

AR 5015 Residency Determination (old AR#4110 (pg.14), New AR#)

1. Overview of Residency Classification for Tuition Purposes

The residency status for tuition purposes of students applying to or enrolling in credit courses at Santa Monica College is determined in accordance with the California Education Code (including §§68040, 68044, 68060, 68062, 68075.65, 68130.5, and 76140).

Students enrolling exclusively in noncredit courses, including Career Development and College Preparation courses, are not subject to residency classification requirements (Ed. Code §68086).

An initial residency classification is made at the time of admission and may be determined again after an absence of more than one semester (Ed. Code §68044).

Students who wish to change from nonresident to resident status must submit a Residency Questionnaire no later than the first day of the term in which they are seeking reclassification, in accordance with Santa Monica College policy. Students have the right to appeal residency decisions as provided in Section 6.4 below.

Complete information regarding residency requirements, acceptable proof of documentation, and residency exceptions/exemptions are available on the Admissions and Records Residency webpage at www.smc.edu/residency (Ed. Code §68075.65).

2. Residency Requirements

To be classified as a California resident for tuition purposes, a student must satisfy core requirements: (1) physical presence in the state for at least one year prior to the residency determination date, (2) intent to make California a permanent home rather than a temporary residence, (3) U.S. Citizenship or a qualifying lawful status under the federal Immigration and Nationality Act (8 U.S.C. § 1101 et seq.), and, (4) when seeking reclassification, evidence of financial independence (Ed. Code §§ 68017, 68023, 68040, 68041, 68043, 68044, 68062, 68070, 68086, 68101; Title 5 §§ 54002, 54010, 54020, 54022, 54024, 54026, 54028, 54032, 54045).

Certain students who are not otherwise eligible based on immigration status may nonetheless qualify for a nonresident tuition exemption under AB 540 (Ed. Code §68130.5). Other students may qualify under one of the exceptions or exemptions outlined in section 4.11 below.

For purposes of this regulation, the one year residence period, which a student must meet to be classified as a resident, does not begin until the student has demonstrated a lawful presence to establish residency and is both present in California and has manifested clear intent to become

a California resident.

2.1. Evidence of Physical Presence

A student who is capable of establishing residency must demonstrate continuous physical presence in California for one year immediately preceding the residence determination date to be classified as a resident (Ed. Code §68041; Title 5 §54024).

- 2.1.1. The residency determination date (RDD) is defined as the day immediately preceding the first day of instruction of the term for which the student seeks to enroll. All classes within that term, including late-start classes, are subject to the same uniform residency determination date (each term has only one residency determination date).
- 2.1.2. A temporary absence from California for business, education, or pleasure does not result in the loss of residency if the individual maintained the intent to return and did not take actions inconsistent with that intent, such as those noted in Section 2.2.4.2.
- 2.1.3. Presence in California solely for educational purposes does not establish residency, regardless of the length of stay (Ed. Code §§ 68017, 68070; Title 5 §54022).

2.2. Evidence of Intent

To establish California residency for tuition purposes, a student must demonstrate intent to make California their permanent home rather than a temporary place of residence. Intent may be shown in a variety of ways; no single factor is determining (Ed. Code §68041; Title 5 §54024).

2.2.1. Students 19 years of age or older

A student who is 19 years of age or older and who has maintained a home in California continuously for the past two years is presumed to have the intent to make California a permanent home, unless contrary intent is shown through actions inconsistent with residency (Section 2.2.4.2; Ed. Code §68041; Title 5 §54024).

2.2.2. Students under 19 years of age

A student who is under 19 years of age is presumed to have the intent to make California a permanent home if both the student and their parent or legal guardian have maintained a home in California continuously for the past two years, unless contrary intent is shown through actions inconsistent with residency (Section 2.2.4.2; Ed. Code §68041; Title 5 §54024).

2.2.3. Other Nonqualifying Students

A student who does not qualify under 2.2.1 or 2.2.2 above must provide independent

evidence of intent to establish California residency for other than a temporary purpose.

2.2.4. Evidence of Intent

2.2.4.1. Actions consistent with a claim of California residency includes, but are not limited to:

- 2.2.4.1.1. Ownership of residential property or continuous occupancy of rented or leased property in California.
- 2.2.4.1.2. Registering to vote and voting in California.
- 2.2.4.1.3. Licensing from California for professional practice.
- 2.2.4.1.4. Active membership in California professional, religious, merchant, service organizations or social clubs.
- 2.2.4.1.5. Presence of spouse, children, or other close relatives in the state.
- 2.2.4.1.6. Showing California as home address on federal income tax forms.
- 2.2.4.1.7. Filing of California state income tax as a resident.
- 2.2.4.1.8. Possessing California motor vehicle license plates/registration.
- 2.2.4.1.9. Possessing a California driver's license or California ID.
- 2.2.4.1.10. Maintaining permanent military address, or home of record in California while in armed forces.
- 2.2.4.1.11. Establishing and maintaining active California bank accounts.
- 2.2.4.1.12. Petitioning for divorce in California.
- 2.2.4.1.13. Remaining in California during academic breaks.
- 2.2.4.1.14. Registering for the Selective Service in California (indicating California address).

2.2.4.2. Actions inconsistent with a claim of California residence includes but are not limited to:

- 2.2.4.2.1. Maintaining voter registration and voting in another state.
- 2.2.4.2.2. Being the petitioner for a divorce in another state.
- 2.2.4.2.3. Attending an out-of-state educational institution as a resident of that other state.
- 2.2.4.2.4. Declaring non-residence for state income tax purposes or paying taxes in another state or country as a resident of that state or country.

2.3. Lawful Presence in the United States

Non-U.S. citizens, including unmarried minors, may establish California residency for tuition purposes if they are not restricted under the federal Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) from establishing domicile in the United States. To qualify, the student must also have lived in California for more than one year immediately preceding the residency determination date for the term of intended enrollment.

In general, non-U.S. citizens cannot establish domicile if their immigration status is undocumented, if they hold a visa that requires maintenance of a residence outside the

United States, or if they entered the country solely for a temporary purpose (Ed. Code §§ 68017, 68043, 68062(h), 68070; Title 5 §§54022, 54045).

See Exemptions and Exceptions in section 5.

2.4. Financial Independence for Reclassification

A student seeking reclassification from nonresident to resident status must be evaluated for financial independence (Ed. Code §68044, 68071; Title 5 §54032, 54020, 54022, 54024). A student who demonstrates financial independence may be reclassified as a California resident if physical presence and intent requirements are met.

In addition to submitting the residency questionnaire, the student must submit documentation to determine financial independence for reclassification.

- 2.4.1. Financial independence weighs in favor of finding California residency, while financial dependence weighs against it. Financial dependence in the current or preceding calendar year carries more weight against a residency finding than dependence in earlier years. Financial dependence in the current or preceding calendar year shall be overcome only if (1) the parent/legal guardian 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.

Students claimed as dependents by parents or legal guardians on income taxes filed in another state are precluded from establishing California residency for tuition purposes.

- 2.4.2. A student is considered financially independent if, for the calendar year of the reclassification request and the three preceding years, they (1) have not been claimed as a tax dependent by a parent or legal guardian, (2) have not received more than \$750 per year in financial assistance from a parent or legal guardian, and (3) have not lived in a parent's or legal guardian's home for more than six weeks per year.
- 2.4.3. 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.
- 2.4.4. Acceptable documentation includes recent state and federal tax returns (from both the student and parents), W-2 or 1099 forms, paystubs, and financial records (e.g., bank statements, loan or trust information verifying income and self-support per section 2.2.1 or 2.2.2).

3. Residency Determination and Classification Process

- 3.1. Residency classification is determined for each student at the time of admission to a given enrollment term, and again if the student has not attended for more than one semester. Summer and winter intersessions are not included in this consideration. (Title 5 §54010).
- 3.2. Residency classification is based on the residency determination date, defined as the day immediately preceding the first day of instruction for the term in which the student plans to enroll (Title 5 §54002).
- 3.3. Students must be notified of their residency classification within 14 calendar days of submitting the admission application (Title 5 §54060).
- 3.4. The burden of proof rests with the student to demonstrate both physical presence in California and intent to establish residency. Students must provide all information and supporting documentation requested on the Residency Questionnaire to enable Admissions and Records to determine their residency classification (Ed. Code §§66700, 68041, 68044, 70901; Title 5 §§54010, 54026). Determination will be made within 30 days if all pertinent documents are received.
- 3.5. Residency classification is the responsibility of the Admissions and Records Office, under the supervision of the Dean of Enrollment Services or designee.
- 3.6. 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 on the Admissions and Records webpage.
- 3.7. All documents and information obtained for residency determination are strictly confidential and protected under the Family Educational Rights and Privacy Act (FERPA).

4. Statutory Rules for Determining Residence

Residency determinations are guided by statutory rules established in the California Education Code and Title 5 regulations. These rules provide the legal framework for identifying a student's place of residence.

- 4.1. A student who has resided in California for at least one year prior to the residency determination date is considered a resident (Ed. Code §68017). The one-year period begins only when the student is both physically present in California and has manifested (shown clear) intent to make California their state of residency (Ed. Code §68062(d); Title 5 §54020).

- 4.2. A student who has resided in California for less than one year immediately preceding the residency determination date is considered a nonresident and must pay nonresident tuition and fees, unless otherwise provided by statute or college policy (Ed. Code §76140).
- 4.3. A student who is married, or 18 years of age or older and not under legal disability (a status that prevents a person from acting with full legal capacity), may establish residency (Ed. Code §68061).
- 4.4. A student can have only one residence at a time (Ed. Code §§ 68060, 68062).
- 4.5. By law, every person has a residence. Residence is defined as the place where a person remains when not called elsewhere for labor or other temporary purposes, and to which they return during periods of repose (Ed. Code §§68060, 68062).
- 4.6. A residence is not lost until another is gained (Ed. Code § 68062).
- 4.7. Residency can change only through the union of act (physical presence) and intent (Ed. Code §68062; Title 5 §54020).
- 4.8. A student may establish their own residence. A student's residence is independent of their spouse; (Ed. Code §68062).
- 4.9. The residence of an unmarried minor is the same as that of the parent or legal guardian with whom the minor lives. If the minor does not live with either parent or legal guardian, residence is determined by the parent/legal guardian with whom they last lived. If both parents are deceased and no guardian has been appointed, the minor may establish their own residence (Ed. Code §68062).
- 4.10. The residence of an unmarried minor with a living parent cannot be changed by the minor's own actions, by the appointment of a legal guardian, or by a parent relinquishing control, unless the student qualifies under the Self-Support or Two-Year Care and Control exceptions (Ed. Code §§ 68071, 68073; Title 5 §54047).
- 4.11. A non-U.S. citizen student, including an unmarried minor, may establish residency unless the Immigration and Nationality Act (8 U.S.C. §1101 et seq.) prohibits them from doing so. For unmarried minors who are noncitizens, residence is determined according to the rules governing their parents' or legal guardians' residence (Ed. Code §68062).

5. **Residency Exceptions and Tuition Exemptions**

The following statutory exceptions and exemptions allow certain nonresident students to qualify for resident classification or exemption from nonresident tuition and fees, even if they do not

otherwise meet the standard residency requirements.

5.1. Minors Moving to Live with a Resident Parent

A minor student living with a parent or legal guardian qualifies for residency classification if that parent/guardian has resided in California for one year immediately preceding the residence determination date for the term the student plans to attend (Ed. Code §§68076, 68080).

5.2. Dependent Under Age 19

A student under age 19 who has not been an adult (18 years of age) California resident for one year prior to the residence determination date may still qualify if: (1) they are a dependent of a California resident who has lived in the state for at least one year, or (2) their parent/guardian has provided continuous court-ordered support and has resided in California for at least one year. This exception applies until the student satisfies the minimum residency requirement, provided continuous enrollment is maintained (Ed. Code §68076).

5.3. Minor with Continuous Enrollment After Parent Leaves California

A minor student who remains in California after their parent/guardian establishes residence elsewhere may retain California residency classification as long as they remain continuously enrolled until reaching age 18 and meeting the minimum residency requirement (Ed. Code §68070; Title 5 §54024).

5.4. Self-Supporting Minor

A minor who is entirely self-supporting, has been physically present in California for more than one year prior to the residence determination date, and demonstrates intent to establish residency, is entitled to residency classification (Ed. Code §68071).

5.5 Residency Credit for Time as a Minor

A student who has been an adult for less than one year before the residency determination date may count their time living in California as a minor (under 18 yrs of age) together with their time as an adult (over 18 yrs of age). This combined period may be applied to meet the one-year California residency requirement (Ed. Code §68072).

5.6 Self-Supporting Student

Students claiming this exception must provide documentation such as: earnings statements (e.g., W-2 forms, or a letter from the employer, earnings of the year immediately preceding the residence determination date, tax return even if zero income from the year immediately preceding the residence determination date; a statement confirming continuous physical presence in California (short absences for business or pleasure are allowed); and a statement of all expenses for the year (Ed. Code §§68044,

68071; Title 5 §§54020, 54024, 54032, 54040).

5.7. Two-Year Care and Control

A student qualifies for resident classification if 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 immediately before enrollment, and that adult has lived in California for at least one year prior to the residence determination date. This exception continues until the student turns 18 and meets the residency requirement, as long as continuous enrollment is maintained (Ed. Code §68073; Title 5 §54047).

5.8. Special Immigrant Visa (SIV) or Refugee

A student who holds a special immigrant visa under Section 1244 of Public Law 110-181, Public Law 109-163, or Section 602(b) of Title VI of Division F of Public Law 111-8, or who has been admitted to the United States as a refugee under 8 U.S.C. §1157, is exempt from paying nonresident tuition.

This exemption applies if the student settled in California upon entering the United States and continues for as long as the student lives in California until they meet the minimum time required to establish residency (Ed. Code §§68017, 68075.6, 76140).

SIV Visa holders include Iraqi and Afghan citizens or nationals (and their spouses and children) who were employed by or on behalf of the United States Government in Iraq (Public Law 110-181, §1244), and who meet certain criteria, and translators (and their spouses and children) who worked directly with the United States Armed Forces (Public Law 109-163, §1059), and who meet certain criteria. SIV Visa holders also include Afghanistan nationals who were employed by or on behalf of the U.S. government or in the International Security Assistance Force (ISAF) in Afghanistan.

The one-year nonresident tuition exemption in Education Code section 68075.6 also applies to Afghan and Ukrainian Humanitarian Parolees. Under federal law, Afghan and Ukrainian humanitarian parolees are entitled to benefits available to refugees. Ukrainian parolees are eligible for the nonresident tuition fee exemption in 68075.6(b)(1), and should be granted it if they have resided in California for less than one year. Afghan parolees are eligible for the non-resident tuition fee exemption in 68075.6(b)(1) until the date on their parole term.

5.9. Students from Bureau of Indian Affairs Schools

Students who graduate from a Bureau of Indian Affairs (BIA) high school in California, are entitled to California resident classification for tuition purposes, if they maintain continuous enrollment (Ed. Code §68077). In addition, Native American (American Indian) students who are attending a BIA school located within the SMCCCD boundaries are entitled to

resident classification (Ed. Code §68082).

5.10. Public School Full-Time Credentialed Employee

A student with a valid California teaching credential who works full-time in a California public school qualifies for residency classification if they are: (1) holding a provisional credential and taking courses needed for another credential; or (2) taking courses required to meet credential requirements under Ed. Code §44250; or (3) taking courses required for a fifth year of education under Ed. Code §44259(b).

A student employed full-time with an emergency teaching permit also qualifies for one year exception. After that period, residency is determined under the standard provisions (Ed. Code §68078; Title 5 §54046).

5.11. State Agency Employee, Spouse, or Dependent

A student who is a full-time employee of a California public institution or state agency—or the spouse or child of such an employee—may be granted resident classification, even if they have not yet satisfied the one-year California residency requirement. For the purposes of this section, an employee of any “state agency” means an individual employed by the State of California who is assigned to work outside of California. This provisional classification remains in effect until the student has lived in California long enough to meet the standard residency requirement under state law (Ed. Code §68079).

5.12. USA Team Athlete

A Team USA student athlete training in California in an elite-level program approved by the U.S. Olympic and Paralympic Committee qualifies for resident classification until they have resided in California for the minimum time required to become a resident (Ed. Code §68083; operative until July 1, 2032).

5.13. Dependent or Ward of the State of California

A student who lives in California, is 19 years of age or younger at the time of enrollment, and who is or was a dependent or ward of the State of California, or who was served by California’s child welfare system, may qualify for resident classification until they meet the minimum residency requirement (Ed. Code §68085).

5.14. Agricultural Workers and Children of Agricultural Workers

A student who is an agricultural laborer in California, or who resides with a parent/guardian who has worked as an agricultural laborer in California for at least two months each year for the past two years, and currently lives in the Santa Monica Community College District may be classified as a California resident. If the parent/guardian earns sufficient income, the student must have been claimed as a dependent for state or federal tax purposes (Ed. Code §§68100, 68044, 68074-75; Title 5 §§54048, 54050).

5.15. **U.S. Citizen Whose Parent Was Deported**

A student whose parent/guardian has been deported, or granted permission to leave the U.S., or voluntarily deported, in lieu of deportation and moved abroad as a result, may qualify for residency if they: (1) demonstrate financial need; (2) lived in California immediately before the parent/guardian's deportation; (3) attended a California public or private secondary school for at least three years; (4) begin their first academic year as a matriculated student in California; (5) will reside in California upon enrollment; and (6) will file a U.S. Citizen Whose Parent Was Deported Affidavit of intent to establish residency in California (Ed. Code §76140; SB 141). Students exempted under this provision do not receive resident status for the purpose of financial aid until they establish California residency (SB 141).

5.16. **Special Part-Time Student (CCAP)**

A special part-time student participating in a College and Career Access Pathways (CCAP) program and enrolled in no more than 15 units per term, qualifies for nonresident tuition exemption. This does not apply to individuals excluded from the term "immigrant" under the INA (8 U.S. Code §1101(a)(15)(A)). (Ed. Code §76004; Title 5 §54045.5).

5.17. **T and U Visa Holders**

A student who holds a T-Visa (Victims of Trafficking) or U-Visa (Victims of Qualifying Crimes) may receive an immediate exemption from nonresident tuition if they first settled in California upon entry, per Education Code §§ 68075.6 and 68122. This exemption is granted for the period they reside in California, up to the minimum time required to establish residency (one year and one day). (Education Code, §§68062(h), 68130.5; Title 5 §§54045, 54045.5, 58003.6)

5.18. **AB 540 Eligible Students**

Students (U.S. citizens, permanent residents, or foreign nationals who are not nonimmigrants, including undocumented students) may be exempt from paying nonresident tuition (Ed. Code §68130.5; Title 5 §54045.5) if they:

- 5.18.1. Attend California schools for at least three years (or earn credits equivalent to three years of full-time attendance in California schools, adult schools, the Department of Corrections and Rehabilitation, California Community Colleges (credit or noncredit courses), or a combination thereof.
- 5.18.2. Graduate from a California high school (or equivalent), or earn an associate degree from a California community college, or meet UC/CSU minimum transfer requirements from a CCC.
- 5.18.3. File a California Nonresident Tuition Exemption Affidavit (AB 540 Affidavit), affirming they have applied or will apply for legal status when eligible. A student

may file an AB 540 Affidavit at any time and residency will be retroactive if eligible.

- 5.18.4. Students applying for state aid via the California Dream Act Application will have eligibility verified by the College (Ed. Code §68130.5, Title 5 §54045.5).

Exemption is not available for students living outside California who are taking distance education classes from California Community Colleges.

5.19. Nonresident Low-Unit Enrollees:

The College may at its discretion exempt from all or part of the nonresident fees for a student enrolled in six or fewer units. However, this is a blanket exemption and may not be granted on a case-by-case basis. Apportionment may not be claimed for these students (Ed. Code §§68130, 76140, 76141).

5.20. Foreign Residents with Financial Need

The College may exempt from the nonresident tuition fee any student who is both a citizen and resident of a foreign country, provided that the student demonstrates financial need. This exemption is limited to no more than 10 percent of the nonresident foreign students attending the district in any academic year and may be granted on an individual basis. Apportionment may not be claimed for these students (Ed. Code §§68130, 76140, 76141).

5.21. Recent Immigrants, Refugees, or Asylees in ESL Courses

The district must exempt the nonresident tuition fee for any nonresident student who enrolls in a credit English as a Second Language (ESL) course and who qualifies as one of the following: a recent immigrant under Section 1101(a)(15) of Title 8 of the United States Code, a recent refugee under Section 1101(a)(42) of Title 8, or a person granted asylum under Section 1158 of Title 8.

This exemption applies only to individuals who, upon entering the United States, settled in California and who have resided in the state for less than one year. The exemption is limited to the tuition fee for credit ESL courses. Apportionment may not be claimed for these students (Ed. Code §76140).

5.22. Survivors of COVID-19 First Responders and Healthcare Workers

The surviving spouse or child of a licensed physician, licensed nurse, or first responder who was a California resident and died from COVID-19 during the state of emergency in California is exempt from all mandatory systemwide tuition and fees, including nonresident tuition (Ed. Code §68120.3).

6. Reclassification to California Residency Status

A student who has been classified as a nonresident may request reclassification to resident status as of any residence determination date (for any term).

- A Residency Reclassification Questionnaire petition must be submitted electronically through the Admissions and Records Residency webpage.
- Supporting documentation demonstrating the conditions of physical presence, intent to establish residency in California and financial independence must be submitted with reclassification request.

6.1 Petition for Reclassification

6.1.1 Students seeking reclassification are strongly encouraged to submit a Residency Questionnaire electronically at least 30 days before the start of the term for which reclassification is requested. The questionnaire, along with a list of acceptable supporting documents (not an exhaustive list), is available through the Admissions and Records Residency webpage (smc.edu/residency).

6.1.2 Students who remain enrolled after the refund deadline do not qualify for a refund. The refund deadlines are posted in the student portal.

6.2. Requirements

6.2.1. **Physical Presence** in California for at least one year immediately preceding the residency determination date for the term they seek reclassification.

6.2.2. **Intent** to make California a permanent home, rather than a temporary residence.

6.2.3. **Lawful Presence** in the United States that allows establishment of domicile (e.g., U.S. citizenship, lawful permanent residency, or an eligible nonimmigrant visa category). Students with “other” lawful status (e.g., copy of permanent resident card, asylee/refugee documentation, or an eligible visa under Ed. Code §68062(h) and Title 5 §54045) may also qualify.

6.2.4. **Financial Independence**, when applicable, as set forth in Education Code and Title 5 regulations (Ed. Code §§68044, §68071; Title 5 §§54020, 54022, 54024, 54032) see sections under 2.1, 2.2, 2.3 and 2.4. To be considered financially independent for purposes of reclassification, a student must meet all of the following:

6.2.4.1. Has not and will not be claimed as an exemption for state or federal tax purposes by their parent/legal guardian in the calendar year of the petition and in any of the three preceding calendar years.

6.2.4.2. Has not and will not receive more than \$750 in financial assistance from their parent/legal guardian during that same time period.

6.2.4.3. Has not lived and will not live for more than six weeks in the home of their parent/legal guardian during that same time period.

6.2.5 Failure to satisfy every criterion does not automatically preclude reclassification if the student demonstrates one year of residence in California and clear intent. However, financial dependence in the current or preceding year weighs more heavily against residency in earlier years.

6.2.6 A student who has established financial independence and meets the other requirements may be reclassified as a resident.

6.3 Reclassification Determination

The Admissions and Records Office will evaluate petitions for reclassification and notify students of the decision (Title 5 §54060) within 30 days of receipt, provided the residency questionnaire has been completed in full and the required documentation was included. If denied reclassification, the reason(s) for denial will be disclosed at the time decision is emailed to student. Students may resubmit another petition for reclassification (another 30 days turnaround time) or may file an appeal.

6.4 Right to Appeal and Appeal Procedure

Students may file an appeal if their residency reclassification is denied. Students must submit an electronic "Special Consideration Petition" to the Admissions and Records Office website within 10 school days of notice of denial.

Students must specify the reasons they believe the Admissions and Records Office erred, and provide additional information not previously made available in support of their request. Petitions without this new (additional) information will be denied. Students will be provided a decision to their Residency Reclassification Appeal within 30 days of receipt of the petition. The decision will be made by the Dean of Enrollment Services or designee, and additional information may be requested. 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 and Refunds

References:

Education Code Sections 68000, 68017-18, 68023, 68040-68044, 68060-62, 68070-80, 68075-75.7, 68080-68086, 68100-01, 68120-23, 68130-30.5, 76140-41, 76300

Title 5 Sections 54000 et seq.; 54001-02, 54010, 54020, 54022, 54024, 54026, 54028, 54030, 54032, 54040-42, 54045-48, 54050, 54060

Title 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, 11/19/25

OLD AR

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

1. Overview of Conditions to Determine Residency Status

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

i. **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. A temporary absence for business, education or pleasure will not result in loss of California residence 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 residence 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, a listing of which is available from Admissions & Records. 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 the 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 1(a)(ii)(1) of this Regulation. A student who is under 19 years of age, shall be presumed to have the intent to make California the home for

other than a temporary purpose if both the student and his/her parent 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 1(a)(ii)(1) of this Regulation (Education Code §68041; Title 5 §54024).

1. Conduct inconsistent with claim of residency include, but are 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.

iii. Legal Presence in the United States

Non-U.S. Citizens, including unmarried minors, may establish residence unless precluded by the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) from establishing domicile in the United States, provided the student has had residence in California for more than one year prior to the residence 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 United States if their status in the country is undocumented, or is under a visa which requires residence outside the United States, or entered the United States solely for a temporary purpose (Education Code §68062(h); Title 5, §54045).

iv. Financial Independence for Reclassification

A student seeking reclassification from nonresident to resident shall be determined financially independent or dependent. Financial independence shall be among the factors to be considered for reclassification. Students claimed by parents/legal guardians on their income taxes in another state will be precluded from establishing California residency for tuition purposes (Education Code §68044; Title 5 §54032).

- b. Residency classifications shall be determined for each student at the time of each enrollment term and whenever a student has not been in attendance for more than one semester. Summer and winter intersessions are not included in this consideration.
- c. Residency classification is derived from a residence determination date, which corresponds to the day immediately preceding the opening day of instruction for any term during which the student proposes to attend the College.
- d. Residence classification is the responsibility of the Admissions and Records Office, under the supervision of the Dean of Enrollment Services. Students must be notified of residence determination within 14 calendar days of submission of the admission application.

- e. The College shall publish the residence determination date and a summary of the regulations governing residency determination and classification.
- f. The burden is on the student to demonstrate clearly both physical presence in California and intent to establish California residence Education Code §§66700, 68044, and 70901).

2. 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 the State of California for more than one year immediately preceding the residence determination date is a resident.
- b. A student who has not resided in the State for more than one year immediately preceding the residence determination date is a nonresident. 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).
- 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:

- i. Every person who is married or eighteen years of age, or older, and under no legal disability to do so, may establish residence (Education Code §68061);
- ii. A person may have only one residence (Education Code §68062);
- iii. 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 (Education Code §68062);
- iv. A residence cannot be lost until another is gained (Education Code §68062);
- v. The residence can be changed only by the union of act and intent (Education Code §68062);
- vi. The residence of the parent with whom 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 the last place of abode was maintained, provided the minor may establish his/her residence when both parents are deceased and a legal guardian has not been appointed (Education Code §68062);

- vii. 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, unless the student qualifies under the Self-Support (Education Code §68071) or the Two-Year Care and Control exceptions (Education Code §68073; Title 5 §54047).
- 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).

3. Statutory Exceptions from Nonresidency Status

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

- a. **Minor with Continuous Attendance:** A student who is a minor and remains in California 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 the College.
- b. **Self-Supporting Minor:** 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).
- c. **Public School Full-time Credentialed Employee:** 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.

- d. **State Agency Full-Time Employee:** 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).
- e. **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).
- f. **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).
- g. **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).
- h. **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).
- i. **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.

- j. **Dependent or Ward of the State of California:** 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).
- k. **Agricultural Workers and Children of Agricultural Workers:** 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).
- l. **U.S. Citizen Children of Deported Parent:** 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).
- m. **Non-Citizens (“AB 540 Students”):** 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 non-citizen 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.

n. **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).

4. Reclassification to California Resident Status

Reclassification requests will be considered upon review of a petition for reclassification and documentation demonstrating financial independence.

a. Petition for Reclassification:

A student previously classified as a non-resident may be reclassified as of any residence determination date. Petitions must be submitted to the Admissions and Records 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. Written documentation may be required of the student in support of the reclassification request.

b. Financial Independence:

A questionnaire to determine financial independence must be submitted with the petition for reclassification. A student shall be considered financially independent for purposes of residence 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 parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application (Education Code Section 68044);
- ii. Has not and will not receive more than seven hundred fifty dollars (\$750) per year in financial assistance from his or her parent in the calendar year the reclassification

application is made and in any of the three calendar years prior to the reclassification application; and

- iii. Has not lived and will not live for more than six weeks in the home of his or her parent during the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification 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 Sections 54020, 54022, and 54024.

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 Admissions and Records Office will make a determination, based on the evidence and notify the student not later than 14 days of receipt of the petition for reclassification. Students have the right to appeal according to the procedures above.

5. Right to Appeal Residency Determination

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

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.

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.

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