



**ACCESS TO HIGHER EDUCATION IN GEORGIA
FOR UNDOCUMENTED STUDENTS
“Visiting the Sins ...”¹ by Denying In-State Tuition Eligibility**

A White Paper (June 2009)

America’s success, and indeed Georgia’s, depends on a strong economy. Strong economies thrive when individuals have the tools to achieve economic success, including access to an affordable college education. Government, private sector, and individual investments in college education facilitate individuals’ ability to increase their earning potential. The average earnings of graduates with a bachelor’s degree are approximately twice those of individuals with only a high school education.²

The State of Georgia’s HOPE scholarship is a model of how investment in its children’s education beyond high school is seen as a direct investment in the well-being of the state. The HOPE scholarship pays full tuition for Georgia high school graduates with a B average who attend the state’s public colleges and universities. HOPE also pays some funds for the state’s high school graduates to attend state technical schools and its private institutions of higher education.

In addition, Georgia charges in-state tuition rates to eligible students who enroll at its public colleges, universities, and technical schools. In-state tuition serves a number of important state interests: to promote accessible higher education for its students, to reward families residing in the state for their economic contribution, to encourage students educated in the state to remain and work in the state, and to “build value” in the state.³ Students who attend college in Georgia are likely to remain in the state upon graduation, thus cultivating a more educated labor force, and consequently, more economic success for the state.⁴

But one group of students in the state is not part of Georgia’s plan to invest in higher education: undocumented immigrant students. These students, many of whom were brought to the United States as children by parents without legal authorization to enter the country, are not eligible for in-state tuition, tuition waivers, or other state

¹ *Exodus* 20:5-6.

² Eric C. Newburger & Andrea E. Curry, *Educational Attainment in the United States (Update): Population Characteristics*, U.S. Census Bureau (Mar. 2000).

³ Jonathan D. Glater, *Colleges Reduce Out-of-State Tuition to Lure Students*, N.Y. Times, (Mar. 8, 2008).

⁴ See e.g., University of Georgia – Office of Institutional Research, *University of Georgia Fact Book 2007*, 62 (39th ed. 2007) (over 60% of University of Georgia alumni reside within the state of Georgia).

programs that help defray college costs. All must instead pay out-of-state tuition rates (full tuition) to attend a public college or university in Georgia. With full tuition at the state's higher education institutions costing at least four times that of in-state tuition,⁵ Georgia's undocumented students are less likely to be able to afford college.

While federal law currently imposes some obstacles to the grant of in-state tuition to undocumented youth, no absolute prohibition exists. States can take steps to provide undocumented students access to in-state tuition if they elect to do so. Denying such access to undocumented students who did not come to Georgia of their own volition and who are otherwise qualified to attend a Georgia state college or university is potentially detrimental to the economic prosperity of the state. Investing in these students is not only legally possible, it is perceived by many to also be wise, just, and of particular economic benefit to the state.

Immigration reform designed to provide a path to legal status is a recognized legislative goal in Washington, D.C. With such reform on the horizon, Georgia should be proactive in readying these students who are likely to become legal Georgia residents, to compete in our local and global economies by providing them vital access to public higher education.

Legal Setting

Georgia Law & Policy

There are thirty-five colleges and universities in the Georgia state higher education system. Georgia's colleges and universities offer in-state tuition to residents of the state. This in-state tuition is typically one-quarter the cost of out-of-state tuition. Over a four year span the difference between in-state and out-of-state tuition can exceed fifty thousand dollars.⁶

The most common way to qualify for in-state tuition in Georgia is to have graduated from a Georgia high school and to have maintained at least 12 consecutive months of residency in the state prior to the first day of class (either the student, if not a dependent, or the student's parents or legal guardian, if the student is a dependent).

Georgia, like most other states, is not limited to offering in-state tuition rates to its in-state residents. Georgia law also allows its colleges and universities to offer out-of-state tuition waivers that assess the in-state tuition rate to certain classes of students who do not legally reside in Georgia.⁷ Georgia officials can grant tuition waivers to families of consular officials; military personnel stationed in Georgia and their spouses and dependent children; full-time employees of Georgia's public school system; and other

⁵ Board of Regents of the University System of Georgia Policy Manual § 704.011(C).

⁶ Georgia Department of Audits and Accounts, *Vague Policies and Poor Practices Allow Non-Resident Students to Pay Lower Tuition at Taxpayer's Expense*, Performance Audit 06-26 (Dec. 2007).

⁷ Board of Regents of the University System of Georgia Policy Manual § 704.041 *et seq.*

classifications of eligible students. Some out-of-state students who live in counties that border Georgia may receive Border County Waivers from eligible colleges and universities. In addition, the presidents of Georgia's higher education institutions can award out-of-state tuition waivers to international and superior out-of-state students and student athletes. However, college presidents cannot give these waivers to more than two percent of the full-time student populations enrolled in their respective institutions.⁸

The state also participates in the Academic Common Market (ACM). Students from states that participate in the ACM may receive tuition waivers if they are seeking a course of study that is not available in their home state.⁹

Finally, some non-citizen, non-immigrant holders of specific classes of visas also receive a break on the high cost of out-of-state tuition. Georgia sometimes offers tuition waivers to those non-citizen students whose parents, spouses, or legal guardians possess work visas, have relocated to Georgia in order to accept employment, and who can demonstrate they are taking steps to pursue lawful permanent resident status.¹⁰ Similarly, independent non-citizen students with work visas who are taking steps to pursue lawful permanent resident status can also receive such waivers.¹¹

Universities recognize that students who are classified by the United States Citizenship and Immigration Services as persons with non-immigrant status may well remain in Georgia upon graduation to become a part of the workforce. Many admissions offices review these student's petitions for in-state tuition on a case-by-case basis, and in some instances, grant them.

Thus, Georgia law allows its colleges and universities to offer residents in-state tuition, and several categories of out-of-state students and other qualified individuals may receive tuition waivers. These opportunities, however, are not available to undocumented students despite the fact that they may have lived in Georgia for most of their lives and have graduated from a Georgia public high school.

The Georgia Security and Immigration Compliance Act (SB 529) became effective in July 2007. SB 529 requires the Board of Regents to set policy that complies with all federal law.¹² SB 529 also denies state, local, or public benefits to those persons who are not lawfully present within the United States.¹³ Georgia legislation enacted in 2009, House Bill 2, clarifies the compliance requirements of SB 529.

In 2007, the Board of Regents in response to SB 529 concluded that federal law (discussed immediately below) would not allow it to grant in-state tuition or tuition waivers to undocumented students, even if they had lived in Georgia since early

⁸ *Id.*

⁹ *Id.*; see also Southern Regional Education Board. Available at <http://www.sreb.org/programs/acm/acmindex.aspx>.

¹⁰ Persons who possess U.S. lawful permanent resident cards are also said to possess "green cards."

¹¹ *Supra* note 8 at § 704.041.

¹² Ga. Code Ann. § 50-36-1 (1996).

¹³ *Id.*

childhood.¹⁴ In 2008, Georgia’s legislators enacted a law that in essence codified the Board of Regents policy:

Noncitizen students shall not be classified as in-state for tuition purposes unless the student is legally in this state and there is evidence to warrant consideration of in-state classification as determined by the Board of Regents. Lawful permanent residents, refugees, asylees, or other eligible noncitizens as defined by federal Title IV regulations may be extended the same consideration as citizens of the United States in determining whether they qualify for in-state classification. International students who reside in the United States under nonimmigrant status conditioned at least in part upon intent not to abandon a foreign domicile shall not be eligible for in-state classification.¹⁵

Federal Law

Two federal laws passed in 1996 impose limitations on benefits¹⁶ that can be provided to undocumented persons living in the United States.

The Personal Responsibility Work and Opportunity Reconciliation Act (PRWORA) provides that undocumented persons who are not qualified aliens are “... not eligible for any State or local public benefit”¹⁷ PRWORA includes within the definition of public benefit “... any ... postsecondary education...benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.”¹⁸

This law, however, does not preempt a state’s ability to exercise its discretion on this issue.¹⁹ Indeed, the PRWORA explicitly grants states the authority to regulate undocumented immigrants’ eligibility for state and local public benefits. Section 1621(d) provides that:

¹⁴ Board of Regents of the University System of Georgia, *Memorandum, The Georgia Security and Immigration Compliance Act* (May 24, 2006). Note; copy available on file at Georgia Appleseed.

¹⁵ Ga. Code. Ann. § 20-3-66 (2008).

¹⁶ For this purposes of this analysis, we have assumed that eligibility for in-state tuition is a “benefit” as that term is used in the federal statutes.

¹⁷ 8 U.S.C. § 1621(a) (1996); 8 U.S.C. 1641(b) (section 1641(b) defines those who are considered qualified aliens, for instance, lawful permanent residents, asylees, refugees, those granted conditional entry, and others).

¹⁸ *Id.* § 1621(c)(1)(B) (1996).

¹⁹ *DeCanas v. Bica*, 424 U.S. 351, 358 (1976).

A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) only through the enactment of a State law after the date of the enactment of this Act [enacted Aug. 22, 1996] which affirmatively provides for such eligibility.²⁰

Therefore, the Georgia legislature could address the federal prohibition in the PRWORA by adopting a law that affirmatively makes undocumented students eligible for in-state tuition treatment.

In 1996, Congress passed a separate free standing bill, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)²¹, which more specifically addressed undocumented persons' eligibility for post-secondary education benefits. The relevant provision of IIRIRA provides that:

Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident.²²

As noted above, Georgia does grant in-state tuition or tuition waivers to various categories of citizens or nationals of the United States without regard to residency. It has been assumed herein, though, that Congress intended that states would not be authorized to offer in-state tuition to undocumented persons based on their residency in the state unless in-state tuition was made available to *any* citizen or national of the United States without regard to residency. This, of course, amounts to a *de facto* absolute prohibition since state colleges and universities are simply unable to charge in-state rates to all of the students who attend.

Furthermore the IIRIRA does not include a specific override provision similar to that found in the PWORA discussed above that would authorize an individual state to allow secondary benefits to be afforded to undocumented students based upon residency in the state.

Nevertheless, the IIRIRA does not impose an insurmountable obstacle to allowing Georgia's undocumented children to take advantage of in-state tuition rates. Ten states have done so already, including California, Illinois, Oklahoma,²³

²⁰ 8 U.S.C. § 1621(d) (1996).

²¹ 8 U.S.C. § 1623(a)-(b) (1996).

²² *Id.* § 1623(a) (1996).

²³ The Oklahoma Taxpayer and Citizen Protection Act of 2007 (HB 1804) does not allow certain undocumented students to receive in-state tuition at Oklahoma's public colleges and universities.

Nebraska, New Mexico, New York, Texas, Utah, Washington, and Kansas.²⁴ These states have recognized that the prohibition in the federal law speaks in terms of eligibility “based on residence” Therefore, instead of classifying an undocumented student as a resident, California law, for example, premises eligibility for in-state tuition upon other criteria, such as attendance at an in-state high school, graduation from an in-state high school, and intent to seek residency in the state.²⁵

As the analysis that follows will demonstrate, Georgia can and should follow the lead of these states and adopt a carefully crafted law that will enhance the ability of qualified, undocumented students to obtain a college education within financial reach and enable Georgia to harness their talent for the state’s gain. The details of such legislation are discussed in the Conclusion and Recommendation section.

Future Law

Members of the United States Congress have recognized the importance of maintaining a highly educated population in order for the country to thrive and compete on a global level. Many have also acknowledged the hopes of young undocumented students who, but for their legal status, would be scholars and leaders at the public institutions of higher education in the states where they have grown up and which they call home. Proposed legislation known as the “DREAM Act” (Development, Relief, and Education of Alien Minors) would enable undocumented students to attend college with a view towards becoming lawful permanent residents (LPR) in the short-term, and possibly U.S. citizens²⁶ in the long-term.²⁷ The most recent DREAM Act of 2009²⁸ was introduced in Congress at approximately the same time that President Obama reiterated his pledge to address comprehensive education reform early in his term.

²⁴ See Tex. Educ. Code Ann. § 54.052(j)(1) (West 2008); CAL. Educ. § 68130.5 (West 2008); Utah Code Ann. § 53B-8-102 (West 2008); Neb. Rev. Stat. Ann. § 85-502 (West 2008); 2005 N.M. Laws 348; 2002 N.Y. Laws 327; 2003 Wash. Laws 95; 2003 Okla. Sess. Laws 210 (West); 2003 Ill. Laws 7; Kan Stat. Ann. § 76-729 (West 2008).

²⁵ See e.g., CAL EDUC. CODE § 68130.5 (requiring graduation or the equivalent from a California high school to be eligible for an exemption to out-of-state tuition). *But see Martinez v. Regents of U.C.*, 166 Cal App. Supp. 4th 1121 (Sept. 2008) (the California Court of Appeals has held that in-state high school attendance and graduation is a *de facto* residency requirement and the law, as written, did not specify the intent to confer a benefit to undocumented students. The State of California has appealed this decision to the California Supreme Court).

²⁶ Andorro Bruno, *Unauthorized Alien Students: Issues and “DREAM Act” Legislation*, CRS Report for Congress (January 30, 2007) (the first of such acts was entitled the Development, Relief, and Education for Alien Minors Act - S. 2075 (2006)).

²⁷ *Id.*

²⁸ *DREAM Act of 2009*, S. 729 111th Congress, §§ 1-12 (2009).

THE CASE FOR CHANGE

Undocumented Students Lack Culpability

As noted previously, many undocumented students who would attend the state's colleges and universities if they could afford to do so were brought here at an early age by parents without legal authorization to enter the country.²⁹ Others were brought here by parents who received visas to visit or stay in the country for limited periods of time, but who remained in the country when their visas expired. Opponents argue that allowing undocumented students to become eligible to receive public higher education at in-state tuition rates rewards illegal behavior and encourages unauthorized entry into the United States. However, there is no evidence to suggest that the parents of undocumented students enter or remain in the United States in order for their children to receive a college education at in-state tuition rates. Studies show that the dominant motivation for unlawful entry into the United States is employment, not post-secondary education.³⁰ Furthermore, whatever the subjective motivation of the parents may have been, opponents of changing the state's current laws regarding undocumented students tend to dismiss the fact that young children who enter the United States with their parents lack culpability and therefore should not be subject to punitive treatment.

The U.S. Supreme Court addressed this issue in *Plyler v. Doe*,³¹ holding that children who had entered the United States without legal authorization could not be kept from receiving a public K-12 education. In *Plyler*, the Court recognized the distinction between children who were young and had no choice of whether or not to come to the United States, and their parents, who knowingly violated federal law by their unlawful entry into the United States.³²

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The Court stated that although adults have the capacity to obey the law and “conform their conduct to societal norms,” the children of such adults who were plaintiffs in the case could “affect neither their parents’ conduct nor their own status.”³³ Furthermore, the Court noted that punishing children for their parent’s unlawful behavior was an ineffective and unjust way to deter parental behavior.³⁴ **The Court not only admonished legislators for penalizing children because of their parents’ acts, it also pointed out that access to education enables individuals to become economically productive, which in turn benefits the whole of society.**³⁵

²⁹ 8 U.S.C. § 1325 (West 2008) (those who enter or attempt to enter the United States without the authorization of an immigration officer are subject to being fined, imprisoned, or both).

³⁰ Immigration Policy Center, *Fewer Job Openings Equals Fewer Immigrants: Undocumented Immigration Slows Along with the U.S. Economy*. 3 (October 2008).

³¹ 457 U.S. 202 (1982) (the Court used the intermediate standard of review to determine the holding of this case).

³² *Id.* at 219.

³³ *Id.* at 220.

³⁴ *Id.* (Citing *Weber v. Aetna Casualty and Surety Co.*, 406 U.S. 164, 175 (1972)).

³⁵ *Id.* at 221.

Underlying the Supreme Court’s rationale in *Plyler* is the absence of culpability on the part of a child who accompanies his or her parent into the country without legal authorization. Both Georgia law and federal law comport with this rationale. Under Georgia law, “[a] person shall not be considered or found guilty of a crime unless he has attained the age of 13 years at the time of the act, omission, or negligence constituting the crime.”³⁶

Similarly, Congress enacted 8 U.S.C. § 1227, which provides for the immediate deportation of people who enter the country in violation of the law³⁷; however, federal immigration laws consider the innocence of a child who is “out of status”, that is, unauthorized to be in the United States. For example, laws related to readmitting an undocumented immigrant who has voluntarily left the United States and is seeking reentry expressly exempt minors from the accrual of unlawful presence in the country.³⁸ Prior unlawful presence is a determinant factor for whether an undocumented adult may be readmitted into the United States. Adults who enter the United States unlawfully and remain in the country for at least 180 days but less than one year may not be readmitted into the United States for a period of three years.³⁹ Furthermore, an adult who has been unlawfully present in the United States for a year or more cannot reenter the United States for a period of ten years.⁴⁰ Children who enter the country without legal authorization, however, are not treated like their adult counterparts. None of the time that a child under the age of 18 enters and remains in the United States can be taken into account for purposes of determining a period of unlawful presence in the country.⁴¹

In summary, Georgia’s current prohibition on allowing otherwise eligible undocumented children access to in-state tuition rates effectively imposes a punitive and unfair sanction upon these children for actions over which they had no practical control and no legal responsibility.

Economic Justice

Prevailing economic factors overwhelmingly favor in-state tuition rates for Georgia’s undocumented students. Undocumented immigrants are eligible to receive free K-12 education, emergency medical treatment, and very little else in the way of public benefits. Policy studies indicate that the costs of such services and the taxes that undocumented immigrants pay for these services generate a fiscal deficit in the short-term. However, this short-term fiscal deficit could be reversed in the long-term with education.⁴² One reason many undocumented immigrants create a fiscal deficit is

³⁶ Ga. Code Ann. § 16-3-1 (2008).

³⁷ See 8 U.S.C. § 1227 (1988).

³⁸ See 8 U.S.C. § 1183(a)(9)(B)(iii)(I) (2008).

³⁹ *Id.* at § 1182(a)(9)(B)(i).

⁴⁰ *Id.*

⁴¹ *Id.* at § 1183(a)(9)(B)(iii)(I).

⁴² Felix Rioja, Neven Valev, and Amanda Wilsker, *The Demographics of Georgia IV: Hispanic Economic Policy Issues*, Georgia State University – Andrew Young School of Policy Studies (March 2006).

because their lack of educational attainment limits their employment opportunities to low-skilled, low-wage jobs, thus hindering their earnings potential.

Ironically, low educational attainment may be reinforced at the high school level when undocumented students find that college tuition costs are prohibitive. They may lose the incentive to learn and excel. The inaccessibility of postsecondary education is a likely contributor to excessive dropout rates among high school age undocumented students.⁴³ The National Center for Public Policy and Higher Education similarly suggests, “Those who believe college is beyond their financial reach have little reason to prepare for it.”⁴⁴ A study from the Pew Hispanic Center suggests that undocumented students are less likely to graduate from high school than are immigrants with legal status or native born students.⁴⁵ Migrants from Latin America comprise over half of Georgia’s foreign-born population.⁴⁶ Georgia self-reported a high school graduation rate of 75.4% in 2008, yet its graduation rates among Hispanic and economically disadvantaged students were 65% and 67%, respectively.⁴⁷ With the State of Georgia reporting such low graduation rates in its Hispanic and economically disadvantaged student populations, it should not place financial and legal hurdles before those undocumented students who would attend college if they could afford to do so.

According to a study prepared by investigators at the Georgia Institute of Technology, investments in higher education in Georgia resulted in \$1.25 billion in extra wages for Georgia students who graduated from college.⁴⁸ Moreover, a recent report by the U.S. Census Bureau revealed that the median 12 month earnings of male college graduates were nearly \$25,000 more than the median 12 month earnings of male high school graduates who did not attend college.⁴⁹ For women, the earnings difference was approximately \$17,000.⁵⁰ Georgia’s undocumented immigrants pay sales taxes, property taxes, and income taxes into the coffers of the state government and its county and local municipalities.⁵¹ They also pay income taxes and social security taxes to the federal

⁴³ See Jason Song, *Raising Hope for Better Life, Citizenship*, Baltimore Sun, 6A (May 13, 2003) (recounting the experiences of high school teacher Kelly Flores, whose “students have dropped out after they realize they could not go to college”).

⁴⁴ Patrick M. Callan, *College Affordability: Colleges, States Increase Financial Burdens on Students and Families*, Measuring Up 2006, The National Report Card on Higher Education (2006). Available at <http://measuringup.highereducation.org/commentary/collegeaffordability.cfm>.

⁴⁵ Jeffrey S. Passel, *Unauthorized Migrants: Numbers and Characteristics*, Pew Hispanic Center, 22 (June 2005).

⁴⁶ Migration Policy Institute, *2007 American Community Survey and Census Data on the Foreign Born by State* (2009). Available at <http://www.migrationinformation.org/datahub/acscensus.cfm#>.

⁴⁷ Georgia Department of Education, *Georgia's Graduation Rate Jumps to 75.4 Percent (AYP Update)*, (September 2008) (graduation rates for Hispanic, African-American, and economically disadvantaged students were 65.5%, 69.2%, and 67%, respectively, in 2007-2008. Available at <http://www.doe.k12.ga.us>. It is important to note here that other independent and well-respected sources report that graduation rates in Georgia are significantly lower than Georgia’s self-reported graduation rates).

⁴⁸ William J. Drummond and Jan L. Youtie, *The Value of a University System of Georgia Education*, Georgia Institute of Technology (June 2003).

⁴⁹ U.S. Census Bureau, *Income, Earnings, and Poverty Data from the 2007 American Community Survey*, 15 (August 2008).

⁵⁰ *Id.*

⁵¹ *Supra* note 42.

government.⁵² The Georgia Budget and Policy Institute estimated that the state's undocumented immigrants collectively may pay between \$215 - \$252 million dollars a year in taxes to the state.⁵³ Undocumented students who would attend Georgia's public institutions of higher education if they could afford to do so, would likely boost both local and state economies by contributing more in taxes upon graduating from college with increased earning capabilities.

Fiscal Responsibility

A better-educated workforce is good for the United States as a whole and for Georgia in particular. The inclusion of undocumented immigrants in a better-educated workforce enhances their impact on our society. Some might argue that offering in-state tuition rates to undocumented students would limit access to public institutions of higher education by students who are already eligible to receive in-state tuition based on residency. A study from the Urban Policy Institute indicates that in America only 2% of the total student population in grades K-12 is comprised of undocumented immigrants.⁵⁴ Additional research suggests that where states have offered in-state tuition to undocumented students, documented students have not experienced limited enrollment.⁵⁵ On the contrary, offering such tuition opportunities increases school revenues by "bringing in tuition from students who otherwise would not be in college."⁵⁶ This finding may be particularly important as state institutions of higher learning experience significant budget cuts due to the current economic crisis affecting Georgia and the nation.⁵⁷

Those who still express concern about seat availability should be mindful that other categories of students also 'take seats' at Georgia's public colleges and universities, including out-of-state students, out-of-state students who have been granted tuition waivers (i.e. athletes and participants in reciprocal tuition agreements such as the Academic Common Market), and non-citizens with legal status. Nevertheless, the state has not identified a shortage of higher education seats with these out-of-state students attending state institutions. The state would, however, deny undocumented students an affordable seat at its colleges and universities, even when the students may have never known another home and their parents have paid taxes to the state and to local governments.

⁵² *Id.*

⁵³ Sarah Beth Coffey, *Undocumented Immigrants in Georgia: Tax Contribution and Fiscal Concerns*, Georgia Budget and Policy Institute, 1 (January 2006).

⁵⁴ Michael Fix & Jeffrey S. Passel, *U.S. Immigration – Trends & Implications for Schools*, presentation for the National Association of Bilingual Education No Child Left Behind Implementation Institute, The Urban Institute, 9, 16 (Jan. 2003).

⁵⁵ Roberto G. Gonzalez, *Wasted Talent and Broken Dreams: The Lost Potential of Undocumented Students*, Immigration Policy in Focus; Immigration Policy Center, Vol. 5 Issue 13, 8 (Oct. 2007).

⁵⁶ *Id.* at 9.

⁵⁷ Gayle White, *Georgia Board of Regents: 6% Cuts Start at All Schools This Year*, Atlanta Journal-Constitution (October 15, 2008).

There is reason to believe that better state oversight would enable Georgia's students, both undocumented and legal, greater access to the state's colleges and universities as the national recession continues to expand. In late 2007, the Georgia Department of Audits and Accounts released an audit that found the state's higher education officials were inappropriately applying residency and domicile standards to some students enrolled in its institutions. The agency estimated that as much as \$2 million worth of state funds may have been foregone each term as a result of state officials improperly classifying ineligible students as Georgia residents and allowing those students to receive in-state tuition rates.⁵⁸ With better oversight and a change in the law, state education funds could be directed to those Georgians, both legal and undocumented, who call Georgia home and will become contributing members of Georgia communities upon graduation.

Conclusion and Recommendation

There are compelling arguments for allowing Georgia's undocumented students access to the state's public institutions of higher education at in-state tuition rates.

- With comprehensive immigration reform a foreseeable reality, students who are currently undocumented may have the ability to change their legal status in the future and become lawful, permanent residents or U.S. citizens.
- Many of Georgia's undocumented students have spent their formative years in Georgia and are more likely to remain in Georgia as adults, making it both prudent and economically advantageous to ensure this potential workforce is educated and able to compete in the job market, thereby boosting the living standards of all Georgians.
- When undocumented college-educated students join the Georgia workforce, they will pay more taxes to the government, while seeking fewer federal, state and local social services for which they may be eligible.
- Georgia's capacity for fiscal and economic growth would rise and "build value", enhancing its potential to compete effectively with other states that offer in-state tuition to unauthorized students.

To address the barriers that currently exist under federal law and to assure that in-state tuition is granted equitably, the Georgia General Assembly should consider the following criteria in crafting new legislation granting in-state tuition rates to undocumented students:

⁵⁸ Georgia Department of Audits and Accounts, Performance Audit Operations, *Vague Policies and Poor Practices Allow Non-Resident Students to Pay Lower Tuition at Taxpayers' Expense*, Performance Audit PID 06-26, 2 (Dec. 2007).

(1) the applicant must have attended high school in Georgia for three or more years;

(2) the applicant must have graduated from a Georgia high school or attained an equivalent;

(3) the applicant must register as an entering student or be a current student at an accredited public institution of higher education in Georgia no earlier than the fall semester or quarter of the 2010 academic year;

(4) the applicant must have been under the age of 13 at the time of unlawful entry into the United States.

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