

Undocumented Immigrant Students: A Very Brief Overview of Access to Higher Education In California

Until the 1990's, undocumented immigrant students were allowed to attend California's colleges and universities as state residents if they could demonstrate that they had lived in the state for a year and a day prior to application and intended to make California their home.¹ This is the same standard used for other students seeking resident classification. The classification as a state resident is significant because it determines the amount of tuition a student must pay, and the difference between resident and non-resident tuition often means the difference between attending and not attending college.

There were challenges to this open-door policy for undocumented immigrants, but in 1985 immigrant students won a court order that held that the Education Code precluding undocumented students from establishing residence is unconstitutional and that these students could establish state residence for tuition purposes for both the University of California (UC) and California State University (CSU) systems.² Neither UC nor CSU appealed this state district court decision, and both segments allowed undocumented students to be classified as state residents if they could show that they had lived in the state for at least a year and intended to make it their residence.

Advocates for immigrant students formed a coalition called the Leticia A. Network, named after the student in the successful state district court case. Composed of counselors, teachers and employees from all three higher education segments, community advocates, students, parents, and civil rights advocates, the Network exchanged information on the policies and practices at different campuses across the state concerning the classification of undocumented students. The Network was instrumental in ensuring that the *Leticia A.* court order was widely known and followed.

A few years later, a UC employee in the registrar's office named Bradford sued UC in an employment action, claiming that he had been forced to quit because he would not follow the *Leticia A.* order. He won an injunction against UC, which UC began implementing in fall 1991, allowing continuing undocumented students as of June 1991 to keep their resident classification but requiring newly enrolled undocumented students to be classified as non-residents.³

The California Student Aid Commission adopted the *Bradford* ruling in spring 1992, and stopped awarding Cal Grants to undocumented students. The California Community Colleges (CCC) was not named in the *Bradford* case, but it issued guidelines interpreting *Bradford* in February 1992. The CCC guidelines allowed continuing students as of fall 1991 to keep their resident classification, but it applied the new classification procedures to newly enrolled undocumented

¹ California Education Code, sections 68017, 68061.

² *Leticia A. v. Board of Regents*, No. 588982-4 (Superior Court, County of Alameda, May 7, 1985). California Education Code § 68062(h) states:

An alien, including an unmarried minor alien, may establish his or her residence, unless precluded by the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) from establishing domicile in the United States.

³ *Regents of University of California v. Superior Court (Bradford)* (1990) 225 Cal.App.3d 972, *reh. den.* (1991)

students after February 1992. The forces behind the *Bradford* litigation sued CSU and won an injunction in 1992, which CSU appealed but lost.⁴ In spring 1995, CSU began implementing the court order.

All three segments of public higher education in California were effectively closed off to newly enrolling undocumented immigrant students. The Leticia A. Network continued its advocacy to protect higher education access for immigrants students, fighting off legislative proposals to preclude legal immigrants from establishing state residency, prohibiting enrollment of undocumented immigrants, or requiring citizenship verification procedures. There were a number of legislative efforts to change state law, but in the pre-Proposition 187 years, they failed.

With the passage of Proposition 187 in 1994, all seemed lost. Proposition 187 prohibited undocumented students from attending *all* public schools, from kindergarten through college and university level. Civil rights organizations immediately challenged the constitutionality of Proposition 187. In 1999, Governor Davis announced that the state would drop its appeal of a federal court's opinion that the initiative is unconstitutional, voiding Proposition 187. While undocumented immigrant students were still allowed to attend California's colleges and universities, the *Bradford* case remained the legal rule -- regardless of how long they lived in California, they were required to pay non-resident tuition, over three times the rate that their high school classmates paid. This usually meant they could not afford the opportunity of a higher education, a loss to them and the state, especially considering they were academically eligible.

After suffering a veto of AB 1197 (Firebaugh) in 2000, advocates statewide continued to press for legislation. In 2001, Governor Davis signed AB 540 (Firebaugh/Maldonado). The bill exempts undocumented immigrant students from paying out-of-state tuition if they have attended California's high schools for three years and graduated from a California high school. While this relief does not classify undocumented students as residents, the out-of-state tuition exemption has the practical effect of making a higher education more accessible financially.⁵ Despite the enactment of policies at all three systems of higher education implementing AB 540, many students and counselors still do not know about this exemption.

About the author: Liz Guillen is Policy Advocate for Public Advocates, Inc. See our website at www.publicadvocates.org. Liz wrote this overview for community-based advocates based on her work as a Staff Attorney and then Legislative Counsel at the Mexican American Legal Defense and Educational Fund. This overview is intended as a chronology. Many, many people and organizations that are not mentioned contributed to the ultimate success of AB 540. For more information about the implementation of AB 540, Liz highly recommends MALDEF's website at www.maldef.org.

⁴ *American Association of Women v. Board of Trustees of CSU*, (1995) 38 Cal. Rptr. 2d 15.

⁵ Undocumented students are not eligible for state or federal financial aid, so for many immigrant students, even an out-of-state tuition waiver is not enough to make college or university a reality.