



## Gaining Visibility

What are we doing for them? What should we do? What can we do?

### Who is included in the “community” that our community colleges serve?

This question demands special attention, since last May Day when, across the country, millions marched in support of undocumented immigrant workers. While historical circumstances ensured that these workers and their families have always been an important part of the California community, in recent years there has been a growing awareness of the significance of this group in other parts of the country. Heightened awareness has focused attention on long-standing controversies over the role of long-term resident immigrants, both documented and undocumented, in our communities.

Access to public services, education among them, takes center stage, raising questions about who is entitled and who pays for these services. The state’s policies of open access and tax support

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of the California community colleges place them in a crucial position on these questions, and eligibility for in-state fees is an important concern. Immigrants not precluded from establishing domicile in the United States are eligible to establish residency in California for the purpose of qualifying for lower in-state community college fees. Immigrants are precluded from establishing domicile if they entered the country illegally (undocumented) or under visas for a temporary purpose (like international students), or under any visa requiring that a residence be maintained outside the United States. Those who have taken the appropriate steps to obtain a change in status to allow them to establish domicile may be granted resident status.

It takes “a year and a day” of residence in California for those eligible to qualify for in-state fees, but this leaves long-term undocumented immigrants in an awkward position. Despite living and working in the state for most of their lives, undocumented immigrants have little, if any, chance of gaining the right to establish domicile. As a result, they face both the risk of exposure of their status and the financial burden of out-of-state fees when they seek to continue their education beyond high school.

The Legislature addressed this situation with AB 540, authored by the late Assemblymember Marco Firebaugh, himself a native of Mexico. Governor Gray Davis signed the bill into law in 2001. This landmark legislation exempts resident, non-citizen students from higher non-resident fees at the community colleges, the University of California and California State University campuses and protects their confidentiality. It is important to note that AB 540 gives no immigration benefit, and resident non-citizen students remain ineligible for any state or federal financial aid. Obtaining an exemption under AB 540 applies only if three conditions are met:

- 1) the student must have attended a high school in California for three or more years;
- 2) the student must have graduated from a California high school or attained the equivalent of a high school diploma;
- 3) any student without immigration status must file an affidavit with the college or university stating that he or she applied to legalize his or her status or will do so as soon as he or she is eligible to do so.

The program is designed to address the needs of long-term non-citizen students who intend to continue to live and work in the United States.

A student who has received a certificate of completion instead of a regular high school diploma meets the second condition. The California Community College Chancellor's Office has issued a legal opinion on this point, concluding "that a certificate of completion or similar document issued by a high school is acceptable as evidence that a student has attained the equivalent of a graduation from a California high school for purposes of section 68130.5" (AB 540). The certificate must certify that the student has completed the course of study and met the proficiency standards prescribed by the governing board of the high school district. Regarding the third condition, immigrant students must affirm the intent to apply for legalization once he/she is eligible. Students should not misrepresent their status as this can prevent the ability to obtain lawful immigration status in the future.

Passage of AB 540 underscores recognition of the benefit to the state of helping college bound immigrant students tap their economic potential, regardless of their status. California has already invested in educating this population in the K-12 system. The community colleges offer the next step toward an educated and skilled workforce that will bring higher state and federal tax revenues and increased buying power for consumer goods. California is not the only state to take this point of view. Nine other states allow undocumented, resident students to pay in-state fees: Texas, Utah, Washington, New York, Oklahoma, Illinois, Nebraska, New Mexico and Kansas.

Nevertheless, the notion remains controversial, and there are strong forces aligned against any kind of public assistance to non-citizens, especially undocumented immigrants. Every year, some members in the California state Legislature attempt to repeal AB 540 — so far, without success. In 2005, AB 540 was challenged in Yolo County Superior Court on grounds that it violates federal law insofar as "an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State ... for any postsecondary education benefit unless a citizen or national is eligible for such a benefit." Defenders maintain that AB 540 complies with federal law in that states are not precluded from providing in-state tuition to undocumented residents so long as non-residents in like circumstances also qualify. The challenger lost a similar lawsuit in Kansas; nevertheless, the California case is active, and the issue has not yet gone to trial.

Despite these challenges, AB 540 supporters hope to increase enrollment of resident non-citizens in the community colleges. The impact on the undocumented community is significant. According to the Pew Hispanic Center, in March 2006, there were nearly 12 million undocumented immigrants in the United States with most of these in California (2.7 million). *San Francisco Chronicle* writer Louis Freedberg reported (January 30, 2006) that 25,000 undocumented immigrants graduate from California high schools each year, yet less than 7,000 enroll in community colleges. Enrollment figures are much lower for UC and CSU.

In answer to critics who see wider access to higher education as a drain on limited resources, proponents point to reports from the National Law Immigration Center showing that, nationwide, undocumented immigrants account for less than 2 percent of this year's high school graduating class. So, while access to higher education through measures like AB 540 can make a huge difference in the immigrant community, it has a minor impact on the system overall. The sad truth is that only a fraction will attend college even if granted in-state tuition. While reasons vary for choosing not to attend community college upon graduation from high school, cost remains a significant factor for California's poorest families. According to David Hayes-Bautista, Professor of Medicine and Director for Latino Health at UCLA, Latinos living in the United States have the highest level of workforce participation yet suffer from the highest poverty level of any segment of American society. As a result, such potential students — whether citizens or non-citizens, documented or undocumented — find it difficult to pursue higher education.

Financial issues often place limits on even those documented immigrants who are eligible to wait the "year and a day" it takes to qualify for in-state fees. Many turn to the non-credit classes offered without fees by many of the community colleges in California. Since most immigrants face a language barrier, English as a Second Language (ESL) courses are popular. The colleges have found that it is advantageous to couple such a class with a content course like business or computer technology, establishing a link between the non-credit and mainstream collegiate programs. Unfortunately, many colleges do not have a clear pathway

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leading from their non-credit to their main program. A credit ESL course may be a better choice because it tends to require more independent work outside class than a non-credit course, thereby better preparing the student for higher level work. But, out-of-state fees may keep this option out of the reach of immigrant students for whom the financial burden of in-state fees is challenging enough. Add to the language and financial hurdles the cultural disconnect between the life experience of an immigrant student and the expectations of higher education, and it is easy to see why these students are at risk. Living in undocumented status compounds these problems.

Counselors encounter many examples like Julia (not her real name), a student at a community college, who has earned high marks in most of her classes in high school. Her father is a gardener and her mother cleans homes for a living. Their wages barely pay for food and rent. Julia is the oldest of the children and is expected to contribute toward the family expenses. Because of her undocumented status, Julia, like her parents, is able to work only in the underground economy. Julia attends her local community college under AB 540 but does not qualify for financial aid. Her books cost more than the college fees, and the cost is a heavy burden on the family. As a result, Julia can only afford to go to school for one semester at a time. She must temporarily leave school and work full time to save money to be able to return to school the following semester.

Recognizing these financial pressures, State Senator Gil Cedillo authored SB 160 (the California Dream Act) to further level the playing field by enabling undocumented students to apply for certain types of financial aid. Such students would remain ineligible for both the Federal Pell Grant and Cal Grant, the latter administered by the California Student Aid Commission. The bill would make community college students who are eligible for AB 540 resident fees also eligible for the Board of Governors (BOG) fee waiver. In addition, it makes each higher education institution responsible for creating forms and procedures for undocumented immigrant students to apply for aid.

A wide range of groups support SB 160, including both the Los Angeles and San Francisco Chambers of Commerce. It has the official support of the California Community College system along with FACC, the American Federation of Teachers, the Community College League of California, and several community college districts. Supporters believe the bill may reach the governor's desk. But negative sentiment toward opening public service access to undocumented immigrants leaves the governor's signature in doubt.

At the national level, the Senate version of comprehensive immigration reform, known as the Kennedy/McCain Bill, was amended in the Senate Judiciary Committee to include The DREAM Act: Development, Relief, and Education for "Alien" Minors Act (S. 1291). This is of special interest to those in higher education, because it adjusts the legal status of those students who have lived in the United States for more than five years at the time of high school graduation and demonstrate civic responsibility. Immigrants would initially qualify for "conditional lawful permanent resident" status that would last for about six years. While in this status, immigrants would be required to go to college, join the military, or perform a significant amount of community service. After meeting one of these prescribed thresholds, the immigrant would be eligible for lawful permanent residence. In another respect, the DREAM Act is similar to California's AB 540 in that, while it exempts undocumented students from out of state tuition and fees, these students remain ineligible for financial aid.

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Proponents argue that it makes sense to provide a path to legalization for promising students who have spent much of their lives in the United States. The National Immigration Law Center points out that, in a majority of cases, undocumented students do not qualify for a "green card" or legal residency through normal application channels irrespective of how long they have lived in the United States. Legal grounds for petition have narrowed to a point where it is almost impossible to obtain legal residency. While these issues are a great concern to those who believe children should not be penalized for the acts of their parents, many argue that there should be no rewards for unlawfully crossing the border.

Recent developments have brought all sides of these issues to a common sentiment: something must be done. For the moment, national immigration reform appears to be stalled while the House and Senate meet to negotiate a common version of their respective bills. It is doubtful that much will be accomplished until after the November elections. In the meantime, community colleges need practical policies for college bound resident non-citizen students whether documented or undocumented.

Regardless of the value we place on an educated public, questions remain about who is entitled and who pays. California has moved in one direction with AB 540 but appears less certain that it will continue farther down the same path with SB 160. Maybe the federal government will provide some leadership through the DREAM Act, but this is doubtful. Leadership will likely come from the California community colleges – the most affordable and accessible higher education resource in the world. ■

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**[Editors Note:** This article was submitted to provide background for the larger discussion on the topic of Immigration and Its Impact on California's Community Colleges, as led by Keynote Speaker Adolfo Bermeo at the upcoming 2006 FACC Conference in Los Angeles. For more information and to register, please visit [www.facc.org/conference.htm](http://www.facc.org/conference.htm).]