



SAN DIEGO COMMUNITY COLLEGE DISTRICT

Administrative Procedure

Chapter 5 – Student Services

AP 5015 – RESIDENCE DETERMINATION

1. RESIDENCE CLASSIFICATION

a. Residency classification shall be determined for each student at the time the application for admission is accepted and whenever a student has not been in attendance for more than one academic year. If a student misses at least two semesters, he/she/they must go through the residence classification process once again. Summer or other intersessions are not included in this consideration. A student's residency is a union of act and intent. Residence classifications are to be made in accordance with the following provisions:

- 1) The residence determination date is that day immediately preceding the opening day of instruction for any term during which the student proposes to attend. Enrollments in late starting classes within a term are subject to this uniform residence determination date. Both a student's residency classification and eligibility for an exception to residency determination are based on information as of the relevant residence determination date.
- 2) Residence classification is the responsibility of the Admissions Office.
- 3) Students shall be notified of residence determination within 14 calendar days of submission of their application for admission and all required documents. The initial residency classification will be made at the time the student applies for admission. Students may file residency questionnaire forms through the third week of the semester to request a review of their residency status. The Admissions Office makes the final residency determination. Students may appeal the decision.

b. Students Enrolled Only in Noncredit Classes

Effective January 1, 2019, under the provisions of Education Code Section 68086, students enrolling only in noncredit courses shall not be subject to residence classification requirements.

c. Students Enrolled Only in Contract Education Courses

Community college districts must charge and report nonresident tuition for students enrolled in for-credit contract education courses who are residents of another state or a foreign country.

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.

2. RULES DETERMINING RESIDENCY

In order to establish California residency for tuition reasons, it is necessary that there be a union of act and intent. To establish residency, a person capable of establishing residence in California must couple 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.

The residency of each student enrolled in or applying for enrollment in, any class or classes maintained by the District shall be determined in accordance with Education Code and Title 5. No one factor is controlling in determining residence classification. The institution may look for certain objective manifestations of subjective intent on the part of a person asserting that residence status has been established or has been maintained in spite of an absence from the state.

- a. In determining the student's place of residence, the following general statutory rules apply:
 - 1) Every person has, in law, a residence; and
 - 2) Every person who is married or 18 years of age or older, and is not precluded by law from doing so, may establish residence in California.
- b. In determining the place of residence, the following rules are to be observed:
 - 1) A person may have only one residence at any given time.
 - 2) 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.
 - 3) A residence cannot be lost until another is gained.
 - 4) The residence can be changed only by the union of act and intent.
 - 5) Every individual may establish their own residence. A person's residence shall not be derivative from that of their spouse. Many of the objective manifestations of a married couple may be shared, but each may have some evidence of intent that is not shared, which may indicate different residences.
 - 6) The residence of the parent with whom an unmarried minor child maintains their domicile 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 domicile was maintained. The minor may establish their residence when both parents are deceased, and a legal guardian has not been appointed.
 - a) Does not apply if the Immigration and Nationality Act precludes the minor from establishing domicile (residence) in the United States.
 - 7) The residence of an unmarried minor who has a living parent 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 either the Self-Support exception or the Two-Year Care and Control exception.

- 8) A noncitizen, including an unmarried minor noncitizen, may establish their residence unless precluded by the United States Citizenship and Immigration Services (USCIS) from establishing residence in the United States.

c. Physical Presence:

- 1) A person capable of establishing residence in California must be physically present in California for one year prior to the residency determination date to be classified as a resident student.
- 2) 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.
- 3) Physical presence within the state solely for educational purposes does not constitute establishing California residency, regardless of the length of time present in the state.

d. Evidence of Intent:

- 1) Intent to make California the home, for other than a temporary purpose, may be manifest in many ways. Conduct inconsistent with a claim of California residence includes, but is not limited to:
 - a) Maintaining voter registration and voting in another state;
 - b) Being the petitioner for a divorce in another state;
 - c) Attending an out-of-state educational institution as a resident of that state;
 - d) Declaring nonresident for California state income tax purposes;
 - e) Paying taxes in another state or country as a resident of that state or country;
 - f) Not fulfilling tax obligations to the State of California; and/or
 - g) Filing an income tax return as a resident of another state. A California resident must file a California income tax return on all income, wherever earned. Claiming an exemption from state income tax as a nonresident is inconsistent with a claim of residency for tuition purposes.

3. NON-CITIZENS

- a. A noncitizen, including an unmarried minor noncitizen, may establish residence unless their immigration or visa status precludes them from establishing domicile in the United States, provided that the student has resided in California for more than one year prior to the residence determination date for the semester. A noncitizen under a visa which requires them to have residence outside of the United States, or that they have entered the United States solely for a temporary purpose shall not be classified as a resident unless and until they have taken appropriate steps to obtain a change of status from the United States Citizenship and Immigration Services (USCIS) to a classification which does not preclude establishing domicile, and has resided in California for more than one year as noted above. Noncitizens who may establish residence must meet the same requirements as U.S. Citizens or Permanent Residents.
- b. An undocumented noncitizen who entered the United States illegally or who has not applied for legalized status cannot become a California resident. However, certain students may qualify for nonresident tuition exemption under AB 540 (see item 4.q.) Noncitizens who violate the terms of the visa or stay in the United States beyond the time permitted by law will not be permitted to establish residence.
- c. The District will admit any noncitizen who is 18 years of age or older, or a high school graduate.

4. NONRESIDENT EXEMPTIONS

- a. 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.
- b. 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.
- c. A student who has not been an adult (19 years of age) 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.
- d. 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 the student meets any of the following requirements:
 - 1) Holding a provisional credential and is enrolling in courses necessary to obtain another type of credential authorizing service in the public schools;

- 2) Holding a public school credential issued pursuant to Education Code Section 44250 and is enrolling in courses necessary to fulfill credential requirements; and/or
 - 3) Enrollment in courses necessary to fulfill the requirements for a fifth year of education prescribed by subdivision (b) of Education Code Section 44259.
- e. 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.
 - f. A student who is a full-time employee, the spouse or child of a full-time employee, of the California State University, the University of California, a California Community College, or of any California state agency may be entitled to resident classification until the student has resided in the state for the minimum amount of time necessary to become a resident.
 - g. An undergraduate student who is a natural or adopted child, stepchild, or spouse who is a dependent of a member of the United States Armed Forces stationed in this state on active duty shall be entitled to resident classification. If the member of the armed forces later transfers on military orders to a place outside this state, or retires as an active member of the armed forces, the student dependent shall not lose their resident classification, so long as he/she/they remain continuously enrolled in the District.
 - h. A student who is a member of the United States Armed Forces stationed in this state 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 their resident classification, so long as they remain continuously enrolled in the District.
 - i. A student who was a member of the United States Armed Forces stationed in California on active duty for more than one year immediately prior to being discharged shall be exempt from paying nonresident tuition for up to one year if they file an affidavit stating that they intend to establish residency in California as soon as possible. This one-year exemption shall be used while the student lives in the state and within two years of being discharged. A former member of the armed forces who received a dishonorable or bad conduct discharge shall not be eligible for this exemption.
 - j. A student who was a member of the United States Armed Forces who was discharged or released from at least 90 days of active service, commencing on or after July 1, 2015, and their dependents, who are using, or intending to use their GI Bill education benefits are entitled to resident classification regardless of the student's state of residence.
 - k. A student who is a minor and resides with 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 for which the student proposes to attend.

- l. 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 in proximity to the district. Additionally, any student who, prior to enrollment in a community college, graduated from any school located in California that is operated by the United States Bureau of Indian Affairs is entitled to resident classification, so long as continuous attendance is maintained at the college (Education Code 68077).
- m. A student who is a federal civil service employee and 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.
- n. 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 the student has resided in the state for the minimum amount of time necessary to become a resident.
- o. 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 the parent's state or federal personal income tax return if the parent has sufficient income to have personal income tax liability shall be entitled to resident classification.
- p. A student who is a dependent of any individual killed in the September 11, 2001, terrorist attacks on the World Trade Center in New York City, the Pentagon building in Washington, D.C., or the crash of United Airlines Flight 93 in southwestern Pennsylvania. The exemption applies if the dependent meets the financial need requirements for the Cal Grant A Program under Education Code section 69432.7 and either the dependent was a resident of California on September 11, 2001, or the individual killed in the attacks was a resident of California on September 11, 2001.
- q. Pursuant to AB 540, students, other than those precluded by law, may qualify for exemption from nonresident tuition. This exemption is not available for students who are absent from California and are taking distance education classes from California community college. There are four eligibility requirements as follows:
 - 1) Requirement One (1) – Attendance at California Schools 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, campuses of the California Community Colleges, or any combination of these; or

- b) Three or more years of full-time California high school coursework, and a total of three or more years of attendance in California elementary schools and/or California secondary schools.
 - 1) Attendance in credit courses at a California Community College counted toward this requirement shall not exceed a total of two years of full-time attendance.
- 2) Requirement Two (2) – Completion of a Course of Student 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.
- 3) Requirement Three (3) – Registration as an entering student at, or current enrollment at, an accredited institution of higher education in California.
- 4) Requirement Four (4) – In the case of a person without lawful immigration status, the filing of an affidavit stating that the student has either filed an application to legalize their immigration status, or will file an application as soon as they are eligible to do so.
- r. Pursuant to SB 141, students are exempted from nonresident tuition who are U.S. citizens and who reside in a foreign country if the student meets all of the following requirements:
 - 1) Demonstrates a financial need for the exemption;
 - 2) Has a parent or guardian who has been deported or was permitted to depart voluntarily under the federal Immigration and Nationality Act;
 - 3) Moved abroad as a result of the deportation or voluntary deportation;
 - 4) Lived in California immediately before moving abroad;
 - 5) Attended a public or private secondary school in California for three or more years;

- 6) Upon enrollment, will be in the student's first academic year as a matriculated student in California public higher education;
 - 7) Will be living in California and will file an affidavit with the community college stating that the student intends to establish residency in California as soon as possible; and
 - 8) Documentation shall be provided by the student as required by statute as specified in Education Code Section 76140(a)(5).
- s. The San Diego Community College District will 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 paying the nonresident tuition fee and expressly allows districts to report their attendance as resident FTES for apportionment purposes (AB 2364, Holden, Chapter 299, Statutes of 201; Education Code 76140.)
- t. The San Diego Community College District will exempt qualifying veterans and dependents ("covered individuals") from paying nonresident tuition. A "covered individual" is defined as:
- 1) A Veteran who lives in California and discharge from a period of active duty service of 90 days or more.
 - 2) A spouse or child entitled to transferred education benefits who lives in California and the transferor has been discharged from a period of active duty service of 90 days or more.
 - 3) A spouse or child using benefits under the Marine Gunnery Sergeant John David Fry Scholarship who lives in California and the transferor has been discharged from a period of active duty service of 90 days or more. An individual who resides in California and 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 following a period of active duty service of 90 days or more.
 - 4) Under Veterans Access, Choice, and Accountability Act (VACA), individuals eligible for rehabilitation under 38 U.S. Code § 3102 pursuing a course of education with education assistance from the Training and Rehabilitation for Veterans with Service-Connected Disabilities (Chapter 31) education benefits program.

5. ERRONEOUS DETERMINATION OF NONRESIDENT STATUS

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.

If incorrect classification results from false or misleading facts, a student may be excluded from classes or the college upon notification and required to pay the appropriate tuition and fees for the term attended.

6. 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. To appeal a residency determination decision, a student may file a *Residency Determination Appeal* form with the college's Admissions Office prior to the residency determination date. The *Residency Determination Appeal* form 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 nonresident tuition refund after the date of the first census. Supporting documentation will be required of the student in support of the reclassification request and must be turned in prior to the end of the current semester.

a. Financial Independence

- 1) A student shall be considered financially independent for purposes of residence reclassification if the applicant meets all of the following requirements:
 - a) Has not and will not be claimed as an exemption for state and federal tax purposes by the parent(s) in the calendar year the reclassification application is made, nor in any of the three calendar years prior to the reclassification application;
 - b) Has not and will not receive more than seven hundred fifty dollars (\$750) per year in financial assistance from their parent(s) in the calendar year the reclassification application is made, nor in any of the three calendar years prior to the reclassification application; and
 - c) Has not, and will not, live for more than six weeks in the home of the parent(s) during the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application.
- 2) A student who has established financial independence may be reclassified as a resident if the student has met the requirements of Title 5 Section 54020. The student must manifest the union of act and intent to establish California residence for one year prior to the residence determination date.
- 3) 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. Title 5 Section 54032(d) permits a district to disregard a finding of financial dependence where there is not intent to establish (or maintain) residence in another state.
- 4) Financial status is only one factor to be considered and districts may wish to require some further documentation showing the student's objective intent to become a California resident.

- 5) The Admissions 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.
- 6) Students have the right to appeal according to the procedures below.

7. RIGHT TO APPEAL

Students who have been classified as nonresidents have the right to a review of their classification (Title 5 Section 54010 (a)). Any student, following a final decision of residence classification by the Admissions Office, may make a written appeal to the Vice President of Student Services within 30 calendar days of notification of final decision by the Admissions Office regarding classification.

8. APPEAL PROCEDURE

The appeal is to be submitted to the college Admissions Office which must forward it to the Vice President of Student Services within five working days of receipt. Copies of the original application for admission, 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 Vice President of Student Services 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 of the appeal, the Vice President shall send a written determination to the student. The determination shall state specific facts on which the appeal decision was made and shall be final.

References: Education Code Sections 68000 et seq., 68040, 68060, 68061, 68062, 68071, 68073, 68086, 68130.5, 68075.7, and 76140;
Title 5 Section 54000 et seq., 54022, 54045, 54047; and
38 U.S. Code Section 3679

Approved by
the Chancellor: October 27, 2022

Supersedes: AP 5015 – 09/16/2015; 11/09/16; 04/18/22