

On Illegal Immigration and Community Colleges

On November 7, 2007, a memo from the North Carolina Community College System (NCCCS) mandated that all community “colleges should immediately begin admitting undocumented individuals.” The new policy reversed an August 2004 directive that permitted each college to decide on its own whether to admit illegal aliens. In the wake of the firestorm that erupted following the November 2007 policy change, the community college system asked for clarification from Attorney General Roy Cooper. On May 6, 2008, the attorney general’s office issued a response that concluded the following:

- 1) The current NCCCS policy (CC 07-275) of forcing every college to admit illegal aliens is vulnerable to a legal challenge.
- 2) NCCCS should return to a 2001 policy (CC 01-271) that previously prohibited illegal aliens from attending community colleges, except for aliens concurrently enrolled in a North Carolina high school or those who meet very limited exceptions set forth in federal law (8 USC § 1641).
- 3) By implication, the August 2004 policy (CC 04-171) of permitting local institutions to individually decide whether to admit illegal aliens is also vulnerable to a legal challenge.

During the last 7 years, NCCCS has changed its position on enrolling illegal aliens four times. The most recent decision to cease enrolling illegal aliens could be changed at any time. What is needed is legislation that will clarify this matter once and for all.

In response to the attorney general’s advisory letter, NCCCS President Scott Ralls announced on May 13, 2008, that community colleges would cease admitting illegal aliens to their degree-granting programs (CC 08-114). The colleges will continue to admit illegal aliens to continuing education programs, such as the Basic Skills Program, at a cost to taxpayers of more than \$10 million.

What does the law say?

Federal law. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 prohibits states from appropriating state or local funds to provide postsecondary education to illegal aliens. States can opt out of this policy only by passing a law that “affirmatively provides for such eligibility” (8 USC § 1621). It is clear that Congress intended here to forbid illegal aliens from attending public higher educational institutions altogether. This fact is clarified by the inclusion of § 1623, which stipulates that even if a state chooses to override § 1621, it would still be illegal to extend *in-state* tuition benefits to illegal aliens. While Governor Mike Easley has recently argued that “federal law is not settled in this area,” the admission criteria established by the community college system in 2001 took it as a matter of course that 8 USC § 1621 prohibits the enrollment of illegal aliens. This policy was implemented during Governor Easley’s first term in office and was not questioned by the governor until now.

State law. The North Carolina General Assembly has not passed legislation authorizing the extension of postsecondary educational benefits to illegal immigrants (cf. 8 USC § 1621 (d)). For this reason, the state attorney general’s office was correct in implying that neither NCCCS nor the UNC system has the authority to enroll illegal aliens. Current state law (G.S. 115D-39) suggests that only persons “lawfully admitted to the United States” are eligible for in-state community college tuition. The ambiguity of the law, however, has encouraged attempts on both sides to deny (cf. HB 164, HB 409) or extend (HB 1183) in-state tuition to illegal aliens.

Case law. The U.S. District Court for the Eastern District of Virginia is the only federal court to consider whether a state may prohibit illegal aliens from attending higher educational institutions (*Equal Access Ed. v. Merten* (2004)). The case involved a challenge to an advisory opinion from the Virginia attorney general’s office that encouraged state universities and colleges to cease admitting illegal aliens. The state’s position was upheld by Judge T. S. Ellis III, who confirmed that “the colleges and universities could deny admission to anyone they chose, without violating the Constitution or exceeding their authority.”

Immigration and Customs Enforcement (ICE). In a May 9, 2008, letter to the *Raleigh News & Observer*, ICE stated that it is “left for the school to decide whether or not to enroll undocumented nonimmigrants,” even as the agency acknowledged that “these individuals are circumventing regulations and laws.” As a matter of policy, the significance of this letter is unclear. The letter is not signed and was written to a newspaper, not NCCCS or the N.C. attorney general. Civitas is awaiting further clarification from ICE as to whether this letter is based on a formal policy.

What are the numbers?

- While NCCCS reports that only 112 illegal aliens are currently enrolled in the curriculum instruction component of the community college system, Civitas' analysis of U.S. Census data suggests the number is closer to 10,000. A very conservative estimate would place the cost to educate these students at \$5 million to \$7 million.
- NCCCS is continuing to educate thousands of illegal aliens – more than 37,000, according to our estimates – via its continuing education programs.¹
- Continuing education courses are generally offered free of charge to all students – at a cost to taxpayers of \$154.4 million. Presuming that illegal aliens make up at least 6.5 percent of enrollment, the cost to taxpayers is more than \$10 million.
- Instruction costs do not include capital costs. Statewide general obligation bonds for the community college system are \$850 million; local bonds for community colleges are millions more.

What do voters want?

- ✓ 68 percent of voters believe illegal aliens should be prohibited from enrolling in community colleges and public universities in North Carolina (February 2008).
- ✓ 70 percent of voters oppose granting in-state tuition to illegal aliens (April 2007).
- ✓ 75 percent would be less likely to vote for a candidate who supports giving in-state tuition to the children of illegal immigrants (September 2005).
- ✓ 69 percent believe illegal immigrants should receive no educational benefits at all from the state of North Carolina (August 2005).

What's next?

- President Ralls announcement has not resolved whether illegal aliens will be permitted to enroll in the community college system in the future. NCCCS is awaiting a response from the Department of Homeland Security regarding whether colleges should admit illegal aliens. Such a response, however, would not decide the matter, as only the state of North Carolina has the authority to determine whether it will admit illegal aliens to its public higher educational system (cf. *Equal Access Ed. v. Merten* (2004)).
- The UNC system – per policy 700.1.4[G] – continues to enroll illegal aliens at the out-of-state tuition rate.
- Two bills (HB 164 and HB 409) introduced during the 2007 legislative session would have prohibited granting in-state tuition to illegal immigrants. Former NCCCS President Martin Lancaster, who is responsible for forcing the colleges to admit illegal aliens in the first place, stated in April 2008 that he “fully expects legislators to pass a law barring illegal immigrants from the state’s colleges.” To date, no such legislation has been introduced in the General Assembly.
- Legislation banning illegal aliens from receiving in-state tuition would be largely meaningless, as no state institution officially provides in-state tuition to illegal aliens.

Model legislation regarding this issue should do the following two things:

- 1) Prohibit illegal aliens from attending all public higher educational institutions in North Carolina, including community colleges and universities.
- 2) Require all higher educational institutions to verify the Social Security number and legal status of all applicants. This can easily be done by means of the federal SAVE (Systematic Alien Verification of Entitlement) online database. Alternatively, Johnston Community College claims it is using its current software to screen Social Security numbers as part of the routine application process.

ENDNOTES:

¹We use two different methodologies to arrive at the number of illegal aliens in the community college system. The first method, which we applied to students in the curriculum instruction program, is adjusted for age and likely college attendance. This method is derived from our analysis of data from the American Community Survey. The second method treats students in the continuing education program as having characteristics equivalent to those of the general Hispanic population. This method, which is based on data from the Pew Hispanic Center, presumes 78 percent of Hispanic students in continuing education courses are illegal aliens.

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