

## AR 4110 Residency Determination (old AR#, New AR# 5015 Residence Determination)

### California Residency Determination for Tuition Purposes

The residency status of each student applying to or enrolling in credit courses at Santa Monica College is determined according to California Education Codes. Students are urged to visit the Admissions and Records Residency webpage for complete residency details and acceptable proofs to establish residency (Education Code §68075.65).

The initial residency classification will be made at the time the student applies for admission. Students may submit reclassification residency questionnaire forms through the first day of the term to request a review of their residency status. Students have the right to appeal the decision by following the procedure listed in this regulation.

A student seeking to enroll exclusively in noncredit career development and college preparation courses, and other courses for which no credit is given, shall not be subject to this residency classification requirement. **MOVED FROM PAGE 4**

### ~~1. Overview of Conditions to Determine Residency Status-Residency Status Criteria~~

a. In order to establish a residence, it is necessary that there be a union of act (**physical presence**) and intent. To establish residency, a person capable of establishing residence in California must demonstrate **their** physical presence in California with **objective** evidence that the physical presence is with the intent to make California their home for other than a temporary purpose (Education Code §68017, §68023, §68040, §68062, §68086, §68101; Title 5 §54002, §54010, §54020, §54026, §54028). California residence for tuition/fee purposes will be dictated by the following factors:

i. **Evidence of Physical Presence:**

A person capable of establishing residence in California must be physically present in California for one year prior to the residence determination date to be classified as a resident student.

**“Residency Determination Date” is that day immediately preceding the opening day of instruction of the term during which the student proposes to attend. Enrollments in late starting classes within a term are subject to this uniform residency determination date (each term only one has one residency determination date).**

A temporary absence for business, education or pleasure will not result in loss of California residency if, during the absence, the person always intended to return to California and did nothing inconsistent with that intent. Physical presence within the state solely for educational purposes does not constitute establishing California residency, regardless of length of that presence (Education Code §68017, §68070; Title 5 §54022).

ii. Evidence of Intent:

Intent to make California the home, for other than a temporary purpose, may be manifested in a number of ways, **no sole factor is determinative**, a listing ~~of which~~ is available ~~from on the~~ Admissions & Records **webpage**. (Education Code §68041; Title 5 §54024).

- a. A student who is 19 years of age or older and who has maintained a home in California continuously for the last two years, shall be presumed to have the intent to make California their home for other than a temporary purpose, unless the student has evidenced a contrary intent by having engaged in any of the activities listed in Section ~~(a)~~(ii) **e.**(1) of this regulation (Education Code §68041; Title 5 §54024).
  - b. A student who is under 19 years of age, shall be presumed to have the intent to make California their home for other than a temporary purpose if both the student and ~~their~~ parent/legal guardian have maintained a home in California continuously for the last two years, unless the student has evidenced a contrary intent by having engaged in any of the activities listed in Section ~~(a)~~(ii) **e.**(1) of this regulation (Education Code §68041; Title 5 §54024).
  - c. A student who does not meet requirements of section “a. or b.” above shall be required to provide evidence of intent to make California their home for other than a temporary purpose, as specified in Section (ii)(2) of this regulation.
  - d. If a student, or the parent/legal guardian of a minor student, relinquish California residence after moving from the state, one full year of physical presence, coupled with one full year of demonstrated intent to be a California resident, is required to reestablish residence for tuition purposes, except as provided by Education Code §68070. [Student who remains in the State after parent moves elsewhere]. Title 5 §54024.
  - e. If a student lives with one parent/legal guardian out of state and graduates high school in that State and then moves to California to live with the other parent/legal guardian in California who has residency per Education Code §68076 the student shall be granted a temporary one-year residency exemption. This exemption shall continue until the student has resided in California the minimum time necessary to document physical presence and intent (not to exceed one-year), so long as continuously enrolled.
- (1) Conduct inconsistent with claim of residency includes, but is not limited to: (1) maintaining voter registration and voting in another state; (2) petitioning for divorce in another state; (3) attending an out-of-state educational institution as a resident of that other state; (4) declare nonresidence for state income tax purposes; or (5) pay taxes in another state or country as a resident of that state or country.

- (2) Conduct consistent with claim of residency includes, but is not limited to: (1) ownership of residential property or continuous occupancy of rented or leased property in California, (2) registering to vote and voting in California, (3) licensing from California for professional practice, (4) active membership in California professional, religious, merchant, service organizations or social clubs, (5) presence of spouse, children or other close relatives in California, (6) showing California as home address on federal income tax form, (7) payment of California state income tax as a resident, (8) possessing California motor vehicle license plates, (9) possessing a California driver's license or California Identification, (10) maintaining permanent military address or home of record in California while in armed forces, (11) establishing and maintaining active California bank accounts, (12) petitioning for divorce in California, (13) remaining in California during academic breaks, (14) registering for Selective Service in California (indicating California address) or (15) other acceptable documentation.

iii. Legal Presence in the U.S.:

Non-U.S. Citizens, including unmarried minors, may establish residency unless precluded by the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) from establishing domicile in the U.S., provided the student has had residence in California for more than one year prior to the residency determination date for the term for which attendance at the College is proposed. In general, non-U.S. Citizens are precluded from establishing domicile in the U.S. if their status in the country is undocumented, or is under a visa which requires residence outside the U.S., or entered the U.S. solely for a temporary purpose (Education Code §68017, §68043, §68062(h), 68070; Title 5 §54022, §54045).

iv. Financial Independence for Reclassification:

A student seeking reclassification from nonresident to resident shall be determined financially independent or dependent. (Education Code §68044, Title 5 §54032)

Financial independence shall be among the factors to be considered for reclassification. A student who has established financial independence may be reclassified as a resident if the student has met the requirements of Title 5 §54020 for one year prior to the residency determination date. In determining whether the student has demonstrated intent to establish California residency, financial independence shall weigh in favor of finding California residence, and financial dependence shall weigh against finding California residence. Financial dependence in the current or preceding calendar year shall weigh more heavily against finding California residence than shall financial dependence in earlier calendar years.

Students claimed by parents/legal guardians on their income taxes in another state will be precluded from establishing California residency for tuition purposes

## Residency Classification

- ~~b.~~ Residency classification ~~shall be~~ is determined for each student at the ~~time of beginning~~ of each enrollment term and whenever a student has not ~~been in attendance~~ for more than one semester (Title 5 §54010). ~~Summer and winter terms are not included in this consideration.~~
- ~~c.~~ Residency classification is derived from the residency determination date, which ~~corresponds to~~ is the day immediately preceding the ~~opening day first day~~ of instruction for any term ~~during~~ which the student ~~proposed plans~~ to attend (Title 5 §54002).
- ~~d.~~ Students must be notified of residence determination within 14 calendar days of submission of the admission application (Title 5 §54060).
- ~~f.~~ The burden is on the student to demonstrate both physical presence in California and intent to establish California residency. ~~The student shall provide Admissions and Records the information and evidence requested on the Residency Questionnaire to determine their residency classification (Title 5 §54010; Education Code §66700, §68041, §68044, and §70901).~~
- ~~A student seeking to enroll exclusively in noncredit career development and college preparation courses, and other courses for which no credit is given, shall not be subject to this residency classification requirement.~~ (MOVED THIS TO FIRST PAGE?)
- ~~e.~~ Residency classification is the responsibility of the Admissions and Records Office, under the supervision of the Dean of Enrollment Services.
- ~~e.~~ The College shall publish the residency determination date and a summary of the regulations governing residency determination and classification ~~in the College catalog, class schedule and Admissions and Records webpage.~~
- Documents and information obtained in residency determination are strictly confidential and governed by FERPA.

## 2. Residency Determination Criteria Criteria for Residency

~~To determine a person's place of residence, reference is made to the following statutory rules:~~

- ~~a.~~ A student who has resided in California for at least one year ~~and one day~~ immediately preceding the residence determination date is a resident (Education Code §68017). The required residency period starts only when a student is physically present in California and has shown clear intent to make California their state of residency (Education Code §68062(d); Title 5 §54020).
- ~~b.~~ A student who has ~~not resided in the State for more than~~ resided in California less than one year immediately preceding the residence determination date is a nonresident, ~~subject to paying nonresident tuition and fees (Education Code §76140), except as otherwise provided in this regulation and in AR 5013 Residency Determinations for Military Personnel~~

~~& Dependents. Except as otherwise provided in statute, as noted in Section 3 of this Administrative Regulation, a student classified as a nonresident shall be required to pay in addition to other fees required, a nonresident fee (Education Code §76140).~~

- ~~i. A student Every person who is married or 18 years of age, or older, and not precluded by law from doing so under no legal disability to do so, may establish residence (Education Code §68061).~~
- ~~ii. A student person can have only one residence at a time (Education Code §68060 and §68062).~~
- ~~c. The residence of each student enrolled in or applying for enrollment in any class or classes maintained by this District shall be determined in accordance with the Education Code which states that every person has, in law, a residence (Education Code §68060). In determining the place of residence, the following rules are to be observed:~~
  - ~~iii. A residence is the place where a person one remains when not called elsewhere for labor or other special or temporary purpose and to which the person returns in seasons of repose (Education Code §68062).~~
  - ~~iv. A residence cannot be lost until another is gained (Education Code §68062).~~
  - ~~v. The residency status can be changed only by the union of act (physical presence) and intent (Education Code §68062, Title 5 §54020).~~
  - ~~viii. The one-year residence period necessary to be classified as a resident does not begin until the student both is present and has manifested clear intent to become a California resident (Education Code, §68062(d); Title 5, §54020).~~
- Any person may establish their own residence. A person's residence is not determined by their spouse (Education Code §68062).
- ~~vi. The residence of an unmarried minor is considered to be the same as the parent/legal guardian with whom they live an unmarried minor child maintains his/her place of abode is the residence of the unmarried minor child. When the minor lives with neither parent, the minor's residence is that of the parent with whom they maintained last place of abode. If the minor does not live with either parent/legal guardian, their residence is based on the parent/legal guardian with whom they last lived. If both parents are deceased and no legal guardian has been appointed, the minor may establish their own residence when both parents are deceased and a legal guardian has not been appointed. (Education Code §68062).~~
- ~~vii. The residence of an unmarried minor with who has a parent living parent/legal guardian cannot be changed by the minor's own actions act, by the appointment of appointing a legal guardian, or by relinquishment of a parent's giving up their right of control, unless the student qualifies under the Self-Support or the Two-Year Care and Control exceptions (Education Code §68071, §68073; Title 5 §54047).~~
- A student who is a noncitizen (not a U.S. citizen or national), including an unmarried minor, may establish residency unless the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) prevents them from doing so. The residence of an unmarried minor who is



not a U.S. citizen or national is determined by their parents/legal guardians' residence, as outlined in this regulation (Education Code §68062).

### 3. Statutory Exceptions from Nonresidency Status for Purposes of Tuition/Fees

~~The following individuals are exempted from nonresidency status for tuition/fees purposes only:~~

**Minor with Continuous Attendance Enrollment:** ~~A student who is a minor student who stays and remains in California after their parent/legal guardian who was previously domiciled in California and has established their residence away from California elsewhere shall be entitled to retain resident classification until attaining the age of majority and has resided in the State may keep residency status as long as they remain continuously enrolled in the College until they reach the age of 18 and meet the minimum residency requirement time necessary to become a resident, so long as continuous attendance is maintained at the College. (Education Code §68070).~~

A minor student living with a parent/legal guardian qualifies for residency classification if the parent/legal guardian has resided in California for more than one year before the residency determination date for the term the student plans to attend (Education Code §68080).

**Self-Supporting Minor:** A minor student who is entirely self-supporting, has been physically present in California for more than one year before the residency determination date, and intends to establish residency, is entitled to residency classification (Education Code, §68044, §68071; Title 5 §54040). ~~A student who is a minor and who provides evidence of being entirely self-supporting and actually present in California for more than one year immediately preceding the residence determination date with the intention of acquiring a residence therein, shall be entitled resident classification until he/she has resided in the State the minimum time necessary to become a resident (Education Code, §§68044, 68071; Title 5 §54040).~~

If a student was not 18 years of age for a full year before the residency determination date for the term they want to attend, any time they lived in California as a minor (before turning 18) can be combined with their time as an adult to meet the one-year residency requirement (Education Code §68072).

#### **Self-Supporting Student**

Any student claiming application of the self-supporting exception pursuant to Education Code §68071 shall provide evidence such as: documentation, including W-2 forms or a letter from the employer, showing earnings for the year immediately preceding the residence determination date of attendance, a statement that the student has actually been present in California for said year (short absences from the state for business or pleasure will not preclude the accumulation of time), and a statement showing all expenses of the student for said year (Education Code §68044, Title 5 §54040, 54020, 54024, 54032).

**Two-Year Care and Control:** A student is entitled to residency classification if, immediately before enrolling, they have lived with and been under the continuous direct

care of an adult (other than a parent/legal guardian) for at least two years, and that adult has lived in California for one year before the residency determination date. This exception continues until the student turns 18 and has lived in the state long enough to meet the residency requirement, as long as they remain continuously enrolled at the College (Education Code §68073, Title 5 §54047).

**Dependent Under 19:** A student who has not been an adult California resident for at least one year prior to residency determination date may still qualify for resident classification if they are a dependent of a California resident who has lived in California for more than one year before the residency determination date, or if their parent/legal guardian has both provided continuous court-ordered support and been a California resident for at least one year. This exception lasts until the student has lived in California long enough to meet the residency requirement, as long as they maintain continuous enrollment at the College. (Education Code §68076)

**Public School Full-time Credentialed Employee:** A student with a valid teaching credential who works full-time in a California public school qualifies for residency classification if they:

- Hold a provisional credential and are taking courses needed for another credential; or
- Hold a credential under Education Code §44250 and are taking courses to meet credential requirements; or
- Are taking courses required for a fifth year of education under Education Code §44259(b).

A student with a valid emergency teaching permit who works full-time is also eligible for residency classification for tuition and fee purposes, but only for one year. Thereafter, residency status will be determined under the provisions of this regulation. (Education Code §68044, §68078; Title 5 §54046)

~~A student holding a valid credential authorizing service in California public schools, who is employed by a school district in a full-time position requiring certification qualifications for the college year in which the student enrolls at the College, shall be entitled to resident classification for no more than one year, if the student meets any of the requirements below; thereafter, the student's residency status will be determined under the other provisions of this Administrative Regulation (Education Code, §§68044, 68078; Title 5 §54046).~~

- ~~i. Holds a provisional credential and is enrolled in courses necessary to obtain another type of credential authorizing service in the public schools;~~
- ~~ii. Holds a credential issued pursuant to Education Code Section 44250 and is enrolled in courses necessary to fulfill credential requirements;~~
- ~~iii. Is enrolled in courses necessary to fulfill the requirements for a fifth year of education prescribed by subdivision (b) of Education Code Section 44259.~~

**State Agency Full-Time Employee:** A full-time employee of a California Community College, the California State University, the University of California, or any state agency, or their child or spouse, may qualify for residency classification, until they have lived in

California the minimum time necessary to become a resident. Employee of “any state agency” means a person employed by California, who is assigned to work outside of California (Education Code §68079).

~~A student who is a full-time employee of a California Community College, the California State University, the University of California, or of any state agency or a student who is a child or spouse such employee, may be entitled to resident classification, until the student has resided in the State the minimum time necessary to become a resident. Employee of any state agency means a person employed by the state, who is assigned to work outside the state (Education Code §68079).~~

**Dependent or Ward of the State of California:** A student who lives in California and is 19 years of age or younger at the time of enrollment and who is, or was, a dependent or ward of the State or was served by California’s child welfare system may qualify for residency classification until they have lived in California long enough to meet residency requirements (Education Code §68085).

~~A student who resides in California and is 19 years of age or under at the time of enrollment, who is currently a dependent or ward of the State through California's child welfare system, or was served by California's child welfare system and is no longer being served either due to emancipation or aging out of the system, may be entitled to resident classification until he/she has resided in the State the minimum time necessary to become a resident (Education Code, §68085).~~

**Agricultural Workers and Children of Agricultural Workers:** A student who lives with a parent/legal guardian, or is an agricultural laborer themselves, may be granted California residency if they or their parent/legal guardian have worked as agricultural laborers in California for at least two months per year in each of the past two years, and currently lives in the Santa Monica Community College District boundaries. If the parent/legal guardian earned enough income, they must have claimed the student as a dependent on their state or federal tax returns (Education Code §68044, §68074, §68075, §68100; Title 5 §54048, §54050).

~~A student who lives with a parent, or is him/herself an agricultural laborer in California and other states, may be granted California residency if the student/parent has performed such labor in California for at least two months per year in each of the two preceding years, and the student/parent resides in the District. The parent must have claimed the student as a dependent on state or federal personal income tax returns if sufficient personal income was earned to incur tax liability (Education Code, §68044, 68074, 68075; Title 5 §54050).~~

**U.S. Citizen of a Deported Parent or Deported Parent of a U.S. Citizen:** A student whose parent/legal guardian has been deported or was permitted to deport voluntarily, and student moved abroad as a result, may qualify for residency if they: (1) demonstrate financial need; (2) lived in California immediately before parent/legal guardian moved abroad; (3) attended a California public or private secondary school for at least three years; (4) will be starting their first academic year as a matriculated student in California; (5) will be living in California



upon enrollment; and (6) will file an affidavit with the College stating they intend to establish residency in California as soon as possible (Education Code §76140). Students exempted under this provision do not receive resident status for the purpose of financial aid until they establish California residency. (SB 141).

~~A student who demonstrates financial need, has a parent who has been deported or was permitted to depart voluntarily, moved abroad as a result of that deportation or voluntary departure, lived in California immediately before moving abroad, attended a public or private secondary school in the state for three or more years, and upon enrollment, will be in his or her first academic year as a matriculated student in California public higher education, will be living in California, and will file an affidavit with the District stating that he or she intends to establish residency in California as soon as possible (Education Code, §76140).~~

**Special Immigrant Visa or Refugee:** A student who has a special immigrant visa (SIV) (under §1244 of Public Law 110-181 or §1059 of Public Law 109-163), or is a refugee admitted under §1157 of Title 8 of the U.S. Code, and who settled in California upon entering the U.S., is exempt from paying nonresident tuition while living in California, up to the minimum time required to establish residency (Education Code §68017, §68075.6, §76140).

### **Special Immigrant Visa & Refugee/Asylum Exemptions** This section had no Title (looks different)

A nonresident student who enrolls in a credit English as a Second Language course at the College and who is any of the following:

- A recent immigrant, as defined in 8 U.S. Code Section 1101(a)(15); or
- A recent refugee, as defined in 8 U.S. Code Section 1101(a)(42); or
- A person who has been granted asylum by the U.S., as defined in 8 U.S. Code Section 1158.

This exemption applies only to individuals who, upon entering the U.S., settled in California and who have resided in California for less than one year. This exemption applies only to the tuition fee for credit ESL courses.

**USA Team Athlete:** Any Team USA student athlete who trains in California in an elite level program approved by the U.S. Olympic and Paralympic Committee is entitled to residency classification for tuition and fee purposes until the athlete has resided in California for the minimum time necessary to become a resident (Education Code §68083; operative until July 1, 2032).

**Native American:** A Native American student is entitled to residency classification if they are attending a school operated by the Bureau of Indian Affairs within the boundaries of the Santa Monica Community College District. Any student who graduates from a California school operated by the Bureau of Indian Affairs also qualifies for residency classification. This exception remains in effect as long as they maintain continuous enrollment (Education Code §68077 and §68082).

## **Special Part-Time Student Exemptions** This section had no Title (Shld be included?)

A special part-time student, other than a person excluded from the term “immigrant” for purposes of the federal Immigration and Nationality Act (8 U.S. Code Section 1101(15)(a)), participating in a College and Career Access Pathways (CCAP) partnership program and enrolled in no more than 15 units per term.

**Noncitizens With Immigrant Status:** Noncitizens who are undocumented, have a temporary visa, or have a visa requiring them to keep a residence outside the U.S. will be classified as nonresidents and charged nonresident tuition (Education Code §68130.5), unless they qualify for a change in status to a classification which does not preclude establishing residency or by an exception listed below:

A noncitizen student with an immigration status allowing permanent residence in the U.S. for at least one year before the start of the term, and who meets California residency requirements, can be classified as a resident (Education Code §68062(h); Title 5 §54045).

**Noncitizens With Nonimmigrant Status (“AB 540 Students”):** Any student who is not a nonimmigrant, except those holding a T (TPS) or U visa under 8 U.S. Code §1101, are exempt from paying nonresident tuition (Education Code, §68062(h), §68122, §68130.5; Title 5 §54045.5, §58003.6 ) if the following provisions are met: Legal Advisory 18-02 also includes guidance on AB 1899 which made “T” and “U” visa holders to be eligible for AB 540 in the same way as refugees,

Any students, other than persons excluded from the term “immigrant” for purposes of the federal Immigration and Nationality Act (8 U.S. Code Section 1101(a)(15)).

Any persons granted “T” or “U” visa status under 8 U.S. Code Section 1101(a)(15)(T)(i) or (ii), or section 1101(a)(15)U(i) or (ii), respectively, who meet the following requirements: (pg. 13)

If, for at least one year preceding the first day of instruction for the term in question, a non-citizen has possessed any immigration status that allows them to live permanently in the U.S. and they meet the California residency requirements, the student can be classified as a resident.

**AB 540 Eligible Students:** U.S. citizens, permanent residents, and foreign nationals who are not nonimmigrants (including undocumented students) may be exempt from paying nonresident tuition if they meet the following requirements:

### **Requirement 1: Attendance at California Schools**

This requirement may be met in either of the following two ways:

- a. Total attendance (or attainment of credits earned) in California equivalent to three or more years of full-time attendance at California high schools, California adult schools, *the Department of Corrections and Rehabilitation*, California Community Colleges (credit or noncredit courses), or a combination of these; or
- b. Three or more years of full-time California high school coursework, and attended a combination of three or more years of attendance in California elementary schools and/or California secondary schools.

## **Requirement 2: Completion of a Course of Study**

This requirement can be met in any of the following ways:

- a. Graduation from a California high school or equivalent; or
- b. Attainment of an associate degree from a California community college; or
- c. Fulfillment of the minimum transfer requirements established for the University of California or the California State University for students transferring from a California community college. or
- d. Completed the minimum requirements at a California community college.

## **Requirement 3: Affidavit of Student without Lawful Immigration Status**

Must file a California Nonresident Tuition Exemption (AB 540 Affidavit) stating that the student either has filed an application to legalize their immigration status or will file an application as soon as they are eligible to do so; or

If the student applied for State-based financial aid by filing the California Dream Act Application with the California Student Aid Commission (CSAC), the College will verify eligibility for this nonresident tuition exemption (Education Code §68130.5, Title 5 §54045.5).

The initial residency classification will be made at the time the student applies for admission. A student may file an AB 540 Affidavit at any time and residency will be retroactive if eligible.

Students have the right to appeal the decision by following the procedure listed in this regulation: Right to Appeal Residency Determination.

This exemption is not available for students who are absent (not physically present in) from California and are taking distance education classes from California community colleges.

~~The District will admit any non-citizen who is 18 years of age or a high school graduate for regular attendance. If non-citizens are present in the United States with undocumented status or with any type of temporary visa, they will be classified as non-residents and charged non-resident tuition unless they meet the exceptions below:~~

~~i. If, for at least one year and one day prior to the start of the term in question, a noncitizen has possessed any immigration status that allows him/her to live permanently in the United States and she or he meets the California residency requirements, the student can be classified as a resident (Education Code, §68062(h); Title 5, §54045).~~

~~ii. Any student who is not a nonimmigrant alien, other than those holding a T or U visa are exempt from paying nonresident tuition (Education Code, §§68062(h), 68130.5; Title 5, §54045) if the following provisions are met:~~

~~1. Attended a high school in California for three (3) or more years or effective January 1, 2015 pursuant to AB 2000, attained credits earned in California from a California high school equivalent to three or more years of full-time high school coursework and attended a total of three or more years in California elementary schools, California secondary schools, or a combination of those schools~~

~~2. Graduated with a high school diploma from a California high school or attained the equivalent thereof.~~

~~3. Complete a questionnaire form prescribed by the California Community Colleges Chancellor's Office and furnished by the College, verifying eligibility for this nonresident tuition exemption.~~

~~iii. Benefits associated with AB540 do not extend to persons who are absent from California, but are taking distance education courses from California Community Colleges.~~

**Other Waivers:** The district may authorize an exemption from nonresident tuition, in whole or in part, for: ~~(1) foreign students (citizens and residents of foreign countries) attending a California Community College, provided that the nonresident has demonstrated a financial need for the exemption and not more than 10% of the nonresident foreign students are so exempted. Exemptions may be made on an individual basis; (2) all students taking six or fewer units. Apportionment may not be claimed for these waivers (Education Code §76140, §68130 and §76140. §76141).~~

- 1. Nonresidents taking six or fewer units.** These waivers must apply equally to all who qualify, not case by case.
- 2. Nonresidents who are citizens and residents of another country** and show financial need. These waivers can be granted individually, but no more than 10% of foreign nonresident students in a district can receive this exemption.

Apportionment may not be claimed for these waivers (Education Code §68130, §76140, and §76141).

The came from Chancellor's & League.

Make sure the following exemptions are in this regulation (from AR 5020 League Template)

• ~~Exemptions, including:~~

- Any students, other than persons excluded from the term "immigrant" for purposes of the federal Immigration and Nationality Act (8 U.S. Code Section 1101(a)(15)), who meet the following requirements: ~~(pg. 10)~~
- 1. ~~either high school attendance in California for three or more years OR attainment of credits earned in California from a California high school equivalent to three or more years of full-time high school coursework and a total of three or more years of attendance in California elementary schools, California secondary schools, or combination of those schools;~~
- 2. ~~graduation from a California high school or attainment of the equivalent thereof;~~
- 3. ~~registration or enrollment in a course offered for any term commencing on or after January 1, 2002;~~
- 4. ~~filing a California Nonresident Tuition Exemption Request form with the District or in the case of students applying for state-based financial aid, by filing a California Dream Act Application (CADAA) with the California Student Aid Commission verifying eligibility for this nonresident tuition exemption; and~~
- 5. ~~in the case of undocumented persons, the filing of an affidavit that the student has filed an application to legalize his/her/their immigration status or will file an application as soon as he/she/they is eligible to do so.~~
- Any students who meet the following requirements: ~~(pg. 8)~~
- 1. ~~demonstrates financial need;~~
- 2. ~~has a parent who has been deported or was permitted to depart voluntarily;~~
- 3. ~~moved abroad as a result of that deportation or voluntary departure;~~
- 4. ~~lived in California immediately before moving abroad;~~
- 5. ~~attended a public or private secondary school in the State for three or more years; and~~
- 6. ~~Upon enrollment, will be in his/her/their first academic year as a matriculated student in California public higher education, will be living in California, and will file an affidavit with the District stating that he/she/they intends to establish residency in California as soon as possible.~~
- Any persons granted "T" or "U" visa status under 8 U.S. Code Section 1101(a)(15)(T)(i) or (ii), or section 1101(a)(15)U(i) or (ii), respectively, who meet the following requirements: ~~(pg. 10)~~
- 1. ~~high school attendance in California for three or more years;~~
- 2. ~~graduation from a California high school or attainment of the equivalent thereof;~~
- 3. ~~registration or enrollment in a course offered for any term or commencing on or after January 1, 2002; and~~



4. ~~filing a California Nonresident Tuition Exemption Request form with the District or in the case of students applying for state-based financial aid, by filing a California Dream Act Application (CADAA) with the California Student Aid Commission verifying eligibility for this nonresident tuition exemption.~~

#### **4. Reclassification to California Residency Status**

Reclassification requests will be considered upon review of the residency reclassification questionnaire petition ~~a petition for reclassification~~ and documentation demonstrating ~~financial independence~~ the conditions of physical presence, intent to establish residency in California and financial independence. Why legal status (citizenship status) if it refers to residency determination date and documentation only has 3 conditions? Explain "Other" citizenship status, (copy of green card or eligible visa?)

- a. **Petition for Reclassification:** A student previously classified as a nonresident may be reclassified as of any residence determination date. Petitions must be submitted through the Admissions and Records Residency webpage (smc.edu/residency). ~~Office. Petitions must be submitted~~ prior to the term/semester for which reclassification is to be effective. Written documentation ~~may be~~ required of the student in support of the reclassification request. (not an exhaustive list but "other documents" not on list)
  - b. Extenuating circumstances may be considered in cases where a student failed to petition for reclassification prior to the residency determination date.
  - c. In no case, however, may a student receive a nonresident tuition refund after the date of the first census (check refund deadline on student portal).
- b. **Financial Independence:** In addition to submitting the residency A questionnaire, the student must submit documentation to determine financial independence ~~must be submitted with the petition~~ for reclassification.

A student shall be considered financially independent for purposes of residency ~~re~~ reclassification if the applicant meets all of the following requirements:

- i. Has not and will not be claimed as an exemption for state and federal tax purposes by ~~his or her~~ their parent/legal guardian in the calendar year the petition for reclassification application is made and in any of the three calendar years prior to the reclassification term/application (Education Code §68044 and §68071).
- ii. Has not and will not receive more than seven hundred fifty dollars (\$750) per year in financial assistance from ~~his or her~~ their parent/legal guardian in the calendar year the petition for reclassification application is made and in any of the three calendar years prior to the reclassification term/application; and

- iii. Has not lived and will not live for more than six weeks in the home of ~~his or her~~ **their** parent/legal guardian during the calendar year the petition for reclassification application is made and in any of the three calendar years prior to the reclassification term application.
- iv. A student who has established financial independence may be reclassified as a resident if the student has met the requirements of Title 5 §54020, §54022, §54024 and Education Code §64044 and §68071. Is it listed in reg so that we can reference it here?

Financial dependence in the current or preceding calendar year shall weigh more heavily against finding California residence than financial dependence in the preceding second and third calendar years. Financial dependence in the current or preceding calendar year shall be overcome only if (1) the parent on whom the student is dependent is a California resident, or (2) there is no evidence of the student's continuing residence in another state.

~~Failure to satisfy all of the financial independence criteria listed above does not necessarily result in denial of residency status if the one year residency requirement is met and demonstration of intent is sufficiently strong.~~

The Admissions and Records Office will make a determination, based on the evidence and notify the student ~~of the decision no later than 14 days of receipt of the petition for~~ within 21 days of receipt of the petition for reclassification-(Title 5 §54060 and §54010).

~~Students are encouraged to submit reclassification requests at least 30 days before the term begins. Students have the right to appeal according to the procedures~~ ~~above~~below.

### **5-Right to Appeal Residency Determination**

~~Students who have been classified as non-residents have the right to a review of their classification~~ Any student, following a ~~final~~ decision of residency classification ~~by the Admission and Records Office~~, may submit a written appeal to the Dean of Enrollment Services within 30 calendar days of notification of ~~final~~ decision by the Admission and Records Office ~~by the College regarding classification~~ (Title 5 §54010(a) and §54060).

~~The appeal must be submitted to the Admissions and Records Office Supervisor, who shall forward it to the Dean of Enrollment Services within five working days of receipt. The Admissions and Records Supervisor shall compile all documentation and evidence provided by the student, with a cover statement indicating the basis on which the residence classification decision was made.~~ Does the student receive a reason by A & R staff if denied? Is there a form (special consideration Request) the student fill out or do they have to mail or bring in in person?

The Dean of Enrollment Services shall review all the records and have the right to request additional information from either the student or the Admissions and Records Office **Supervisor**.

Within 30 calendar days of receipt, the Dean of Enrollment Services shall send a written determination to the student. The determination shall state specific facts on which the appeal decision was made.

For residency determinations for military personnel and federal service employees and their dependents see AR 5013 Residency Determinations for Military Personnel & Dependents.

Also see AR 5010 Admission Eligibility, AR 5011 Admission & Concurrent Enrollment of HS & Other Young Students, AR 5012 International Students, AR 5013 Residency Determinations for Military Personnel & Dependents, AR 5020 Nonresident Tuition and Exemptions and AR 5030 Fees

References:

Education Code Sections 66700, 68000, 68017-18, 68023, 68040-41, 68044, 68060-62, 68070-80, 68075.7, 68082-85, 68086, 68101, 68121, 68130-30.5, 76140, 76300

Title 5 Sections 54000 et seq.; 54001-02, 54010, 54020, 54022, 54024, 54026, 54028, 54030, 54032, 54040-42, 54045-47, 54050, 54060

38 U.S. Code §3679 and 8 U.S. Code §1101

Reviewed and/or Updated: 4/29/03, 5/15/12, 3/26/13, 5/14/13, 3/2/16, 4/30/25

The Leagues Template dated April 2025

## AR 5015 Residence Determination

**NOTE:** *This procedure is **legally required**. Districts may insert their local practice below. The following language is provided as an illustrative example.*

**Residence Classification** – Residency classifications shall be determined for each student at the time of each registration and whenever a student has not been in attendance for more than one semester. Residence classifications are to be made in accordance with the following provisions:

- A residence determination date is that day immediately preceding the opening day of instruction for any session during which the student proposes to attend.
- Residence classification is the responsibility of the [ **designate, such as Admissions Office** ].

Students must be notified of residence determination within 14 calendar days of submission of application.

A student seeking to enroll exclusively in career development and college preparation courses, and other courses for which no credit is given, shall not be subject to this residency classification requirement.

The District shall publish the residence determination date and summary of the rules and regulations governing residence determination and classification in the District catalog or addenda thereto.

### **Rules Determining Residence**

- A student who has resided in the state for more than one year immediately preceding the residence determination date is a resident.
- A student who has not resided in the state for more than one year immediately preceding the residence determination date is a nonresident.

The residence of each student enrolled in or applying for enrollment in any class or classes maintained by this District shall be determined in accordance with the Education Code which states that every person has, in law, a residence. In determining the place of residence, the following rules are to be observed:

- Every person who is married or 18 years of age, or older, and under no legal disability to do so, may establish residence.
- A person may have only one residence.
- A residence is the place where one remains when not called elsewhere for labor or other special or temporary purpose and to which one returns in seasons of repose.
- A residence cannot be lost until another is gained.
- The residence can be changed only by the union of act and intent.
- A man or a woman may establish his/her/their residence. A woman's residence shall not be derivative from that of the woman's husband.
- The residence of the parent with whom an unmarried minor child maintains his/her/their place of abode is the residence of the unmarried minor child. When the minor lives with neither parent, the minor's residence is that of the parent with whom the last place of abode was maintained, provided the minor may establish his/her/their residence when both parents are deceased and a legal guardian has not been appointed.
- The residence of an unmarried minor who has a parent living cannot be changed by the minor's own act, by the appointment of a legal guardian, or by relinquishment of a parent's right of control.

### **Determination of Resident Status**

A resident is a student who has been a bona fide resident of the state for one year prior to the residence determination date. A bona fide resident is a person whose residence is in California as determined above except:

- A student who is a minor and remains in this state after the parent, who was previously domiciled in California and has established residence elsewhere, shall be entitled to retain resident classification until attaining the age of majority and has resided in the state the minimum time necessary to become a resident, so long as continuous attendance is maintained at an institution.
- A student who is a minor and who provides evidence of being entirely self-supporting and actually present in California for more than one year immediately preceding the residence determination date with the intention of acquiring a residence therein, shall be entitled resident classification until he/she/they has resided in the state the minimum time necessary to become a resident.
- A student who has not been an adult for one year immediately preceding the residence determination date for the semester for which the student proposes to attend an institution shall have the immediate pre-majority-derived California residence, if any, added to the post-majority residence to obtain the one year of California residence.
- A student holding a valid credential authorizing service in the public schools of this state, who is employed by a school district in a full-time position requiring certification qualifications for the college year in which the student enrolls in an institution, shall be entitled to resident classification if each student meets any of the following requirements:
  - - He/she/they holds a provisional credential and is enrolled in courses necessary to obtain another type of credential authorizing service in the public schools.
  - - He/she/they holds a credential issued pursuant to Education Code Section 44250 and is enrolled in courses necessary to fulfill credential requirements.
  - - He/she/they is enrolled in courses necessary to fulfill the requirements for a fifth year of education prescribed by subdivision (b) of Education Code Section 44259.
  - - A student holding a valid emergency permit authorizing service in the public schools of this state, who is employed by a school district in a full-time position requiring certification qualifications for the academic year in which the student enrolls at an institution in courses necessary to fulfill teacher credential requirements, is entitled to resident classification only for the purpose of determining the amount of tuition and fees for no more than one year. Thereafter, the student's residency status will be determined under the other provisions of this procedure.



- A student who is a full-time employee of the California State University, the University of California or a community college, or of any state agency or a student who is a child or spouse of a full-time employee of the California State University, the University of California or a community college, or of any state agency may be entitled to resident classification, until the student has resided in the state the minimum time necessary to become a resident.
- A student who is a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces of the United States stationed in this state on active duty and is attendance at, or has been admitted to the District shall be entitled to resident classification. If the member of the armed forces of the United States later transfers on military orders to a place outside this state, or retires as an active member of the armed forces of the United States, the student dependent shall not lose his/her/their resident classification, so long as he/she/they remains continuously enrolled in the District.
- A student who is a member of the armed forces of the United States stationed in this state is entitled to resident classification only for the purpose of determining the amount of tuition and fees. If the student later transfers on military orders to a place outside this state, the student shall not lose his/her/their resident classification, so long as he/she/they remains continuously enrolled in the District.
- A veteran who was discharged or released from at least 90 days of active service, commencing on or after July 1, 2015, and his/her/their dependents, regardless of the veteran's state of residence is entitled to resident classification.
- An individual who is the child or spouse of a person who, on or after September 11, 2001, died in the line of duty while serving on active duty as a member of the Armed Forces who resides in California.
- An individual who is entitled to transferred Post-9/11 GI Bill program benefits by virtue of their relationship to a member of the uniformed services who is serving on active duty.
- A student who is a minor and resides with his/her/their parent in a district or territory not in a district shall be entitled to resident classification, provided that the parent has been domiciled in California for more than one year prior to the residence determination date for the semester, quarter or term for which the student proposes to attend.
- A student who is a Native American is entitled to resident classification for attendance at a community college if the student is also attending a school administered by the Bureau of Indian Affairs located within the community college district.
- A student who is a federal civil service employee and his/her/their natural or adopted dependent children are entitled to resident classification if the parent has moved to this state as a result of a military mission realignment action that involves the relocation of at least 100 employees. This classification shall continue until the student is entitled to be

classified as a resident, so long as the student continuously attends an institution of public higher education.

- A student who resides in California and is 19 years of age or under at the time of enrollment, who is currently a dependent or ward of the state through California's child welfare system, or was served by California's child welfare system and is no longer being served either due to emancipation or aging out of the system, may be entitled to resident classification until he/she/they has resided in the state the minimum time necessary to become a resident.
- A student who lives with a parent who earns a livelihood primarily by performing agricultural labor for hire in California and other states, and the parent has performed such labor in this state for at least two months per year in each of the two preceding years, and the parent resides in this District and the parent of the student has claimed the student as a dependent on his/her/their state or federal personal income tax return if he/she/they has sufficient income to have personal income tax liability shall be entitled to resident classification.
- A student who demonstrates financial need, has a parent who has been deported or was permitted to depart voluntarily, moved abroad as a result of that deportation or voluntary departure, lived in California immediately before moving abroad, attended a public or private secondary school in the state for three or more years, and upon enrollment, will be in his/her/their first academic year as a matriculated student in California public higher education, will be living in California, and will file an affidavit with the District stating that he/she/they intends to establish residency in California as soon as possible.
- A student who has a special immigrant visa that has been granted status under Section 1244 of Public Law 110-181 or under Public Law 109-163, or is a refugee admitted to the United States under Section 1157 of Title 8 of the United States Code, and who, upon entering the United States, settled in California, shall be exempt from paying the nonresident tuition fee required by Education Code Section 76140 for the length of time he/she/they lives in this state up to the minimum time necessary to become a resident.
- Any Team USA student athlete who trains in the state in an elite level program approved by the United States Olympic and Paralympic Committee is entitled to resident classification for tuition and fee purposes until the athlete has resided in the state the minimum time necessary to become a resident.

**Right to Appeal** – Students who have been classified as non-residents have the right to a review of their classification (Title 5 Section 54010 subdivision (a)). Any student, following a final decision of residence classification by the [ **designate, such as Admission Office** ], may make written appeal to the [ **designate, such as Chief Student Services Officer** ] within 30 calendar days of notification of final decision by the college regarding classification.

**Appeal Procedure** – The appeal is to be submitted to **designate, such as Admissions Office** which must forward it to the [ **designate, such as Chief Student Services Officer** ] within five working days of receipt. Copies of the original application for admission, the residency questionnaire, and evidence or documentation provided by the student, with a cover statement

indicating upon what basis the residence classification decision was made, must be forwarded with the appeal.

The [ **designate position** ] shall review all the records and have the right to request additional information from either the student or the Admissions Office.

Within 30 calendar days of receipt, the [ **designate position** ] shall send a written determination to the student. The determination shall state specific facts on which the appeal decision was made.

**Reclassification** – A student previously classified as a non-resident may be reclassified as of any residence determination date. A residence determination date is that day immediately preceding the opening day of instruction for any session during which the student proposes to attend.

Petitions are to be submitted to the Admissions Office.

Petitions must be submitted prior to the semester for which reclassification is to be effective. Extenuating circumstances may be considered in cases where a student failed to petition for reclassification prior to the residency determination date. In no case, however, may a student receive a non-resident tuition refund after the date of the first census.

Written documentation may be required of the student in support of the reclassification request.

A questionnaire to determine financial independence must be submitted with the petition for reclassification. Determination of financial independence is not required for students who were classified as non-residents by the University of California, the California State University, or another community college district (Education Code Section 68044).

A student shall be considered financially independent for purposes of residence reclassification if the applicant meets **all** of the following requirements:

- Has not and will not be claimed as an exemption for state and federal tax purposes by his/her/their parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the year the reclassification application is made;
- Has not and will not receive more than seven-hundred fifty dollars (\$750) per year in financial assistance from his/her/their parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification; and
- Has not lived and will not live for more than six weeks in the home of his/her/their parent during the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application.

A student who has established financial independence may be reclassified as a resident if the student has met the requirements of Title 5 Sections 54020, 54022, and 54024.

Failure to satisfy all of the financial independence criteria listed above does not necessarily result in denial of residence status if the one year requirement is met and demonstration of intent is sufficiently strong.

Financial dependence in the current or preceding calendar year shall weigh more heavily against finding California residence than financial dependence in the preceding second and third calendar years. Financial dependence in the current or preceding calendar year shall be overcome only if (1) the parent on whom the student is dependent is a California resident, or (2) there is no evidence of the student's continuing residence in another state.

The [**designate position**] will make a determination, based on the evidence and notify the student not later than [**insert number of days here – recommend 14 days**] days of receipt of the petition for reclassification.

Students have the right to appeal according to the procedures above.

**Non-Citizens** – The District will admit any non-citizen who is 18 years of age or a high school graduate.

If non-citizens are present in the United States without inspection at a designated port of entry and has not obtained a status under the immigration laws of the United States allowing them to establish domicile, with a visa that requires they have a residence outside of the United States, or with any type of temporary visa, they will be classified as non-residents and charged non-resident tuition unless they meet the exceptions contained below.

If, for at least one year and one day prior to the start of the semester in question, a non-citizen has possessed any immigration status that allows him/her/them to live permanently in the United States and he/she/they meets the California residency requirements, the student can be classified as a resident.

Any students who are U.S. citizens, permanent residents of the U.S., and foreign national persons who are not nonimmigrants (including those who are undocumented), may be exempt from paying nonresident tuition if they meet one of the following requirements:

- Total attendance of, or attainment of credits earned while in California equivalent to three or more years of full-time attendance or attainment of credits at any of the following: (a) California high schools; (b) California high schools established by the State Board of Education; (c) California adult schools established by either a county office of education, unified or high school district, or The Department of Corrections and Rehabilitation; (d) campuses of the California community colleges; or (e) a combination thereof; or
- Three or more years of full-time high school coursework in California, and a total of three or more years of attendance in California elementary schools, or a combination of California elementary and secondary schools.

Additionally, the following requirements must be met: (pg. 9)

- Graduation from a California high school or attainment of the equivalent thereof; or completed an associate degree from a California Community College; or completed the minimum requirements at a California Community College, or fulfill the minimum transfer requirements established for the University of California or the California State University for students transferring from a campus of the California Community Colleges;
- Registration or enrollment in a course offered by any college in the District for any term commencing on or after January 1, 2002;
- Filing a California Nonresident Tuition Exemption Request form with the District or in the case of students applying for state-based financial aid, by filing a California Dream Act Application (CADAA) with the California Student Aid Commission verifying eligibility for this nonresident tuition exemption; and
- In the case of undocumented persons, the filing of an affidavit that the student has filed an application to legalize his/her/their immigration status or will file an application as soon as he/she/they is eligible to do so.

Documents and information obtained in implementing this exemption are confidential.

The initial residency classification will be made at the time the student applies for pg 1 admission. Students may file residency questionnaire forms through the third week of the semester to request a review of their residency status. Final residency determination is made by the [ *designate position* ]. Students may appeal the decision.

### **Section below was moved to NEW AR #5013 Residency Determination for Military Personnel & Dependents**

**Armed Services Member Stationed in California:** A student who is a member of the armed forces of the United States stationed in California on active duty, except a member of the Armed Forces assigned for educational purposes to a state-supported institution of higher education, is entitled to resident classification only for the purpose of determining the amount of tuition and fees. If the student later transfers on military orders to a place outside this state, the student shall not lose his/her resident classification, so long as he/she remains continuously enrolled in the District (Education Code, §§68044, 68075; Title 5 §54042).

**Dependent of an Armed Services Member Stationed in California:** A student who is a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces of the United States stationed in California on active duty shall be entitled to resident classification. If the member of the armed forces of the United States later transfers on military orders to a place outside this State, or retires as an active member of the armed forces of the United States, the student dependent shall not lose his/her resident classification, so long as he/she remains continuously enrolled at the College resident (Education Code, §§68044, 68074; Title 5 §54041).

**Nonresident Veteran, Spouse, or Dependent:** Students verified to be covered individuals that qualify to use Montgomery GI Bill-Active Duty or Post-9/11 GI Bill education benefits (Chapters 30 and 33, respectively, of Title 38, U.S. Code) while living in California, and their covered spouse or dependent children may be waived from nonresident tuition and the capital outlay fee while living



in California, provided the eligible veteran was discharged or released from at least 90 days of active service less than three years before the date of enrollment in a course commencing on or after July 1, 2015, regardless of the veteran's state of residence (Education Code, §68075.7).

**Child or Spouse of Individual Killed in the September 11, 2001 Terrorist Attacks:** An individual who is the child or spouse of a person who died, on or after September 11, 2001, as a result of the terrorist attacks, who resided in California at the time of the incident may be granted residency (Education Code, §§68121, 76300).

**Relocated Federal Service Employee and Dependent Children:** A student who is a federal civil service employee and his or her natural or adopted dependent children are entitled to resident classification if the parent has moved to California as a result of a military mission realignment action that involves the relocation of at least 100 employees. This classification shall continue until the student is entitled to be classified as a resident, so long as the student continuously attends an institution of public higher education.