California Community Colleges
Chancellor’s Office

CACCRAO
Annual Conference 2013

Advanced Residency Overview

Presented by Elias Regalado (CCCCCO)
and CACCRAO Board Members
April 30, 2013
AGENDA

- Basic Residency Definitions
- Primary Purposes for Residence Classification
- General Rules and Guidelines
- Updates and Specific Situations
- Information Resources
- Questions/Comments
- Contact Information

* Unless otherwise indicated, all legal citations refer to California Code of Regulations, Title 5
* INA – Immigration and Nationality Act
Basic Residency Definitions

- **Resident:**
  - A “resident” is a student who has been physically present in the state for more than one year immediately preceding the residence determination date (one year and one day), and has demonstrated an intent to make California a permanent home. EC § 68017

- **Nonresident**
  - A “nonresident” is a student who does not have residence in the state for more than one year immediately preceding the residence determination date. EC § 68018
Basic Residency Definitions

- **Residence:**
  - To establish or change a residence, a person capable of establishing residence must couple his or her physical presence with objective evidence that the physical presence is with intent to make California the home for other than a temporary purpose. EC §68062(d);
    - Physical presence alone is insufficient; intent alone is insufficient

- **Residence Determination Date:**
  - Residence determination date is the day immediately preceding the opening day of instruction of the quarter, semester, or other session as set by the district governing board, during which the student proposes to attend a college. Enrollments in late starting classes within a term are subject to this uniform residency determination date.
Primary Purposes for Residence Classification

- **State taxpayer subsidy for public higher education is reserved for resident students**
  - Low fees for state residents promote educational opportunity and reflect a long-standing commitment to an educated citizenry
  - Promotes state’s economic growth on the idea that students are likely to stay in the state where they attend school and graduate, then after obtaining jobs that meet the need of society for trained personnel
  - Residents have paid taxes that have, collectively, supported the state colleges and universities
Primary Purposes for Residence Classification

Therefore, residence classification is necessary for

- Proper charging of Nonresident Tuition

- Proper claiming of State general apportionment
  - nonresident FTES is not included in state apportionment calculations (certain nonresident students qualify to be reported as residents for apportionment purposes, such as AB 540 students or active military members)
General Rules and Guidelines

- **Residence Classification:**
  - Residency classification shall be made for each student, including noncredit-only enrollees, at the time applications for admission are accepted and whenever a student has not been in attendance for more than one semester or quarter (two, not one, semester or quarter of non-attendance). T5 § 54010(a)
  - Timely student notification of the classification. T5 § 54060(a)
  - District must establish procedures for appeals of residency classification. T5 § 54060(b);
General Rules and Guidelines

- **Rules For Determining Residence**
  - The burden is on the student to demonstrate clearly both physical presence in California AND intent to establish residence. T5 § 54026
  - Where required, evidence to prove resident/exemption status must be requested of student. EC § 68041/44; T5 § 54010(b)/24(d)
    - A student/parent (as applicable) has been in Calif. less than 2 years or where conduct inconsistent w/claim of residency exist
    - Eligibility verification for NR tuition fee exemptions
General Rules and Guidelines

- **Rules For Determining Residence (cont.)**
  - There can only be one residence (an established primary and permanent home)
  - A residence is the place when one remains when not called elsewhere for labor or other special or temporary purpose and to which he or she 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
General Rules and Guidelines

- Rules For Determining Residence (Cont.)
  - A person’s residence shall not be derived from that of his or her spouse
  - The residence of the parent with whom an unmarried minor child resides with is the residence of the unmarried minor child. When the minor lives with neither parent, his or her residence is that of the parent with whom he or she last resided.
  - Each student must be classified as a resident or nonresident, even when enrolling only in Noncredit courses
General Rules and Guidelines

- **Rules For Determining Residence (Cont.)**
  - 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.
  - Moving to California primarily to attend school does not constitute establishing California residence, regardless of the length of that presence.
General Rules and Guidelines

Rules For Determining Residence (Cont.)

- If a student or the parents of a minor relinquish California residence after moving from the state, one full year of physical presence coupled with intent is required to reestablish residence.

- Temporary absences will not result in a loss of California residence if, during the absence, the person always intended to return and did nothing inconsistent with that intent.
Updates and Specific Situations

- **AB 540 Nonresident Tuition Exemption:**
  - Effective January 1, 2013, nonimmigrant alien students holding “T” or “U” Visas have been made eligible for AB 540 exemption (AB 1899, Chapter 509, Statutes of 2012, EC § 68122)
  - Chancellor’s Office is working with UC and CSU system offices to update AB 540 application/affidavit form; Legal Advisory 07-01
  - Approval for federal “Deferred Action for Childhood Arrivals” (DACA) does not preclude AB 540 eligibility—DACA approval does not grant an immigration status that permits eligibility for establishing resident status
Updates and Specific Situations

- Residency Reclassification and Financial Independence:
  - EC § 68044 requires that financial independence status be included as one of the factors in residency reclassifications.
  - EC § 68044 focuses on parental support aspects, but also permits district governing boards to define other factors which may be considered in making residency reclassifications, such as support from family members other than the parent(s).
Updates and Specific Situations

- Residency Reclassification and Financial Independence (cont.):
  - A student who has established financial independence may be reclassified as a resident, if the basic physical presence and intent requirements are also met.
  - In determining intent, financial independence weighs in favor of California residence and financial dependence shall weigh against finding California residence.
Updates and Specific Situations

- Residency Reclassification and Financial Independence (cont.):
  - Financial dependence in the current or preceding calendar year shall weigh more heavily against finding California residence.
  - 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.
Updates and Specific Situations

- Residency Reclassification and Financial Independence (cont.):
  - T5 § 54032(d) permits a district to disregard a finding of financial dependence where there is not intent to establish (or maintain) residence elsewhere.
  - The ultimate question is whether the student has demonstrated intent to become a California resident.
  - Since financial status is only one factor to be considered, districts may still wish to require some further affirmative showing of objective intent to become a California resident.
Updates and Specific Situations

- **Residency and Distance Education (DE):**
  - Education Code Section 68040 and Title 5 Section 54010 make no differentiation for distance education courses and on campus face-to-face courses in the requirement that each student be classified as a resident or nonresident at the time that applications for admission are accepted.

  - As such, residency determination requirements for both of these types of courses are the same. Same systems and processes that are in place for face-to-face courses should be used for DE.
Updates and Specific Situations

- Residency Classification and Distance Education (cont.):
  - As it relates to claiming apportionment for noncredit courses, please note that pursuant to T5 § 58007 nonresident students may only be claimed if they are living in California during the period of attendance.
  - This T5 physical presence requirement was adopted by the BOG specifically to address out-of-state noncredit distance education enrollments.
  - Credit course enrollment by nonresidents does not have the same California presence requirement since they cannot be claimed for apportionment and must pay a nonresident tuition fee.
Updates and Specific Situations

- **Residency Classification for Incarcerated Students (Legal Opinion O 06-07):**
  - A student is not precluded from establishing residency simply by virtue of his or her status as a prison inmate.
  - In determining residency, the same standards and procedures for all students should be applied to prison inmates. (same questionnaire, etc.)
  - The appropriate district official must determine if, given the totality of the circumstances, the student has carried the burden of proving residency. Cannot make determination simply based on length of time in CA.
Updates and Specific Situations

- **New Immigration Statuses determined to be precluded from establishing domicile (residency)**
  - Aliens under an “Order of Supervision”
    - Determined to be inadmissible or removable according to various provisions of INA
  - Aliens on “Parole” status
    - Admitted only on a temporary basis
  - Aliens on “H-1B1” visa status
    - Temporary worker nonimmigrant visa for citizens of Singapore and Chile. Unlike basic “H-1B” visa, must demonstrate an intent to return to home country when temporary job finished.
Updates and Specific Situations

- **New Immigration Statuses determined capable of establishing domicile (residency)**
  - Applicants for the Family Unity Program, LIFE Act (LIFE Legalization), and LIFE Act Family Unity Provisions
  - Applicant’s for “withholding of removal” (formerly called “withholding of deportation”) under INA or under United Nations Convention Against Torture
  - **E-3 Visa Status**
    - For Australian nationals working in the U.S. in specialty occupations – similar to E-1 and E-2 visas
Updates and Specific Situations

- **Nonresident Military Personnel**
  - Law changed somewhat effective January 1, 2013 (AB 2478; EC § 68075.5):
    - A student who was a member of the armed forces stationed in California on active duty is exempt from the nonresident tuition fee for up to one year if he or she files an affidavit stating that he or she intends to establish residency in California as soon as possible.
    - The change in law is that the student has two years to use this exemption, instead of just one (must be living in California to commence the exemption period) and affidavit is required.
Updates and Specific Situations

- Residency and Other Public Higher Segments
  - Each of the three segments of public higher education are required to classify a student as resident or nonresident (CCC, CSU, UC)
  - It’s important to remind transfer students that even if they qualify as a resident at a community college, they may not qualify under regulations established by CSU and UC
  - The primary reason for different classifications relates to “Financial Independence” determination criteria
Chancellor's Office Website

Chancellor's Office Web Address: www.cccco.edu

– Primary Source for:
  • Board of Governors & Consultation Council Information
  • Notices of Recently Promulgated Title 5 Regulations and Implementation Guidelines
  • Legal Advisories/Opinions
  • Legal Resources (direct links to T5 and EC)
  • Handbooks and Manuals
  • Fiscal/FTES Data
  • Contact Information
Questions/Comments
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