Dr. Charles W. Contéro-Puls
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Austin, Texas 78711-2788

Dear Dr. Contéro-Puls:

Thank you for the opportunity to provide public written comments on the proposed rules in Texas Administrative Code §54 published in the September 5th issue of the Texas Register. The undersigned organizations and persons oppose the adoption of the proposed rules as well as the conclusions regarding fiscal implications, economic impact and public benefit. We urge the Texas Higher Education Coordinating Board (THECB) to revise the rules to address the facts and legal authorities cited below prior to publishing the final rules.

Determination of Resident Status for Higher Education Access in Texas and the Need for Revision of Proposed Rules to Ensure Compliance, Clarity, and Protection of Student Privacy

On June 4, 2025, a Texas district court issued an order blocking the Texas Dream Act's [1] in-state tuition benefits for individuals "who are not lawfully present in the United States." On September 5, the THECB published changes to the Administrative Code in part to "incorporate the requirements of interpreting federal law related to establishing lawful presence as a condition of eligibility for resident tuition." However, THECB has offered no clear definitions nor legal framework for schools to follow when making a "lawful presence" determination. Instead, institutions are left with the de facto option of turning immigrant students' personal information over to USCIS—a step that undermines student privacy, risks violating federal protections, and goes far beyond what the court required. We urge you not to adopt rules that only create confusion, put students at risk, and cause lasting harm to Texas institutions, local economies, and the broader public.

[1] The popular reference to H.B 1403 and Texas Education Code Sec. 54.052(a)(3).

Absence of Clear Standards on Lawful Presence Leading to Inconsistent, Disruptive and Unfair Implementation

The proposed rules fail to provide institutions with guidance on how to determine whether a student has lawful presence, despite repeated references to the June 4, 2025, court order. Before addressing the lack of definitional clarity in specific proposed rules, the undersigned organizations and individuals wish to highlight the experiences some of us have had with higher education institutions and impacted students in the months since the court order. In July, 2025, the Coordinating Board advised institutions to reclassify students and to require both an updated affidavit and proof of lawful presence, yet offered no guidance or standards as to how schools should make this determination.

Because the THECB failed to provide clear standards, institutions were left to develop ad hoc processes.[2] Some schools immediately reclassified all Dream Act "affidavit" students as non-residents by default and increased their tuition, without providing students an opportunity to provide any documentation of lawful presence. Others reclassified all Dream Act "affidavit" students as non-residents and then placed the burden on the students to disprove that classification, again without any guidance on how lawful presence should be determined. At other institutions, students who, in fact, have lawful presence—such as those with Deferred Action for Childhood Arrivals (DACA), U visas, employment authorization documents, or pending visa applications—were nevertheless misclassified as non-residents. Some institutions have applied erroneous "lawful status" definitions and the more limited immigrant categories recognized in the domicile regulation, which specifically states that it is not applicable to Sec. 54.052(a)(3).[3] Finally, some schools have properly utilized the standards of the Department of Public Safety and USCIS.

[2] See https://www.texastribune.org/2025/08/19/texas-colleges-undocumented-immigrants-tuition-ruling/ ("Confusion reigns as Texas colleges scramble to comply with ban on in-state tuition for undocumented students"); see also https://www.houstonchronicle.com/news/houston-texas/education/article/texas-dream-act-tuition-20814370.php ("She's 8 credits shy of graduation. A challenge to the Texas Dream Act is pushing her out of college.")

[3] 19 TAC §21.24(d).

Some institutions gave students fewer than seven days to submit documentation of lawful presence with no definition or guidance, while others reclassified students on the very day that tuition was due. This compressed and inconsistent timeline, coupled with no guidance, created significant confusion and hardship, leaving students with little to no opportunity to respond or correct errors. Based on the haphazard implementation statewide and the direct experience of some of the undersigned parties, it is evident that many students were wrongly classified as non-residents, with no clear process available to challenge these erroneous determinations.

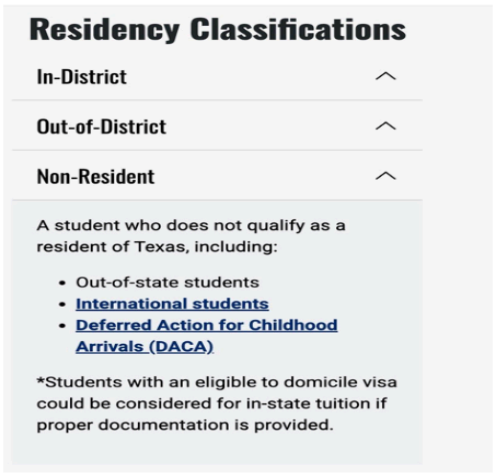
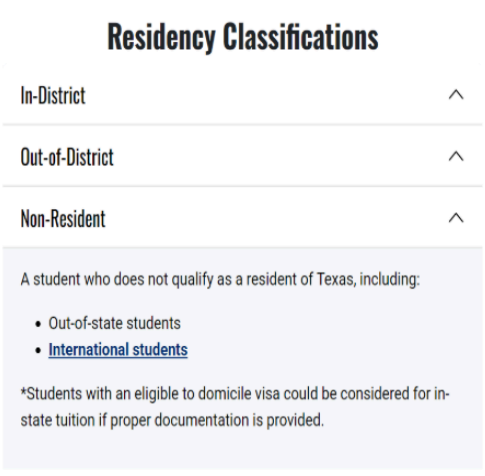
The most egregious examples of the inconsistent and arbitrary application of "lawful presence" come from institutions that are not allowing DACA recipients to qualify for in-state tuition. For example, we were also recently made aware that Laredo College has the following current policy: "Laredo College, like all public institutions in Texas, is complying with this ruling by updating residency classifications to align with federal and state law," the college said in a statement. "Beginning in fall 2025, students who are not eligible under federal law for lawful presence — including undocumented and DACA recipients — will have their residency classification updated from in-district/in-state to out-of-state."[4]

In another example, Blinn College had been explicitly advertising on its website that DACA students were ineligible for in-state tuition and instead required to pay non-resident rates. The position of Blinn College was contrary to USCIS definitions; the Department of Public Safety guidance; and the position of the Texas Attorney General, in its litigation in *U.S. v. Texas*, in which the Texas Attorney General recognizes that DACA students are lawfully present and eligible for in-state tuition.[5]

As depicted below, several weeks after we brought this error to their attention, the college finally updated its website on September 19, 2025 to accurately reflect the law: DACA students are eligible for in-state tuition if they meet residency requirements[6]. This change is

[4] See https://www.lmtonline.com/local/article/laredo-students-texas-dream-act-repeal-21033285.php
[5] See Case 7:25-cv-00055-O Document 47 Filed 07/02/25 Page 4.
[6] See https://www.blinn.edu/admissions/residency-information.html

welcome, but it raises serious questions: How many students were misled, overcharged, lost access to financial aid or forced to leave school because of the misinformation?

Screenshot of Blinn College Non-Resident Classification Prior to September 19, 2025	Screenshot of Blinn College Non-Resident Classification as of September 19, 2025
	

Since the court order, some of the undersigned parties have held webinars for Texas students to explain what constitutes lawful presence under DPS and USCIS guidelines. Some undersigned parties have worked to resolve issues of lawful presence for students who were misclassified, many of whom have been forced to drop courses, reduce their course loads, or take out loans while awaiting guidance and resolution. Unfortunately, we have only been able to assist a small fraction of those affected—leaving countless other students without correct information or any support in navigating these challenges.

The lack of articulated standards of lawful presence in the proposed rules starkly contrasts with the detail in former rule 19 TAC §21.24(d), regarding immigration categories, and in proposed rule §13.196(a)-(k), regarding documentation for resident status. We strongly oppose the lack of definitions and standards to determine lawful presence throughout the proposed rules. This lack of guidance to students has led to misclassifications and disparate implementation and if the rules are adopted, it will continue to do so.

§13. 192(5) Lawfully Present Alien

The Board should adopt clear, uniform definitions of lawful presence, consistent with those recognized by USCIS and DPS, rather than leaving each institution to make its own determinations, often incorrectly. This is essential to ensure compliance, uniformity and fairness across all campuses.

§13.194(d) Sharing information with USCIS to determine lawful presence

This proposed rule directly violates the Federal Education Rights and Privacy Act (FERPA). Except for limited exceptions, such as the SEVIS program, universities are prohibited from sharing student information. While FERPA permits disclosure with a student's consent in narrow circumstances, requiring students to authorize the sharing of information with USCIS to determine residency status—especially in the current political climate—amounts to coercion. It forces students to choose between potential in-state tuition eligibility and the protection of confidential information that could place them and their families at risk.

The proposed rule also underscores the lack of clear definitions regarding lawful presence, instead deferring to USCIS, which, for the first time since its establishment in 2003, has deployed armed agents with arrest powers.[7] This effectively transforms universities into de facto immigration enforcement partners. The rule also allows an institution to request any additional information "reasonably necessary" to verify that a student is lawfully present. As explained previously, without standards and guidelines, administrators will not know what is "reasonably necessary," nor will students know what is "unreasonable."

To uphold FERPA, ensure fairness, and protect Texas students and families, the THECB must adopt clear, uniform definitions of lawful presence to safeguard institutions from being compelled to share confidential information with USCIS. For these reasons, §13.194(d) should be withdrawn.

[7] https://www.uscis.gov/newsroom/news-releases/uscis-to-add-special-agents-with-new-law-enforcement-authorities: "Through this delegation, the USCIS director has the authority to order expedited removal and investigate civil and criminal violations of the immigration laws within the jurisdiction of USCIS."

Core Residency Questions §§13.195; 13.192(1), Figure 13.195(b)(.pdf)

The Core Residency Questions form must be updated and designed in a manner that ensures it encompasses lawfully present students. As it is now designed, there are no questions regarding lawful presence or any guidance as to what documents a lawfully present student must provide to qualify for resident tuition under Sec. 54.052(a)(3). This document is of crucial importance because it is the primary residence document used by students and institutions. The revised core residency questions must be user-friendly and clear to students, high school guidance counselors, and higher education staff, as it constitutes the outward-facing residency eligibility determination tool.

Some undersigned parties have direct knowledge of cases in which some schools have conflated the categories listed in Part F of the core residency questions with those required to prove lawful presence.[8] In one instance, a student with DACA, a Texas driver's license, and an employment authorization card has been classified as a non-resident because he cannot show he has an application for permanent residence pending with a Form I-797.[9]

While Part H of the Core Residency Questions asks for additional information in order to evaluate eligibility, the form provides no specificity as to what additional information a student should submit. Likewise, the Affidavit requires a student to attest that he or she is able to demonstrate lawful presence without any further guidance.

Similarly, under §13.195 (d), there is no explanation of what good faith efforts an institution must make, or what is the reasonable documentation a student must provide, in connection with the Core Residency Questions. The lack of guidance, definitions, and clarity has led to the chaos that we have witnessed since the court order, as schools reclassify and misclassify students. That will continue if the proposed questionnaire is used, now that new residency rules must be applied. It invites each institution to set its own standards, leading to the exclusion of lawfully present students.

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[8] Core Residency Questions, Part 5, Question 2-4.

[9] Core Residency Questions, Part F. Question 3. See also Dallas College Residency https://www.dallascollege.edu/admissions/application/residency/

§13.191(b)- Scope of the Rules

The extension of the new residency rules to private or independent institutions of higher education has a chilling and overbroad effect on private and independent institutions. Texas Education Code Sec. 61.003(8) defines an institution of higher education as a *public,* not private or independent, institution. If, in fact, there are limited provisions in the Education Code that apply to private institutions, the proposed rules should specify them, rather than adopting an overbroad interpretation of the June 4, 2025 court order regarding residency.

§13.193- Effective Date/Grandfathering of Current Students

Given the profound harm and educational disruption to already-enrolled students and their established reliance interests, the new rules should not be applied to this student population. The need for grandfathering of these students is also required because of the lack of guidance and standardless implementation of lawful presence determinations, and consequent misclassifications of resident students. *See* discussion *infra.* Students have relied on Sec. 54.052(a)(3) and incurred financial costs in their efforts to obtain a college degree. For example, juniors and seniors, who are only a few semesters away from graduating and who have invested significant time, effort, and financial resources in their education, have been forced to abandon their studies. Unfortunately, students currently enrolled at all levels will be unable to finish their university programs.

Their reliance interests are substantial and thus, the rules should apply prospectively only, at minimum, while the decision in *U.S. v. Texas* is on appeal.[10] In a similar situation, the Fifth Circuit Court of Appeals, in ending portions of the DACA program in Texas, recognized the "immense reliance interests that DACA has created," twelve years after its implementation. Thus, the Court entered a stay of the implementation of the decision to those recipients who already held DACA status: "'Given the uncertainty of final disposition and the inevitable disruption that would arise from a lack of continuity and stability,' we therefore preserve the

[10] See Motion to Intervene - 7:25-cv-00055-O Document 16 Filed 06/24/25.

stay as to existing recipients."[11] Texas Dream Act students, in the middle of their college career, face the same disruption, instability, and lack of continuity.

§113.202 Resident Status Determination Official

We support the requirement of a resident status determination official. However, without clear definitions in the rules, merely designating an official will not resolve the chaotic and uneven implementation seen since June 2025. Crucially, school officials must not be put in a position where they are compelled to violate FERPA by sharing sensitive student information with USCIS—a scenario that could expose students and their families to arrest or other enforcement actions. Requiring consent under these circumstances amounts to coercion, forcing students to choose between their educational opportunities and their personal safety.

We strongly urge that designated officials receive comprehensive, standardized training to accurately assess lawful status under established guidelines. These protections are essential not only to ensure consistent implementation, but also to safeguard students' privacy, well-being, and access to higher education in an environment free from fear and intimidation.

Fiscal Implications for State and Local Governments; Estimated Losses in Revenue to the State or Local Governments, and Impact on Small Businesses, Rural Communities and Local Employment and Affected Students

Dr. Contero-Puls, Assistant Commissioner for Student Financial Aid Programs, erroneously attested that there are no fiscal implications or any estimated losses in revenue to state or local governments as a result of enforcing or administering the rule. Likewise, he wrongly determined that the rule has no impact on small businesses, micro businesses, and rural communities, nor any impact on local employment. Contrary to Dr. Contero-Puls' assertions, there are drastic economic costs to students who are unable to comply with lawful presence requirements and who will be unable to afford higher education.[12]

[11] 126 F.4th 392 at 422 (5th Cir. 2025), citing Texas II, 50 F. 4th 498 at 531 (5th Cir. 2022).

[12] While the undersigned recognize that some of the rule changes may be required by the consent decree of June 4, 2025, Dr. Contero-Puls fails to recognize, minimizes, and incorrectly states the consequences of the changes. We also state for the record that we do not agree with the legal basis of the consent decree or the collusive, accelerated manner in which the order was procured.

Public Benefit

Dr. Contero-Puls mistakenly concluded that the proposed rules will provide more clarity, specificity, and operability of rules relating to the determination of residency. As discussed above, the lack of definitional clarity and guidance regarding lawful presence and the failure to update the Core Residency Questionnaire to adapt to the June 4, 2025, court ruling has and will continue to cause misinterpretation and disparate application, resulting in the denial of in-state tuition to lawfully present students.

Government Growth Impact Statement

The Government Growth Impact Statement is also incorrect. The proposed rules eliminate a state government program, namely, in-state tuition for certain Texas high school graduates under Texas Education Code Sec. 54.052(a)(3) and 54.051(m); they limit an existing rule regarding eligibility for in-state tuition; and they change the number of individuals subject to the rule, specifically students who are unable to show lawful presence.[13] The proposed rules limit students without lawful presence from accessing university education because of cost, by requiring them to pay non-resident tuition and by depriving them of financial aid, a dramatic departure from almost twenty-five years of access to higher education.[14] As discussed below, these rules clearly negatively impact the state's economy.

Negative Economic Impact

The proposed rules will have an enormous negative economic impact on the Texas economy across all geographic regions, on state and local governments, and on all types of businesses and local employment. They will also reduce revenue for institutions of higher education and preclude students from attending college.

Research has shown that the state of Texas stands to lose $461.3 million each year, including $244.4 million in lost wages and $216.9 million in spending power, by excluding

[13] *See*, footnote 11. The Government Growth Impact Statement fails to recognize and incorrectly states the consequences of these changes.

[14] H.B. 1403, 77th Leg. R.S. 2001, codified as Texas Education Code Sec. 54.052(a)(3), was enacted in 2001. *See also*, 19 TAC § 21.24(a)(1).

affidavit students from higher education.[15] Although it is unclear exactly how many affidavit students will be excluded under the proposed rule based on their inability to demonstrate lawful presence, that number is likely to be significant. Having a bachelor's degree increases a Texas Dream Act student's earning capacity by $19,600 annually.[16] Higher earning capacity leads to the increased payment of state and local taxes. For example, in 2021, the potential extra state and local government tax contributions by Texas Dream Act students with bachelor's degrees was estimated to be over $43 million, and for students with associate degrees, $9 million.[17] For these reasons, the Texas business community has consistently recognized the positive economic impact of a college-educated population and supported access to higher education for all Texas residents.[18]

Loss of Revenue to Institutions of Higher Education[19]

Institutions will lose revenue from the thousands of students who have been forced to reduce enrollment intensity or unenroll entirely due to the financial cost of non-resident tuition and their loss of access to state grant programs intended for resident students.[20] In addition, institutions will lose even more future revenue because thousands of current and future high school students will likely decline to enroll in Texas colleges because they cannot establish

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[15] American Immigration Council, "The Economic Cost of Repealing In-State Tuition in Texas," Mar. 2023, https://www.americanimmigrationcouncil.org/research/economic-cost-repealing-state-tuition-texas.

[16] https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/20230320_factsheet_tx_instatetuition_2023.pdf

[17] https://everytexan.org/wp-content/uploads/2023/05/Texas-Dream-Act-fact-sheet-May2023.pdf

[18] *See*, *generally,* Texans for Economic Growth, composed of 160 Texas businesses that support in-state tuition for immigrant students. https://www.txcompact.org. "Texas has a long and proud tradition of embracing immigrants and leading the country in bipartisan, common-sense immigration policies. We urge state leaders to protect tuition equity and continue to offer in-state tuition to all Texas high school graduates who want to continue their education and contribute their talents to our vibrant Texas economy." https://www.txcompact.org/compact; https://txblc.org/wp-content/uploads/Texas-Dream-Act-Survives_Because-Texans-Showed-Up.pdf; published on the website of the Texas Legislative Business Council, https://txblc.org; https://www.americanimmigrationcouncil.org/blog/texas-dream-act-undocumented-students-legislation/

[19] *See* footnote 11.

[20] Approximately 57,000 "affidavit" students attended Texas institutions before the court order. It is unclear how many of those students have or will be able to prove "lawful presence." https://www.presidentsalliance.org/wp-content/uploads/2024/07/Undocumented-Students-in-Higher-Education.pdf. In 2021, 20,137 students signed the required affidavit. https://everytexan.org/wp-content/uploads/2023/05/Texas-Dream-Act-fact-sheet-May2023.pdf

lawful presence.[21] There will also be increased administrative time and costs for universities as they attempt to comply with lawful presence determinations, particularly with no guidance from the THECB.

Economic Costs to Students Who Cannot Establish Lawful Presence

A significant number of Texas Dream Act "affidavit students" who cannot establish lawful presence will be negatively affected by the proposed rules. They will be forced to pay much higher tuition (if they can even afford it), lose access to financial aid, and in most cases, be forced to reduce enrollment intensity or unenroll entirely. As described above, the personal economic costs are dire—lower earning capacity, fewer employment opportunities, decreased upward mobility, and other concomitant consequences.

Thank you for your consideration of our public comments. We look forward to the opportunity to provide additional testimony at a public hearing. As the state's highest authority in public higher education, the Coordinating Board has a responsibility to uphold its mission as a resource, partner, and advocate for Texas students. Protecting student privacy, ensuring consistent and lawful implementation, and preventing coercion must remain central priorities as these rules are finalized. We urge the Board to ensure that any final rules do just that: protect student privacy, prevent coercion, and support safe, equitable access to higher education, in alignment with its mandate to advance a globally competitive workforce and to serve the best interests of Texas students and families while ensuring the safety and integrity of higher education institutions.

Sincerely,

Kristin Etter, Texas Immigration Law Council
Chloe Latham Sikes, IDRA
Stephen Reeves, Fellowship Southwest
Luis Figueroa, Every Texan
Will Davies, Breakthrough Central Texas
Barbara Hines, Attorney at Law
Chelsie Kramer, Texans for Economic Growth

[21] An estimated 18,000 undocumented students graduate from Texas high schools each year: Higher Ed Immigration Portal, "Texas State Data," https://www.higheredimmigrationportal.org/state/texas/.

Trudy Taylor Smith, Children's Defense Fund-Texas
Cairo Mendes, Grantmakers Concerned with Immigrants and Refugees (GCIR)
Maria Ramirez Campos
Zabdi Salazar
Eva Sikes
Ilene Cruz
Monica Pepping, RISE for Immigrants
Jonathan Feinstein, EdTrust in Texas
Sonia Rivera Suire, RISE for Immigrants
Raymond Suire
Raul Lomeli-Azoubel
Rebecca Aronson
Neel Lane
Eric Holguin, UnidosUS (formerly National Council of La Raza)
Maximiliano Prado, Laredo Immigrant Alliance
Tannya Benavides, Local Progress Texas (signing on behalf of Local Progress Texas, not as an individual)
Britni Cuington, Common Defense
Cristian Sanchez, Individual
Julieta Garibay, IDRA