

2004 CACCRAO STAFF DEVELOPMENT

RESIDENCY DEFINITIONS

RESIDENT EC 68017, 68062; T5 54020

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 residence.

NONRESIDENT EC 68018

A student who does not have residence in the state for more than one year immediately preceding the residence determination date.

RESIDENCE DETERMINATION DATE EC 68023; T5 54002

“Residence Determination Date” is 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 college.

RESIDENCE EC 68017, 68062; T5 54020

In order to establish a residence, it is necessary that there be a union of act and intent. To establish residence, a person capable of establishing residence in California must couple his/her physical presence in California with objective evidence that the physical presence is with the intent to make California the home for other than a temporary purpose.

PHYSICAL PRESENCE EC 68017; T5 54022

- a. A person capable of establishing residence in California must be physically present in California for one year prior to the residence determination date to be classified as a resident student.
- b. A temporary absence for business, education or pleasure will not result in loss of California residence if, during the absence, the person always intended to return to California and did nothing inconsistent with that intent.
- c. Physical presence within the state solely for educational purposes does not constitute establishing California residence regardless of length of that presence.

GENERAL RULES – RESIDENCY CRITERIA

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

- a. Every person has, in law, a residence. **EC 68060**
- b. Every person who is married or 18 years of age, or older, and under no legal disability to do so, may establish residence. **EC 68061**
- c. In determining the place of residence the following rules are to be observed: **EC 68062**
 - (1) There can only be one residence.
 - (2) A residence is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which one returns in seasons of repose.
 - (3) A residence cannot be lost until another is gained.
 - (4) The residence can be changed only by the union of act and intent.
 - (5) A man or woman may establish his/her residence. A person's residence shall not be derivative 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 share, which may indicate different residences.
 - (6) 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, his/her residence is that of the parent with whom he or she maintained his/her last place of abode. The minor may establish his/her residence when both parents are deceased and a legal guardian has not been appointed.
Note: The conditions in c.(6) apply unless the Immigration and Nationality Act preclude the minor from establishing residence in the United States.
 - (7) The residence of an unmarried minor who has a parent living cannot be changed by his/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 exceptions.
 - (8) 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 6, above)
 - (9) 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

T5 54024

- a. Intent to make California the home, for other than a temporary purpose, may be manifest in many ways. No one factor is controlling.

- b. 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 by having engaged in any of the activities listed in subdivision "f" of this section.

- c. 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 by having engaged in any of the activities listed in subdivision "f" of this section.

- d. A student who does not meet the requirements of subdivision "b" or "c" of this section shall be required to provide evidence of intent to make California the home for other than a temporary purpose, as specified in subdivision "e" of this section.

- e. Objective manifestations of intent to establish California residence include, but are not limited to:
 - 1. Ownership of residential property or continuous occupancy of rented or leased property in California.
 - 2. Registering to vote and voting in California.
 - 3. Licensing from California for professional practice.
 - 4. Active membership in service or social clubs.
 - 5. Presence of spouse, children, or other close relatives in the state.
 - 6. Showing California as home address on federal income tax forms.
 - 7. Payment of California state income tax as a resident.
 - 8. Possessing California motor vehicle license plates.
 - 9. Possessing California driver's license.
 - 10. Maintaining permanent military address, or home of record in California while in armed forces.
 - 11. Establishing and maintaining active California bank accounts.

12. Being a petitioner of divorce in California.

f. **Conduct inconsistent with a claim of California residence includes, but is not limited to:**

1. Maintaining voter registration and voting in another state.
2. Being the petitioner for a divorce in another state.
3. Attending an out-of-state institution as a resident of that other state.
4. Declaring nonresidence for state income tax purposes.

ONE-YEAR WAITING PERIOD

T5 54028

The one year residence period, which a student must meet to be classified as a resident, does not begin to run until the student is both present in California and has manifested clear intent to become a California resident.

REESTABLISHED RESIDENCE

T5 54030

If a student, or the parents of a minor student, relinquish California residence after moving from the state, one full year of physical presence, coupled with one full year of demonstrated intent to be a California resident, is required to reestablish residence for tuition purposes, except as provided by Education Code Section 68070 [Student who remains in state after parent moves elsewhere].

FINANCIAL INDEPENDENCE

EC 68044; T5 54032

- a. 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.
- b. A student who has established financial independence may be reclassified as a resident, if the student has met the requirements of Section 54020 (union of act and intent), for one year prior to the residence determination date.
- c. In determining whether the student has objectively manifested intent to establish California residence, financial independence shall weigh in favor of finding California residence and financial dependence shall weigh against finding California residence.
- d. Financial dependence in the current or preceding calendar year shall weigh more heavily against finding California residence, than shall financial dependence in earlier 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.

ACTIVE DUTY MILITARY STUDENTS

EC 68075; T5 54042

Undergraduate students who are members of the armed forces of the United States stationed in California on active duty (except those assigned to the state for educational purposes), are exempt from nonresident tuition for the duration of their attendance at a community college as long as they remain on active duty as of the residence determination date. Active duty military students seeking a graduate degree are entitled to no more than one academic year of resident classification --- see *Legal Opinion M 03-06*. (*The Chancellor's Office has concluded that service in the California National Guard does not constitute being a member of the armed forces of the United States for Education Code sections 68074 and 68075.*)

DEPENDENTS OF ACTIVE DUTY MILITARY MEMBERS

EC 68074; T5 54041

An undergraduate student who is a natural or adopted child, stepchild, or spouse and who is a dependent of a member of the armed forces of the United States stationed in California on active duty is entitled to resident classification for the purposes of determining the amount of tuition and fees. There is no limitation on the length of the resident classification. If that member of the armed forces, whose dependent is in attendance at a community college, is thereafter transferred on military orders to a place outside this state where the member continues on active duty or is thereafter retired as an active member of the armed forces of the United States, the student dependent shall not lose his or her resident classification until he or she has resided in the state the minimum time necessary to become a resident. Dependents seeking a graduate degree are entitled to no more than one academic year of resident classification --- see *Legal Opinion M 03-06*.

ALIEN STUDENTS

EC 68062(h); T5 54045

- (a) An alien not precluded from establishing domicile in the United States by the Immigration and Nationality Act [8 U.S.C. 1101 (INA), et seq.,] shall be eligible to establish residency pursuant to the provisions of this subchapter.
- (b) An alien is precluded from establishing domicile in the United States if the alien:
 - (1) entered the United States illegally (undocumented aliens);
 - (2) entered the United States under a visa which requires that the alien have a residence outside of the United States; or
 - (3) entered the United States under a visa that permits entry solely for some temporary purpose.
- (c) An alien described in paragraph (b) shall not be classified as a resident unless and until he/she has taken appropriate steps to obtain a change of status from the Immigration and Naturalization Service [currently known as the Bureau of U.S. Citizenship and Immigration Services] to a classification which does not preclude establishing domicile, and has met the requirements of Sections 54020-54024 related to physical presence and the intent to make California home for other than a temporary purpose.

Please note: Pursuant to Assembly Bill 540 (EC 68130.5; T5 54045.5, 58003.6), 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 institution of higher education 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.

Nonimmigrant alien students, as defined by federal law, are not eligible for the exemption. Students who are exempt from the payment of nonresident tuition under EC 68130.5 may be reported for apportionment purposes by community college districts. Although these students are exempted from paying nonresident tuition, they remain nonresidents until such time as they change their immigration status to one that allows residence in the United States.

The Chancellor's Office has issued guidelines for the implementation of section 68130.5. The guidelines address specific issues that may arise under the section and may be useful to districts in meeting their responsibilities. The guidelines are available under the Student Services and Special Programs portion of the Chancellor's Office website at:

http://www.cccco.edu/divisions/ss/student_services/attachments/ab540_guide_3rd_ed.doc.

STUDENTS ELIGIBLE TO ESTABLISH RESIDENCE

The following statuses ALLOW a student to establish residency as long as the student also meets the criteria regarding physical presence and intent to make California home for other than temporary purposes.

- U.S. Citizens
- Permanent Resident Aliens, including conditional permanent residents, and applicants for permanent resident status
- Applicants for legalization pursuant to Immigration Reform and Control Act
- Asylees and asylum applicants
- Applicants for the Family Unity Program
- Applicants for Temporary Protected Status
- Applicants for VAWA Self-Petition - Battered spouse or child of U.S. citizens or lawful permanent residents with pending or approved self petition (Form I-360).

Authorized under the immigration provisions of the Violence Against Women Act (VAWA) passed by Congress in 1994.

The following visa statuses MAY establish residency:

A-1 to A-3	Foreign government officials, employees, family and servants
E-1, E-2	Treaty trader and treaty investor, spouse and children
G-1 to G-5	Representatives of foreign government, officers, and employees of international organizations
H-1B, H-1C, H-4	Temporary worker/trainee (Special Note for H-4 [Spouse or child of H-1B, H-1C, H-2A, H-2B, and H-3]: Only spouse and child of H-1B and H-1C may establish residency. Spouse and child of H-2A, H-2B, and H-3 may not establish residence.)
I	Foreign information media, spouse and children
K-1, K-2, K-3, K-4	Fiancé and fiancée of U.S. Citizen; Spouse and children of a U.S. Citizen (LIFE Act)
L-1A, L-1B, L-2	Intra-company transferee, spouse and children
N-8, N-9	Parent of a special immigrant child (Classified SK-3) and Child of a special immigrant (Classified N-8, SK-1, SK-2, SK-3)
NATO 1 to 7	NATO representatives, staff, family, expert employees and civilians accompanying NATO members
O-1, O-3	Alien with extraordinary abilities in science, arts, business, athletics, spouse, and children (Special note for O-3 [spouse or child of O-1 or O-2]: Only spouse and child of O-1

may establish residence. Spouse or child of Visa O-2 **may not** establish residence)

R-1, R-2	Religious workers; spouse or child
T-1 to T-4	Victims of a severe form of trafficking in persons; spouse or child; parent of T-1 if T-1 victim is under 21 years of age
U-1 to U-4	Victims of certain crimes; spouse or child; parent of U-1 victim if U-1 is under is 21 years of age
V-1, V-2, V-3	Spouse/child/derivative child of a Lawful Permanent Resident who is the principal beneficiary of a family-based petition (Form I-130) which was filed prior to Dec. 21, 2000, and has been pending for at least three years;

STUDENTS INELIGIBLE TO ESTABLISH RESIDENCE

The following visa statuses PRECLUDE a student from establishing residency, regardless of the length of time in California:

B-1, B-2	Visitor for business or pleasure
C-1 to C-4	Alien in transit
D-1, D-2	Alien crew member
F-1, F-2, F-3	Academic student, spouse and children (F-3 students are border commuter students who maintain actual residence and place of abode in the country of nationality)
H-2A, H-2B, H-3, H-4	Temporary Workers (Agricultural; skilled and unskilled) and Alien trainee. (Special Note for H-4 [Spouse or child of H-1B, H1-C, H2-A, H-2B, and H-3]: Only spouse and child of H-1B and H-1C may establish residency. Spouse and child of H-2A, H-2B, and H-3 may not establish residence.)
J-1, J-2	Exchange visitor, spouse and children
M-1, M-2, M-3	Nonacademic or vocational student, spouse and children (M-3 students are border commuter students who maintain actual residence and place of abode in the country of nationality)

O-2	Alien with extraordinary ability in the sciences, arts, education, business or athletics (arrives with O-1, but is not related)
P-1	Internationally recognized athlete or entertainer
P-2	Artist or entertainer entering the United States to perform under a reciprocal exchange program
P-3	Artist or entertainer entering the United States to perform under a program that is culturally unique
P-4	Spouse or child of P-1, P-2, or P-3 alien
Q-1 to Q-3	International cultural exchange program
S-5, S-6	Informant of criminal organization; informant of terrorism information
TN/TD	Business persons and professionals who are citizens of Canada & Mexico under the North American Free Trade Agreement (NAFTA)
TWOV	Transit Without Visa (Passenger/Crew)

ANY ALIEN WHOSE VERY PRESENCE IS UNLAWFUL, OR THOSE WHO OVERSTAY HIS/HER VISA (UNDOCUMENTED OR OUT-OF-STATUS)

California Community Colleges
Chancellor's Office
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