

When the Road to Legal Status Crumbles: International Students Going Undocumented

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Federal Law and State Law

Federal Law

- Equal Protection Doctrine

“...nor deny to any person within its jurisdiction the equal protection of the laws.” (Fourth Amendment Sec. 1)

Plyler v. Doe (1982)

- FERPA

- INA Chapter 8

INA Chapter 8:

Aliens and Nationality

- 8 C.F.R. § 214.3(g)(1):
Record Keeping and
Reporting
Requirements.

Must maintain records
for at least three years
after student is not
pursuing a full course
of study or a
reinstatement denial.

- 8 C.F.R. § 214.4(a):
Reasons for certification
or recertification denials.

None of these reasons
relates to undocumented
students' admission or
enrollment at the
institution.

DHS Confirms

- Immigration Law & Policy Organization

<http://www.nilc.org/immlawpolicy/DREAM/Dream009.htm>

- *The News and Observer*

<https://salsa.democracyinaction.org/o/371/images/ICE%20Statement%20on%20Enrollment%20of%20Undocumented.pdf>

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- Letter to the North Carolina attorney general's office.

[http://www.nilc.org/immlawpolicy/
DREAM/DHS-letter-re-undoc-
students-2008-07-9.pdf](http://www.nilc.org/immlawpolicy/DREAM/DHS-letter-re-undoc-students-2008-07-9.pdf)

State Law

“States may bar or admit illegal aliens from enrolling in public post-secondary institutions either as a matter of policy or through legislation.”

Jim Pendergraph

Office of State and Local Coordination - ICE

Institutional/ISSO Policies and Practices

Admissions Policy

- Few require proof of legal status (as a matter of policy or legislation).
- Most private institutions treat undocumented students as foreign students (not a state law).
- The majority don't require proof of legal status.

Tuition Policy

- ⦿ Resident Tuition (10 states by statute)
- ⦿ Do not allow to gain resident tuition (3 states by statute)

University of Houston Law Center

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- Oklahoma
 - Senate Bill 596 [rescinded 2008]
 - House Bill 1408
- Arkansas
 - Senate Bill 799 – failed March 2009
- Texas
 - House Bill 1403
 - Senate Bill 1528

DSO Reporting Responsibilities

- 8 C.F.R. § [214.3\(g\)\(2\)\(ii\)\(A\)-\(F\)](#)
- **NAFSA: 3.70.1 Event-based reporting**
“Because terminating a student's SEVIS record may have adverse effects on the student's immigration status, schools should develop institutional policies regarding how to proceed in cases that may require record termination. “

When do you determine that an international student has to be treated as an undocumented student.

Case Study #1: An F1 student has been out of status for more than 5 months, but states that she will likely apply for reinstatement in the near future (no exact date given).

How do you code newly undocumented students in your student information system (SIS)?

Case Study #2: An international student told you he will not be applying for reinstatement. Do you take any actions in your SIS?

Does your office service undocumented students?

Case Study #3: An undocumented student who entered the country without a legal status comes to your office to inquire about applying for an F1 status.

Would you allow the student to complete their education as an undocumented student

A student has failed to maintain F1 status, filed for reinstatement at previous school and was denied by USCIS, student graduated from state high school and meets undocumented requirements for admission. Student has an application based on family for Permanent Residency application and cannot depart the USA without abandoning such application and is 18 years of age; yet student already accruing unlawful presence in the USA as of 18th birthday.

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