



**Judicial  
Watch®**  
*Because no one  
is above the law!*

**VIA FACSIMILE (303-556-3912)**  
**AND U.S. MAIL**

June 12, 2012

Metropolitan State College of Denver  
Board of Trustees  
c/o Loretta P. Martinez, Secretary to the Board  
SSB - 440  
Campus Box 01  
P.O. Box 173362  
Denver, CO. 80217-3362

**Re: Changes to Metro State College's Tuition Policy**

Dear Sir/Madam:

Judicial Watch, Inc. is an educational organization that seeks to promote transparency, integrity, and accountability in government and fidelity to the rule of law. We frequently work with like-minded citizens and taxpayers across the United States who share our respect for law enforcement and dedication to the rule of law.

We understand that the Board of Trustees ("the Board") of the Metropolitan State College of Denver ("the College") recently approved the creation of a special category of tuition to enable certain unlawfully present aliens to attend the College without having to pay full non-resident tuition. In approving this new category of tuition, the College recognized that these students would otherwise be required to pay full non-resident tuition because of their inability to demonstrate lawful presence in the United States. Because the new category violates both federal law and Colorado law and constitutes an *ultra vires* act by the Board, it must be rescinded.

Specifically, on June 7, 2012, the Board approved and adopted the "Colorado High School/GED Tuition Rate" that allows unlawfully present aliens to pay a tuition rate of \$3,358.30 per 12-credit semester. This rate is somewhat higher than the in-state rate of \$2,152.20 per 12-credit semester, but considerably lower than the out-of-state rate of \$7,992.60 per 12-credit semester. To be eligible for the new rate, an unlawfully present alien must satisfy three criteria: (1) attendance for at least three years at a Colorado high school; (2) graduation from a Colorado high school or completion of a GED in Colorado; and (3) filing of a written

statement concerning pursuit of lawful status. The new tuition rate currently is scheduled to be implemented in the fall of 2012.

Under federal law, unlawfully present aliens are ineligible for state or local public benefits, including post-secondary education benefits such as reduced tuition, unless a state has enacted a law affirmatively making unlawfully present aliens eligible for the benefits. 8 U.S.C. § 1621. More specifically, federal law provides, in pertinent part:

**(a) In general**

Notwithstanding any other provision of law and except as provided in subsections (b) and (d) of this section, an alien who is not—

- (1) a qualified alien (as defined in section 1641 of this title),
- (2) a nonimmigrant under the Immigration and Nationality Act [8 U.S.C. § 1101 et seq.], or
- (3) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. §1182 (d)(5)] for less than one year,

is not eligible for any State or local public benefit (as defined in subsection (c) of this section).

\* \* \*

**(d) State authority to provide for eligibility of illegal aliens for State and local public benefits**

A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) of this section only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility.

8 U.S.C. §§ 1621(a) and (d).

There is no way to reconcile the “Colorado High School/GED Tuition Rate” with this federal law. Although the Board claims that “[n]o federal or state public benefit or subsidy will be used for this special tuition rate,” section 1621 expressly applies to “local public benefits,” and the new rate clearly provides a “local public benefit” to unlawfully present aliens. Indeed, that is the stated intent behind the new special rate. Even though the new “special” rate for unlawfully present aliens is higher than the in-state rate for students who are lawful residents of Colorado, it nonetheless is less than half of the rate that out-of-state students must pay to attend the College. In addition, because the College receives substantial financial support from the State, the College’s claim that no taxpayer dollars will be used to support the new benefit is not credible.

Because Colorado has not enacted a law affirmatively making unlawfully present aliens eligible for the new “special tuition rate,” providing this benefit to them clearly violates federal law. In fact, we understand that, on no less than five occasions, the Colorado General Assembly has rejected proposed legislation that would have made unlawfully present aliens who graduate from a Colorado high school or receive a GED in Colorado eligible to pay a lower rate of tuition at public colleges and universities in Colorado. Consequently, the Board’s action not only violates federal law, but it also is contrary to the will of the people of Colorado as expressed through their elected representatives.

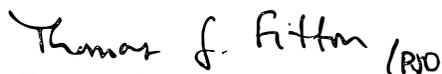
The new “special tuition rate” also violates Colorado law. Colorado law specifies that “state institutions of higher education shall apply uniform rules, as prescribed in this article and not otherwise, in determining whether students are classified as in-state students or out-of-state students for tuition purposes.” C.R.S. § 23-7-101. These uniform rules create only two categories of tuition – in-state and nonresident – and provide that “each governing board, for the institutions it controls, shall annually set the amount of tuition to be paid by students with in-state classification and by nonresident students who enroll in and attend the institutions.” C.R.S. § 23-5-103.5. These same rules state that the Board “in accordance with section 23-5-103.5, shall annually set the amount of tuition to be paid by students with in-state classifications and by non-resident students who enroll in and attend Metropolitan state college of Denver.” C.R.S. § 23-54-102.5(1). Nowhere does Colorado law authorize the Board – or any other board of trustees overseeing a state institution of higher education – to create its own special categories of students for purposes of tuition. By failing to apply the uniform rules created by Colorado law and instead adopting its own “special tuition rate” for certain unlawfully present alien students it wishes to benefit, the Board overstepped its lawful authority and committed an *ultra vires* act.

The Board may not ignore federal and state law when those laws are contrary to its own policy preferences. We trust that the Board will rescind its new special tuition rate immediately and hope that litigation will not be necessary to compel the Board to conform its tuition policy to the requirements of federal and Colorado law.

Thank you for your attention to this matter.

Sincerely,

JUDICIAL WATCH, INC.

Handwritten signature of Thomas J. Fitton in black ink, with the initials 'RJD' written to the right of the signature.

Thomas J. Fitton

President

cc: President Stephen M. Jordan, Ph.D. (Via Fax: 303-556-3912)  
Attorney General John W. Suthers (Via Fax: 303-866-5691)