

State	Admit undocumented students? (Y/N)	Tuition for undocumented students: in-state or out-of-state rates?	Modified requirement to establish eligibility for in-state tuition.	Is a student disclosure form required?	Pending legislation/ Case law	Verification process	College reporting requirements	Statutory cite and effective date for applicable standards regarding undocumented students
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Arizona	Yes	Out-of-state ⁽¹⁾	Not applicable	Yes	None	Birth certificate or passport and form ⁽²⁾ and SAVE ⁽³⁾	Dec 31 and June 30 to Joint Legislative Budget Committee	Ariz.Rev. Stat. §15-1803 (2008) December 2006
California	Yes	In-state	3 years of high school ⁺⁽⁴⁾	Yes	Yes Martinez v. Regents & pending legislation	Statewide form and additional documents ⁽⁵⁾	No Information re: undocumented student status is confidential.	Cal. Educ. Code §68130.5 (2008) October 2001
Colorado	Yes	Out-of-state	Not applicable except for US citizen children of undocumented parents	Yes	No	Affidavit ⁽⁶⁾ with documents and SAVE	No ⁽⁷⁾	Colo. Rev. Stat. §23-7-110 (2008) May 2008

(1) In accordance with the Illegal Immigration and Reform and Immigrant Responsibility Act of 1996 (PL 104-208; 110 Stat. 3009-546), a person who was not a citizen or legal resident of the US or who is without lawful immigration status is not entitled to classification as an in-state students pursuant to A.R.S. 15-1802 or entitled to classification as a county resident pursuant to A.R.S.15-1802.01.

(2) Appendix AZ 91-93

(3) SAVE charges up to \$1 per transaction with a \$25 monthly minimum.

(4) High school attendance in CA for 3 or more years, graduated from a CA high school or attained equivalent degree, and files an affidavit to become a legal permanent resident at the earliest possible time. Cal. Educ. Code §68130.5 (a) (2008).

(5) Appendix CA-72

(6) Appendix CO-80

(7) The recently enacted Colorado statute providing for in-state tuition for U.S. citizens with undocumented parents (Col. Rev. Stat. §23-7-110) provides that “any information provided to satisfy the criteria specified in this section shall be confidential unless disclosure is explicitly required by law.”

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Florida	Yes No current law prohibiting undocumented student admission. Colleges can make autonomous decisions.	Out-of-state	Not applicable	Yes	Yes – to allow undocumented students in-state tuition	Form to collect student documents ⁽⁸⁾	None	Fl. Stat. Ann. §1009.21 (2008) July 2007 Fla. Adm. Code § 6A-10.044 March 2005
Georgia	Yes No current law prohibiting undocumented student admission.	Out-of-state ⁽⁹⁾	Not applicable	Yes	Yes – a resolution calling for updated federal immigration legislation.	Standard form with documents ⁽¹⁰⁾	None	Ga. Code. Ann. §50-36-1. July 2007

(8) Appendix FL-115 for sample

(9) This provision requires that the University System of Georgia or the State Board of Technical and Adult Education adopt policies to ensure that unqualified aliens are not entitled to receive postsecondary benefits in a manner that is consistent with 8 U.S.C. §§ 1611, 1621, or 1623. We have not identified any rules promulgated to enforce this provision.

(10) Appendix GA-78 for sample

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Illinois	Yes	In-state	3 years +(11)	Yes	Yes – to repeal current standards.	Required affidavit(12)	None	110 Ill. Comp. Stat. 305/7e-5; 520/8d-5; 660/5-88; 665/10-88; 670/15-88; 675/20-88; 680/25-88; 685/30-88; 690/35-88; 805/6-4a. May 2003
New Mexico	Yes	In-state	2 years +(13)	Yes	None	Standard form with certification and documents (14)	None	N.M. Stat. Ann. § 21-1-4.6; June 17, 2005 N.M. Admin. Code title 5 §7.18.9(D) August 2007

(11) Illinois Public Act 93-007 (2003) created an exception to permit students to be eligible for in-state tuition if they attended at least at least three years of high school and file an affidavit of intent to legalize immigration status.

(12) Appendix IL-67

(13) Under N.M. Stat. Ann. §21-1-4.6, an undocumented student is eligible to receive in-state tuition if the student attended a state high school for one year and graduated or received a GED.

(14) Appendix NM-21

State	Admit undocumented students? (Y/N)	Tuition for undocumented students: in-state or out-of-state rates?	Modified requirement to establish eligibility for in-state tuition.	Is a student disclosure form required?	Pending legislation/ Case law	Verification process	College reporting requirements	Statutory cite and effective date for applicable standards regarding undocumented students
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New York	Yes	In-state	2 years + (15)	Yes	Yes – to repeal current standards	Affidavit(16) with self-reporting and/or documents	None	NY Educ. Law §355(2)(h)(8) August 2002
South Carolina	No	Not applicable	Not applicable	Yes	None	Federal SAVE system required with documents	None	S.C. Code Ann. §59-101-430 (2008) June 2008
Texas	Yes	In-state	3 years + (17)	Yes	Yes –to repeal current standards	Affidavit with self-reporting or documents (18)	None	Tex. Educ. Code §54.052 September 2005
Virginia	Yes	Out-of-state	Not applicable	Yes	Yes –to permit in-state tuition	Petition for residency with documents	None	Va. Code Ann. § 23-7.4(B) (2008) March 2008

(15) Under the NY Educ. Law §355(2)(h)(8), an undocumented student is eligible for in-state tuition, a student must attend state high school for 2 or more years, graduate, and file affidavit of intent.

(16) Appendix NY-53

(17) Under Tex. Educ. Code §54.052, an undocumented student is eligible for in-state tuition a student must attend state high school for 3 years, graduate or get GED, and file affidavit of intent.

ARIZONA

State Agencies:

Arizona Board of Regents: The Arizona Board of Regents is the governing body of Arizona's public university system, providing policy guidance to Arizona State University, Northern Arizona University, and the University of Arizona, including their branch campuses.

Community Colleges: Community colleges in Arizona are governed by local district boards.

Is there a policy to admit or not to admit undocumented immigrants into curriculum programs at public colleges?

Yes. Undocumented students can be admitted to Arizona public colleges.

- Arizona Board of Regents policies indicate that students classified for tuition purposes as Arizona residents and who meet general aptitude and basic competency requirements are required to be admitted to one of the three public universities in Arizona. This process is referred to as “assured admission for Arizona residents.”²⁹ However, an undocumented student cannot be classified as an in-state student.³⁰ Arizona public colleges have discretion to admit additional applicants that do not qualify for the “assured admission” process.³¹ Undocumented students can be admitted under this procedure.
- Admission to Arizona community colleges may be granted to any person who is a high school graduate, has a high school certificate of equivalency, is at least 18 years of age, and demonstrates evidence of potential success, or is a transfer student in good standing from another college or university.³²

If undocumented immigrants are admitted, do they pay in-state or out-of state tuition?

Undocumented students may not be classified as Arizona residents, and therefore are not eligible for in-state tuition.³³

Are undocumented students defined? If so, how?

²⁹ Ariz. Rev. Stat. §15-1803 (2008) and Arizona Board of Regents Policy 4-102.

³⁰ Id.

³¹ Arizona Board of Regents Policy, 2-101(C).

³² Ariz. Rev. Stat. §15-1805.01 (2008).

³³ Ariz. Rev. Stat. §15-1825 (2008).

The relevant Arizona statute describes undocumented students as those students who are “not a citizen or legal resident of the United States or who is without lawful immigration status.”³⁴

In order for undocumented immigrants to qualify, what additional criteria or conditions must be satisfied? What disclosure and documentation must they provide?

There are no specific admission requirements an undocumented student must fulfill to be accepted into an Arizona institution. As noted above, undocumented students are not qualified for in-state tuition. In order to qualify for in-state tuition, Arizona requires students to sign a declaration of citizenship or status, indicating the student’s citizenship or immigration status. Where applicable, students must indicate on the form that they “do not qualify” for U.S. citizenship status or a legal immigration status.³⁵

What pending legislation, judicial proceedings, or Attorney General opinions, if any, exist with regard to the admission of undocumented students?

None identified.

What are the verification processes to determine who is “lawfully present” for purposes of admission or tuition determinations? What are the estimated costs of that process?

Colleges report that student status is verified at admission by the admission office, to determine tuition charges. To verify, they require student submission of evidence, such as a birth certificate or passport, or other documents.³⁶ A handful of colleges report using the SAVE system, which can cost up to \$1.00 per transaction, and a minimum of \$25/month.

Arizona colleges report an average of 4.7 staff members involved in verifying all students’ residency status, with varying percentages of the workload spent on undocumented student verification.

If verification is not completed, what are the student sanctions, and who administers them?

Enforcement of the tuition residence classification procedures is the responsibility of the president of each college or university and the designated classification officer.³⁷ Any student found to have made a false or misleading statement concerning the student’s domicile or tuition status is subject to dismissal from the university.³⁸

The survey results indicated that most often, students are charged the higher tuition if their legal status cannot be verified.

³⁴ Ariz. Rev. Stat. §15-1803(2008).

³⁵ Maricopa Community Colleges Student Declaration of Citizenship or Status.

³⁶ See Appendix B. AZ-pages 91-93.

³⁷ Arizona Board of Regents Policy 4-206(A).

³⁸ Arizona Board of Regents Policy 4-208(B).

If verification of a student's status as an undocumented student is not completed, are there specific sanctions imposed upon the college?

Our research did not identify specific state sanctions in the Arizona statutes and regulations that would be imposed upon a college for failure to abide by Arizona admission or tuition requirements related to undocumented students. In general, Arizona public institutions of higher education are subject to the oversight of the governing boards (the Arizona Board of Regents or individual community college governing boards) to ensure compliance with state requirements and policies. In addition, employees can be removed from an institution for dishonesty in professional activities, or for neglect of properly assigned duties.³⁹

What reporting requirements exist?

Ariz. Rev. Code §15-1803 requires each community college and university to report to the joint legislative budget committee, on December 31 and June 30 of each year, the total number of students who were entitled to classification as an in-state student, and the total number of students who were not entitled to classification as an in-state student because the student was not a citizen or legal resident, or is without lawful immigration status.⁴⁰

³⁹ Arizona Board of Regents Policy 6-101(H).

⁴⁰ Ariz. Rev. Stat. §1803(C) (2008).

CALIFORNIA

State Agencies

Regents of the University of California: The University of California, including all its locations, is governed by the Regents, which under Article IX, Section 9 of the California Constitution has "full powers of organization and governance," subject only to very specific areas of legislative control.

California Community Colleges: The California Community Colleges system is comprised of 72 districts and 110 colleges. The colleges are administered by a System Office which operates under the direction of the Board of Governors of the California Community Colleges.

Is there a policy to admit or not to admit undocumented immigrants into curriculum programs at public colleges?

Yes. Undocumented students are eligible for admission to the University of California and community colleges so long as the students meet the individual school's academic admission requirements. The Regents publish general entrance requirements requiring that the top one-eighth of the state's high school graduates be eligible for admission to the University of California.⁴¹ Individual locations of the University of California also have discretion to admit additional applicants from their pool of eligible candidates. A community college district may admit any California resident, or any non-resident possessing a high school diploma.⁴²

If undocumented immigrants are admitted, do they pay in-state or out-of state tuition?

Undocumented students are eligible for in-state tuition if they qualify for California's "nonresident exemption."⁴³ To qualify for the "nonresident exemption," an individual must have:

- Attended at least 3 years of high school in California; and
- Graduated from high school or received an equivalent degree.

⁴¹ Regents of the University of California Policy on Admissions.

⁴² Cal. Educ. Code §76000 (2008).

⁴³ Cal. Educ. Code §68130.5 (2008).

In addition, an undocumented student must file an affidavit stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so.

Are undocumented students defined? If so, how?

The California “nonresident exemption” refers to “persons without lawful immigration status” as those individuals who must file an affidavit to be eligible for in-state tuition.⁴⁴

In order for undocumented immigrants to qualify, what additional criteria or conditions must be satisfied? What disclosure and documentation must they provide?

As noted above, to receive the “nonresident exemption” for in-state tuition, an undocumented student must file an affidavit. California provides this affidavit in its “California Nonresident Tuition Exemption Request” form.⁴⁵ This form requires the student to identify whether he or she is an alien with a valid immigration status (“a nonimmigrant alien”), or an “alien without lawful immigration status.”

What pending legislation, judicial proceedings, or Attorney General opinions, if any, exist with regard to the admission of undocumented students?

California currently has legislative as well as judicial matters pending with regard to undocumented students.

- In the case of Martinez v. Regents of the University of California,⁴⁶ U.S. citizens paying nonresident tuition at California state colleges and universities brought an action challenging the validity of the “non-resident” tuition exemption. The case is currently set for hearing by the California Supreme Court. The “nonresident exemption” at Cal. Educ. Code §68130.5 remains in effect while the case is pending.⁴⁷
- Senate Bill 160 was introduced in the California Senate on February 14, 2009. On March 18, 2009, the bill was voted out of committee and referred to the California Senate Committee on Appropriations. This proposed legislation would require the Regents of the University of California to establish procedures and forms to enable those undocumented students who qualify for in-state tuition to be eligible for state-funded financial aid programs.⁴⁸

⁴⁴ Id.

⁴⁵ Sample Student Declaration of Citizenship or Status Form.

⁴⁶ See Martinez, et al. v. Regents of the University of California et al., 166 Ca. App. 4th 1121 (2008) (granted review in the California Supreme Court, 198 P. 3d 1).

⁴⁷ University of California statement about Martinez v. Regents appeal, dated September 22, 2008.

⁴⁸ See California Senate Bill 160.

What are the verification processes to determine who is “lawfully present”? What are the estimated costs of that process?

California colleges report routinely collecting information on citizenship/residence status on the admission application, and verifying the students’ status for in-state tuition determination using the form completed by the student, either in Admissions or in the Registrar’s office.⁴⁹ Staffing is reported to average 2.5 full-time equivalent staff that spends less than 20 percent of their time on undocumented student verification, at a cost of less than \$4500 per year. Colleges also report verifying the citizenship status of applicants as part of determining if a student is eligible to receive federal student aid authorized by Title IV of the Higher Education Act of 1965.⁵⁰ There is no single time when student status is verified – it may be at application receipt, or after admission.

If verification is not completed, what are the student sanctions, and who administers them?

California law provides specific consequences for students that receive in-state tuition but do not meet the statutory and regulatory eligibility requirements. First, if the student’s residency status for tuition is incorrect, the student’s residency status will immediately be changed. In addition, if a student concealed facts or made untruthful statements about residency status, he or she will be required to pay all tuition and fees that would have been charged, and will be subject to appropriate discipline.⁵¹

The survey results indicated that most often, students are charged the higher tuition if they do not provide the required information.

If verification of a student’s status as an undocumented student is not completed, are there specific sanctions imposed on the college?

Our research did not identify specific state sanctions in the California statutes and regulations that would be imposed on a college for failure to abide by the requirements of Cal. Educ. Code §68130.5. In fact, California institutions of higher education are specifically protected by a statute if the “nonresident exemption” is determined by a state court to be unlawful.⁵² The law indicates that a state court can order equitable relief to require a California institution to “terminate any waiver” awarded under the “nonresident exemption.” This means that a court could require California institutions to stop granting nonresident tuition waivers and to charge recipients of those waivers out-of-state tuition. However, the law also provides that if a state court finds that Section 68130.5 is unlawful, California Community Colleges, the California State University, and the University of California will not be required to pay money damages, tuition refunds or waivers, or other retroactive relief.

⁴⁹ See Appendix, p. CA-72 and Appendix D.

⁵⁰ 20 U.S.C. §1001, et seq. (2008).

⁵¹ Regents Standing Order 110.2(c).

⁵² Cal. Educ. Code §68130.7 and 68133 (2008).

What reporting requirements exist?

Consistent with the survey responses, our research did not identify specific reporting requirements related to an undocumented student's immigration status. Community college districts are allowed to report students exempt from nonresident tuition to be considered full time equivalent students for apportionment purposes.⁵³ Further, other California universities must report data regarding residency status of their students. However, Cal. Educ. Code §68130.5(d) provides that student immigration status information provided under "nonresident exemption" is considered confidential.

⁵³ Cal. Educ. Code §68130.5(b).

COLORADO

State Agencies:

Colorado Commission on Higher Education/Department of Higher Education: Under the authority of the Commission, the Department coordinates policy and state resources for the state's 27 public institutions, as well as several hundred proprietary schools.

Colorado Community College System: The System office oversees career and academic programs in the 13 state community colleges. In addition, CCCS oversees 1200 secondary and 800 postsecondary career and technical programs in more than 150 school districts, and in seven other postsecondary institutions across the state.

Is there a policy to admit or not to admit undocumented immigrants into curriculum programs at public colleges?

Yes. Undocumented students may be admitted to Colorado institutions.

- Four-year institutions follow minimum admission standards adopted by the Colorado Commission for Higher Education. These standards require Colorado institutions to consider a student's standardized test scores, high school grade point average, high school class rank, and other factors in making admissions decisions. Institutions may also adopt admission standards that are more rigorous than the Commission's minimum admission standards. These standards do not consider a student's immigration status as one of the admission criteria.
- Colorado community colleges follow an open-admission policy where a community college may admit applicants who are 17 years old or older that the college determines would benefit from the programs offered by the institution.⁵⁴

If undocumented immigrants are admitted, do they pay in-state or out-of state tuition?

Undocumented students are not eligible to receive in-state tuition.

- Certain non-U.S. citizens with valid immigration status may be eligible for Colorado in-state tuition.⁵⁵ However, Colorado law requires that an individual must provide proof that he or she is "lawfully present in the United States" and submit an affidavit attesting that he or she is lawfully present in the United States, in order to obtain a state benefit,

⁵⁴ Colorado Commission on Higher Education Policy, Section 1 Part F Admissions Standards Policy.

⁵⁵ Colo. Rev. Stat. §23-7-103(1)(o) (2008).

including in-state tuition.⁵⁶ If the individual's affidavit indicates that he or she is an alien who is lawfully present in the United States, Colorado law also requires institutions of higher education to verify the individual's immigration status using the federal SAVE system.

- Colorado also recently enacted a provision designating United States citizens who have graduated from a Colorado high school, attended at least 3 years, and who reside in the state, as eligible for in-state tuition.⁵⁷ The law was created to cover applicants who are U.S. citizens but whose parents may be undocumented.

Are undocumented students defined? If so, how?

Colorado law requires that where verification of citizenship is required by law “all persons eighteen years of age or older shall provide proof that they are lawfully present in the United States prior to receipt of certain public benefits,” including in-state tuition.⁵⁸ However, we did not identify a specific definition of “undocumented student” in the Colorado statute or regulations.

In order for undocumented immigrants to qualify, what additional criteria or conditions must be satisfied? What disclosure and documentation must they provide?

Again, we did not identify criteria specific to undocumented students that are required for a student to be eligible for admission to an institution of higher education. Students must prove residency for purposes of in-state tuition by use of acceptable documents.⁵⁹ Non-citizens who are eligible to receive in-state tuition are required to verify their lawful presence in the United States through the SAVE program.

What pending legislation, judicial proceedings, or Attorney General opinions, if any, exist with regard to the admission of undocumented students?

The Colorado Attorney General has recently issued two attorney general opinions relevant to the admission of undocumented students.

- A January 23, 2006 opinion issued by the Colorado Attorney General concluded that the Colorado Commission on Higher Education did not have statutory authority to establish a policy or regulation granting in-state tuition status to undocumented aliens⁶⁰
- An August 14, 2007 opinion issued by the Colorado Attorney General concluded that current law authorized U.S. citizens whose parents were undocumented aliens to receive

⁵⁶ Colo. Rev. Stat. §24-76.5-103(b) (2008).

⁵⁷ Colo. Rev. Stat. §23-7-110.

⁵⁸ Colo. Rev. Stat. §24-76.5-103(b) (2008).

⁵⁹ For example, please see the list of acceptable documentation published by the University of Colorado.

⁶⁰ Formal Opinion of John W. Suthers, Attorney General, No. 06-01, dated January 23, 2006.

in-state tuition. This opinion led to the passage of the legislation permitting such individuals to be eligible for in-state tuition based on high school attendance.⁶¹

What are the verification processes to determine who is “lawfully present”? What are the estimated costs of that process?

Colorado law requires that in verifying the lawful presence of an alien in the United States, the individual must execute an affidavit stating that he or she is an alien lawfully present in the United States⁶². The state must then use the federal SAVE program to verify the individual’s immigration status.⁶³ The SAVE system charges a minimum of \$25/month, or up to \$1.00 per transaction.

Colorado colleges report routinely collecting citizenship and/or resident status on the admission application, and verifying that information either at the time of application or after admission through a form and submission of evidence, typically to the Admissions office. Colleges estimate that the verification of residency is a task that required 4.5 full-time equivalent staff, and that less than 20 percent of the task time is spent on undocumented students⁶⁴.

A separate Colorado statute also requires the state attorney general to bring suit against the federal government for reimbursement of state costs incurred by Colorado in dealing with illegal immigration.⁶⁵ In 2007, the Colorado attorney general did bring suit in the United States District Court for the District of Colorado against the United States, the U.S. Attorney General, and the Secretary of the Department of Homeland Security.⁶⁶ The suit sought an order for the Attorney General and Secretary to enforce various provisions of federal law relating to prevention of illegal immigration. However, the case was dismissed on the grounds that the Colorado attorney general did not have standing to pursue the lawsuit and the state was not entitled to the relief it sought.

If verification is not completed, what are the student sanctions, and who administers them?

Colorado law provides that any person who “knowingly makes a false, fictitious, or fraudulent statement or representation in an affidavit” regarding his or her status as an alien with a lawful presence in the United States will, upon conviction, be guilty of second degree perjury, a class 1 misdemeanor.⁶⁷

If verification of a student’s status as an undocumented student is not completed, are there specific sanctions imposed upon the college?

⁶¹ Formal Opinion of John W. Suthers, Attorney General, No. 07-03, dated August 14, 2007.

⁶² Appendix CO-80 for a sample.

⁶³ Colo. Rev. Stat. §24-76.5-103 (2008).

⁶⁴ Appendix D.

⁶⁵ Colo. Rev. Stat. §§ 24-19.7-101; 24-19.7-102; 24-19.8-101.

⁶⁶ *Colorado v. Gonzales*, 558 F. Supp.2d 1158 (D. Colo. 2007).

⁶⁷ Colo. Rev. Stat. §18-5-503 (2008).

Colorado law provides that it is unlawful for a Colorado public agency to provide benefits in violation of the verification requirements.⁶⁸ However, we did not identify specific sanctions that would be applicable to the public agency for violation of the verification requirements.

What reporting requirements exist?

Our research did not identify specific reporting obligations for Colorado institutions of higher education regarding a student's immigration status in the Colorado law or regulations. In fact, the recently enacted Colorado statute providing for in-state tuition for U.S. citizens with undocumented parents, Col. Rev. Stat. §23-7-110, provides that “any information provided to satisfy the criteria specified in this section shall be confidential unless disclosure is explicitly required by law.”

Consistent with the survey data, Colorado does require four-year public institutions to report demographic data regarding undergraduate freshmen, including residency status, to the Colorado Department of Higher Education, using the Department's data reporting system. The data are used to monitor the institution's compliance with its minimum admission standards, including standards relating to in-state and out-of-state student status. The policy documents reviewed did not indicate whether an undocumented student's status is to be reported separately for purposes of the enrollment report. Colorado policies impacting the four-year institutions require that at least 55% of each class must be comprised of in-state students. If an institution does not comply with this and other admission standards, the institution will be required to provide an explanation to its governing board and develop a corrective action plan; the item will then be reviewed by the Commission.⁶⁹

⁶⁸ Colo. Rev. Stat. §24-76.5-103(9) (2008).

⁶⁹ Section 1 Part F Admissions Standards Policy, 7.02.03.

FLORIDA

State Agencies:

Florida Board of Governors: The Florida Board of Governors manages the Florida State University System, which consists of eleven public universities. The Florida State University System Office, headed by a Chancellor, administers the system on behalf of the Board of Governors.

Florida Department of Education, Division of Community Colleges: This office administers the Florida Community College system.

Is there a policy to admit or not to admit undocumented immigrants into curriculum programs at public colleges?

Yes. Undocumented students may be eligible for admission to certain Florida public colleges.

- The Florida State University System has adopted minimum requirements for applicants to be admitted to a Florida state university. These requirements do not consider the student's immigration status.⁷⁰
- Florida law requires that each community college have minimum admission requirements, including that a student must have a standard high school diploma or its equivalent. Each community college board of trustees is authorized by statute to adopt additional admission requirements.⁷¹

If undocumented immigrants are admitted, do they pay in-state or out-of state tuition?

Undocumented students may not be considered to be Florida residents, and are not eligible for in-state tuition.⁷²

Are undocumented students defined? If so, how?

Florida guidance provides a definition of undocumented students. However, the definition is not incorporated into Florida laws or regulations.

⁷⁰ Fla. Admin. Code Ann. §6C-6.001 (2008).

⁷¹ Fla. Stat. §1007.263 (2008).

⁷² Fla. Admin. Code Ann. §6A-10.044 (2008)

- Florida’s Guidelines for Florida Residency for Tuition Purposes does include a definition of an “undocumented immigrant” as a “foreign national who lives in the U.S. without the required documentation.” An undocumented immigrant is not eligible to establish residency for tuition purposes in Florida.⁷³
- The Florida laws and regulations do not include a specific definition of “undocumented student.” Rather, the regulations include a comprehensive list of certain categories of non-citizens who *are eligible* to be considered Florida residents for tuition purposes. These categories include permanent residents, parolees, asylees, refugees, or other permanent status persons (e.g., conditional permanent residents and temporary residents) who have applied to and have been approved by the U.S. Bureau of Citizenship and Immigration Services.⁷⁴

In order for undocumented immigrants to qualify, what additional criteria or conditions must be satisfied? What disclosure and documentation must they provide?

As noted above, undocumented students do not qualify for in-state tuition in Florida. Florida law establishes different statutory categories an individual may use to establish residency. Each category requires the student to provide different types of documentation to establish residency. For example, non-citizens with a documented immigration status are required to provide copies of an approved visa, or documentation of asylum or parolee status, in order to establish their eligibility for in-state tuition.⁷⁵

What pending legislation, judicial proceedings, Attorney General opinions, or policy statements, if any, exist with regard to the admission of undocumented students?

SB 1118 was introduced into the Florida Senate on January 30, 2009, by Senator Frederica Wilson. The proposed legislation would permit an undocumented student to be eligible for in-state tuition if the student:

- Has resided in the state for 3 consecutive years prior to receipt of a high school diploma or GED;
- Has attended high school for 3 consecutive years; and
- Files an affidavit demonstrating that the student has initiated the process of legalizing his/her status or will do so as soon as he/she is eligible to do so.

Under the proposed bill, these students would not be eligible for state financial assistance. This bill is currently assigned to four Florida Senate committees for consideration.

⁷³ Florida’s Guidelines for Florida Residency for Tuition Purposes, p. 19.

⁷⁴ Fla. Admin. Code Ann. §6A-10.044 (2) (2008)

⁷⁵ Guidelines for Florida Residency for Tuition Purposes, Exhibit 2-1 Overview of Residency Qualifications and Exceptions, p. 7 and 8. See Appendix FL-115 for sample documentation collection form.

What are the verification processes to determine who is “lawfully present”? What are the estimated costs of that process?

Florida colleges report routinely collecting information on an applicant’s citizenship/residence status on the admission application, and the admission office verifying that information for determination of tuition rates at the time of admission, using documentation such as a passport or birth certificate. The average number of staff used for verifying is 6.7, and that is considered inadequate to the task. It appears to take up to 40 percent of staff time just for undocumented students. Costs were not provided⁷⁶.

If verification is not completed, what are the student sanctions, and who administers them?

A student granted status as a Florida resident for tuition purposes can be subject to disciplinary sanctions determined by the university if the student’s resident status is based upon a false statement.⁷⁷ In addition, a university may invalidate college credit for work done by a student if the student provided false or fraudulent or incomplete statements in his or her application, residence affidavit, or accompanying documents.⁷⁸

If verification of a student’s status as an undocumented student is not completed, are there specific sanctions imposed on the college?

Our research did not identify specific state sanctions in the Florida statutes and regulations that would be imposed upon a college for failure to abide by Florida admission or tuition requirements. In general, the board of trustees of each Florida public institution of higher education is required to ensure the institution complies with state and federal law, rules, regulations, and requirements.⁷⁹

What reporting requirements exist?

Our research did not identify in the Florida law or regulations any specific reporting obligations for Florida institutions of higher education regarding a student’s immigration status. In general, Florida law requires that each university establish an enrollment plan for each fiscal period. Universities are required to report enrollments in order to create this plan.⁸⁰ The statutes reviewed did not indicate whether an undocumented student’s status is to be reported separately for purposes of the enrollment report or plan.

⁷⁶ Appendix D.

⁷⁷ Fla. Adm. Code §6C-7.005.

⁷⁸ Fla. Adm. Code §6C-6.001(7). (2008).

⁷⁹ Fla. Stat. 1001.74(7) (2008).

⁸⁰ Fla. Adm. Code §6C-6.001 (2008).

GEORGIA

State Agencies:

University System Board of Regents: The University System of Georgia's Board of Regents oversees thirty-five colleges and universities: four research universities, two regional universities, thirteen state universities, eight state colleges, and eight two-year colleges. The Board elects a chancellor who serves as its chief executive officer and the chief administrative officer of the University System.

State Board of Technical and Adult Education: The State Board of Technical and Adult Education is responsible for establishing standards, regulations, and policies for the operation of the Georgia Department of Technical and Adult Education, the state's thirty-three technical colleges, economic development programs, and adult education programs.

Is there a policy to admit or not to admit undocumented immigrants into curriculum programs at public colleges?

Our research did not identify a specific prohibition against admission of undocumented students to Georgia's public colleges.⁸¹

- The Board of Regents has established minimum requirements for admission to the system, including several different categories for admission to different types of programs. The Board of Regents policy notes that "international students" may be admitted.⁸²
- The Georgia State Board of Technical and Adult Education policy requires that to be admitted to a community college, the student must hold a high school diploma or a recognized alternate type of diploma.⁸³ Individual institutions may also establish additional admission requirements beyond the minimum standard.

If undocumented immigrants are admitted, do they pay in-state or out-of state tuition?

Georgia law provides that undocumented individuals are not eligible to receive in-state tuition.

⁸¹ Georgia recently enacted a statute which requires each Georgia agency to verify the lawful presence of individuals in order to obtain state benefits. Under this law, the Board of Regents or the State Board of Technical and Adult Education is required to set forth policies "regarding postsecondary education benefits that comply with all federal law." Ga. Code. Ann. §50-36-1 (2008). We contacted a representative to ascertain whether admission would constitute a benefit under this standard, but did not receive a definitive response.

⁸² Georgia Board of Regents Admission Policy 4.02.0101(a)(4).

⁸³ Georgia State Board of Technical and Adult Education Policy V.B.1.

- The Georgia Board of Regents policy provides that noncitizens shall not be classified as “in-state” for tuition purposes, unless there is evidence that the individual is a “lawful permanent resident, refugee, asylee, or other eligible noncitizen.”⁸⁴
- The Georgia State Board of Technical and Adult Education policy also states that “ineligible noncitizens” cannot qualify for in-state tuition.⁸⁵

Are undocumented students defined? If so, how?

Georgia law requires that a non-citizen applying for in-state tuition must demonstrate that he or she is a “qualified alien or nonimmigrant under the federal Immigration and Nationality Act, 18 years of age or older, and lawfully present in the United States.”⁸⁶ Those who do not satisfy this standard would be considered undocumented.

In order for undocumented immigrants to qualify, what additional criteria or conditions must be satisfied? What disclosure and documentation must they provide?

Our research did not identify specific additional admissions requirements that an undocumented student would be required to satisfy for admission. On the application for admission to a technical college, a student is required to identify his or her country of lawful residence, and the student may be required to submit other information necessary to make a determination of a student’s legal domicile for tuition rate and student advisement purposes.⁸⁷ Undocumented students are not eligible to receive in-state tuition.

What pending legislation, judicial proceedings, or Attorney General opinions, if any, exist with regard to the admission of undocumented students?

A resolution, HR 339, was introduced to the Georgia legislature, calling for the federal government to enact comprehensive immigration reform that would address, among other things, providing undocumented high school students “a meaningful opportunity to pursue higher education.” The resolution has been referred to committee, but no additional action has been taken.⁸⁸

What are the verification processes to determine who is “lawfully present”? What are the estimated costs of that process?

To receive in-state tuition, the Georgia Board of Regents requires students to complete a Petition for Classification of Students for Tuition Purposes.⁸⁹ On this document, the student must

⁸⁴ Georgia Board of Regents Policy 403.02(B).

⁸⁵ Georgia State Board of Technical and Adult Education Residency Policy VI.

⁸⁶ Ga. Code Ann. §50-36-1(d)(2).

⁸⁷ Georgia State Board of Technical and Adult Education Admission Policy VI.C.

⁸⁸ This resolution is not included in the appendix.

⁸⁹ University System of Georgia Petition for Classification of Students for Tuition Purposes.

indicate whether he or she is an eligible non-citizen with a valid immigration status and make an affirmation that the information is accurate.⁹⁰

Six of seven Georgia colleges report that they routinely collect residency and citizenship information on admissions applications, and verify the information in the Admissions office, through submission of passport documentation, for tuition rates and financial aid eligibility. Georgia schools report that they have, on average, 3.8 full time equivalent staff doing verification, and that undocumented students consume less than 20 percent of that staff time. No costs were provided.⁹¹

If verification is not completed, what are the student sanctions, and who administers them?

Under Georgia law, a person who knowingly and willfully makes a false, fictitious, or fraudulent statement of representation in the affidavit regarding his or her lawful presence in the United States is guilty of violating criminal statute, Ga. Code Ann. §16-10-20, which is punishable upon conviction by a fine of not more than \$1,000.00 or by imprisonment for not less than one nor more than five years, or both.⁹²

According to the survey results, students who do not complete the process are either not permitted to enroll, or charged higher tuition.

If verification of a student's status as an undocumented student is not completed, are there specific sanctions imposed upon the college?

Our research did not identify specific sanctions that may be imposed upon an institution for failure to abide by the Georgia requirements relating to admission and to the awarding of in-state tuition. In general, the Georgia Board of Regents is responsible for monitoring and overseeing the operation of the state universities. Community colleges are also monitored by the Georgia Board of Regents. Georgia law provides that the Board is authorized to inspect and supervise the community colleges as necessary to ensure that the Board's policies and standards are met by the community colleges. If there is a failure to comply, the Board has the authority to withhold or terminate payment of any state funds which would otherwise be due to the college.⁹³

What reporting requirements exist?

The survey results and the research did not identify any reporting obligations or requirements specific to admission of undocumented students. Institutions in the University System, and the community colleges, are required to report the number of out-of-state students, which would include undocumented students, on an annual basis.⁹⁴ The policy documents reviewed did not indicate whether an undocumented student's status is to be reported separately for purposes of the enrollment report.

⁹⁰ See Appendix, p. GA-78.

⁹¹ Appendix D.

⁹² Ga. Code Ann. §§50-36-1(f), 16-10-20 (2008).

⁹³ Ga. Code Ann. §20-30-134 (2008).

⁹⁴ Georgia Board of Regents Policy, 403.01; Georgia State and Technical Board Residency Policy.

ILLINOIS

State Agencies:

Illinois Board of Higher Education: The Board's function is to plan and coordinate Illinois' system of colleges and universities. The Board of Higher Education approves all new units of instruction, research, and public service, as well as new academic administrative units, for public colleges and universities in the state.

Illinois Community College Board: This Board is the state coordinating board for community colleges, and administers the Illinois Public Community College Act. The Illinois Community College System covers the entire state, and includes 48 colleges and one multi-community college center.

Is there a policy to admit or not to admit undocumented immigrants into curriculum programs at public colleges?

Yes. Undocumented students may be admitted to Illinois public colleges.

- The Illinois Board of Higher Education establishes minimum admission standards for public colleges and state universities.⁹⁵ Each state university or college has admission standards which include minimum academic, high school coursework, and acceptable testing scores.⁹⁶
- Illinois regulations provide that community colleges should admit all students qualified to complete any one of their programs.⁹⁷

If undocumented immigrants are admitted, do they pay in-state or out-of state tuition?

Undocumented students are eligible to pay in-state tuition in Illinois if:

- They attended an Illinois high school for at least 3 years as of the date of graduation from high school; or
- They attended school for at least 3 years as of the date they received the equivalent of a high school diploma.

⁹⁵ 110 Ill. Comp. Stat. §§205/10, 205/9.07 (2008).

⁹⁶ See e.g. 11- Ill. Comp. Stat. §305/8 (Admission standards for the University of Illinois; 110 Ill. Comp. Stat. §520/8e (Admission standards for Southern Illinois University); 110 Ill. Comp. Stat. §675/20-85 (Admission standards for the Illinois State University).

⁹⁷ 110 Ill. Comp. Stat. §805/3-17 (2008).

Under this provision, the undocumented applicant must also confirm via affidavit that he or she has filed an application to legalize his or her immigration status, or that he or she will file such an application when eligible to do so.⁹⁸

Are undocumented students defined? If so, how?

The statute refers to an individual “who is not a citizen or a permanent resident of the United States” to identify those students who are required to file an affidavit in order to be eligible to receive in-state tuition.⁹⁹

In order for undocumented immigrants to qualify, what additional criteria or conditions must be satisfied? What disclosure and documentation must they provide?

As noted above, individuals who are not citizens or permanent residents of the United States are required to file an affidavit in order to be eligible to receive in-state tuition.

What pending legislation, judicial proceedings, or Attorney General opinions, if any, exist with regard to the admission of undocumented students?

House Bill 4142 was introduced in the Illinois legislature on February 27, 2009. The bill would stipulate that an individual who is not lawfully present in the U.S. is not eligible for any postsecondary education benefit, including in-state tuition. The bill is currently pending in the Illinois Rules Committee.¹⁰⁰

What are the verification processes to determine who is “lawfully present”? What are the estimated costs of that process?

Six of the 9 Illinois colleges that responded to the survey reported that they routinely ask about citizenship on their admissions applications, but do not verify the information. Other response rates were too low to report¹⁰¹.

If verification is not completed, what are the student sanctions, and who administers them?

The survey results and the research did not identify specific statutes or regulations that impose sanctions upon a student due to failure to complete a verification of the student’s status.

⁹⁸ Illinois adopted Public Act 093-0738, which incorporated this provision into the authorizing acts for each of the Illinois public colleges and universities. 110 Ill. Comp. Stat. §305/7e-5; 110 Ill. Comp. Stat. §520/8d-5; 110 Ill. Comp. Stat. §660/5-88; 110 Ill. Comp. Stat. §665/10-88; 110 Ill. Comp. Stat. §670/15-88; 110 Ill. Comp. Stat. §675/20-88; 110 Ill. Comp. Stat. §680/25-88; 110 Ill. Comp. Stat. §685/30-88; 110 Ill. Comp. Stat. §690/35-88; 110 Ill. Comp. Stat. §805/6-4a. See Appendix IL-67, p. IL-67 for form.

⁹⁹ Id.

¹⁰⁰ This resolution was not included in the Appendix.

¹⁰¹ Appendix D.

If verification of a student’s status as an undocumented student is not completed, are there specific sanctions imposed upon the college?

Our research did not identify specific sanctions that could be imposed upon the public colleges and universities relating to failure to verify a student’s status. In general, the Illinois Board of Higher Education oversees the operation of the universities and colleges. The community colleges are monitored by the Illinois Community College Board. If the Board concludes that a community college district is not in compliance with standards, sanctions can be imposed on the district, including an interruption of state funding.¹⁰²

What reporting requirements exist?

The survey results and the research did not identify any reporting requirements specific to admission of, or in-state tuition status for, undocumented students. Community colleges are required to report head-count enrollments to the State board by a specified deadline after the completion of each term.¹⁰³ In addition, community colleges complete an annual audit on their compliance with state requirements, including a schedule of enrollment data, a verification of enrollment data, and a description of the process for verifying residency status.¹⁰⁴ Public universities participate in an annual enrollment survey as well.¹⁰⁵ The regulations reviewed did not indicate whether an undocumented student’s status is to be reported separately for purposes of the enrollment report.

¹⁰² 23 Ill. Admin. Code §1501.114 (2008).

¹⁰³ 23 Ill. Admin. Code §1501.406.

¹⁰⁴ 23 Ill. Admin. Code §1501.503(a)(2). (2008).

¹⁰⁵ See IBHE Operating and Degree Granting Authority Manual, p. 34.

NEW MEXICO

State Agencies:

New Mexico Higher Education Department: The New Mexico Higher Education Department regulates and oversees all postsecondary institutions, including two-year and four-year institutions. Two-year institutions include private and state-funded community colleges and schools offering certificate and Associate Degrees. Four-year institutions include those offering baccalaureate and graduate degrees.

Is there a policy to admit or not to admit undocumented immigrants into curriculum programs at public colleges?

Yes. Undocumented students may be admitted to New Mexico public institutions of higher education. New Mexico law prohibits any public postsecondary educational institution from denying “admission to a student on account of the student’s immigration status.”¹⁰⁶

If undocumented immigrants are admitted, do they pay in-state or out-of state tuition?

Undocumented students are eligible to receive in-state tuition if the student:

- Has attended a secondary school in New Mexico for at least one year; and
- Graduated from a New Mexico high school or received a New Mexico general equivalency degree (GED).¹⁰⁷

Are undocumented students defined? If so, how?

No, the New Mexico statute does not explicitly define the category of undocumented students. The statute simply provides that students may be admitted and receive in-state tuition regardless of the student’s “immigration status.”¹⁰⁸

In order for undocumented immigrants to qualify, what additional criteria or conditions must be satisfied? What disclosure and documentation must they provide?

An undocumented student must provide evidence that he or she has attended a state high school for one or more years, and has graduated from a New Mexico high school or holds a New

¹⁰⁶ N.M. Stat. Ann. §21-1-4.6 (2008).

¹⁰⁷ N.M. Stat. Ann. §21-1-4.6(B) (2008).

¹⁰⁸ Id.

Mexico GED. The regulations provide that acceptable evidence to establish New Mexico residency for tuition purposes may include, for example:¹⁰⁹

- A New Mexico high school transcript issued in the past year confirming attendance at a New Mexico public or private high school within the past twelve months; or
- A transcript from an online high school showing a New Mexico address and confirming attendance within the past twelve months.¹¹⁰

What pending legislation, judicial proceedings, or Attorney General opinions, if any, exist with regard to the admission of undocumented students?

None identified.

What are the verification processes to determine who is “lawfully present”? What are the estimated costs of that process?

The survey response was limited, and those who responded did not provide cost estimates. Other than the brochure (Appendix NM-20) and form, we did not receive sufficient information to estimate costs¹¹¹.

If verification is not completed, what are the student sanctions, and who administers them?

New Mexico guidance states that it is the student’s responsibility to petition for the appropriate tuition status. However, if the student does not petition for a change of resident status and continues to pay non-resident tuition, he/she waives any right to recover the difference.¹¹²

If verification of a student’s status as an undocumented student is not completed, are there specific sanctions imposed on the college?

Our research did not identify specific state sanctions in the New Mexico statutes and regulations that would be imposed on a college for failure to abide by the admission or tuition requirements. However, New Mexico regulations do require the New Mexico Higher Education Department to conduct audits to ascertain compliance with the residency determination policy. The Department is required to conduct a random audit of each postsecondary institution’s residency decisions on an annual basis.¹¹³ The reports on the verification audits are made annually to the New Mexico Department of Finance and Administration and the Legislative Finance Committee. The

¹⁰⁹ Other forms of acceptable evidence of residency are also listed in N.M. Admin. Code tit. 5 §7.18.9 (2008). We listed the two items above as the documentation relevant to high school attendance. See Appendix, p. NM-21 for form.

¹¹⁰ N.M. Admin. Code tit. 5 §7.18.9(D) (2008).

¹¹¹ Appendix D.

¹¹² See brochure titled “Establishing New Mexico Residency or Eligibility for Reduced Tuition Rates or In-State Tuition.”

¹¹³ N.M. Admin. Code tit 5 §7.18.12(a)(4) (2008).

Department is also required to consider the verification findings in making annual recommendations in connection with higher education funding.¹¹⁴

What reporting requirements exist?

The survey results and the research did not identify specific reporting obligations in New Mexico law or regulations regarding an undocumented student's status. In general, all public postsecondary institutions are required to provide fall and spring semester enrollment reporting, including reporting numbers of in-state and out-of-state students.¹¹⁵ However, the regulations do not contain a specific obligation to identify numbers of undocumented students in the enrollment census.

¹¹⁴ N.M. Stat. Ann. §21-1-26.3 (2008).

¹¹⁵ N.M. Admin. Code tit 5 §6.2.8 (2008).

NEW YORK

State Agencies:

New York Board of Regents: The Regents are responsible for the general supervision of all educational activities within the State, presiding over the University of the State of New York and the New York State Education Department. The University of the State of New York is a broad term encompassing all the institutions, both public and private, offering education in the State.

Is there a policy to admit or not to admit undocumented immigrants into curriculum programs at public colleges?

Yes. Undocumented students may be admitted to public institutions of higher education in New York.

If undocumented immigrants are admitted, do they pay in-state or out-of state tuition?

New York law provides that a student may receive in-state tuition if:¹¹⁶

- The student attended an approved New York high school for two or more years and graduated from the high school, or attended an approved New York GED program and received a GED;
- The student applied for attendance at a public educational unit within the University of New York within five years of graduating from high school or receiving a GED.

Under this provision, an undocumented student must also file an affidavit stating that the student has filed an application to legalize his or her immigration status, or will file such an application when he or she is eligible to do so.¹¹⁷

Are undocumented students defined? If so, how?

The statute refers to “student[s] without lawful immigration status” as those students who are required to file an affidavit in order to be eligible to receive in-state tuition.¹¹⁸

¹¹⁶ Note: this statutory provision does not apply to residents of New York and aliens with a lawful immigrant status (known as “non-immigrant aliens”). A non-immigrant alien, as the term is defined in 8 U.S.C. §1101(a)(15), essentially is an alien with a lawful immigration status.

¹¹⁷ N.Y. Educ. Law §355(2)(h)(8) (2008).

¹¹⁸ Id.

In order for undocumented immigrants to qualify, what additional criteria or conditions must be satisfied? What disclosure and documentation must they provide?

As described above, the undocumented student must file the requisite affidavit.¹¹⁹

What pending legislation, judicial proceedings, or Attorney General opinions, if any, exist with regard to the admission of undocumented students?

There are two bills currently pending in the New York legislature that address undocumented student issues. There is also a pending complaint filed by the Washington Legal Foundation with the Department of Homeland Security, as outlined below:

- A bill, A05234, was introduced in the New York State Assembly on February 11, 2009. The proposed legislation would permit undocumented immigrants to be eligible for state financial aid if the student is authorized by the institution to pay in-state tuition under current law. The bill has been referred to the Committee on Higher Education for consideration, but no further action has taken place.

A second bill, A03991, was introduced in the New York State Senate on January 29, 2009. The proposed legislation would repeal New York's current standards, prohibit institutions from admitting illegal aliens, and require postsecondary institutions to verify the immigration status of each person enrolled in the institution. The bill was referred to the Committee on Higher Education on January 29, 2009.

- On September 7, 2005, the Washington Legal Foundation filed a formal complaint with the Department of Homeland Security (DHS) against New York, charging that New York is violating the civil rights of U.S. citizens who live outside the State. The Washington Legal Foundation charged that New York is violating federal law by offering in-state college tuition rates to illegal aliens who live in New York, while denying those same rates to U.S. citizens who do not reside in the state. The Washington Legal Foundation called on DHS to bring enforcement action against New York, including ordering New York to refund excessive tuition charges. No action has been taken regarding this complaint.¹²⁰

What are the verification processes to determine who is "lawfully present"? What are the estimated costs of that process?

New York colleges report that they routinely ask about citizenship and residency on admissions applications, and that when they verify the information, it is for in-state tuition and financial aid purposes, in the Admissions or Student Accounts office. The schools averaged 2.9 full time staff to perform verification, while the task as it relates to undocumented students took less than 20

¹¹⁹ See Appendix, NY-53.

¹²⁰ Information regarding this complaint is available at the Washington Legal Foundation website at <http://www.wlf.org/Litigating/casedetail.asp?detail=371>.

percent of the staff time, at an average cost of less than 20 percent of \$17,000. They split between student self-reporting and document submission, such as passports.

If verification is not completed, what are the student sanctions, and who administers them?

From the survey results, it appears that students who do not complete the process are charged a higher tuition.

If verification of a student's status as an undocumented student is not completed, are there specific sanctions imposed upon the college?

Our research did not identify specific sanctions that may be imposed upon an institution for failure to abide by the New York requirements relating to admission and to awarding in-state tuition. In New York, the colleges and universities are generally subject to oversight from the New York State Education Department (NYSED). New York law provides that the NYSED Commission is required to “enforce all general and special laws relating to the educational system of the state and execute all educational policies determined upon by the board of regents.”¹²¹ NYSED is also authorized to “examine or inspect” any school or institution to ensure that the institution is compliant with applicable laws.

What reporting requirements exist?

The New York State Education Department's Office of Research and Information Systems collects data from all postsecondary institutions regarding enrollment and state of residence of new students. However, we did not identify any reporting obligations or requirements specific to the admission of undocumented students.

¹²¹ N.Y. Educ. Law §305(1) (2008).

SOUTH CAROLINA

State Agencies:

South Carolina Commission on Higher Education: This Commission serves as the coordinating board for South Carolina's 33 public institutions of higher learning.

South Carolina State Board for Technical & Comprehensive Evaluation: This Board operates the South Carolina Technical College System, a statewide system which includes 16 technical colleges.

Is there a policy to admit or not to admit undocumented immigrants into curriculum programs at public colleges?

Yes. Undocumented students may not be admitted to South Carolina institutions of higher education. South Carolina is the only state of those surveyed to adopt a law which provides that "an alien unlawfully present in the United States is not eligible to attend a public institution of higher learning in this State."¹²²

If undocumented immigrants are admitted, do they pay in-state or out-of state tuition?

Undocumented students are not eligible for in-state tuition.

- South Carolina law provides that "an alien unlawfully in the United States is not eligible on the basis of residence for a public higher education benefit including, but not limited to, scholarships, financial aid, grants, or resident tuition."¹²³
- Non-resident aliens, non-citizens, and non-permanent residents with lawful status pay the out-of-state tuition rate.¹²⁴

Are undocumented students defined? If so, how?

The statute refers to an undocumented student as "an alien unlawfully present in the United States."¹²⁵

In order for undocumented immigrants to qualify, what additional criteria or conditions must be satisfied? What disclosure and documentation must they provide?

South Carolina's statute requires that institutions of higher education must verify an alien's immigration status with the federal government pursuant to 8 U.S.C. §1373(C), a provision of

¹²² S.C. Code Ann. §59-101-430(A) (2008).

¹²³ S.C. Code Ann. §59-101-430(B) (2008).

¹²⁴ S.C. Code Ann. Regs. §62-604 (2008).

¹²⁵ S.C. Code Ann. §59-101-430 (2008).

the Illegal Immigration Reform and Immigration Responsibility Act of 1996, and must not rely on local verification processes. The federal law requires the Department of Homeland Security to respond to any inquiry “by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency” for any lawful purpose.¹²⁶ To implement this provision, the Department of Homeland Security developed the SAVE program described in the introductory section.

What pending legislation, judicial proceedings, or Attorney General opinions, if any, exist with regard to the admission of undocumented students?

None identified.

What are the verification processes to determine who is “lawfully present”? What are the estimated costs of that process?

As described above, an alien’s immigration status must be verified using the SAVE system. The South Carolina statute prohibits institutional personnel from acting to “independently verify the immigration status of any alien.”¹²⁷ The SAVE system charges a minimum of \$25 per month, and up to \$1.00 per transaction.

As required by law, South Carolina colleges collect information about citizenship and residency status on the admission application and verify all non-citizen applicants for determination of admission, tuition, and student aid through the SAVE system, which requires information from a birth certificate or passport. The task may be accomplished in the Admissions or Registrar’s office, and typically uses 1.4 full time staff, which the colleges report as inadequate to the task.

If verification is not completed, what are the student sanctions, and who administers them?

Under South Carolina law, each state institution is required to designate an official to administer its tuition & residency determination process.¹²⁸ The South Carolina statute provides that where it appears “to the satisfaction of the officials” that an individual has “gained domiciliary status improperly or by making or presenting willful misrepresentations of fact, such persons shall be charged tuition and fees past due and unpaid at the out-of-state rate, plus interest at a rate of 8% per annum, plus a penalty amounting to 25% of the out-of-state rate for one semester; and until these charges have been paid no such student shall be allowed to receive transcripts or graduate from any State institution.”¹²⁹

If verification of a student’s status as an undocumented student is not completed, are there specific sanctions imposed on the college?

¹²⁶ 8 U.S.C. § 1373(c) (2008).

¹²⁷ S.C. Code Ann. §59-101-430(A) (2008).

¹²⁸ S.C. Code Ann. §59-112-80 (2008).

¹²⁹ S.C. Code Ann. §59-112-90 (2008).

Our research did not identify specific statutory or regulatory provision sanctioning colleges for failure to abide by the prohibition against the admission of undocumented students to South Carolina institutions. Institutions of higher education are required to complete an annual audit and quality review process.¹³⁰

What reporting requirements exist?

Our research did not identify any reporting obligations or requirements specifically addressing the admission of undocumented students. Each public institution of higher education is required to annually report the number of out-of-state undergraduate students in attendance, no later than September 15 of each year.¹³¹

¹³⁰ S.C. Code Ann. §59-101-660 (2008).

¹³¹ S.C. Code Ann. §59-101-420 (2008).

TEXAS

State Agencies:

Texas Higher Education Coordinating Board: The Board provides leadership and coordination for the Texas higher education system. The Board oversees the certificate, baccalaureate, master's, and doctoral programs offered by Texas public universities and health-related institutions. The Board also oversees and coordinates the operation of local community and technical colleges.

Is there a policy to admit or not to admit undocumented immigrants into curriculum programs at public colleges?

Yes. Undocumented students may be admitted to Texas universities and public colleges.

- The admission standards for the public universities are not based on the student's immigration status. For the general academic universities, Texas has adopted admission standards for students based on a student's high school academic standing, the student's academic record, and other factors.¹³²
- Public community colleges in Texas have open admission policies.¹³³

If undocumented immigrants are admitted, do they pay in-state or out-of state tuition?

An undocumented student may qualify as a Texas resident and pay in-state tuition, if:

- The student graduated from a Texas high school or received a Texas GED;
- Maintained a residence in the state for three years prior to the date of the student's high school graduation;
- Maintained a residence in the state for one year prior to the census date for the academic term that the student will attend.¹³⁴

An undocumented student that meets these criteria must file an affidavit stating the person will apply to become a permanent resident as soon as the person becomes eligible to apply.¹³⁵

Are undocumented students defined? If so, how?

The Texas statute refers to persons that are "not a citizen or permanent resident of the United States" as those individuals required to file an affidavit in order to obtain in-state tuition.¹³⁶

¹³² Tex. Educ. Code Ann. §51.803, 51.804, 51.805 (2008).

¹³³ 19 Tex. Admin. Code §9.53 (2008).

¹³⁴ Tex. Educ. Code Ann. §54.052, 54.053(3)(B) (2008).

¹³⁵ See Appendix, TX-65 for sample form.

In order for undocumented immigrants to qualify, what additional criteria or conditions must be satisfied? What disclosure and documentation must they provide?

The undocumented student must file an affidavit as described above.

What pending legislation, judicial proceedings, or Attorney General opinions, if any, exist with regard to the admission of undocumented students?

There are two bills in the 2009 legislative session related to undocumented students. There is also a pending complaint filed by the Washington Legal Foundation with the Department of Homeland Security.

- H.B. 255 would repeal Texas' current law allowing undocumented immigrants to attend and qualify for in-state tuition at postsecondary institutions. Under the proposed bill, no institution of higher education could admit an applicant unless the applicant submits documentation verifying the applicant is authorized by law to be present in the United States.
- H.B. 266 would require that all students' immigration status be verified before receiving any public benefits, including educational benefits. The bill would grandfather undocumented students admitted to an institution of higher education prior to the 2009-2010 academic year under the current standards. Both bills have been referred to committees in the Texas Legislature.
- On August 9, 2005, the Washington Legal Foundation filed a formal complaint with the Department of Homeland Security (DHS) against Texas, charging that Texas is violating the civil rights of U.S. citizens who live outside the State. WLF charged that Texas is violating federal law by offering in-state college tuition rates to illegal aliens who live in Texas, while denying those same rates to U.S. citizens who are not Texas residents. WLF called on DHS to bring appropriate enforcement action against Texas, including ordering Texas to refund excessive tuition charges. To date, no further action has been taken by the Department of Homeland Security.¹³⁷

What are the verification processes to determine who is “lawfully present”? What are the estimated costs of that process?

Texas colleges report that they routinely collect information about applicants' citizenship and residency status on the admission application, and verify that information for tuition and financial aid purposes through self-reporting and/or the submission of evidence such as a birth certificate or a passport to the Admissions or Registrar's offices¹³⁸. They report an average full time staff of 6.9, at a cost of \$27,000, who spend less than 20 percent of their time on undocumented students, which they report is adequate

¹³⁶ Tex. Educ. Code Ann. §54.053(3)(B) (2008).

¹³⁷ Information regarding this complaint is available at the Washington Legal Foundation website at www.wlf.org.

¹³⁸ Appendix D.

A 2005 report by the Texas comptroller estimated that after the passage of Section 54.52(j), the enrollment of students receiving in-state rates increased almost 10 times, from a total of 393 to 3792 statewide, more than 75% of whom attended community colleges. However, not all of these students were undocumented¹³⁹.

If verification is not completed, what are the student sanctions, and who administers them?

Texas law, supported by survey results, provides that if an individual is erroneously classified as a Texas resident, the institution of higher education must charge the student out-of-state tuition beginning with the first academic term after the institution discovers the error.¹⁴⁰

If a person fails to provide requested information, or provides false information about his or her residency status, the person will then be required to pay the difference between the in-state and out-of-state tuition for each academic term for which the person had paid in-state tuition.¹⁴¹ The individual must pay the amount owed within 30 days of receiving notice from the institution of higher education. The institution of higher education can withhold the student's certificate or diploma or transcript if the liability is not paid.

If verification of a student's status as an undocumented student is not completed, are there specific sanctions imposed on the college?

Our research did not identify specific sanctions that may be imposed on an institution for failure to abide by the Texas requirements relating to admission and to awarding in-state tuition. In general, the Texas Higher Education Coordinating Board is required to monitor and coordinate the activities of component institutions and evaluate the performance of the institutions.¹⁴² The Board is also required to report if any institution of higher education fails to comply with its rules and regulations.¹⁴³

What reporting requirements exist?

Schools are required to provide enrollment reports to the Texas Higher Education Coordinating Board.¹⁴⁴ However, the statute and regulations do not specify that the institution must break out the number of undocumented students in these reports, but according to the survey, the colleges do report information concerning the number of undocumented students as part of the enrollment reports¹⁴⁵.

¹³⁹ Strayhorn. C.K. Special Report: Undocumented Immigrants in Texas, Dec 2006, p. 5

¹⁴⁰ Tex. Educ. Code Ann. §54.056 (2008).

¹⁴¹ Tex. Educ. Code Ann. §54.057 (2008).

¹⁴² Tex. Educ. Code Ann. §51.353 (2008).

¹⁴³ Tex. Educ. Code Ann. §51.045 (2008).

¹⁴⁴ Tex. Educ. Code Ann. §51.403 (2008); Tex. Educ. Code Ann. §130.0036 (2008).

¹⁴⁵ Appendix D.

VIRGINIA

State Agencies:

State Council for Higher Education for Virginia: The State Council of Higher Education for Virginia (SCHEV) is the Commonwealth's coordinating body for higher education. SCHEV makes higher education public policy recommendations to the Governor and General Assembly in such areas as capital and operating budget planning, enrollment projections, institutional technology needs, and student financial aid.

Virginia State Board for Community Colleges: This Board administers the Virginia Community College System.

Is there a policy to admit or not to admit undocumented immigrants into curriculum programs at public colleges?

Yes. Virginia law provides that the board of visitors or other governing body of each institution is authorized to establish rules and regulations for the acceptance and assistance of students.¹⁴⁶ The statute does not include specific admission requirements relating to the citizenship or immigration status of prospective students. However, the Virginia Attorney General issued an opinion in 2002 recommending that institutions “prohibit the enrollment of undocumented aliens, illegal aliens and those without proper visas.”¹⁴⁷ According to news reports, a SCHEV poll in early 2008 revealed that four of the fifteen Virginia colleges and universities admit undocumented students.¹⁴⁸ Some community colleges also accept undocumented students, but will charge those students out-of-state tuition.¹⁴⁹

If undocumented immigrants are admitted, do they pay in-state or out-of state tuition?

Undocumented students are not eligible for in-state tuition.¹⁵⁰

Are undocumented students defined? If so, how?

Virginia regulations refer to undocumented students as “students unable to present valid, current INS documentation of their alien status.”¹⁵¹

¹⁴⁶ Va. Code. Ann. §23-9.2:3 (2008); Va. Code Ann. §23-9.6:1 (2008).

¹⁴⁷ Immigration Law Compliance Update, prepared by Alison P. Landry, Assistant Attorney General, dated September 5, 2002.

¹⁴⁸“ODE defends its policy on undocumented students,” by Julian Walker and Matthew Bowers, Virginia Pilot, January 18, 2008.

¹⁴⁹ See Northern Virginia Community College Administrative Counsel meeting minutes, September 8, 2003. See 2008-2009 NVCC Catalog referencing undocumented students not eligible for in-state tuition.

¹⁵⁰ 8 VAC 40-120-110(I) (2008).

¹⁵¹ 8 VAC 40-120-110(I) (2008).

In order for undocumented immigrants to qualify, what additional criteria or conditions must be satisfied? What disclosure and documentation must they provide?

Any additional requirements imposed on undocumented immigrants to qualify for admission are the decision of the individual institutions of higher education, and were not reviewed in this survey. As noted above, undocumented immigrants are not eligible for in-state tuition.

What pending legislation, judicial proceedings, or Attorney General opinions, if any, exist with regard to the admission of undocumented students?

One bill, S.B. 1037, was introduced in the current session of the Virginia legislature. The proposed legislation would permit an undocumented student to receive in-state tuition if the applicant:

- 1) Resides with parent, guardian or other person standing as *loco in parentis* while attending a high school in the state;
- 2) Graduated or received a GED from a school in the state;
- 3) Lived in the state for 3 years as of the date of graduation from high school, or 1 year if a veteran or active duty military;
- 4) Has registered as a student entering a postsecondary institution;
- 5) Provides an affidavit indicating the student has filed an application to become a permanent resident, or will do so as soon as he/she is eligible; and
- 6) Submitted evidence that he/she or parent/guardian has paid VA tax returns for 3 years prior to entrance into higher education institution.

S.B. 1037 passed the Virginia Senate on January 26, 2009 and is currently referred to the Virginia House Subcommittee on Education.

What are the verification processes to determine who is “lawfully present”? What are the estimated costs of that process?

Aliens or immigrants with a lawful immigration status are required to present valid, current INS documentation of their status to establish eligibility for in-state tuition.¹⁵² All Virginia colleges report asking for citizenship and residency status at the time of the student’s application for admission, which is typically handled by the Admissions Office, at a cost of \$18,000 for 1.7 staff, while the task for undocumented students takes less than 20 percent of their time¹⁵³.

If verification is not completed, what are the student sanctions, and who administers them?

Virginia law provides that it is the student’s responsibility to register under the proper domicile classification for purposes of determining eligibility for in-state tuition.¹⁵⁴ Failure to provide

¹⁵² 8 VAC 40-120-110 (2008).

¹⁵³ Appendix D.

¹⁵⁴ 8 VAC 40-120-140 (2008).

information can result in a student's reclassification. The law further states that a student who knowingly provides erroneous information to evade payment of out-of-state fees shall be charged out-of-state tuition fees for each term attended and may be subject to dismissal from the institution.¹⁵⁵ In the absence of fraud or knowingly providing false information, the student is not responsible for paying the out-of-state tuition differential for terms completed prior to the change in the student's residence status.¹⁵⁶

If verification of a student's status as an undocumented student is not completed, are there specific sanctions imposed on the college?

Our research did not identify any specific sanctions that would be imposed upon an institution for failure to abide by standards relating to undocumented students. Virginia institutions are generally required to abide by all SCHEV rules and regulations.¹⁵⁷ Colleges and universities, as well as community colleges, are also measured by their performance on specific performance benchmarks and are required to complete an annual assessment of institutional compliance which may examine the college's admissions and tuition decisions.

What reporting requirements exist?

Our research did not identify data reporting requirements related to the citizenship of the students. Virginia law authorizes SCHEV to develop a comprehensive information database. Public and not-for-profit private institutions are required to submit data to SCHEV, including data on admissions, degrees conferred, courses, enrollments, financial aid, and any other information requested by SCHEV. The enrollment reports provide information on numbers of in-state and out-of-state students, as well as data on the domicile of new undergraduates.¹⁵⁸

¹⁵⁵ Va. Code Ann. §23-7.4(D) (2008); 8 VAC 40-120-130 (2008).

¹⁵⁶ 8 VAC 40-120-120(C)(2) (2008).

¹⁵⁷ Va. Code Ann. §23-9.6:1 (2008).

¹⁵⁸ Va. Code Ann. § 23-9.6:1 (9) (2008). Student data are available at SCHEV's website at: <http://research.schev.edu/topicpages.asp>.