

## CHAPTER 2. RESIDENCY REGULATIONS AND REQUIREMENTS

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## CHAPTER 2

### RESIDENCY REGULATIONS AND REQUIREMENTS

#### DEFINITIONS

##### General

Residency determination shall be made 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 or quarter. For apportionment purposes, residency determination may be required on a course-by-course basis.

Reference: ECS 68040, 68044; T5 54000, 54002, 54010

##### Residence

That location with which a person is considered to have the most settled and permanent connection; it is also the place where that person intends to remain, and, during absences, intends to return. Residence results from the union of physical presence with objective evidence that the intent is to remain at that place for other than a temporary purpose.

Reference: ECS 68062, T5 54020

##### Student

For purposes of residence determination only, a person enrolled in or applying for admission to a community college.

Reference: ECS 68015

##### Resident

A student who has established both physical presence and intent to make California the permanent home (domicile), for more than one year pursuant to the Education Code (commencing with Section 68060), as of the residence determination date.

Reference: ECS 68017, ECS 68060

##### Nonresident

A student who has not established residence in California for one year as of the residence determination date.

Reference: ECS 68018

### **Nonresident Tuition**

Except as otherwise provided in statute, a student classified as a nonresident shall be required to pay in addition to other fees required, a nonresident fee.

**Note:** A district may exempt a student who is a resident of another state from the mandatory fee requirement (or a reduced fee) under certain conditions, and the student may be considered a resident for apportionment purposes as prescribed under ECS 76140 subsections (i), (j), and (k).

Reference: ECS 68050, ECS 76140

### **District Resident**

A student who has residence within a community college district in California.

Reference: ECS 68018, ECS 68060

### **Nondistrict Resident**

A student who does not have residence within a community college district in California, or a student who, (a) was graduated from a high school which is situated in territory not within a district, and (b) whose parent resides in such territory.

Reference: ECS 68020

### **District**

A community college district maintaining one or more community colleges.

Reference: ECS 68021

### **Residence Determination Date**

That 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.

Reference: ECS 68023, T5 54002

### **Physical Presence**

A person capable of establishing residence in California must be physically present for one year prior to the residence determination date, excluding temporary absences for business, education or pleasure.

Reference: ECS 68018, T5 54022

**Institution**

Any university or college of the California State University and Colleges, the University of California, or any California Community College.

Reference: ECS 68011

**State Agency**

Every office, department, division, bureau, board or commission of the state of California.

Reference: ECS 69620

**Age of Majority**

Eighteen years of age or older.

Reference: Civil Code Section 25.1

**Parent**

The father or mother with whom the minor resides; or, if both parents are deceased, his or her legal guardian.

Reference: ECS 68014

**International Student**

An international student is a citizen of a foreign country, or a resident of a foreign country, or both.

Reference: ECS 76140

**Continuous Attendance**

For residence determination purposes at a community college, means active, continuous, full-time enrollment for a normal academic year at such institution since the beginning of the period or which attendance is claimed. Nothing in this section shall require a student to attend summer intersession or other terms beyond the normal academic year in order to render his or her attendance "continuous."

Reference: ECS 68016

**Full Time**

Enrollment for 12 or more semester or quarter units of credit.

The standard applying to full time in summer intersession should be established by the district governing board.

Reference: ECS 68016

## GENERAL LAW

### Criteria

To determine a person's place of residence, reference is made to the following statutory rules:

1. Every person has, in law, a residence.
2. Every person who is married or 18 years of age, or older, and not precluded from doing so, may establish residence.
3. In determining the place of residence the following rules are to be observed:
  - a. There can only be one residence.
  - b. A residence is the place where one remains when not called elsewhere for labor or other special or temporary purposes, and to which he or she returns in seasons of repose.
  - c. A residence cannot be lost until another is gained.
  - d. The residence can be changed only by the union of act and intent.
  - e. A man or a woman may establish his or her residence. A person's residence shall not be derived from that of his or her spouse. Many of the objective manifestations of the two may be shared, but each may have some evidence of intent that is not shared, which may indicate different residences.
  - f. The residence of the parent with whom an unmarried minor child maintains his or her place of abode 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 maintained his or her last place of abode. The minor may establish his or her residence when both parents are deceased and a legal guardian has not been appointed.

**Note:** The conditions in 3.f. apply unless the minor is precluded by the Immigration and Nationality Act from establishing residence in the United States.

- g. The residence of an unmarried minor who has a parent living cannot be changed by his or her 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 exception. (See Self-Support, item 2, page 14, or Two Year Care and Control, item 6, page 15.)
- h. 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. (See subsection f., above.)

- i. 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.

Reference: ECS 68060, 68061, 68062; T5 54022, 54045

### **Residence Questionnaire and Supplemental Residence Questionnaire**

When a student does not answer all of the questions on the Residence Questionnaire or on the Supplemental Residence Questionnaire, if one is used, and residency cannot be determined, the student may be classified as a nonresident.

Reference: T5 54012, 54026

### **Evidence of Intent**

1. Under the Education Code, the general rule is that a student must pay nonresident tuition unless the student can qualify as a resident student or meet the requirements of certain special provisions. Since the concept of residence involves subjective intent, this manual cannot anticipate every question that will arise in connection with determining whether such intent exists.

Reference: ECS 76140 [see exceptions in (i),(j), and (k)], T5 54020

No one factor is controlling, however, the institution may look for certain objective manifestations of subjective intent on the part of one asserting that residence status has been established, or has been maintained in spite of an absence from the state.

- a. A student who is 19 years of age or older and maintained a home in California continuously for the last two years may be presumed to have the intent to make California the permanent home unless the student has evidenced contrary intent by having engaged in any of the activities listed in item 3., page 6.
- b. A student who is under 19 years of age may be presumed to have intent to make California the permanent home if both the student and his or her parent maintained a home in California continuously for the last two years unless the student or parent has evidenced a contrary intent by having engaged in any of the activities listed in item 3., page 6.
- c. A student who does not meet the requirements of subsection a. or b., above, shall be required to provide evidence of intent to make California the permanent home as specified in item 2., below.

Reference: T5 54024

### **2. Among acceptable evidence of intent to make California the student's permanent home are:**

- a. Ownership of residential property or continuous occupancy of rented or leased property in California.

- b. Registering to vote, and voting in California.
- c. Licensing from California for professional practice.
- d. Carrying on of a business or employment in California.
- e. Active resident membership in service or social clubs.
- f. Presence of spouse and/or dependent children in the state.
- g. Continuous presence in the state except for absences which can be explained without conflicting with establishment of residence.
- h. Indicating a California address on California State and Federal income tax forms (i.e., W-2, 540, 1040...).
- i. Payment of California personal income tax as a resident. (See Military Personnel, page 11).
- j. Possessing California motor vehicle license plates. Payment of a vehicle license fee is not required of nonresident military personnel. (An exemption may be filed.) Thus, payment of the fee is some indication of intent to be a California resident.
- k. Possessing California driver's license or a California Department of Motor Vehicles (DMV) identification card (Vehicle Code Sections 12502 and 12505 require a resident to obtain a California driver's license within 10 days from date residence is established.). For purposes of the DMV, residence is established when, after a move to California, a person rents, leases, or buys property in the state.
- l. Maintaining a California address as the home of record in military records and on the Leave and Earnings Statement (LES) while in the armed forces. (See Military Personnel, pages 10-12.)
- m. Maintaining active savings and checking accounts in California banks.
- n. Petitioning for a divorce as a resident of California.
- o. Possession of hunting or fishing license as a resident of California.

Reference: T5 54024

3. **Conduct inconsistent with a claim for California residence includes but is not limited to:**
- a. Maintaining voter registration and voting in another state.
  - b. Being a petitioner for a divorce or lawsuit as a resident in another state.
  - c. Attending an out-of-state institution as a resident of that state.

- d. Declaring nonresidence for California income tax purposes.

Reference: T5 54024; Voluntary Tax Assistant Program Guidelines of 1990, California Franchise Tax Board

### **Burden**

The burden is on the student to demonstrate clearly, with proof, both physical presence in California and intent to establish California residence.

Reference: ECS 68041, T5 54026

### **Absence During Time of Residence**

1. A student who is attempting to establish one year of residence in California but who returns to his or her former residence or to the home of his or her parents in another state or country for periods when the institution is not in session, should be subject to question as to whether he or she has the necessary intent to establish residence in California. Absences by the student from California during this period, or if the student is a minor, absences of the person from whom the student's residence is derived, for reasons of business or vacation may not necessarily indicate lack of intent to establish or maintain residence.

Reference: ECS 76143, T5 54022, 54024

2. For purposes of the nonresident tuition fee, a community college district shall disregard the time during which a student living in the district resided outside the state, if:
  - a. The change of residence to a place outside the state was due to a job transfer and was made at the request of the employer of the student or the employer of the student's spouse or, in the case of a student who resided with, and was a dependent of, the student's parents, the change of residence was made at the request of an employer of either of the student's parents and,
  - b. Such absence from the state was for a period of not more than four years and,
  - c. At the time of application for admission to a college maintained by the district, the student would qualify as a resident if the period of the student's absence from the state was disregarded.
3. A nonresident tuition fee shall not be charged to a student who meets each of the conditions specified in subdivisions a. to c., inclusive.

Reference: ECS 76143, T5 54022, 54024

## **Resident Student Elsewhere**

Classification of a student as a resident for tuition purposes by an out-of-state university or college generally establishes him or her as a nonresident of California as of that time. Normally, he or she will have to establish California residence and hold it for a year until he or she is entitled to similar classification in California. However, it is conceivable that his or her classification in the other state was a result of an exception similar to the exceptions provided in California law. If the student can show this, the pertinence of such classification would be overcome. Of course, the student would still have to affirmatively establish that he or she is a resident of this state.

Reference: ECS 76143, T5 54024

## **Change of Residence**

Any student who is classified as a resident, but who becomes a nonresident at any time by virtue of a change of residence, by his or her own action or by the person from whom his or her residence is derived, is obliged to notify the classifying institution at once.

Reference: ECS 76143

## **Derived Residence, Special Applications**

Because of the language of Education Code, Section 68062(f) which gives to a minor the residence of the parent, the following rules apply:

- a. Where the residence of the student is derived, the California residence of the person or persons from whom it is derived must satisfy the one year waiting period requirement.
- b. A minor adopted by a California resident who has been a resident for one year immediately prior to the residence determination date, immediately takes that resident status. No waiting period applies.
- c. A minor child of permanently separated parents takes the resident status of the parent with whom he or she lives, without any waiting period applying. If the minor lives alone, he or she takes the resident status of the parent with whom he or she last lived. (See Minor Aliens, item 7, page 25.)

Reference: ECS 68062(f),(h),(i)

## **Deceased Parents**

1. When both parents are deceased, and no legal guardian has been appointed, a minor may establish his or her own residence. Until the minor does so, his or her residence remains that of the last parent to die. The one year waiting period runs from the date of arrival or one year from the date of the parent's death. If the residence of the last parent to die was California, the minor's derived residence may be tacked to the newly established residence.

2. If a guardian is appointed for a minor any time after the death of the minor's parents, the minor takes the residence of the guardian. If that be California, the one year waiting period runs from the date of appointment, subject to applicable tacking. (See Tacking, page 13.)

Reference: ECS 68014, 68062

### **Parents of Minor Move to California**

If the parents of a minor move to California leaving the minor behind, the minor takes the parent's California resident status when acquired. If the minor remains outside California after reaching the age of majority and then comes to California, the minor is to be treated the same as a person possessing California residence who had left California and then returned. The minor should be screened with the objective of determining if he or she had acquired out-of-state residence. One factor to be checked in such a screening would be whether the minor had attended an out-of-state educational institution where resident status for tuition purposes had been granted or denied. (The minor may be eligible for an exception to prior law. See: Adult Dependent Child of California Resident, page 17.)

Reference: ECS 68061, 68062, 68076

### **Reestablished Residence**

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

Reference: T5 54030

### **Financial Independence**

1. A student seeking reclassification as a resident, who was classified as a nonresident in the preceding term, shall be determined financially independent or dependent in accordance with Education Code, Section 68044.
2. Financial dependence in the current or preceding calendar year shall weigh more heavily against California residence than shall financial dependence in earlier calendar years.
3. A student who has established financial independence may be reclassified as a resident if the student has met the requirement that there be a union of act and intent as defined in Title 5, Section 54020.
4. Financial independence is only one of the factors to be considered in reclassification to resident and should be balanced against other factors, such as the passage of time, the parents' residence, and the student's intent to establish residence elsewhere. The ultimate question is whether the student has demonstrated intent to become a California resident. The regulations would permit a college to disregard a finding of financial dependence where the parent on whom the student is dependent is a California resident or where there is no evidence of intent to establish residence in another state; however, since financial status is only one factor to be considered, a college may still wish to require some affirmative showing of intent to become a California resident.

Reference: ECS 68044, T5 54020, 54032

## **MILITARY PERSONNEL**

### **1. General Rule**

- a. Active members of the military who are present in California under military orders, except those assigned to California for educational purposes, are exempt from nonresident tuition for the duration of their enrollment at a community college.
  - (1) There is no requirement for the military person to establish residence; however, the student must be on active duty assigned to California as of the residence determination date.
  - (2) If the military person becomes separated from the military service, he or she would be required to provide evidence of intent to establish California residence for a minimum of one year prior to the residence determination date. (See Soldiers' and Sailors' Civil Relief Act of 1940, Item 2, below.)
  - (3) A student who was a member of the military stationed in California on active duty for more than one year immediately prior to being separated from the military is entitled to resident classification for up to one year for the time he or she resides in California. This one-year waiver after the military person's discharge allows the time necessary to establish residence. After the one-year waiver, the student would provide evidence as to his or her California residence.
- b. Dependents of Military Personnel (See **Dependents of Military Personnel**, page 16.)

Reference: ECS 68074, 68075, 68075.1; T5 54041, 54042

### **2. Soldiers' and Sailors' Civil Relief Act of 1940**

For purposes of providing evidence as to the discharged military person's intent for California residence, in addition to the objective manifestations asked of other students, there would be the necessity for further information as to intent, i.e., including the changing of the home of record in military records, changing the permanent home address in military records, not taking advantage of the exemption from payment of California income tax and/or personal property taxes contained in the Soldiers' and Sailors' Civil Relief Act of 1940.

#### **a. Home of Record and Permanent Home Address.**

A military "home of record" is a historical fact. It is the place recorded on official military documents as the:

- (1) Military person's home upon being commissioned, reinstated, appointed, reappointed, enlisted, reenlisted, inducted, or ordered into active duty.
- (2) It may be changed only at the time one of the above events occurs, although it is subject to correction at any time for bona fide error.
- (3) A Change in home of record to California is persuasive evidence of an intent to become a California resident, if coupled with military legal residence being California (DD 2058).

Similarly, the occurrence of changing the legal residence to that of another state is persuasive evidence that the military person does not intend domicile in California.

- (4) Less persuasive, but still evidence to be considered, is a listing of California as a "permanent home address" in military records. This can be done during the interim between occurrences of the above listed events. However, once one of those events occurs, failure to change the home of record eliminates the "permanent home address" as an item of proof of intent to be considered. In fact, as just noted, such failure is persuasive evidence of a lack of intent to establish California as the state of residence.

**b. Income Tax**

- (1) Personal income from military service is exempt from state income tax levied by a state of which a military person is not a resident (Soldiers and Sailors' Civil Relief Act of 1940). Thus, if a military person pays income tax on his military income to the State of California, such payment would tend to indicate he or she considered himself or herself a resident of California at the time the payment was made.
- (2) Credit is allowed against California income tax for taxes paid by military persons to other states (Rev. and Tax. Code Section 17067) by one temporarily out of the state, as for example, a California resident in military service stationed in another state.

**c. Personal Property Tax.**

Payment of personal property tax is required of all persons having personal property in the State of California on the assessment date, with the exception of nonresident military personnel. The latter are given immunity to personal property tax by the Soldiers' and Sailors' Civil Relief Act of 1940. That Act, in pertinent part, provides:

- (1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent

therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District of Columbia, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or District of Columbia. Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders: Provided, that nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction...." (Emphasis added).

### 3. **Active Military Who are Residents of California**

- a. Active military who are residents of California stationed in California are required to pay California income tax on their military or other income sources.
- b. Active military who are residents of California stationed outside the state are not required to pay California income taxes on their military income. However, military persons are required to pay income taxes on all other income sources.
- c. If the military person has been out of California for any length of time and has not paid income taxes, to determine whether California residence has been maintained, evidence would be "home of record" in military documents, and/or the Leave and Earnings Statement (LES). The LES indicates the military

person's home of record, and if it indicates California, the military person is "subject" to California taxes.

Source: Voluntary Tax Assistant Program Guidelines of 1990 and Legal Ruling Number 300, 1965, California Franchise Tax Board

#### **4. Entry into Service After Establishing California Residence but Before Having that Residence for a Full Year**

A person who moves to California with the intention of establishing residence here, and who enters the military service before a year has elapsed, may still be classified as a California resident if he or she has, at the residence determination date, otherwise met the durational requirement, and has not in the interim, established residency elsewhere. In other words, if he or she arrived in California with intent to establish residence in this state, subsequent absences will not preclude the residence-for-a-year from being realized, if he or she did not establish residence elsewhere during the absence.

Reference: ECS 68074, 68075; T5 54022, 54028

### **Tacking**

1. The term "tacking" refers to the process of adding one period of resident student qualification to another so as to satisfy the one year waiting period requirement.
2. Tacking is utilized in the following cases:
  - a. Adding the immediate pre-majority derived California residence to the post-majority residence to satisfy the durational requirement.
  - b. Shifting derivative residence, as when the derivation shifts from a father, who dies, to the mother.
  - c. Shift in residence of a minor from deceased parents to a legal guardian, or none appointed, to minor's own elected residence.

Reference: ECS 68072

## **EXCEPTIONS**

### **General**

A resident student is a person who has had residence in California for more than one year immediately preceding the residence determination date as established by the district governing board. However, in some instances, a student may obtain resident classification (for a prescribed period) even though a year has not passed since the student arrived in California.

Reference: ECS 68017, 68023, 68060, 68062

### **Nonresident Minors**

1. Parent was California Domiciliary Who Left. A student who remains in this state after his or her parent, who was theretofore domiciled in California for at least one year immediately prior to leaving and has, during the student's minority and within one year immediately prior to the residency determination date established residence elsewhere, shall be entitled to resident classification until the student has attained the age of majority and has resided in the state the minimum time necessary to become a resident, so long as, once enrolled, the student maintains continuous full-time attendance at an institution.

**Requires:**

- a. Parent must have been domiciled in California for at least one year prior to leaving, and,
- b. Parent must have left California to establish domicile elsewhere within one year of resident determination date and,
- c. Student once enrolled maintains continuous full-time attendance at an institution.
- d. Student is under age nineteen and in process of becoming a resident as defined on pages 5 and 6.

Reference: ECS 68070

**2. Self-Support**

- a. A student who has been 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 to resident classification until he or she has resided in the state the minimum time necessary to become a resident.

**Requires:**

- (1) Student must be under 19 on residence determination date.
- (2) Student must be entirely self-supporting.

Reference: ECS 68071

- b. A student claiming application of the self-supporting exception must provide **evidence** to the admissions officer such as:
  - (1) Documentation, including W-2 forms or a letter from employer, showing earnings for the year immediately preceding residence determination date of attendance.
  - (2) A statement that the student was actually present for said year (short absences from the state for business or pleasure will not preclude the accumulation of time), and

- (3) A statement showing all expenses of the student for said year.
  - (a) A loan made by a bank to the parent who turns over the proceeds to the minor negates self-support.
  - (b) A loan made by a bank to the student without the parent co-signing or endorsing the student's note indicates self-support. Co-signing or endorsement by parent negates self-support, since the student is then being supported by parent's credit.
  - (c) A loan made by parent to the student negates self-support.
- (4) If requirements (1) and (2) are met, the student is treated as having the capacity to establish his or her own residence so he or she would be screened just as would an adult.

Reference: ECS 68071, T5 54040

- 3. **Dependents of Military Personnel.** (See page 16.)
- 4. **Minor Aliens:** (See page 25.)
- 5. **Continuing Exception Under Prior Law. (See Exceptions Limited to the Minimum Time Necessary to Become a Resident, page 20.)**
- 6. **Two-Year Care and Control**

A student shall be entitled to resident classification if, immediately prior to enrolling at an institution, he or she has lived with and been under the continuous direct care and control of any adult or adults, other than a parent, for a period of not less than two years, provided that the adult or adults having such control have been domiciled in California during the year immediately prior to the residence determination date. This exception shall continue until the student has attained the age of majority and has resided in California the minimum time necessary to become a resident, so long as continuous full-time attendance is maintained at an institution.

**Requires:**

- a. The student has lived under the direct care and control of an adult, other than a parent for two years immediately preceding the residence determination date, and
- b. Such adult has, for the year immediately preceding the residence determination date, had California residence, and
- c. Full-time continuous enrollment by the student.

Reference: ECS 68073, T5 54047

- 7. **Child of Employee. (See Nonresident Employees, page 16.)**

8. **Agricultural. (See Agriculture Employment, page 19.)**

**Dependents of Military Personnel**

1. 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 California on active duty shall be entitled to resident classification for the duration of his or her enrollment at a community college.

Should that member of the armed forces of the United States whose dependent natural or adopted child, stepchild, or spouse is in attendance at an institution, be thereafter transferred on military orders to a place outside of California where the member continues to serve in the armed forces of the United States; or thereafter retires from the military, the student dependent shall not lose his or her resident classification.

Reference: ECS 68074, T5 54041

**Requires:**

- a. Student must be spouse or natural or adopted child or stepchild of the armed forces member stationed in California or military person outside of California on active duty on residence determination date; or that the military person has, after the residence determination date, retired as an active member of the armed forces.
  - b. Student must be a dependent for income tax purposes of that member of armed forces, and
  - c. Student dependent is given a waiver for the minimum time necessary to establish California residence, beginning from the time the military person was stationed outside of California; or, from the date of retirement.
    - (1) For adults this is one year.
    - (2) For minors this is one year after attaining age 18.
2. Continuing Exception Under Prior Law. **(See Exceptions Limited to the Minimum Time Necessary to Become a Resident, page 20.)**

**Nonresident Employees and/or Their Dependents**

1. A person who is a full-time employee of an institution or of any state agency (See definition on page 3.), or a student who is a spouse or child of a full-time employee of an

institution or of any state agency who is assigned to work outside the state, may be entitled to resident classification until he or she has resided in the state the minimum time necessary to become a resident.

Reference: ECS 68079

**Requires:**

- a. The student must be a full-time employee of any California Community College, California State University or Colleges, the University of California, or the California Maritime Academy; or the parent or spouse of the student must be such an employee.
  - b. The student is a child or spouse of a person employed full time by any state agency (See definition on page 3.) and is assigned to work outside of California.
  - c. The student must not have lived in California for more than one year since arriving or since attaining age 18, whichever came later.
    - (1) For adults this is one year.
    - (2) For minors this is one year after attaining age 18.
2. See **Exceptions Limited to the Minimum Time Necessary to Become a Resident**, page 20, for period during which this exception is applicable.

**Adult Dependent Child of California Resident**

1. 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 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.

**Requires:**

- a. The student must be an adult natural or adopted child of a California resident who has satisfied the one-year waiting period requirement;
- b. 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.
- c. The student must not have lived in California for more than one year.
- d. The student must maintain continuous attendance at the college.

Reference: ECS 68076

2. **Continuing Exception Under Prior Law.** (See **Exceptions Limited to the Minimum Time Necessary to Become a Resident**, page 20.)

### **Employees of Public Schools**

1. A student holding a valid public school 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 such student meets any of the following requirements:

Reference: ECS 68078, T5 54046

- a. Holding of a provisional public school credential and enrollment at an institution in courses necessary to obtain another type of credential authorizing service in the public schools.
- b. Holding a public school credential issued pursuant to Section 44250 and enrollment at an institution in courses necessary to fulfill the credential requirements.
- c. Enrollment at an institution in courses necessary to fulfill the requirements for a fifth year of education prescribed by subdivision (b) of Section 44259.

#### **Requires:**

- (1) Compliance with a, or b, or c, and
- (2) Student must hold a valid credential authorizing service in California public schools, and
- (3) Student must be employed full time by a public school during the year he will attend, and
- (4) The position must require certification qualifications.

Reference: ECS 68078, T5 54046

2. **Continuing Exception for Public School Employees.** (See **Exceptions Limited to the Minimum Time Necessary to Become a Resident**, page 20.)

### **Apprentices**

A student claiming resident status as an apprentice shall provide evidence such as a card or certification from the Joint Apprenticeship Committee or the student's employer, evidencing such apprenticeship status.

Reference: Labor Code Section 3077

#### **Requires:**

A student at least 16 years of age who has entered into a written agreement called an "apprentice agreement," with an employer or his or her agent, an association of employers, or an organization of employees, or a joint committee representing both and which meets the requirements of Labor Code, Section 3077.

### **Agricultural Employment**

A district may classify a student as a resident if he or she 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, the parent lives within the district which maintains the community college attended by the student, and the parent claims the student as a dependent on his or her state or federal personal income tax returns if he or she has sufficient income to have a personal income tax liability.

Reference: ECS 68100, T5 54048

#### **Requires:**

- a. Student living with parent who earns his or her livelihood primarily in agricultural labor and has performed such labor in California for at least two months each of the last two years, and resides in the district and if the parent files state and/or federal income tax returns, the student must have been included as a dependent.
- b. Requires student earning his or her livelihood primarily in agricultural labor for hire and have done so in California at least two months per year for the last two years.

### **Graduate of School Operated by Bureau of Indian Affairs**

A 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.

Reference: ECS 68077

### **Students Employed by a Public Agency**

1. A student who has been hired by a "public agency" may be classified as a resident for enrollment in and completion of police academy training courses.
2. "Public agency" as defined by this section means the state or any city, county, district, or other local authority or public body of or within the state of California.

Reference: ECS 76140.5, Government Code Section 811.2

#### **Requires:**

- a. Student has passed all other requirements of the public agency, and

- b. Written assurances by the public agency that it intends to classify the student as a peace officer upon successful completion of the police academy training course.

- Note:**
- (1) The provisions as stated above are intended to apply to all classes of persons defined as "peace officers."
  - (2) The term "police academy training" is interpreted to cover peace officer training at a college or academy.

### **Waivers**

- 1. The district may authorize an exemption from nonresident tuition, in whole or in part, for:
  - a. Foreign students (citizens and residents of foreign countries) attending a California Community College, provided that the nonresident has demonstrated a financial need for the exemption and not more than 10% of the nonresident foreign students are so exempted. Exemptions may be made on an individual basis.
  - b. All students taking six or fewer units.

**Note:** If a district authorizes the exemptions cited above, the student contact hours may not be reported for state funding purposes.

Reference: ECS 76140

### **Exceptions Limited to the Minimum Time Necessary to Become a Resident**

- 1. The time necessary to become a resident for tuition purposes is one year and one day. Those exceptions where duration is "the minimum time necessary to become a resident" should be granted only for the period of time a student needs to otherwise establish the one year.
- 2. Thus a student otherwise entitled to an exception whose term is "for the minimum time necessary to become a resident," who arrives in California on January 1, 2001 and enrolls in the Fall term, should be granted the resident classification under the exception only until January 1, 2002. For minors, the exception is for one year from the date the student becomes 18 years of age (to age 19).

Reference: ECS 68070, 68074, 68075, 68078, 68079; T5 54041, 54042, 54046, 54047, 54048, 54050

### **Alien Students**

- 1. A student who is an alien may establish his or her residence pursuant to the provisions of this chapter if not precluded by the Immigration and Nationality Act from establishing domicile in the United States; provided that the student has had residence in California for more than one year prior to the residence determination date for the semester, quarter or other session for which attendance at an institution is proposed.

Reference: ECS 68062(h), T5 54045

2. An alien is precluded from establishing domicile in the United States if the alien entered the United States illegally (See item 3. and item 4., pages 21 and 22.), or under a visa which requires that the alien have residence outside the United States, or that he or she entered the United States solely for a temporary purpose. An alien is precluded from establishing domicile in the United States and shall not be classified as a resident of this state if he or she holds a visa of the following types:

- a. B-1, B-2 Visitor for business or pleasure
- b. C Alien in transit
- c. D-1, D-2 Alien crew member
- d. F-1, F-2 Academic student, spouse and children
- e. H-2, H-3 Spouse and children of temporary worker or trainee
- f. J-1, J-2 Exchange visitor, spouse and children
- g. M-1, M-2 Nonacademic or vocational student, spouse and children
- h. O-2 Alien accompanying and assisting an O-1 alien with extraordinary ability in the sciences, arts, education, business or athletics
- i. P-1 Internationally recognized athlete or entertainer
- j. P-2 Artist or entertainer entering the United States to perform under a reciprocal exchange program
- k. P-3 Artist or entertainer entering the United States to perform under a program that is culturally unique
- l. P-4 Spouse or child of P-1, P-2, or P-3 alien
- m. Q International cultural exchange program
- n. TN,TD Trader under NAFTA, spouse and children

Reference: Immigration and Nationality Act, 8 U.S.C., 1101(a)(15), as amended by Immigration Act of 1990, Public Law 101-649, Carlson v. Trustees (1/4/99)

### 3. **Undocumented Aliens**

An undocumented alien is one who entered the country illegally and has not applied for legalization pursuant to the Immigration Reform and Control Act (IRCA), or other provisions of federal immigration law. Undocumented aliens cannot become California

residents because they are precluded by federal law from establishing domicile in the United States. (See item 4., below.).

In order to become capable of establishing domicile, undocumented aliens must take steps to obtain a change of status from the Immigration and Naturalization Service to a status which does permit establishing domicile (See item 4., below.)

Reference: ECS 68062(h),(i); T5 54045, Regents of the University of California v. Bradford

**4. An alien student holding one of the visas listed in item 2., page 21, or who is undocumented, shall not be classified as a resident unless and until:**

- a. He or she has taken appropriate steps to obtain a change of status from the Immigration and Naturalization Service to a classification which does not preclude establishing domicile, by:
  - (1) Applying for permanent resident status.
  - (2) Applying for legalization pursuant to the Immigration Reform and Control Act.
  - (3) Applying for and being granted a change of status to a visa category which does permit establishing domicile.
  - (4) Applying for asylum.
  - (5) Applying for the Family Unity Program.
  - (6) Applying for Temporary Protected Status.
- b. He or she has met the requirements related to one year of physical presence coupled with intent to make California home for other than a temporary purpose. The one-year durational period may not begin until the application has been made for a change of status as discussed in 4.a., above. Aliens seeking a visa under 4.a.(3), above, cannot be classified as a resident until the visa has been granted, but the one-year period can begin at any time after application has been filed. (See item 6., page 24, regarding aliens not precluded from establishing domicile.)
- c. Evidence that an alien is in the process of adjusting his or her status to either permanent resident or to a visa category other than to one in item 2., page 21, includes, but is not limited to, one of the following:
  - (1) A Petition to Classify an Alien Relative, stamped as filed with INS (I-130);
  - (2) An employment authorization document (I-688A);
  - (3) A petition for Immigrant Worker, stamped as filed with INS (I-140);
  - (4) An approved application for an A, E, G, H-1, H-4, I, K, L, O-1, O-3, or R visa;

- (5) An INS stamped Request for Asylum in the United States (I-589);
- (6) An application for lawful temporary residence (I-687 or I-700);
- (7) An application for the Family Unity Program (I-817);
- (8) An application for Temporary Protected Status (I-821 or I-104);
- (9) Other appropriate documentation from INS indicating that an application for change of status has been filed.

**Note:** Be aware that in many instances a person submitting an application by mail may not receive any acknowledgment from INS. Districts may wish to develop policies for permitting alternative methods for documenting that an application has been filed (i.e., an affidavit from an attorney).

Reference: ECS 68062(h),(i); T5 54045; Regents of University of California v. Bradford

## 5. **Out-of-Status Aliens**

An alien, as listed in item 2., page 21, continues to be precluded from establishing domicile until he or she has taken appropriate steps as described in item 4., pages 22 and 23, to obtain a change of status from the Immigration and Naturalization Service. Students should not be allowed to establish residence only by showing that they have violated the terms of their visa or stayed in this country beyond the period permitted by law. Out-of-status students also have to comply with the requirements specified in item 4., pages 22 and 23.

Once the above condition has occurred, a person must demonstrate both physical presence in California for one year coupled with intent to make California the permanent home.

**Note:** Even an alien who is in one of the categories that precludes him or her from establishing domicile, and has not taken steps as prescribed in item 4., pages 22 and 23, may be classified as a resident if he or she fits into one of those limited exceptions authorized by law. Those exceptions relate to: (1) minors who are self-supporting; (2) minors who reside with and are supported by California residents, other than their parent for at least two years; (3) minors whose parents were California residents who moved elsewhere within the year prior to the time the minor enters the college; and (4) minors who lived out-of-state, and returned to California as adults (and have not been in the state for a year), but are dependent children (natural or adopted) of a California resident. (ECS 68070, 68072-68082, 68100)

Reference: ECS 68062(h),(i); T5 54045; Regents of the University of California v. Bradford

6. **Students** who will be considered **eligible to establish residence** for tuition fee purposes shall include, but are not limited to the following:

- a. Permanent residents, including conditional permanent residents
- b. Legalized aliens (lawful temporary residents, or "amnesty students")

- (1) Special Agricultural Workers (SAW) status - Immigration and Nationality Act (INA), Section 210
- (2) Temporary resident status - INA, Section 245A
- (3) Cuban/Haitian status - Immigration and Control Act (IRCA), Section 202
- c. Spouses and unmarried children of legalized aliens who have been granted a temporary stay of deportation and work authorization - Family Unity Program - Immigration Act of 1990, Section 301
- d. Aliens in Temporary Protected Status - INA, Section 244A (Salvadorans, Kuwaitis, Lebanese, Liberians, Somalians)
- e. Asylees and asylum applicants- INA, Section 208
- f. Nonimmigrants holding valid visas as indicated below:
  - (1) A-1, A-2, A-3 Foreign government official or employee, family and servants
  - (2) E-1, E-2 Treaty trader and treaty investor, spouse and children
  - (3) G-1, G-2, G-3 Representative of foreign government, officer G-4, G-5 and employee of international organization, family and attendants or servants
  - (4) H-1, H-4\* Temporary worker or trainee, spouse and children (Note: T-C, Trader/Canada is equivalent to H-1)
  - (5) I Representative of foreign information media, spouse and children
  - (6) K Fiancé and fiancée of U.S. citizen
  - (7) L-1, L-2 Intracompany transferee, spouse and children
  - (8) O-1, O-3\* Alien with extraordinary ability in the sciences, arts, education, business, or athletics, spouse and children
  - (9) R Religious occupations

\*Even though dependent children holding an H-4 or O-3 visa are not precluded, their residence is derived from that of their parents. (See item 7., on the next page.)

Reference: Immigration and Nationality Act, 8 U.S.C., 1101(a)(15), as amended by Immigration Act of 1990, Public Law 101-649, 11/29/90

## 7. Minor Aliens

- a. An unmarried minor alien (if not precluded by the Immigration and Nationality Act from establishing residence in the United States) derives residence from his or her parents, pursuant to Education Code Section 68062(f).

- b. A minor alien, whose parent is precluded from establishing domicile pursuant to item 2., page 21, or item 3., page 21, may be eligible for residency if the parent has taken appropriate steps to obtain a change of status from the Immigration and Naturalization Service to a classification which does not preclude establishing domicile; and, the parent has met the requirements of one year physical presence coupled with intent to make California a home for other than a temporary purpose. (See item 4., page 22 and 23.)
- c. The minor children of aliens who are precluded from establishing domicile, are allowed to establish residence separately from their parents if the children were born in the United States and are United States citizens, and otherwise meet applicable California residence requirements.

**Note:** Such students must be allowed to establish residence because, as citizens, these individuals are entitled to the full rights that citizenship brings.

Reference: ECS 68062 (f),(h),(i); T5 54045

## **8. Amnesty Students**

An amnesty student is a previously undocumented alien who has applied for legalization pursuant to the Immigration Reform and Control Act. (See item 6.b., page 24.)

## **MISCELLANEOUS**

### **Continuous Attendance**

The student whose resident classification is predicated upon one of the exceptions requiring "continuous attendance" must be reclassified as a "nonresident" for the following term if he drops below the minimum units for full time enrollment and he is not otherwise entitled to resident classification.

Reference: ECS 68016

### **Students Under Jurisdiction of a California Juvenile Court**

1. Minor students, under placement by order of a juvenile court, in a foster home or with adults other than their natural parents are subject to the normal rules of residence for minors. If, however, the order of the court goes to a determination of parental rights -- a determination that the parent is no longer entitled to the rights as a parent -- then the facts should be reviewed for indicia of emancipation, self support, or perhaps the two year care and control exception.

2. The review of any court order should be done in consultation with the district's legal counsel -- if rules other than the normal reference to the natural parent are to be employed.

Reference: ECS 68062(f),(g), ECS 68073; T5 54047

### **Student Appeals Procedure**

1. The college district shall notify each student of the student's residence classification not later than fourteen (14) calendar days after the beginning of the session for which the student has applied, or fourteen (14) calendar days after the student's application for admission, whichever is later.
2. Any student, following a decision on residence classification by the college, may make written appeal of that decision. Each college district shall establish procedures for appeals of residence classifications.
3. The Chancellor will advise college districts on issues of residence classification. However, the student shall have no right of appeal to the Chancellor.

Reference: T5 54070

### **Refunds**

Each district governing board shall adopt rules providing for refund of the following nonresident tuition fees:

- a. Those collected in error.
- b. Those refundable as a result of a reduction of the educational program for which the fees have been paid.
- c. Those refundable as a result of the student's reduction of units or the student's withdrawal from an education program for which fees have been paid, where reduction or withdrawal is for reasons deemed sufficient by the district governing board.

Reference: T5 54070