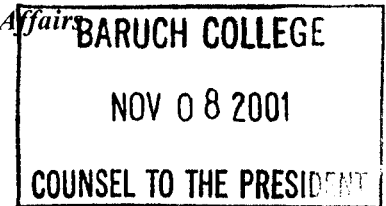


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November 2, 2001

STUDENT ADVISORY MEMORANDUM NO. 2001-2

To: College Presidents

From: Frederick P. Schaffer 

Re: Undocumented and Out-of-Status Students

In 1989 the University began treating as New York State residents for the purpose of tuition all undocumented or out-of-status alien students who could prove New York State residency for the previous 12 months or attended a New York City or State high school for the previous two semesters and who completed the "Undocumented or Out-of-Status Immigrant Affidavit" in compliance with the University's Tuition and Fee Manual (at pp. 15-16). That policy was an outgrowth of Executive Order 124 issued by Mayor Koch in August 1989, which provides that "[a]ny service provided by a City agency shall be made available to all aliens who are otherwise eligible for such service unless such agency is required by law to deny eligibility for such service to aliens." That executive order was reaffirmed by Mayor Dinkins and Mayor Giuliani and reflects the City's (and the University's) historic support for immigrants and recognition of their contribution to our community.

In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Congress amended the immigration laws to provide: "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 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." That means that a public university like CUNY cannot treat undocumented aliens as New York State residents for the purpose of tuition if it does not offer the same lower rate of tuition to U.S. citizens or nationals who are not New York State residents. The effective date of that provision was July 1, 1998.

Prior to that date the then Acting General Counsel sought outside legal advice from an expert in immigration law, who noted that the statute did not explicitly address in-state tuition and therefore advised us to defer any action until implementing regulations were issued and who also pointed out that there was a possible constitutional defect in the law. Accordingly, the University did not change its policy at that time.

The current administration of the University has taken a fresh look at this issue. After more than three years, no implementing regulations have been issued. However, the language of the statute clearly applies to any postsecondary education benefit, which includes the lower, subsidized rate of tuition available to state residents. Indeed, the Conference Report states that it “provides that illegal aliens are not eligible for in-state tuition rates at public institutions of higher education.” Furthermore, New York City’s constitutional challenge to a related provision of the law was rejected by the U.S. Supreme Court.

I have therefore concluded that the University must change its prior tuition policy regarding students who are undocumented or out-of-status aliens. Effective next term, undocumented or out-of-status alien students must be treated the same as out-of-state U.S. citizens (as well as foreign students here on student visas). All such students must be charged the non-resident rate of tuition. The Tuition and Fee Manual will be amended accordingly.

The University remains deeply committed to maintaining its proud tradition of welcoming and educating all immigrants. That tradition was forged over many generations and strengthened by the extraordinary diversity of our student body. We must, however, implement that commitment in a manner consistent with federal law.

In order to do so, each college must ensure that it obtains information about the citizenship and immigration status of its students in the course of the application and registration process. You should review your procedures for recording this information and make any necessary improvements prior to registration for the next semester. Please note that there will be no change in the University’s policy and practice of keeping students’ records (including information regarding their citizenship and immigration status) confidential unless required by law to disclose such information.

It is also important that students are properly informed about this policy change prior to registration for classes next semester. My office will work with Vice Chancellor Otis Hill and the college offices of student affairs to assist in communications with students as soon as possible. It will be particularly important to make counseling easily available to students.

- c: Trustees
- Cabinet
- Vice Presidents for Finance and Administration
- Vice Presidents for Student Development
- Legal Affairs Designees
- Registrars
- Foreign Student Advisors