



OFFICIAL POLICY

Federal Preemption of State Postsecondary Tuition Eligibility Requirements

Under the 1982 Supreme Court decision *Plyler v. Doe*, states are required to provide resident immigrants, regardless of legal status, with a free primary and secondary education. States agree that denial of an education to these children would stamp them with an enduring disability and would harm the state's economic viability by creating a permanent underclass drawing on state resources rather than contributing to them. It is in the state's interests to see all children become productive members of society by maximizing their educational opportunities.

In conflict with this position is a 1996 provision of the federal Illegal Immigration Reform and Immigrant Responsibility Act (P.L. 104-208) that preempts state laws regarding postsecondary education benefits ("in-state tuition") for immigrant students, even when the child has successfully graduated from the state's K-12 system. The federal law prohibits states from providing in-state tuition benefits to those not lawfully present unless all students, regardless of state residence, are eligible for such benefit—effectively preempting state law determining who is and who is not eligible for in-state tuition. Before the 1996 preemption, states routinely determined these issues without help or interference from the federal government.

It is the position of the National Conference of State Legislatures that this underlying federal preemption of state authority should be amended or repealed by federal action on this issue with authority for the determination of eligibility for post-secondary education benefits restored to the states.

Expires August 2009