



# TUITION EQUITY POLICY BRIEF

APRIL 2022

## Tuition Equity for Undocumented Students in the State of Wisconsin

Dreamers of Wisconsin

*“Extending in-state residency tuition rates to undocumented students who meet specific criteria is a feasible, necessary, and urgent policy change...”*

**Summary:** In 2009, the Wisconsin State Assembly Bill 75 provided that undocumented students were to be considered residents, as opposed to nonresidents, for purposes of admission to and tuition for state universities if the students met certain criteria. However, in 2011, 2009 AB 75 was repealed by 2011 AB 40, preventing undocumented students, including DACA recipients, from qualifying for in-state tuition. Furthermore, Wis. Stat. §36.27 prohibits the Board of Regents from granting residency status to undocumented students. The current legislative scheme in Wisconsin breaks from the recent trend of states across the country implementing policies, either via the legislative process or through Boards of Regents, which extend in-state rates to undocumented students who meet certain criteria. As of 2022, at least 21 states and the District of Columbia have established a version of this policy.<sup>1</sup>

This policy brief includes a history of tuition equity initiatives in Wisconsin, contextualizing the current status of state and university system policy in relation to regional and national trends. Additionally, this brief analyzes relevant research and social and economic data to demonstrate the benefits of and present a case for tuition equity for undocumented students. Namely, this brief demonstrates that extending in-state residency tuition rates to undocumented students who meet specific criteria is a feasible, necessary, and urgent policy change that will benefit the state of Wisconsin as a whole.<sup>2</sup>

<sup>1</sup> Tuition & Financial Aid Equity for Undocumented Students, *Higher Ed Immigration Portal* (2022). <https://www.higheredimmigrationportal.org/>.

<sup>2</sup> The specific criteria mentioned here refers to the stipulations put forth in AB 75, allowing in-state residency for tuition purposes for undocumented students that graduated from a Wisconsin high school, received a GED in the state of Wisconsin, or attended a Wisconsin high school for three consecutive years.

## Undocumented Students in Higher Education: An Overview

Per the American Community Survey (ACS) published in 2019, undocumented students account for approximately 427,000, or roughly two percent, of all students currently enrolled in an institute of higher education throughout the United States. Approximately 181,000 of these students are either current DACA recipients or eligible for DACA.<sup>3</sup> At least 75,669 undocumented immigrants currently reside in the state of Wisconsin, 10,517 of whom are eligible for DACA.<sup>4</sup> Although exact enrollment numbers for undocumented students in the state of Wisconsin are unavailable, data collected about the immigrant community in Wisconsin offers insight into the scope of the impacted population: out of the 336,000 students currently enrolled in an institution of higher education in the state, approximately 12,000 are first-generation immigrant students, which suggests that Wisconsin's population of undocumented students in higher education is in line with the national average of 2% of the overall population.<sup>5</sup>

## The National Context of Tuition Equity for Undocumented Students

In 1982, the Supreme Court of the United States addressed the issue of whether undocumented school children enjoy the protection afforded by the Equal Protection Clause of the Fourteenth Amendment, and thus were entitled to enrollment in public schools. In *Plyler v. Doe*, the Supreme Court held that denying undocumented children the right to attend public school violates the Equal Protection Clause of the Fourteenth Amendment, reasoning that undocumented members of the community, and their children, though not citizens of the United States, are people “in the ordinary sense of the term,” and therefore are afforded protections under the Fourteenth Amendment.<sup>6</sup> While the holding in *Plyer v. Doe* applies only to primary education, , many states have relied on this decision to enact legislation to extend in-state tuition to undocumented students.

Additionally, Section 505 of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) states that “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

<sup>3</sup> *Undocumented Students in Higher Education* (New American Economy Research Fund, March 2, 2021).

<sup>4</sup> *Immigrants and the Economy in Wisconsin* (New American Economy Research Fund).

<https://www.newamericaneconomy.org/locations/wisconsin/>.

<sup>5</sup> State Data: Wisconsin (Higher Ed Immigration Portal).

<https://www.higheredimmigrationportal.org/state/wisconsin/>.

<sup>6</sup> *Plyler v. Doe* 457 U.S. 202 (1982).

scope) without regard to whether the citizen or national is such a resident.”<sup>7</sup> State legislation passed in the aftermath of *Plyer* and the enactment of IIRIRA fall into the general parameters set by these policies, offering in-state tuition that is tied to high school attendance and graduation rather than simple residency, thus remaining in line with the provisions of the IIRIRA.

Through 2022, at least 21 states and the District of Columbia have implemented policies that allow undocumented students access to in-state tuition. Generally, these laws require students to have attended and/or graduated from a high school in the state in which the university is located, with many laws also requiring affidavits pertaining to the students’ commitment to seek citizenship as soon as possible. To date, California, Colorado, Connecticut, Florida, Hawai’i, Illinois, Kansas, Kentucky, Maryland,

Michigan, Minnesota, Nebraska, New Jersey, New Mexico, New York, Oklahoma, Oregon, Rhode Island, Texas, Utah, Virginia, and Washington extend in-state tuition benefits to undocumented students in some form.<sup>8</sup> Additionally, at least 18 states grant comprehensive access to undocumented students, offering eligibility for some state financial aid in addition to in-state tuition.<sup>9</sup> Although approximately half of the states in the country have enacted some form of assistance for undocumented students, there are currently 5 states, including Wisconsin, Missouri, Tennessee, North Carolina, and New Hampshire, which have enacted explicitly restrictive legislation or policies, barring access to in-state tuition and financial aid to undocumented students. Other states, including Alabama, Georgia, and South Carolina, have outright prohibitive policies that prevent undocumented student enrollment in all or some state institutions.<sup>10</sup>

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<sup>7</sup> “Undocumented Student Tuition: Overview.” *National Conference of State Legislatures*, June 9, 2021. <https://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx>.

<sup>8</sup> *Basic Facts About In-State Tuition for Undocumented Immigrant Students* (Los Angeles:

National Immigration Law Center, March 15, 2021): 1.

<sup>9</sup> Tuition & Financial Aid Equity for Undocumented Students, *Higher Ed Immigration Portal* (2022). <https://www.higheredimmigrationportal.org/>.

<sup>10</sup> *Ibid.*

## Tuition & Financial Aid Equity for Undocumented Students

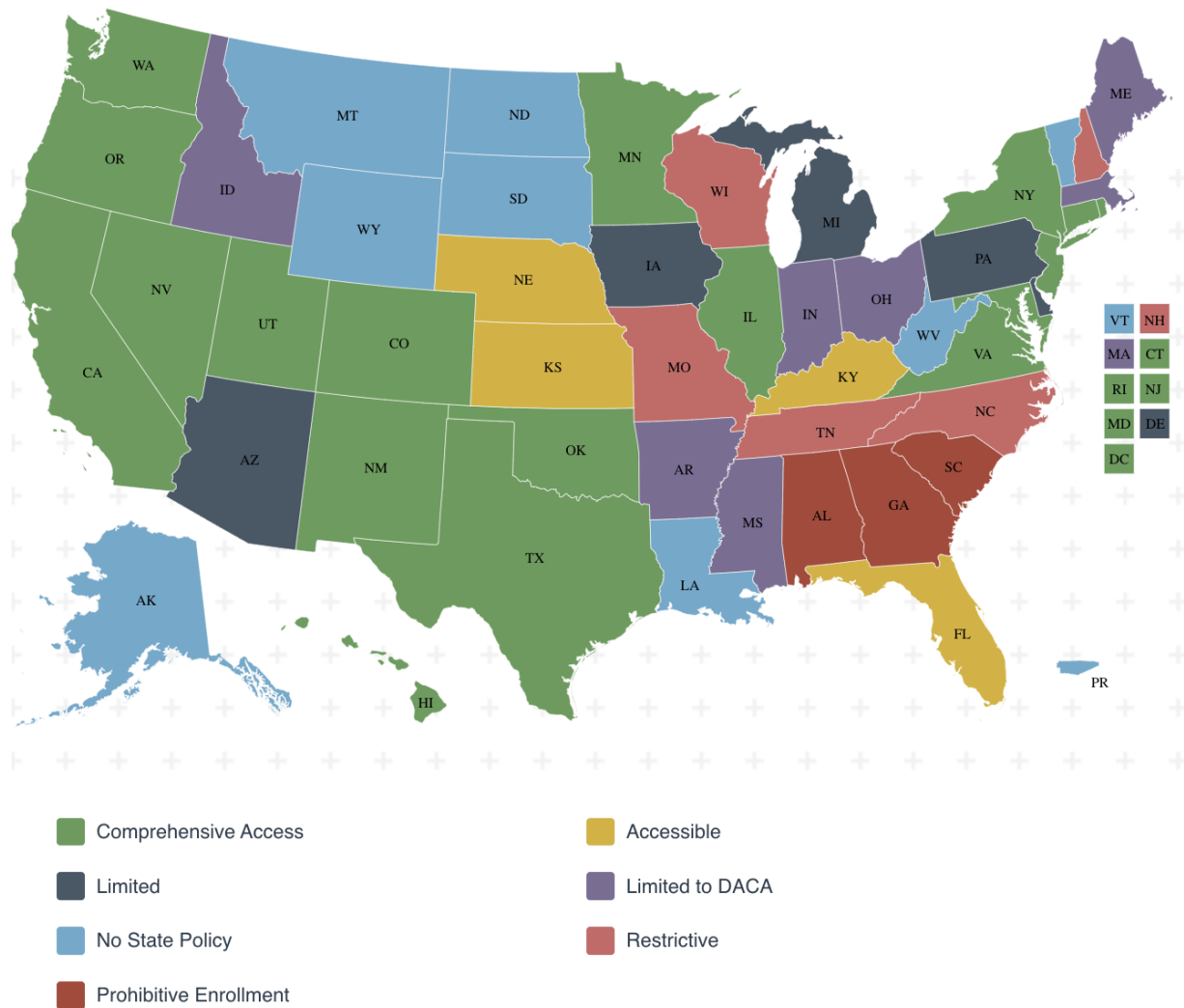


Figure 1: A Map of the US Classifying Each State According to Undocumented Student Access to Tuition and Financial Aid.<sup>11</sup>

### A History of Tuition Equity for Undocumented Student Residents in Wisconsin:

Beginning in 2003, Wisconsin State Assembly Bill 95 introduced the idea of in-

state tuition eligibility for undocumented students in the state, but ultimately failed to pass.<sup>12</sup> However, in 2009, the Wisconsin legislature enacted Wisconsin State Assembly Bill 75, which

<sup>11</sup> "Tuition and Financial Aid Equity," *Higher Ed Immigration Portal*. <https://www.higheredimmigrationportal.org/states/>.

<sup>12</sup> A.B. 95, 2003-2004 Legislature, 96th Regular Session (WI 2003).

allowed undocumented students to pay in-state tuition if they graduated from a Wisconsin high school, received a GED in the state of Wisconsin, or attended a Wisconsin high school for three consecutive years. In addition to these requirements, undocumented students were required to file an affidavit affirming that they had or would file for permanent residency as soon as they are eligible to do so.<sup>13</sup> In 2011, Wisconsin State Assembly Bill 40 repealed this provision, preventing undocumented students, including DACA recipients, from accessing in-state tuition.<sup>14</sup> Following repeal, proponents of tuition equity for undocumented students have introduced a series of resolutions intended to restore the provisions of the 2009 legislation, including Assembly Bill 785 in 2014 and Assembly Bill 929 in 2016; all have failed to pass. Additionally, Wisconsin State Legislature Statute § 36.27, which establishes tuition guidelines for the Board of Regents, prevents them from establishing in-state tuition for undocumented students, removing an alternative policymaking avenue employed in states like Hawai'i, Oklahoma, and Michigan.<sup>15</sup>

While in-state residency for tuition purposes has remained inaccessible to undocumented students in Wisconsin over the past decade,

a series of alternative measures and initiatives implemented by UW-system institutions have sought to acknowledge and alleviate the disproportionate financial burden faced by undocumented students. The Whitewater Dream Fund, a private scholarship created in direct response to the 2011 repeal of the in-state tuition provision, offers a non-competitive scholarship available to any full-time undocumented student enrolled at the University of Wisconsin-Whitewater.<sup>16</sup> Likewise, in 2017 the University of Wisconsin-Milwaukee established the Undocumented Student Task Force, a first-of-its-kind initiative in the state that trained faculty on how to assist undocumented students when filing for financial aid and worked to educate the campus on the impact of undocumented or DACA-mented students' status on their time at the university.<sup>17</sup> Finally, the University of Wisconsin-Madison opened the Center for DREAMers in 2021 after receiving a \$110,000 grant from the Baldwin Wisconsin Idea Endowment; a program that provides mental and social services, legal representation, and career and educational counseling for DREAMers across the state, the Center for DREAMers works to ease the "burden of uncertainty" faced by undocumented immigrants across the

<sup>13</sup> A.B. 75, 2009-2010 Legislature, 99th Regular Session (WI 2009).

<sup>14</sup> A.B. 40, 2011-2012 Legislature, 100th Regular Session (WI 2011).

<sup>15</sup> Wis. Stat. § 36.27.

<sup>16</sup> Anee Stinson, Courtney Luedke, and Gresham D. Collom, *Undocumented Students at the University of*

*Wisconsin-Whitewater: A Resource Guide to Navigating College* (Whitewater: University of Wisconsin-Whitewater, 2021): 12.

<sup>17</sup> Ana Martinez-Ortiz, "UW-Milwaukee Creates Task Force for Undocumented Students," *UWM Post*, April 4, 2017.

state.<sup>18</sup> Along with a series of similar initiatives implemented across the UW system, these programs indicate a clear acknowledgement of the disproportionate financial burden faced by undocumented residents in Wisconsin.

In recent years, the 2021-2023 Governor's Proposed Budget for Immigrant Issues has

again raised the question of tuition equity for undocumented students in the state of Wisconsin. Seeking to revive the measures of the AB 75 (2009), the Evers administration has proposed extending in-state tuition to undocumented students. Under this proposal, undocumented students would remain ineligible for state or federal financial aid.<sup>19</sup>

### The Case for Tuition Equity

- The UW system's Big 10 counterparts have implemented tuition equity policies for undocumented students, most notably through Minnesota's 2013 Prosperity Act.<sup>20</sup> Other institutions include the University of Illinois, University of Maryland, University of Nebraska and the University of Michigan.<sup>21</sup>
- Opponents of tuition equity argue undocumented immigrants contribute little to the socioeconomic health of Wisconsin. However, undocumented students and families pay \$218.5 million dollars annually.
- Meanwhile, DACA-eligible immigrants contributed \$48 million to federal, state, and local economies through taxes.<sup>22</sup>
- A study by the Wisconsin Council on Children & Families found that repealing in-state tuition was not an economic benefit to the state. The study states, "Undocumented students have not been a burden on the university system. Large funding cuts are responsible for the budget challenges the UW system faces."<sup>23</sup>
- A robust body of research finds that increasing undocumented student access to higher education offers real socioeconomic benefits at the national level.

<sup>18</sup> Elise Wiegele, "UW Opens Specialized Support Center for Undocumented Students," *The Badger Herald*. October 20, 2021.

<sup>19</sup> *Summary of Governor's Proposed Budget for Immigrant Issues* (Wisconsin Budget Project: April 20, 2021). <http://www.wisconsinbudgetproject.org/wp-content/uploads/2021/04/2021-3-budget-summary-immigration.pdf>.

<sup>20</sup> Minnesota Session Laws 2013, Chapter 99, Article 4

<sup>21</sup> Marina Alexio, Jacob Chin, Katherine Fennelly, and Allison Shurilla, "Analysis of Policies toward Applications from Undocumented Immigrant Students at Big Ten Schools," *Minnesota Journal of Law & Inequality* 30, no. 1 (2012).

<sup>22</sup> "Taxes & Spending Power" *New American Economy* <https://www.newamericaneconomy.org/locations/wisconsin/>.

<sup>23</sup> Julie Davidson, *Limiting Options for Undocumented Youth: Tuition Policy Closing Doors* (Wisconsin Council on Children & Families): 5.

- A report by the Institute for Higher Education Policy argues that, “As the United States moves into the 21st century as part of the global economy...it is imperative to develop policies at the federal, state, local, and institutional levels to help immigrants gain access to and succeed in higher education. Without such policies, the nation may find itself with a workforce that does not have sufficient education to enable the United States to remain economically competitive.”<sup>24</sup>

## Recommendations

Based on this background, DREAMers of Wisconsin recommends the following policies:

1. *Restore the policies of AB 75 (2009), granting certain undocumented students access to in-state tuition.*
2. *Offer access to state and private financial aid in line with the policies put forth by the state of Minnesota’s Prosperity Act (2013).*
3. *Increase student support services, including financial support, for undocumented students.* These include status-cognizant financial aid and mental health services, relevant legal support related to student status, culturally competent trainings for faculty and staff, access to employment and internship opportunities, and targeted programming designed to create a welcoming atmosphere for undocumented students within the campus community.
4. *Create and maintain a set number of ASM allocations dedicated to undocumented students.*

## Acknowledgments

**Thank you to the following for contributing to the Tuition Equity for Undocumented Students in Wisconsin Policy Brief:**

Nicole Contreras Garcia, Nancy Cruz, Anthony Hernandez, Alexander Hopp, Cristhabel Martinez, Julian Morales, and Keydi Osorio

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<sup>24</sup> Wendy Erisman and Shannon Looney, *Opening the Door to the American Dream: Increasing Higher Education Access and Success for Immigrants* (Institute for Higher Education Policy, 2007): 4.