

CACCRAO Annual Conference 2019

# Overview and Current Issues in Student Residency

Presented by:  
Natalie Wagner, CCC Chancellor's Office

# AGENDA

- ✓ Basic Residency Definitions
- ✓ Primary Purposes for Residence Classification
- ✓ General Rules and Guidelines
- ✓ Recently Approved Legislation
- ✓ Current Updates and Reminders
- ✓ Questions/Comments

# Basic Residency Definitions

## **Resident (for tuition purposes):**

- Unless precluded, 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); Note: 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.

# Basic Residency Definitions

## Exceptions to Residence Determination:

- Education Code prescribes several exceptions to residence determination—some are required (e.g. military members stationed in CA ECS 68075) and some are permitted (e.g. individuals hired as a peace officer by public agency ECS 76140.5)
- These apply where an individual that is NOT otherwise eligible to be classified as a Resident for tuition purposes, can nonetheless be classified as a Resident and claimed for apportionment purposes if applicable requirements are met

## Exceptions to Payment of Nonresident Tuition:

- Education Code also prescribes situations where the nonresident tuition is either required to be exempted (e.g., AB 540, AB 2364) or a district is given permission to exempt specified students (e.g., non resident students who take six or fewer units 76140(a)(1))
- In some cases apportionment can be claimed for exempted student (e.g., AB 540, AB 2364) and in others apportionment is NOT claimable (e.g., non resident students who take six or fewer units 76140(a)(1) )

# Primary Purposes for Residence Classification

## **Residence classification is necessary for**

### **Proper charging of Nonresident Tuition**

(Note: Nonresident students must also be charged the basic enrollment fee)

### **Proper claiming of State general apportionment**

Nonresident FTES is not included in state apportionment calculations (Note: certain nonresident students qualify to be reported as residents for apportionment purposes, such as AB 540 students or active military members stationed or domiciled in California)

**Student Eligibility for certain programs** (Example: CA Promise Grant, formerly known as the BOG fee waiver)

# General Rules and Guidelines

## Residence Classification:

- Residency classification shall be made for each student, except 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 (within 14 calendar days) T5 § 54060(a)
- District must establish procedures for appeals of residency classification and refunds of nonresident tuition fees. T5 § 54060(b); 54070

# General Rules and Guidelines

## Rules For Determining Residence

- There can only be one residence (an established primary and permanent home). EC § 68062(a)
- A residence is the place when one remains when not called elsewhere for labor or other temporary purpose and to which he or she returns in seasons of repose. EC § 68062(b)
- A residence cannot be lost until another is gained. EC § 68062(c)



# 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.  
EC § 68062(d); T5 § 54020
- 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. T5 § 54030
- 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. T5 § 54022(b)

# General Rules and Guidelines

## Rules For Determining Residence (Cont.)

- A person's residence shall not be derived from that of his or her spouse. EC § 68062(e)
- The residence of the parent with whom an unmarried minor child resides 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. EC § 68062(f)
- Moving to California primarily to attend school does not constitute establishing California residence, regardless of the length of that presence. T5 § 54022(c)

# General Rules and Guidelines

## Residency Reclassification and Financial Independence:

- Financial independence status must be included as one of the factors in residency reclassifications EC § 68044; T5 § 54032
- 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)

# General Rules and Guidelines

## Residency Reclassification and Financial Independence (cont.):

- In determining intent, financial independence weighs in favor of California residence and financial dependence shall weigh 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
- T5 § 54032(d) permits a district to disregard a finding of financial dependence where there is not intent to establish (or maintain) residence elsewhere.

# Recently Approved Legislation and Current Updates

# Recently Approved Legislation

## **AB 3101 (Carillo, 2018)**

Adds Section 68086 to the Education Code, to read:  
68086.

(a) A student seeking to enroll exclusively in career development and college preparation courses, and other courses for which no credit is given, at a community college shall not be subject to the residency classification requirements of Article 3 (commencing with Section 68040).

(b) Nothing in subdivision (a) shall prohibit the Chancellor of the California Community Colleges from collecting residency data, for a student described in subdivision (a), that is voluntarily submitted by the student after he or she enrolls at a community college.

# Regulatory Changes (Approved)

## Nonresident Students in Noncredit Courses

In May 2018, the Board of Governors approved a change to T5 section 58003.3. The change eliminates the requirement that students be lawfully admitted in order for districts to claim apportionment for nonresident students in noncredit courses.

### § 58003.3. ~~ALIEN STUDENTS.~~ APPORTIONMENT FOR NONCREDIT COURSES

Notwithstanding section 68062 of the Education Code, for the purposes of crediting community college attendance for apportionments from the State School Fund, a community college district may claim the attendance of students living in California ~~who have been lawfully admitted to the United States in accordance with all applicable laws of the United States and~~ enrolled in noncredit courses in the district.

# Recently Approved Legislation

## **Assembly Bill 3255 (Post Secondary Omnibus Bill) amended Education Code section 68101**

A community college district may accept the residency determination of another community college district pursuant to a process established by the Chancellor's Office, or if the student is cross-enrolling in a course offered through the Online Education Initiative Consortium.



# Recently Approved Legislation

## **AB 3255 (Post Secondary Omnibus Bill) amended Education Code 68075 68075.**

*(a) For purposes of this section, “Armed Forces of the United States” means the Air Force, Army, Coast Guard, Marine Corps, Navy, and the reserve components of each of those forces, the California Army National Guard, the California State Military Reserve, and the California Naval Militia.*

~~(a)~~ *(b)* A student who is a member of the Armed Forces of the United States stationed in this **state** ~~on active duty, 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.

~~(b)~~ *(c)* If that member of the Armed Forces of the United States who is in attendance at an institution is thereafter transferred on military orders to a place outside this state where the member continues to serve in the Armed Forces of the United States, he or she shall not lose his or her resident classification so long as he or she remains continuously enrolled at that institution.

# Recently Approved Legislation

## **AB 2210 (McCarty, 2018) added section 68075.65 to the Education Code**

This section requires each community college to post on its internet site a notice that sets forth which persons are exempt from paying nonresident tuition pursuant to section 68075.6. The Chancellor's office issued [Legal Advisory 19-02](#) which contains sample language that colleges maybe posted to community college websites to comply with the requirements set forth in AB 2210.

# Recently Approved Legislation

## Sample language from Legal Advisory 19-02:

Education Code section 68075.6 grants an immediate nonresident tuition fee exemption to eligible Special Immigrant Visa (SIV) holders and refugee students who settled in California upon entering the United States. This exemption is granted for one year from the date the student settled in California upon entering the United States.

This exemption applies to the following:

- Iraqi citizens or nationals (and their spouses and children) who were employed by or on behalf of the United States Government in Iraq (Pub.L. No. 110-181, § 1244)
- Afghan and Iraqi translators (and their spouses and children) who worked directly with the United States Armed Forces (Pub.L. No. 109-163, § 1059)
- Afghanistan nationals (and their spouses and children) who were employed by or on behalf of the U.S. government or in the International Security Assistance Force (ISAF) in Afghanistan (Pub.L. No. 111-8, § 602)
- Refugee students admitted to the United States under Section 1157 of Title 8 of the United States Code

# Recently Approved Legislation

## VACA Act Change

Pub.L. No 115-251 (2018) added a new category of covered individuals eligible for the VACA Act. The new category includes 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.

The CCCCO is working to revise ECS 68075.7 to reflect the change.

In the meantime, refer to the federal statute [\(38 U.S.C. 3679\(c\)\)](#) for the complete list of covered individuals.

# Apportionment for Tutoring

The CCCCO Academic Affairs Division released a [memo](#) in January 2019. States that the CCCCO has determined that colleges may collect apportionment for non-credit supervised tutoring hours in which students are strengthening basic skills even if they are seeking support for such skills in transfer-level courses.

Apportionment may be claimed for tutoring that strengthens the following skills:

- Communication/literacy skills
- Quantitative reasoning skills
- Critical thinking skills

One or more of these skills must be listed in the course outline of record and course syllabi.

# Recently Approved Legislation

## **AB 1809 Budget Trailer Bill- Apprenticeship Changes**

- Beginning in 2018-19, districts may report hours generated by apprentices on the CCFS- 320 if not reported on the CCFS-321 (must use positive attendance method to calculate FTES)
- Course must be taught by a community college faculty member to report attendance on the CCFS-320
- Enrollment may be limited to apprentices if that course or course section is required for those students as a part of a registered apprenticeship program.
- If the course is part of an apprenticeship program in the building and construction trades, the sponsor must approve a decision to report attendance on the CCFS-320 rather than on the CCFS-321.

# AB 540

## **AB 540 Nonresident Tuition Exemption (effective January 1, 2002)**

Original Eligibility Criteria: Individual other than a nonimmigrant who attended HS in California for three or more years AND graduated from a California HS (or attained the equivalent).

➤ Effective January 1, 2013, AB 1899 (EC § 68122). expanded eligibility to include nonimmigrant alien students holding “T” or “U” Visas.

➤ Effective January 1, 2015, AB 2000 (EC § 68130.5) expanded eligibility to include students who:

Demonstrate attainment of credits earned in California from a California HS equivalent to three or more years of full-time HS coursework AND a total of three or more years of attendance in California elementary/secondary schools or a combination of those schools AND graduated from a California HS (or attained the equivalent).

# AB 540

## Recently Approved Legislation: SB 68 (Lara, 2017)

SB 68, effective January 1, 2018, amended Education Code section 68130.5 and significantly expanded eligibility criteria for AB 540. Two main changes:

1. Attendance Requirement: SB 68 amended the attendance requirement to allow attendance (or credits earned) at: California High Schools, California Adult Schools, California Community Colleges (limit: 2 years in CCC credit courses), or a combination of these, to count toward the three year requirement.
2. Completion of a course of study: Under SB 68 a student may satisfy the completion requirement with graduation from a California high school or the equivalent, OR attainment of an AA degree from a CCC OR fulfilment of the minimum requirements to transfer to a UC or CSU.



# AB 540

## Recently Approved Legislation: AB 3255 (Post Secondary Omnibus Bill)

Amended Education Code 68130.5 (a)(1)(B):

(B) Three or more years of full-time high school **coursework** **coursework in California**, and a total of three or more years of attendance in California elementary schools, California secondary schools, or a combination of California elementary and secondary schools.

# Current AB 540 Exemption Eligibility Criteria

## Requirement 1: Attendance at California schools

### Two Paths:

- ❖ Total attendance (or attainment of credits earned) in California equivalent to three or more years of full-time attendance at California high schools, California high schools established by the State Board of Education, California adult schools (established by a county office of education, a unified school district or high school district, or the Department of Corrections and Rehabilitation), campuses of the California Community Colleges, or a combination of these; 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, California secondary schools, or a combination of California elementary and secondary schools.

# Current AB 540 Exemption Eligibility Criteria

## **Requirement 2: Completion of a course of study**

**This requirement may be met in any of the following ways:**

- ❖ Graduation from a California high school or equivalent.
- ❖ Attainment of an associate degree from a California community college.
- ❖ 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.

(Ed. Code, § 68130.5, subd. (a)(2).)

# Current AB 540 Exemption Eligibility Criteria

**Requirement 3: Registration.** Requires registration as an entering student at, or current enrollment at, an accredited institution of higher education in California.

**Requirement 4: Affidavit of student without lawful immigration status.**

Students without lawful immigration status must file an affidavit with their college or university stating that the student has either 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. (Note: All students seeking the AB 540 exemption must complete the affidavit.)

# AB 540 Attendance Requirement

<b>Full-time Attendance Equivalents</b>		
	<b>1-Year Equivalent</b>	<b>3-Year Equivalent</b>
<b>High School</b>	55 credits	165 credits
<b>Adult School</b>	420 class hours	1260 class hours
<b>Community College (Credit)</b>	24 credit units	May only use up to two years (48 credit units)
<b>Community College (noncredit)</b>	420 class hours	1260 class hours

# B-Visas and AB 540 Eligibility

## Three separate issues:

### 1. Is an out-of-status B-visa student eligible for AB 540?

Yes. Legal Advisory 18-02, page 8 states: *Students who previously held valid nonimmigrant visas but who are out-of-status at the time of execution of the affidavit are eligible for the exemption.*

### 2. When do they become eligible?

The CCCCO Legal Division has always taken the position that if the student overstays his/her I-94 authorization date, the student is in violation of the terms of that visa and would be considered to be “out of status” even if the passport is not expired.

# B-Visas and AB 540 Eligibility (cont.)

## **3. Can a B-visa student may be admitted?**

Individuals with a B-1 or B-2 visa are prohibited from enrolling in a course of study. However, the prohibition is on the visa holder, not the college (there is nothing in the law that says colleges may not enroll B-visa holders). The CCCCO Legal Division has not issued an opinion on this matter, instead, they defer to college's legal counsel to set a policy of enrolling or not enrolling B-visa holders.

# Recent modifications to the CCFS-320 Report

The new Student Centered Funding Formula has new metrics that required some minor changes to the CCFS-320 Apportionment Attendance Report. The changes are included under District Forms, Part IX, which was modified as follows:

1. AB 540 Headcount & Special Admit FTES is now reported at each reporting period (first, second, annual, and recal). Prior to this change, this data was not reported for at the first reporting period (P1).
2. A field was added for districts to provide the number of FTES (credit, noncredit, and total) generated by incarcerated students eligible to attend the Colleges of the District pursuant to Ed Code Section 84810.5(a)



# Recent modifications to the CCFS-320 due to the SCFF.

https://misweb.cccco.edu/CCCF320/DIST/DistrictPart9.aspx

Part VII

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**CA**.GOV CALIFORNIA COMMUNITY COLLEGES CHANCELLOR'S OFFICE APPORTIONMENT ATTENDANCE REPORT CCFS-320

Logout Instructions Change Period Districts Colleges Passwords **District Forms** District Reports Certification

Part I | Supplemental | Part II | Part III | Part IV | Part V | Part VI | Part VII | Part IX | CDCP NC FTES | Center FTES | CCFS-317

Contact Information  
 • [ccfs320admin@ccco.edu](mailto:ccfs320admin@ccco.edu)

**Part IX - AB 540 Headcount, Special Admit FTES and Inmates in Correctional Facilities FTES**  
 Antelope Valley Login Role: Fiscal Services Administrator  
 [2018-2019] [P1] Period

\*\*\* This Year/Period has been certified. Page is view only \*\*\*

**AB 540 Student Headcount Report**  
 In the space provided below, for the District as a whole, please provide the total number of students who received the Nonresident tuition fee exemption under AB 540 for the Fiscal Year. This total should include any student that was considered to be an AB 540 student during any part of a term/session and should be an unduplicated student headcount (e.g., please count each student only once, regardless of how many terms/sessions they attended). This data collection will be considered to be a limited survey instrument and not tied or associated with FTES counts. Supporting documentation does not need to be submitted with this report.

Headcount
442

**Special Admit (Full-Time and Part-Time) P.E. Credit FTES Report**  
 In the spaces provided below, please provide the requested districtwide Fiscal Year FTES information of special "admit" part-time and full-time students eligible to attend the Colleges of the District pursuant to Education Code Section 48800 or 48800.5. Please refer to Legal Advisory 05-01 and the Contracted District Audit Manual for the Fiscal Year, State Compliance Item No. 427.

Total FTES of Special Part-Time and Full-Time Students Col. 1	Total FTES of Special Part-Time and Full-Time Students in P.E. Courses Col. 2	Total Reported* FTES of Special Part-Time and Full-Time Students in P.E. Courses Col. 3	Percent of Reported* FTES of Special Part-Time and Full-Time Students in P.E. Courses (Col. 3/Col. 1)
193.90	3.58	3.58	1.85 %

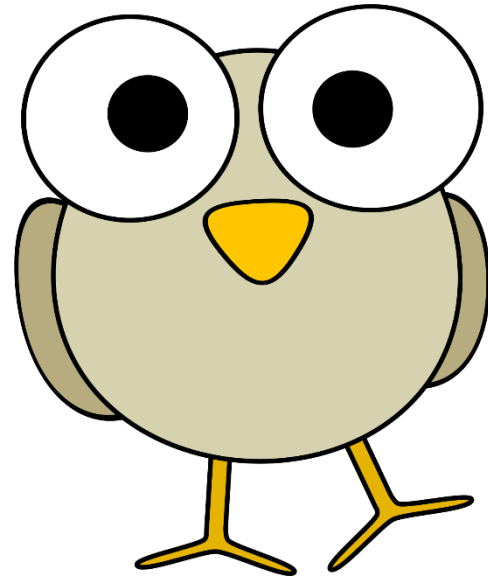
**Inmates in Correctional Facilities FTES**  
 In the spaces provided below, please provide the requested districtwide Fiscal Year FTES information of incarcerated students eligible to attend the Colleges of the District pursuant to Education Code Section 84810.5(a).

Total FTES of Incarcerated Students Col. 1	Credit FTES of Incarcerated Students Col. 2	Noncredit FTES of Incarcerated Students Col. 3
5.64	5.64	0.00

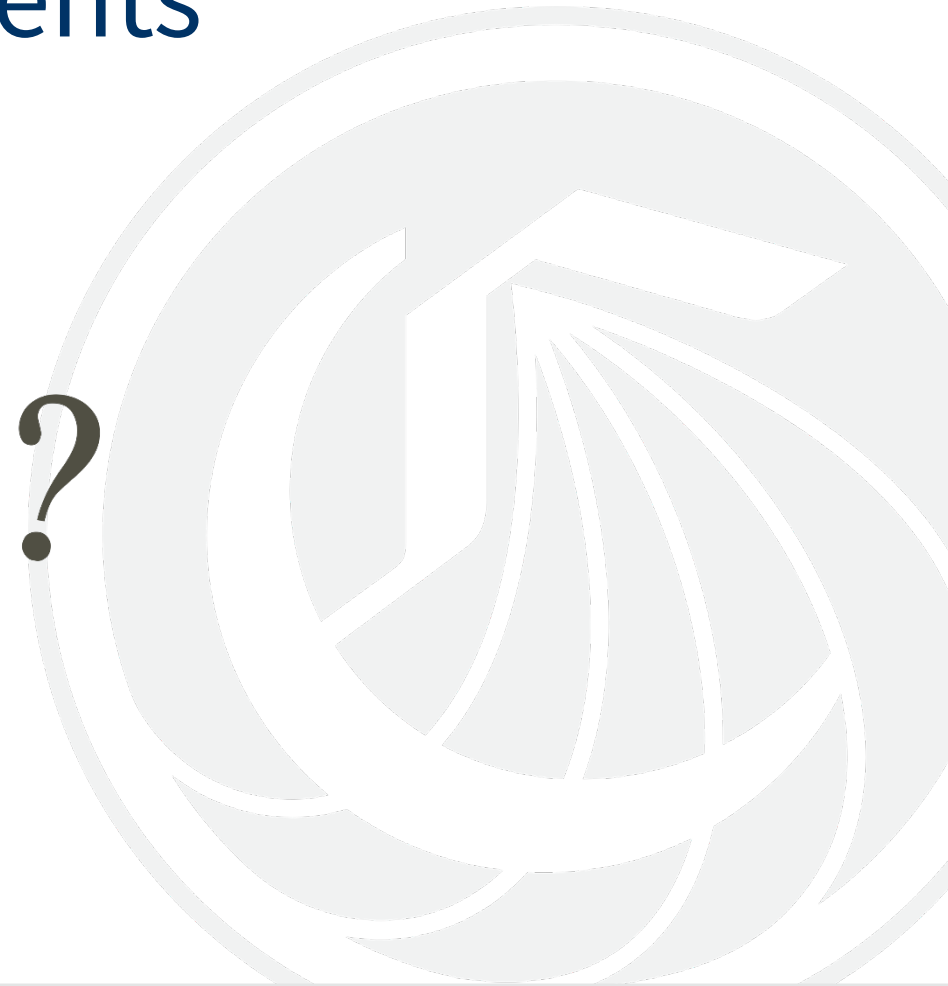
\* Reported "FTES" amounts should represent amounts that are subsets of FTES data certified and reported in the corresponding CCFS-320 - Resident FTES, Part I., A. through D. FTES shall be computed and rounded to two decimal places. Supporting documentation does not need to be submitted with this report, but should be retained by the District as records basic to audit pursuant to Title 5 Section 59025.



# Questions/Comments



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# Contact Information

Natalie Wagner  
(916) 327-1554  
nwagner@cccco.edu

Chancellor's Office

