

NEBRASKA
Appleseed

*A decade of sowing
the seeds of justice.*

Educational Opportunity for Undocumented Students

An Overview of In State Tuition Laws

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Core Values Common Ground Equal Justice

What is Nebraska Appleseed?

- Affiliate of the Appleseed Foundation
- Founded in 1996 by leaders of the Nebraska Bar Association
- 2006- 10 year celebration- Appleseed @ 10!
- A non-profit non-partisan public interest law firm that is committed to equal justice for all Nebraskans.
- Mission: To achieve systemic change for underrepresented constituencies
- Strategies: Class Action litigation, Impact litigation, Public Policy Advocacy, Community Outreach & Education
- Staff: lawyers, social workers, community organizers, law students, and webmasters. We join our skills with civic and community-based organization leaders, other professionals, and community members to seek lasting solutions to public interest problems

Nebraska Appleseed Programs

- Low Income Self Sufficiency
- Immigrant Integration & Civic Participation
- Children in Need of Protection
- Access to Justice
- Building Democracy

Relevant Terminology & Basics

- Immigration policy is solely a federal issue
- Educational policy is historically a state issue
- Undocumented Immigrant
- Mixed Status Family
- Legal Immigrant
- DREAM ACT
- ICE/INS
- Asylees/Refugees

Immigration Statistics- National

- The United States: A nation of immigrants.
- Today there are over 34 million foreign-born in the U.S.
- During the last decade, nine of twelve Midwest states had foreign-born populations that grew faster than the national average.
- New immigrants accounted for one out of two new workers added to the U.S. economy since 1995
- New immigrants contributed at least 60% of the growth in the nation's labor force between 2000 and 2004
- 85% of immigrant families with children are "mixed legal status" families
- The undocumented population in United States now estimated between 9 and 12 million, with hundreds of thousands entering the United States illegally each year or violating the terms of their visas

Immigration Statistics- Nebraska

- Total foreign-born population growth rate in Nebraska was 165% from 1990-2000. This is the 7th highest in the country. Urban Institute Analysis of 1990-2000 US Census Data
- The undocumented immigrant population in Nebraska grew from 6,000 in 1990 to 24,000 in 2000. Pew Hispanic Center
- The estimated population of undocumented immigrants in Nebraska today is anywhere from 33-55 thousand. Pew Hispanic Center
- The overall share of the immigrant population living in the six "major destination" states (California, New York, Texas, Florida, New Jersey, Illinois) declined from 75% in 1990 to 68% in 2000. Urban Institute
- The immigrant population in 22 "new growth" states increased by 145% from 1990 to 2000, while nationwide it grew by 57%. US Census Bureau
- In 2005, 20% of Nebraska's kindergarten classes are Latino. J.B. Milliken, President, University of Nebraska, Lincoln Journal Star 10-18-2005

Overview of In State Tuition Laws

- Federal law provides that it is up to states to decide whether or not to provide access to in state tuition benefits to undocumented students who are residents of their states 8 USC § 1621(d)
- 10 States Extend In State Tuition (California, Texas, New York, Utah, Washington, Oklahoma, Illinois, Kansas, New Mexico, Nebraska)*
- In 2006 48 bills were introduced in 20 states on various matters related to immigrants and educational access*
- Lawsuits have been filed challenging states rights to provide these benefits to undocumented students. These cases are at various stages of appeal. As of today these challenges have not been successful on any legal theory at any stage of litigation.
- *National Conference of State Legislatures, www.ncsl.org

Why In State Tuition Laws Are Important

- Existing Barriers to Access Higher Education for Undocumented Students
 - Lack of knowledge about in state tuition laws
 - Lack of ability to qualify for all federal student loans and grants
 - Not necessarily prohibited from receiving state grants & scholarships but need to check eligibility requirements
 - Fear of deportation
 - Inability to secure work during or upon graduation
 - Cost prohibitive
 - University of Nebraska-Lincoln 2005-2006
 - Resident Credit Hour Tuition: \$151.00
 - Non-Resident Credit Hour Tuition: \$448.00

Arguments in Favor of In State Tuition Laws

- This is an education issue-not an immigration issue. The new Nebraska law does not give undocumented students any state or federal residency rights but rather provides and exemption for their ability to access post secondary education at in state tuition rates.
- This is not just a Latino issue. This affects many students from a diverse set of cultures.
- Students are a resource to our state. Many immigrant populations have a much higher high school drop out rate than Caucasian counterparts because of barriers to advance beyond high school previously under Nebraska law.
- This legislation does not take away from other students or deplete state resources.
- Estimated to affect 100-200 students per year statewide. Jerry Deichert, University of Nebraska-Omaha
- We should finish the job. *Plyler v. Doe*, held that to deny undocumented students the same access to our K-12 public schools violated the 14th amendment and would create a permanent "underclass" of citizens and would punish these children for the acts of their parents. US Supreme Court (1982)
- It makes good business sense. Do we want our future contributing to our economy on a university level or a GED level?

Supporters of In State Tuition in Nebraska

- Legislation Sponsors: Schimek (27), Aguilar (35), Combs (32), Kruse (13), Preister (5), Synowiecki (7)
- Catholic Charities
- Center for People in Need
- Chicano Awareness Center
- Coordinating Commission for Postsecondary Education
- Hanscom Park United Methodist Church
- Immigrants Rights Network of Iowa and Nebraska
- Latino Police Officers Association, Omaha Chapter
- Lincoln Hispanic Community Center
- Mexican American Commission
- National Association of Social Workers, Nebraska Chapter
- Nebraska Appleseed Center
- Nebraska Association of School Boards
- Nebraska Catholic Conference
- Nebraska Community College Association
- Nebraska Council of School Administrators
- Nebraska Department of Education
- Nebraska State College System
- Nebraska State Education Association
- Omaha Together One Community
- The Gallup Organization
- University of Nebraska

Why This Law is Good for Nebraska

- **Truly Bi-Partisan Effort:**

Many long-time Senators from both political parties rose to endorse this policy change based on fairness and decency. LB 239 says to the young immigrants growing up in our towns and cities and graduating from Nebraska high schools that we know your future is bright here, and as a state we will give you the opportunity to fully pursue it.

- **Practical Impact:**

LB 239 will quickly help a few hundred future engineers and business leaders and other professionals access higher education and in the long run it will provide important tax benefits to the State.

- **Symbolic Impact:**

This vote reflects the potential for common ground that exists among Nebraskans on difficult social problems. According to the *Washington Post*, "Perhaps the most intriguing, and gratifying, aspect of the Nebraska debate, though, is the suggestion that the rising tide of illegal immigration can produce rational policy rather than unthinking backlash."

Nebraska's In State Tuition Law

Legal Requirements: LB 239

- Student must have lived with a parent, guardian, or conservator while attending a public or private high school in Nebraska, and
- Student must graduate from a Nebraska public or private high school or receive the equivalent of a high school diploma in Nebraska, and
- Student must have resided in Nebraska for at least 3 years before the date they graduate from the high school or receive the equivalent of a high school diploma, and
- Student must be registered as an entering student in a state post secondary educational institution not earlier than the 2006 fall semester, and
- Student must provide to the state post secondary educational institution an affidavit stating that he or she will file an application to become a permanent resident at the earliest opportunity he or she is eligible to do so, or
- If the parent, guardian, or conservator with whom the student resides ceases to reside in Nebraska student can retain resident status if the student has a bona fide intention to make this state his or her permanent residence, supported by documentary proof

Implementation Issues-

Legal Requirements for the Affidavit

- Generally "an affidavit is a written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to Administer such oath or affirmation." State v. Haase 247 Neb. 817 (1995). See also; N.R.S. § 25-1241 and Bantley v. Finney, 43 Neb. 794 (1895)
- Affiant must sign affidavit in presence of notary. N.R.S. § 64-105
- Affiant must be personally known to the notary or identified by the notary through satisfactory evidence Which includes; a government ID that is current and that bears a photo image of the individuals face, their signature, and a physical description of the individual; or a properly stamped passport without physical description; or notarized affirmation from one credible witness unaffected by the transaction who knows the notary or the affiant; or notarized affirmation of two witnesses unaffected by the transaction who each personally knows the affiant and shows the notary proper identification of themselves as previously described. N.R.S. § 64-105
- A notary is disqualified from notarizing the affidavit if they are related to the affiant. N.R.S § 64-105.01
- The notary must be an official notary in Nebraska. N.R.S §64-107
- It is recommended that there be at least one person at each educational institution who is an authorized notary. This will make the process much easier for the student to accomplish and limit the number of people the student may have to identify their immigration status to.

Implementation Issues- Legal Requirements for the Affidavit

- Who can file an affidavit?
 - A prospective student that is 19 years or older can effectuate an affidavit. Nebraska age of majority is 19 N.R.S. §43-245
 - A prospective student who is at 18 can most likely effectuate an affidavit. We argue this is possible because an 18 year old in Nebraska can effectuate a will or can sign a self proving affidavit as a witness to a will at 18 years old N.R.S § 30-2329
 - A prospective student who is 18 years old or younger could probably effectuate an affidavit. We argue this is possible because under Nebraska law a minor can contract for necessities like food, housing, and education. However, in order to cover all the bases you could decide to have a parent, guardian, or conservator the sign affidavit too if the student is 17 years old or younger. N.R.S. §25-307
 - A prospective student that is 18 or younger and either married, emancipated, or in the military could effectuate the affidavit. See; N.R.S. § 2101; Accent Service Co. V. Ebsen, 209 Neb. 94 (1981)

Sample Affidavit

STATE OF NEBRASKA

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)ss.

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COUNTY

COMES NOW, _____, a prospective student at _____,
(Student Name) (Name of Educational Institution)

and hereby swears, or affirms, under penalty of perjury; that I am a United States citizen, or a legal permanent resident, or not yet a legal permanent resident that will apply to adjust my status as soon as I am eligible to do so; that I have lived in Nebraska for at least three years with my parent(s), guardian, or conservator; that I have graduated from a Nebraska high school; and therefore qualify for in-state tuition rates.

Subscribed and sworn to before me on this _____ day of _____ 200____.

Notary Public

Implementation Issues-

How to Protect Student Privacy

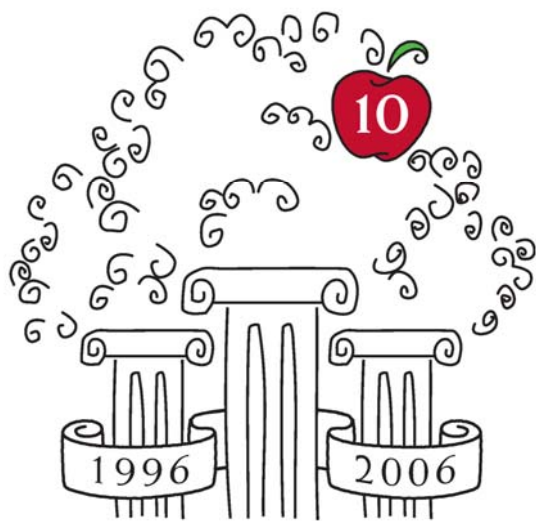
- How do we protect this information?
- Federal Law-student records/privacy
20 USCS § 1232g (The Family Educational Privacy Act) holds any documents that contain information directly related to the student and maintained by an educational agency can not be released generally without a subpoena. Violations result in loss of federal funding for the institution.
- State Law-student records/privacy
N.R.S. § 79-2104 holds that no one other than the student, his parents, or school administrators can access their records without consent unless needed for a government audit.

Other Implementation Issues To Think About

- Re-draft admission applications in hard copy and online at each educational institution to address the new in state tuition law
- Consider translating relevant admissions documents in different languages
- Discuss issues with admissions office or legal counsel about addressing student identification issues (no SSN available, suggest student apply for ITIN-which also has benefits when eligible to adjust status)
- Students admitted to an educational facility under LB 239 should not be entered into the Student & Exchange Visitor Information System (SEVIS) database
- This law does not apply to students who are currently enrolled and may be undocumented and receiving in state tuition rates or students who are currently with status but may lose status later
- The in state tuition law takes effect July 14, 2006

Additional Resources

- Education Quest, www.educationquest.org
- Nebraska Mexican American Commission,
<http://www.mex-amer.state.ne.us/>
- National Immigration Law Center,
www.nilc.org
- National Conference of State Legislatures,
www.ncsl.org



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