Enrollment," *International Migration Review* 50, no. 4 (May 21, 2015): 864–89, <https://doi.org/10.1111/imre.12167>.

of the few extant studies and the intensifying debate about the provision of public resources to undocumented immigrants, further systematic investigation of this issue is needed.

What do people think about the desirability of extending in-state college tuition to undocumented students? The answer depends on how questions are worded, who is being asked, and when the poll is conducted. In 2017, two polls conducted in Tennessee included a question about this issue. A telephone poll of 1,004 registered Tennessee voters, weighted to reflect estimated state population parameters, was conducted May 4-15 and asked: “Now thinking about children of undocumented immigrants who are brought to this country when they are young... If these children attend Tennessee public schools, graduate from a Tennessee high school and are accepted at one of Tennessee’s public colleges and universities, do you think they should be eligible for the in-state tuition rate, or shouldn’t they?” Sixty-six percent (66%) responded “Yes, they should be eligible,” 30% responded “No, they should not be eligible,” and three percent did not know.¹⁷

Another telephone poll conducted May 31-June 5, 2017 of 1,007 likely Republican primary voters in Tennessee asked: “In 2018, the Tennessee General Assembly is expected to reconsider a bill to provide in-state college tuition to illegal immigrant students. Do you support or oppose providing in-state college tuition to illegal immigrant students?” The results from this survey found that 68.9% strongly disapproved, 15.5% somewhat disapproved, 5.9% somewhat approved, 5.2% strongly approved, and 4.5% were not sure or did not know.¹⁸ In future debates about the merits of proposals to extend in-state tuition for undocumented students, state officials can expect feedback from constituents with widely divergent views on this issue. According to Tennessee’s Attorney General, state legislation on the issue needs to specify whether unlawful aliens are eligible for public benefits such as in-state tuition.¹⁹

¹⁷ “Vanderbilt Poll Snapshot,” Center for the Study of Democratic Institutions, accessed March 23, 2018, <https://www.vanderbilt.edu/csdi/vupoll-home.php>.

¹⁸ Tennessee Star Staff, “Tennessee Star Poll: 84 Percent of Republican Primary Voters Reject In-State Tuition for Illegal Aliens,” accessed March 23, 2018, <http://tennesseestar.com/2017/06/08/tennessee-star-poll-87-percent-of-republican-primary-voters-reject-in-state-tuition-for-illegal-aliens/>.

¹⁹ State of Tennessee, Office of the Attorney General, “Proposed Legislation Granting State Institutions of Higher Education the Authority to Determine Eligibility for In-State Tuition” (Opinion No. 17-53, December 6, 2017), <https://www.tn.gov/content/dam/tn/attorneygeneral/opinions/documents/2017/op17-053.pdf>.