

# AP 5015      Residence Determination

Reference:            ***Education Code Sections 68000 et seq. and 68130.5;  
Title 5 Sections ~~54000~~ 55500 et seq.***

Date Issued:        June 13, 2012

Updated: December 9, 2014

---

## **Residence Classification**

Residency classifications shall be determined for each student at the time applications for admission are accepted and whenever a student has not been in attendance for more than one semester. A student's residency is a union of act and intent. 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 term during which the student proposes to attend. Enrollments in late starting classes within a term are subject to this uniform residence determination date.
- Residence classification is the responsibility of Admissions and Records.
- Students shall be notified of residence determination within 14 calendar days of submission of application.

## **Rules Determining Residence**

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 and Title 5 which states that every person has, in law, a residence. Every person who is married or 18 years of age, or older, and under no legal disability to do so, may establish residence. In determining the place of residence, the following rules are to be observed:

- Intent to make California the home, for other than a temporary purpose, may be manifest in many ways. No one factor is controlling
- Every person who is married or eighteen 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 or her residence. A person's residence shall not be derivative from that of his or her spouse.
- 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.
- 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.

- An alien, including an unmarried minor alien, may establish his or her residence unless precluded by the Immigration and Nationality Act from establishing residence in the United States.
- Physical presence within California solely for educational purposes does not allow a student to establish residence, regardless of the length of time present in the state.

### **Evidence of Intent**

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. 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.

A student who does not meet the above requirements shall be required to provide evidence of intent to make California the home for other than a temporary purpose.

### **Alien Students**

An alien may establish residence unless their immigration or visa status precludes them from establishing domicile. An alien is precluded from domicile in the United States if that person entered the U.S. permitting legal entry for a temporary purpose. Aliens who may establish residence must meet the same requirements as U.S. Citizens or Permanent Residents. An undocumented alien who entered the United States illegally or who has not applied for legalized status cannot become a California resident. Aliens who violate the terms of the visa or stayed in the United States beyond the time permitted by law will not be allowed to establish residence.

### **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. Students must submit petitions to the Admissions and Records Office prior to the session for which the reclassification becomes 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 nonresident tuition refund after the date of the first census for the semester in question. Written documentation may 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 questionnaire to determine financial independence must be submitted with the petition for reclassification. Determination of financial independence is not required for students who were classified as nonresidents 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 the parent(s) in the calendar year prior to the year the reclassification application is made
- Has not lived 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

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.

### **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 and Records Office, may make written appeal to the College Petitions Committee within 30 calendar days of notification of final decision by the Admissions and Records Office regarding classification.

### **Appeal Procedure**

The appeal must be submitted to the Admissions and Records Office. 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 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. The College Petitions Committee will render a final decision.

Within 30 calendar days of receipt, the College Petitions Committee shall send a written determination to the student. ~~The determination shall state specific facts on which the appeal decision was made.~~

### **Exceptions**

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 has resided in the state the minimum time necessary to become a resident.

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.

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 holds a provisional credential and is enrolled in courses necessary to obtain another type of credential authorizing service in the public schools.
- He/she holds a credential issued pursuant to Education Code Section 44250 and is enrolled in courses necessary to fulfill credential requirements.
- He/she is enrolled in courses necessary to fulfill the requirements for a fifth year of education prescribed by subdivision (b) of Education Code Section 44259.

A student holding a valid emergency permit authorizing service in the public schools of this state, who is employed by a school district in a full-time position requiring certification qualifications for the academic year in which the student enrolls at an institution in courses necessary to fulfill teacher credential requirements, is entitled to resident classification only for the purpose of determining the amount of tuition and fees for no more than one year.

Thereafter, the student's residency status will be determined under the other provisions of this procedure.

A student who is a full-time employee of the California State University, the University of California or a community college, or of any state agency or a student who is a child or spouse of a full-time employee of the California State University, the University of California or a community college, or of any state agency may be entitled to resident classification, until the student has resided in the state the minimum time necessary to become a resident.

A student who is a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces of the United States stationed in this state on active duty 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 in the District.

A student who is a member of the armed forces of the United States 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 his/her resident classification, so long as he/she remains continuously enrolled in the District.

A student who was a member of the armed forces of the United States stationed in this state on active duty for more than one year immediately prior to being discharged from the armed forces is entitled to resident classification for the length of time he/she lives in this state after being discharged up to two years to become a California resident.

A student who is a minor and resides with his or 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 in proximity to the community college district<sup>[AS1]</sup>.

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 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 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 state or federal personal income tax return if he/she has sufficient income to have personal income tax liability shall be entitled to resident classification.

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 dependents 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.

Pursuant to AB 540, students who attended high school in California for three or more years and graduated from a California high school or attained the equivalent thereof are exempted from payment of the nonresident tuition in credit courses if they meet the criteria specified in the law. In the case of a person without lawful immigration status, the student must file an affidavit with the college stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so.

Pursuant to SB 141, nonresident students are exempted from nonresident tuition who are U.S. citizens are who reside in a foreign country if the student meets all of the following requirements:

- Demonstrates a financial need for the exemption
- Has a parent or guardian who has been deported or was permitted to depart voluntarily under the federal Immigration and Nationality Act
- Moved abroad as a result of the deportation or voluntary deportation
- Lived in California immediately before moving abroad

- Attended a public or private secondary school in California for three or more years
- 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 community college stating that he or she intends to establish residency in California as soon as possible
- Documentation shall be provided by the student as required by statute as specific in Education Code section 76140(a)(5)

## Refunds

Refunds will be made for the following reasons:

### 1. Erroneous Determination of Nonresident Status

If a student is erroneously, through no fault of their own, is-determined to be a nonresident and consequently the 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.

### 2. Withdrawal from College or Reduction of Program

Nonresidents who officially withdraw from College or reduce their program by the stated refund deadline will receive a refund. Nonresidents who fail to show to their class and documentation verifies they never entered [AS2] would also be entitled to a refund.

~~Students shall be classified at the time of each application for admission or registration to Grossmont-Cuyamaca Community College District (District) as a resident or nonresident student.~~

~~A resident is any person who has been a bona fide resident of California for at least one year on the residence determination date. The District's residence determination date shall be the day immediately preceding the first day of instruction of the semester or term to which the student seeks admission.~~

~~Residence classification shall be made for each student at the time applications for admission are accepted or registration occurs and whenever a student has not been in attendance for more than one semester. A student previously classified as a nonresident may be reclassified as of any residence determination date.~~

~~The Chancellor shall ensure that the criteria for residence determination is set forth in detail in the Grossmont College Catalog and Cuyamaca College Catalog, available in the colleges' Admissions offices and posted on the District websites. The procedures for determining residence shall include, but not be limited to, the following components:~~

- ~~▪ Residence classification~~
- ~~▪ Rules determining residence~~
- ~~▪ Determination of resident status~~
- ~~▪ Right to appeal classification and appellate procedures~~
- ~~▪ Reclassification~~
- ~~▪ Non-citizens~~