

This state consensus is conducted in the context of the LWVUS position, which supports provisions for unauthorized immigrants now in the country to earn legal status. This is not at issue here. We seek consensus only about extending in-state tuition in NJ.

This document has three parts. Everyone participates in the consensus at Part A and in the follow up question in Part C. How you answer Part A determines whether or not you answer Part B.

A. THE CONSENSUS QUESTION: Should New Jersey extend in-state tuition and related benefits to unauthorized immigrants who graduate from New Jersey high schools and are admitted to New Jersey's public institutions of higher education?

- YES, as asked (*skip to part C below*)
 MAYBE, Depends on conditions in Part B (*continue with part B below*)
 NO, regardless of conditions (*SKIP TO PART C BELOW*)
 NO CONSENSUS (*SKIP TO PART C BELOW*)

B. If your League answered "MAYBE, Depends on conditions at Part B" at A above, then complete Part B. All others skip to Part C.

Please indicate for each of the following whether it is necessary for your League to agree to the consensus question, helpful but not essential, or not an issue for your League.

<i>This is NOT a consensus question. Please indicate <u>counts</u> of individuals voting for each response.</i>	NECESSARY	HELPFUL	Not an issue
1. If the student attended high school in NJ for 3 or more years.			
2. If the student is required to file an affidavit with the institution of higher education stating that the student has filed an application to legalize his/her immigration status or will file an application as soon as s/he is eligible to do so.			
3. If all information about immigration status obtained in extending in-state tuition to a student is kept confidential.			
4. If credible budgetary calculations demonstrate that the total net costs that New Jersey colleges are likely to incur as a result of extending in-state tuition to unauthorized immigrants will be very minor.			
5. If a priority system is used for offering admission that gives first priority to citizens, then to legal permanent residents, then all others, including unauthorized immigrants. Whether or not admission is extended to each successive group would depend primarily on the number of openings.			

B, continued:

B6. Please indicate any other actions or criteria that would make your League **SUPPORT** extending in-state tuition to unauthorized immigrants in NJ.

B7. Then please indicate any other actions or criteria that would make your League **OPPOSE** extending in-state tuition to unauthorized immigrants in NJ.

C. Further question about the application of this consensus to related issue at independent colleges. *All Leagues participate in Part C.*

Some state funding is now available to New Jersey's 14 independent colleges, based on the number of NJ students enrolled. This funding is administered by the Independent College Fund of NJ (ICFNJ), and by law the formula for dividing the money excludes unauthorized immigrants. Do you support reversing this exclusion to encourage state funding on the basis of total NJ enrollment, including unauthorized immigrants?

YES, we should treat unauthorized immigrant students attending private colleges in the same way as we treat other students. Given that we provide some state-funding for any NJ students, we should provide it for all.

NO, leave things the way they are.

NO CONSENSUS

Additional comments regarding any of the questions:

___ *number of members participating in consensus.*

Thank you for participating in this study and consensus.

Please submit your completed form by December 15, 2009, to the LWVNJ office:

FAX: 609-599-3993; Email: contact@lwvnj.org; 204 West State Street, Trenton, NJ 08608

STUDY DOCUMENT

This LWVNJ study and consensus concerns the extension of in-state tuition for public higher education to all students, including unauthorized¹ immigrants who have attended and graduated from NJ high schools and are admitted to public colleges in New Jersey. It also concerns the possible elimination of immigrant status as a criterion for state-funded scholarships used at independent institutions.

The five conditions raised in part B of the Consensus Questions Document are listed with comments at the end of this document. We recommend that all Leagues review these conditions as part of their general discussion prior to taking consensus on parts A and C of the Consensus Questions Document.

Who is involved?

Most of the students involved arrived in this country as children traveling with family members. They are unauthorized now because their families entered without proper authorization or because the authorization that they had on arrival has expired. These students have graduated from NJ high schools, and in many cases elementary and middle schools, without regard to their immigration status. (The right to a public school education through grade 12 is guaranteed by the U.S. Supreme Court decision Plyler v. Doe -- see below.) Most of these students expect to stay in this country for the foreseeable future, and they have been accepted at a NJ public college or university.

Who is NOT involved?

Students who were born in this country ("native born") are US citizens by virtue of their birth in this country. As a result they receive in-state tuition if they meet eligibility requirements based on residency in New Jersey. The immigration status of their parents is not at issue.

Similarly students who are authorized permanent residents in the United States and New Jersey residents can receive in-state tuition without regard to the immigration status of their parents.

What has happened in other states?

Nationally college attendance is very low among unauthorized immigrants graduating from high school, 5 to 10 percent compared to 75 percent for native-born students graduating with them. In-state tuition increases this rate, but does not bring it up to the

¹ The terms "undocumented immigrant", "illegal immigrant" and "unauthorized immigrant" are often seen as equivalents. The LWVUS national position uses "unauthorized" and we follow that usage. We recommend that Local Leagues use it as well, except, of course, when quoting language that uses one of the other terms.

rate of native-born students. This is true whether the state is a high or a low immigration state. For instance:

- 30 or 8% of roughly 370 unauthorized immigrants graduating from high school enrolled in Kansas public colleges in 2005-6 following enactment of instate legislation.
- 393 such students enrolled in Texas public colleges/universities in 2001-2, or 0.4% of all enrollment in these colleges.

All states that have passed instate tuition legislation require at least one year attendance at instate high schools (Kansas and Texas both require 3 years, as do most of the remaining states; they also require graduation from a high school in the state or an equivalent diploma.)

These attendance and degree requirements are key in that existing federal legislation² appears to require that instate tuition also be extended to all citizens, regardless of state of residence, if eligibility for instate tuition for unauthorized immigrants were based solely on residency for immigrants. A legal challenge to basing eligibility for instate tuition on graduation/attendance as a way to avoid extending instate tuition to all citizens regardless of state of residence should be decided in the California Supreme Court in the fall of 2009.

How much tuition money could be involved if instate tuition is passed?

Unauthorized immigrants who graduate from NJ high schools are generally charged out-of-state tuition in NJ. This is the tuition charged to students not living in New Jersey. As shown below, out-of-state tuition averages at least 90 percent more than the tuition charged to students who graduate from NJ high schools who are citizens or permanent residents, and varies little with the category of the college. NJ has no set policy for unauthorized immigrants, however, and some colleges refuse admission to unauthorized immigrants altogether while others already charge instate tuition.

We estimate that about 2000 unauthorized immigrants graduate each year from New Jersey high schools. Using other states' experience, we also estimate that roughly 200 of these students would actually use in-state tuition.

² Section 505 of IIRIRA, 8 U.S.C § 1623

New Jersey's tuition figures at issue, as of 2007-2008 are:

Average 2007-2008 Tuition Per Student (rounded to thousands)

	Instate	Out-Of State	Difference Per Year
8 State Colleges (William Paterson, Rowan, Ramapo, Richard Stockton, New Jersey City, Montclair State, Kean, The College of New Jersey)	\$7,000	\$13,000	\$6,000
3 Senior Public Average (Rutgers, UMDNJ, NJIT)	\$7,000	\$13,000	\$6,000
19 Community Colleges	\$2,000 for in-district, \$4,000 for out-of-district	\$6,000 for out-of- state	\$2,000 to \$4,000

(modified from Eagleton Institute, Blue Ribbon Panel Appendix, 2009, taken from NJ Commission of Higher Education)

Because state colleges and senior public colleges (see lists for both in the table above) charge essentially the same average tuition, they are grouped together in the discussion below. Community colleges, however, are kept separate as they charge much less.

The money involved in the first several years following passage of instate tuition is probably reasonably approximated by using these two scenarios:

- The first scenario assumes that students interested in and eligible for instate tuition split evenly between state/senior and community colleges, and that NONE of them would have attended without instate tuition.
- The second scenario also assumes an even split between state/senior and community colleges, but assumes that at least some of these students would have attended and paid out-of-state tuition if instate tuition were not available.

Subsequent years may well show more attendance at 4-year colleges as students move up from community colleges.

Scenario 1: 100 state/senior and 100 community; no NJ public college attended otherwise

If 100 of NJ's eligible students take advantage of instate tuition to attend a state/senior college and 100 to attend a community college in their own districts, and none of these would otherwise have attended a public college in NJ, the total tuition intake per year that would result from passage of instate tuition is **\$900,000**.³

³ \$900,000 = 100 X average instate tuition at state/senior colleges of \$7000 + 100 X average instate tuition at community colleges of \$2000).

Scenario 2: 100 state/senior, including 10 who would have attended without instate tuition, and 100 community, including 20 who would have attended without instate tuition

As with Scenario 1, but 10 of the 100 attending a state/senior college would have attended anyway and would have paid out-of-state tuition. In addition, 20 of the 100 attending a community college would have attended anyway, half paying out of district and half paying out of state. The total tuition intake per year that would result from passage of instate tuition is **\$730,000**.⁴

Attendance and thus the additional tuition intake resulting from passage of instate tuition will of course be spread across all colleges attended. If attendance were distributed equally across the 11 state/senior colleges and the 19 community colleges, the state/senior would average 9 additional students each, and the community colleges would average 5 additional students each. Even assuming greater concentrations at some colleges than at others, no one college is likely to be overwhelmed.

In short, neither attendance nor tuition is likely to show a very large increase at any single college if instate tuition is passed. The additional costs incurred at each college will be offset by the tuition that would not otherwise have been paid as most of these students would not otherwise have attended. (Note that ADDITIONAL students at a college/university bring in additional revenue. Students who take the place of other students, however are revenue neutral.)

How much money could be involved in future earnings and taxes as a result of instate tuition?

Nationally more educated workers earn higher incomes and thus spend more and pay higher taxes across the board, including income tax, sales tax, and property taxes. This is true in New Jersey as well. The NJ Department of Labor and Workforce Development figures show a doubling of income with a college degree over a high school diploma:

- A median 2006-2007 income of \$51 thousand for householders 25 years and older with only a high school diploma
- A median 2006 income of \$106 thousand for those with a bachelor's degree or higher.

We know that nationally unauthorized immigrants pay taxes in total that offset costs to their communities even if the taxes don't now go to the right entities. For instance,

⁴ \$730,000 = 90 X average instate tuition at state/senior colleges of \$7000 - 10 X \$6000 in "lost" tuition + 80 X average indistrict tuition at community colleges of \$2000 - 10 X \$2000 in "lost" out-of-district tuition - 10 X \$4000 in "lost" out-of-state tuition.)

social security taxes, from which the immigrants cannot now benefit, are included in the total along with real estate and sales taxes.

At this time, however, unauthorized immigrants have no legal status as employees as they have no legal status as residents. As a result, any direct benefit to the state of facilitating higher education for unauthorized immigrants may need to wait on federal legislation that provides a path to legal status.

What fairness issues are involved?

Section 1 of Amendment 14 to the U.S. Constitution (see Appendix Document 5) guarantees equal protection of the law to all persons in the U.S., without respect to citizenship, and specifically applies this to all states. This Amendment does NOT address education per se, but the 1982 U.S. Supreme Court decision of Plyler v Doe (see Appendix Document 6 for web address) does guarantee a free public education through grade 12. The Plyler decision specifically cites the issue of fairness (children should not be penalized for the mistakes of their parents) and the 14th Amendment as well as opposition to creating or maintaining an uneducated or illiterate class of residents.

Fairness is frequently raised in opposition to instate tuition for unauthorized immigrants. Opponents point out that other immigrants did things "right," entering with proper authorization, doing what was required to maintain that authorization, and paying their fair share of taxes.

CONTEXT AND REFERENCES

LWVUS Immigration Position (Appendix Document 1)

The LWVUS position on immigration is critical to this study, even though it does not address the issue directly. The LWVUS position envisions a process by which unauthorized immigrants become legal.

"In transition to a reformed system, the League supports provisions for unauthorized immigrants already in the country to earn legal status."

and

"In achieving overall policy goals, the League supports a system for unauthorized immigrants already in the country to earn legal status, including citizenship, by paying taxes, learning English, studying civics and meeting other relevant criteria. While policy reforms, including a path to legal status, remain unachieved, the League does not support deporting unauthorized immigrants who have no history of criminal activity."

The actual existence of a path to legalization could increase expectations about financial benefits to the state of extending instate tuition to unauthorized immigrants.

Likewise, the certainty that there will never be such a path would increase expectations of the low likelihood of such financial benefits to the state. We are conducting the study and consensus now, however, in the absence of any certainty of what path, if any, will be available in the near future. We are also conducting it with the certain knowledge that the League is working toward a path to legalization.

New Jersey legislation (Appendix Document 2) and opposition to this legislation (Appendix Document 3)

Instate tuition bills are now before the state legislature and have been before it for several years without action. These bills mirror legislation passed in other states. Some of the consensus question wording comes directly from the proposed NJ bills. Because Governor Corzine and his Blue Ribbon Panel strongly support instate tuition, such legislation may have a better chance of coming to a vote this year or next than they have in the past.

Opposition, however, is also strong. For example, a letter is attached from NJ Senator Shirley K. Turner, Tempore, Chair of the Senate Education Committee, member of the Senate Budget and Appropriations Committee, and an administrator at Rider University.

Governor Corzine's Blue Ribbon Panel on immigration (The appendix to the Blue Ribbon Report that concerns instate tuition is attached as Appendix Document 4)

The most complete and recent study of immigration issues facing New Jersey was completed this past winter by Governor Corzine's Blue Ribbon Panel on immigration. The Panel supports instate tuition, and Corzine joined it in support. The full appendix section from the Panel's report that deals with instate tuition both as it might pass in NJ and as it exists in other states is provided in the Appendix for this study document, along with the website for the full report.

Other key documents:

Amendment 14 to the U.S. Constitution (Appendix Document 5)

Plyler v. Doe – U.S. Supreme Court Decision regarding basic education for immigrant children. (Appendix Document 6 provides web address)

Note that further issues could arise relevant to this issue.

The instate tuition issue at public colleges raises possible issues about state aid to New Jersey's 14 independent colleges (Drew, Georgian Court, Princeton, Rider, etc.). In the past such aid has been calculated based on the number of NJ residents enrolled who are citizens and permanent residents. By law, unauthorized immigrants have been excluded from the calculation. Assuming both that state funding for independent colleges survives the current budget crisis and that instate tuition for unauthorized immigrants at public colleges passes, we can imagine an effort to include unauthorized immigrants in the formula for state aid to independent colleges.

Regarding *Conditions in Part B of the Consensus Questions Document*

The conditions from Part B are italicized and bolded below, followed by comments in regular type.

1. If the student attended high school in NJ for 3 or more years. Attendance and graduation in the state at issue are parts of every instate tuition law passed thus far, although the number of years of attendance varies. These requirements are intended to increase the likelihood of the student's connection to the state. They are also a means of sidestepping the issue of residency per se, which could bring a federal law into play as discussed on page 2 of this document.

2. If the student is required to file an affidavit with the institution of higher education stating that the student has filed an application to legalize his/her immigration status or will file an application as soon as s/he is eligible to do so. This requirement limits the extension of instate tuition to those unauthorized immigrants who intend to stay in this country. In principle all adult students might file for legalization, but their options may be limited by a general lack of visas, and by lengthy delays and backlogs which can extend back for many years and can make such filing feel pointless.

- As of May, 2009, the most recent family-based immigration visas being processed from most areas (other than China, India, Mexico, or the Philippines) must have been submitted in October 2004 or before (5 years prior to 2009).
- The countries listed specifically all had longer delays.⁵ For instance, as of May, 2009, the US was processing most family-based visa applications from Mexico only if they were submitted in 1992 or before (17 years prior to 2009).

3. If all information about immigration status obtained in extending instate tuition to a student is kept confidential. Few unauthorized immigrants would be likely to apply for instate tuition if their own immigration status or that of their families were made public as part of the application. Confidentiality makes it possible for students to apply.

4. If credible budgetary calculations demonstrate that the total net costs that New Jersey (or its colleges) is likely to incur as a result of extending instate tuition to unauthorized immigrants will be very minor. See sections on tuition money and future earnings on pages 2 to 4 of this document.

5. If a priority system is used for offering admission that gives first priority to citizens, then to legal permanent residents, then all others, including unauthorized immigrants. Whether or not admission is extended to each successive group would depend primarily on the number of openings. This condition is not likely to come into play at this time – see section on tuition money on pages 2-4 for estimates of numbers of students likely to take advantage of this law at this time. A priority system, however, could act as a safety valve for the future if unauthorized immigration increases in the future.

⁵ Department of State Publication 9514, CA/VO: April 8, 2009;
http://travel.state.gov/visa/frvi/bulletin/bulletin_4454.html

DISCUSSION LEADERS' GUIDE

Please review the **QUESTIONS SHEET** first.

The reference to the national immigration position is intended to help limit the discussion to the question at hand. We are NOT discussing whether there should be a path to legal status for unauthorized immigrants.

Please note that the primary consensus question is Part A of the Consensus Questions Document. We recommend that you try to reach consensus on this question, not just take a majority vote.

Part B asks about some conditions that may make the difference between support and lack of support for the primary consensus question. Please answer Part B if your response to Part A depended strongly on the specific conditions noted in Part B. If you DO complete Part B, provide us a count of the VOTES for each response – do not attempt to reach consensus here.

At least some Leagues plan to use the Part B conditions to direct discussion before answering Part A. Consider raising any issues that your members don't raise themselves both to make sure your members have considered the issues fully. In order to aid the Immigration Committee and the State Board in coming to the most appropriate consensus statement, we are asking for votes/counts on these questions.

Part C covers a situation which may arise if the instate tuition legislation passes. We want to know now how League members feel. Although intended to be answered as a consensus question, please just vote if your League feels more comfortable with addressing it that way. This issue is secondary to the main consensus question in Part A.

TIMELINE for the study—the Immigration Committee will conduct a workshop on **September 12** at the fall workshops where materials will be distributed to all Leagues. Each League's completed Consensus Questions Sheet is due back to the League office on or before **December 15, 2009**. Fax, email, and street address are all on the form.

The **STUDY DOCUMENT** provides guidance to the issues in the Questions Sheet. It supplements the materials in the **APPENDIX**, which provides fuller guidance. The organization of the document is general background for the primary consensus question in Part A, specific background to the conditions listed in Part B, and background to the related consensus question shown in Part C.