

ADMISSIONS AND LICENSURE FOR DACA STUDENTS

Background

The Department of Homeland Security provided that individuals satisfying all of the following criteria are eligible to have removal from the United States deferred for two years.

Admission of Students with Deferred Action for Childhood Arrivals (“DACA”) Classification August 1, 2013

- 1) individuals who came to the United States under the age of sixteen, were present in the United States on June 15, 2012, and are presently under the age of thirty;
- 2) individuals who have continuously resided in the United States for at least five years prior to June 15, 2012;
- 3) individuals who are currently in school, have graduated from high school, or is an honorable discharged veteran;
- 4) individuals who have not been convicted of any serious criminal offense;
- 5) individuals who do not pose a threat to national security or pose a threat to public safety

DACA APPLICABILITY TO THE NORTH CAROLINA COMMUNITY COLLEGE SYSTEM “ADMISSION TO COLLEGES” RULE

The State Board of Community Colleges Code (“State Board Code”) provides the general admissions policy that “Each college shall maintain an open-door policy to all applicants who are legal residents of the United States and who are either high school graduates or at least 18 years of age.”

There is an exception to the general open-door policy that is applicable to undocumented immigrants. The State Board Code provides that “undocumented immigrant” means any immigrant who is not lawfully present in the United States.

The State Board then goes on to provide certain limitations on the admission of undocumented immigrants.

During the period of deferment, individuals who have been granted deferral under the DACA program do not meet the definition of an undocumented immigrant as it is defined in ID SBCCC 400.2(b) because the deferral recipients are lawfully present in the United States during the period of deferment. Please note that it is not within the authority of community colleges to determine who is eligible to receive DACA classification. Student applicants are responsible for presenting documentation to establish that they have DACA classification.

IMPLEMENTATION OF “ADMISSIONS TO COLLEGE” RULE TO STUDENTS WITH DACA CLASSIFICATION

The phrase “legal residency” in ID SBCCC 400.2(a) means individuals who are “lawfully present” in the United States, solely for the purpose of ID SBCCC 400.2(a). Since individuals with DACA classification are lawfully present during their period of deferral and do not fit the definition of an undocumented immigrant per ID SBCCC 400.2(b), community colleges should treat an individual with DACA classification like any other student who is lawfully present in the United States **with two exception:**

- 1) Neither federal law, nor North Carolina law permits individuals with DACVA classifications to receive professional licenses. See 8 U.S.C. & 1621(a) and (c)(1)(A). Because individuals with DACA classification cannot receive professional licenses, while community colleges are open-door institutions, local community colleges have the discretion to determine whether to admit an individual with DACA classification into a specific program of study leading to professional licensure. More specifically, a local community college would be authorized to deny access to an individual with DACA classification into a specific program of study that leads to professional licensure. Conversely, a local community college would be authorized to allow access to an individual with DACA classification into a specific program of study that leads to professional licensure.
- 2) Moreover, it is the current position of the State Residence Committee that individuals with DACA classification do not have the capacity to receive in-state tuition.

ADMISSION TO COLLEGES

The State Board of Community Colleges Code states the policy of admission of student under the DACA classification will be to maintain an open-door admission policy to all applicants who are legal residents of the United States and who are either high school graduates or are at least 18 years of age. Student Admission processing and placement determination shall be performed by the officials of each college. Admissions requirements for an emancipated minors shall be the same as an applicant of 18 years or older. Provisions with respect to admission of minors are set forth in Rule .0305 of this Section.

For the purposes of this Section, “undocumented immigrant” means any immigrant who is not lawfully present in the United States. Community colleges shall admit undocumented immigrants under the following conditions:

- (1) Community colleges shall admit an undocumented immigrant only if he or she attended and graduated from a United States public high school, private high school, or home school that operates in compliance with State or local law;
- (2) When determining who is an undocumented immigrant, community colleges shall use federal immigration classifications;
- (3) Undocumented immigrants admitted under Subparagraph(b)(1) of this Rule must comply with all federal and state laws concerning financial aid;
- (4) An undocumented immigrant admitted under Subparagraph(b)(1) of this Rule shall not be considered a North Carolina resident for tuition purposes. All undocumented immigrants admitted under Subparagraph(b)(1) of this Rule must be charged out of state tuition whether or not they reside in North Carolina;
- (5) When considering whether to admit an undocumented immigrant into a specific program of study, community colleges shall take into account that federal law prohibits states from granting professional licenses to undocumented immigrants;
- (6) Students lawfully present in the United States shall have priority over any undocumented immigrant in any class or program of study when capacity limitations exist.