

AP 5015 Residence Determination

Reference: ***Education Code Sections 68000 et seq. 68130.5, 68074-68075.7;
Title 5 Sections 54000 et seq.;***
38 U.S. Code Section 3679

Date Issued: June 13, 2012

Revised: ~~July 21, 2020~~

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 application, registration, and whenever a student has not been in attendance for more than one semester ~~two or more primary consecutive terms or as required by other residency guidelines~~. Residence classifications are to be made in accordance with the following provisions:

- The 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 Admissions and Records Office.

Students ~~shall~~ 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 California 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 residence. A women's residence shall not be derivative from that of ~~her~~ 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 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, unless the student qualifies under the Self-Support or the Two-Year Care and Control exceptions.
- 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.

Evidence of Intent

- a. Intent to make California the home, for other than a temporary purpose, may be manifest in many ways. No one factor is controlling.
- b. 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 subdivision "f" of this section.
- c. 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 in any of the activities listed in subdivision "f" of this section.
- d. A student who does not meet the above requirements of subdivision "b" or "c" of this section shall be required to provide evidence of intent to make California the home for other than a temporary purpose, as specified in subdivision "e" of this section.
- e. Objective manifestations of intent to establish California residence include, but are 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 the state.

6. Showing California as home address on federal & state income tax forms.
7. Payment of California state income tax as a resident.
8. Maintaining California motor vehicle license plates/registration.
9. Maintaining a California driver's license or California ID.
10. Maintaining permanent military address, or home of record in California while in armed forces.
11. Establishing and maintaining active California bank accounts.

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 fulltime 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 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, 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/their resident classification, so long as he/she/they remains continuously enrolled in the District.
- A veteran who was discharged or released to California 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, and his/her 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 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 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 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.
- Per California Education Code 76140, the District may choose to exempt certain residents of Mexico who meet all of the following requirements:

- A student who demonstrates financial need based on California or Mexican income thresholds, whichever is more favorable to the student;
- Resides within 45-miles of the California-Mexican border for at least one year prior to the start of the semester in question; and
- Registers for lower division coursework at [COLLEGE/DISTRICT]

Additionally, the following requirements must be met:

- Student must have an active application on file.
- Student must file an AB 91 Nonresident Tuition Exemption Affidavit at each college they wish to enroll in.
- Student must be enrolled in classes to qualify for the nonresident tuition waiver.
- If students intend to attend classes in person, they must have a valid F-1 I-20 for border commuter students.

Once admitted, if a student stops out for two consecutive primary terms, they must re-apply. Exemptions are processed on a first-come, first-served basis based on the act of the application, affidavit, and enrollment.

No more than 150 full-time equivalent students (FTES) at each community college described in clause shall be exempted from payment of a nonresident tuition fee under this paragraph in any academic year. The attendance of nonresident students who receive this exemption may be reported as resident FTES for state apportionment purposes.

- ~~A student who has not been an adult resident of California for more than one year and is the dependent child of a California resident parent (Adult Dependent Child of California Resident) shall be entitled to resident classification until the student has resided in California the minimum time necessary to become a resident so long as continuous attendance is maintained at the college. Thereafter, such student must meet the requirements for establishing residency.~~
 - ~~The student must be an adult natural or adopted child of a California resident who has satisfied the one-year waiting period requirement.~~
 - ~~The student is a dependent for income tax purposes of that California resident, or evidence is provided that the student is currently dependent on parent who is a California resident, even though the student had previously been claimed for income tax purposes by a parent who resided outside of California.~~
 - ~~The student must not have lived in California for more than one year.~~
 - ~~The student must maintain continuous attendance at the college.~~

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 Admissions and Records Office, may make written appeal to the

College's Petitions Committee within 30 calendar days of notification of final decision by the Admissions and Records Office regarding classification.

Appeal Procedure

The appeal is to be submitted to the Admissions and Records Office, which must forward it to the College's Petitions Committee within ten-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 College's Petitions Committee 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 College's Petitions Committee 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 nonresident 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.

Residency Petitions ~~Reclassification Petitions~~ are to be submitted to the Admissions and Records Office.

Petitions must be submitted prior to the semester for which the reclassification is to be effective. Extenuating circumstances may be considered in cases where a student fails 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, based on the outcome of Reclassification Petition.

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 if the student is under 19. 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;
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- 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 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 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 below.

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, ~~illegally~~ 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 noncitizen has possessed any immigration status that allows him/her to live permanently in the United States and he/she 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 aliens- 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.

*A year's equivalence at a California Community College is either a minimum of 24 semester units of credit or 36 quarter units. Only two (2) years of full-time attendance in credit courses at a California Community College will count toward the three (3) or more years of attendance. For noncredit courses, a year's attendance is a minimum of 420 class hours per year (a semester is equivalent to a minimum of 210 hours and a quarter is equivalent to a minimum of 140 hours). Full-time attendance at a California adult school is a minimum of 420 hours of attendance for each school year.

Additionally, the following requirements must be met:

- ~~Graduated or will graduate (before the first term of enrollment at the CCC) with a California high school diploma or the equivalent (i.e., California-issued GED, CHSPE); or completed or will complete (before the first term of enrollment at the CCC) an associate's degree from a California Community College; or completed or will complete (before the first term of enrollment at the CCC) the minimum~~
- ~~requirements at a California Community College from transfer to the California State University,~~
- 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 Completion of a questionnaire form prescribed by the Chancellor of the California Community Colleges and furnished by the District at time of enrollment, verifying eligibility for this nonresident tuition exemption; and

- In the case of a student without lawful immigration status undocumented person, 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.

Pursuant to AB 2364 (Holden, Chapter 299, Statutes of 2016; Ed. Code, § 76140) and effective January 1, 2017, a district must exempt all qualifying nonresident special “part-time” students (other than those with a non-immigrant status, such as those present in the United States on a B Visitor Visa*) from the nonresident tuition fee and expressly allows districts to report their attendance as resident FTES for apportionment purposes.

The initial residency classification will be made at the time the student applies for admission. Students may file residency questionnaire forms no later than through the second-third week of the semester to request a review of their residency status. Final residency determination is made by the Office of Admissions and Records. Students may appeal the decision.

Enrollment in only Distance Education Courses

Students enrolled in only distance education courses will be required to verify their physical location with the Admissions & Records Office. Student’s residency for State Authorization purposes is determined by their local address.

Refunds

Refunds will be made for the following reasons:

1. **Erroneous Determination of Nonresident Status**
2. **Withdrawal from College or Reduction of Program**

If a student is erroneously, through no fault of their own, determined to be a nonresident and consequently nonresident tuition is paid, such tuition is refundable in full by the Business Office of the College, provided acceptable proof of State residence is presented within the term for which the tuition was paid.

Nonresidents who officially withdraw from College or reduce their program by the stated refund deadline will receive a refund. Nonresidents who fail to attend (or login) to their class, and documentation verifies they never attended (or logged into) their class would also be entitled to a refund.