Brief Legal Guide to Undocumented Students in the UC

 Relevant Laws

- **Federal Law**: Congress has plenary authority to regulate naturalization and extensive authority over other aspects of immigration. However, federal law permits a state to pass laws that would allow it to provide state and local public benefits to undocumented persons.

- **California Law**
  - **AB 540 (2001)**: Allows students, regardless of immigration status, who meet certain qualifications\(^1\) to become eligible for an exemption from nonresident tuition.
  - **California Dream Act (AB 130 and 131) (2011)**: Allows any student eligible for the AB 540 exemption from nonresident tuition to also be eligible for state and institutional financial aid.
  - **DACA (Deferred Action for Childhood Arrivals) (2012)**: An exercise of prosecutorial discretion allowing certain undocumented children to receive a renewable two-year work permit and exemption from deportation. DACA does not confer legal immigration status and is not a law, but rather a policy established by President Obama through an executive order.

 Issues

1. **Can the university offer admission or continued enrollment to undocumented students?**

   Yes. Federal law does not forbid undocumented students from attending college or university.

2. **Can the university offer in-state tuition or financial aid to undocumented students?**

   Yes, but only to two groups. Generally, the university may only offer in-state tuition or financial aid to undocumented student who meets the requirements for AB 540 eligibility. Irrespective of whether undocumented students meet AB 540 eligibility, the UC recently allowed DACA students to qualify for in-state tuition by counting periods of deferred action to meet the physical presence requirement to establish residency for tuition purposes.\(^2\)

3. **Can the university employ undocumented students?**

   Currently yes, but only if the undocumented student is a DACA student. Under the Immigration Reform and Control Act of 1986 (IRCA), an employer may only employ persons with valid work authorization. DACA students are eligible for work authorization for a period of two years, which can be renewed. However, if a DACA student’s deferment period lapses, so does the work authorization. While the university is not required to automatically terminate such an undocumented student, it may not employ the student during the period of lapsed work authorization.

4. **Is the university legally required to provide the US Immigration and Custom Enforcement (ICE) with information on the immigration status of undocumented students?**

   Generally no. The Family Education Rights and Privacy Act (FERPA) prohibits the university from disclosing personally identifying information, including records reflecting a student’s immigration status, unless a FERPA exception applies or the student gives consent. To date, the only information that the university is legally mandated to disclose to ICE is statutorily specified information on students with F, M, and J visas. The university may be obligated to disclose information on a student’s immigration status in response to a lawfully issued subpoena or court order. However, attorney-client communication in the UC Davis School of law clinics and the UC Undocumented Legal Services Center would be exempt from a subpoena under the attorney-client privilege.

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\(^{1}\) Currently, AB 540 requires, among other qualifications, (1) graduation from a California high school or its equivalent and (2) three years of attendance in a California high school or three years’ worth of high school coursework in California and three years of attendance in California elementary and/or secondary schools.

\(^{2}\) UCOP, UNIVERSITY OF CALIFORNIA RESIDENCY POLICY AND GUIDELINES; President Janet Napolitano, Letter to Chancellors on residency policy (Feb. 2, 2015).
5. What are the implications for the university if the DACA program is terminated?

Employment. DACA students would lose their employment authorization. As a result, the university would be unable to employ these students. These students would also lose any benefits that they would have received as an employee (e.g., student housing for Resident Advisors) unless they pay for the benefit out-of-pocket or would otherwise be entitled to the benefit solely as a student.

Financial Aid. DACA students who are not AB 540 eligible but otherwise meets the requirements for residency for tuition purposes would no longer be eligible for in-state tuition. However, if the current DACA student is also AB 540 eligible, the student remains eligible for in-state tuition and state and institutional financial aid.

Research/Study Abroad. DACA students would lose the ability to apply for authorization to travel outside of the United States. This would exclude undergraduate DACA students from participation in travel abroad programs and graduate DACA students from engaging in research requiring international travel. If they do leave the country, they may not be able to re-enter.

Detention/Deportation. DACA students would lose their current “lawful presence” status and thus may potentially be detained and deported.