

Congress of the United States
Washington, DC 20515

November 15, 2012

Board of Trustees
Metropolitan State University of Denver
1100 Stout St.
Denver, CO 80202

Dear Trustees:

We are very heartened to see that Metro State has taken a leadership role on one of the critical issues in our state and nation: educating all students so they can be productive members of the workforce. You have our full support for offering undocumented students who have graduated from Colorado high schools the Colorado High School/GED Non-resident Tuition Rate, provided they meet Metro State's admission standards and criteria.

Many young people who are in the United States are unable to take advantage of the privileges of citizenship, through no fault of their own. They should be given more chances to make a positive impact on our country, which is often the only country they know as home. By extending an affordable but unsubsidized tuition rate to these students, the board has demonstrated the importance of providing educational opportunities for undocumented students to our economy and our community, now and in the future. Equally as important, this new rate is a prime example of how Metro State is advancing its mission as an institution of opportunity, serving low-income, first-generation and historically under-represented populations.

It is clear that your decision was not taken lightly or without understanding the gravity of your action. We appreciate the thoughtfulness and prudence that you exercised in analyzing and carefully crafting a tuition rate that does not include publicly subsidized money. It is in this context in which we agree that your tuition rate policy is within federal and state legal authority. In contrast to the opinion recently issued by Colorado Attorney General John Suthers, we wanted you to be aware of some analysis of federal statute and existing case law that supports your decision.

According to a recent memo drafted by the non-partisan Congressional Research Service (CRS), the federal law that restricts benefits for undocumented individuals -- the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 -- defines a "public benefit" as a support, assistance or appropriated funds provided by state or local government. CRS found that the courts that have considered this issue have determined that child support collection services and workers' compensation payments do not constitute public assistance, meaning payment by a government agency. Therefore, CRS noted that these payments are not considered by the courts a public benefit under the statute. Specifically, CRS stated that, "it appears that programs and services provided by a state or locality for a fee may be

unlikely to be viewed as state and local public benefits for purposes of PRWORA. Like child support collection services and workers' compensation, such programs and services arguably could not be characterized as either economic assistance or earned benefits." Further, CRS noted that where funds for programs and services provided for a fee do not derive from the government – for example, child support payments come from parents and workers' compensation payments come from employers -- they are not considered public benefits.

Because Metro State's Colorado High School/GED Non-resident Tuition Rate is paid by the student and is high enough to cover the full costs of an education at the college, it is reasonable to conclude this is not a form of government assistance and thus, not a public benefit, making the tuition rate legal under federal law. Moreover, Metro State's separate tuition fee for undocumented students, will, like child support payments and workers' compensation, be paid by a non-governmental entity -- the students themselves. As such, by the same logic, these payments could not be considered a public benefit.

Thank you for leading the way on this issue among Colorado's institutions of higher learning. We are hopeful that this is the one ripple in the ocean that will lead to a wave of further opportunities for deserving students to realize their dreams.

Sincerely,



Diana DeGette
Member of Congress



Jared Polis
Member of Congress