

2017 CACCRAO STAFF DEVELOPMENT

RESIDENCY FOR TUITION PURPOSES GENERAL OVERVIEW

(Revised March 8, 2017: substantive changes/additions highlighted in yellow)

RESIDENT

EC 68017, 68062; T5 54020, 54026

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.

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 CLASSIFICATION

EC 68040; T5 54010

Residency classification shall be made for each student, including noncredit-only enrollees, at the time applications for admission are accepted and whenever a student has not been in attendance for more than one semester or quarter. To be clear, if a student misses at least two, not one, semesters or quarters, then he or she must again go through the residence classification process. Summer or other intersessions are not included in this consideration. However, please note that districts can and some do make new residency determinations for students missing only one semester even though not required by title 5. Whatever is determined by the district in this regard, including a more restrictive policy, should be included in the districts local rules and policies relating to residency determination and should be uniformly administered for all applicable nonresident students.

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 a college. Enrollments in late starting classes within a term are subject to this uniform residence determination date (each term only one has one residence determination date).

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, 68070; 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 shared, 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 domicile (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 (EC 68071) or the Two-Year Care and Control exceptions (EC 68073; T5 54047).
- (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 (EC 68043; T5 54022(c)).

EVIDENCE OF INTENT

EC 68041; 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 California professional, religious, merchant, service organizations 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. Maintaining California motor vehicle license plates/registration.
 9. Maintaining a California driver's license or California ID.
 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.
 13. Remaining in California during academic breaks.
 14. Registering for the Selective Service in California (indicating California address).
- 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 educational institution as a resident of that other state.
 4. Declaring nonresidence for state income tax purposes; paying taxes in another state or country as a resident of that state or country or not fulfilling tax obligations to the State of California.

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.

BURDEN

T5 54026

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

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 and title 5 section 54032. The law requires that financial independence be “among the factors to be considered” in reclassification and specifies how financial independence should be balanced against other factors, such as the passage of time, parent’s residence, and the student’s intent to establish residence elsewhere.
- b. A student shall be considered financially independent for purposes of this section if the applicant meets all of the following requirements:
 - I. Has not and will not be claimed as an exemption for state and/or federal tax purposes by his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application,
 - II. Has not and will not receive more than seven hundred fifty dollars (\$750) per year in financial assistance from his or her parent, in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, and
 - III. Has not lived and will not live for more than six weeks in the home of his or her parent during the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application.
 - IV. Relevant documentation to support a finding of financial independence may include tax returns from the student to verify the student’s income and from parents to verify the student was not included as a dependent, W-2’s, apartment rental contracts for leases, and copies of other necessary financial documentation (bank statements, loans, trusts, etc.) to verify the sources of the student’s income/savings. In terms of appropriate tax returns to use in review, you would request the latest returns available (for example, for the 2012-13 academic year, including spring term reclassifications, you would at a minimum expect to be provided tax returns for 2009, 2010, and 2011).
- c. 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.
- d. 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.

- e. 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. The title 5 section 54032(d) a district to disregard a finding of financial dependence where there is not intent to establish (or maintain) residence in another state. The ultimate question is whether the student has demonstrated intent to become a California resident. Since financial status is only one factor to be considered and districts may still wish to require some further affirmative showing of objective intent to become a California resident.

1. What if a student (citizen or permanent resident) is supported by an out of country parent?

The pertinent statute and regulation do not differentiate between in-country and out-of-country parental support. Thus, the requirements noted above apply in both cases.

2. If financial assistance is received from a relative or sponsor (not the parent), is a student considered financially dependent?

EC § 68044 focuses on parental support aspects of financial independence, 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). The intent of the financial independence provisions is to determine if the student has supported his/her own self with own resources (employment, commercial/institutional loans in student's name only, financial aid and savings from earnings, all of which require official documentation). In making this determination, the district should follow the criteria indicated in Education Code section 68044 and any other factors that have been appropriately established by the local governing board for purposes of making that determination.

3. If a student is not claimed as a dependent on their parents' income taxes and does not receive support from the parent, is there a minimum amount of income they need to earn to be considered financially independent?

No, there is no minimum amount of income that a student needs to earn to be considered financially independent. Each student's circumstances will be different as it relates to the resources that will be needed to demonstrate that a student has supported his/her own self with own resources.

4. Can a student be considered financially independent if they are not working but have savings in the bank?

In this type of situation, the district should request documentation from the student to verify the source of the student's savings in the bank. If the source of the savings exceed \$750 per year and is determined to be from a parent, the student would not be considered financially independent.

ALIEN STUDENTS

EC 68062(h); T5 54045

An alien, including an unmarried minor alien, may establish his/her residence unless precluded by the Immigration and Nationality Act [8 U.S.C. 1101, et seq.] 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 the college is proposed.

In general, an alien is precluded from establishing domicile in the United States if he/she entered the United States illegally, or under a visa which requires residence outside the United States, or if he/she entered the United States solely for a temporary purpose. Such an alien shall not be classified as a resident unless and until he or she has taken appropriate steps to obtain a change of status from the U.S. Citizenship and Immigration Services ("USCIS," formerly Immigration and Naturalization Services) to a classification which does not preclude establishing domicile, and has residence in California for more than one year as noted above. (Ed. Code, § 68062 (h) and (i); Cal.Code Regs., tit. 5, § 54045, 8 U.S.C. 1101 (a)(15), and Regents of the University of California v. Superior Court [Bradford], 225 Cal.App.3d 972 (1991).)

5. Which alien visa or immigration statuses are "precluded" from establishing domicile in the United States?

Aliens on visas B-1, B-2, C-1, C-1D, C-2, C-3, C-4, D-1, D-2, F-1, F-2, F-3, H-1B1, H-2A, H-2B, H-3, H-4 (if spouse or child of H-1B1, H-2A, H-2B, or H-3), J-1, J-2, M-1, M-2, M-3, O-2, O-3 (if spouse or child of O-2), P-1, P-2, P-3, P-4, Q-1, Q-2, Q-3, S-5, S-6, S-7, TWOV (Transit Without Visa), and (NAFTA) TN and TD are precluded from establishing domicile in the United States. Also precluded are aliens under an "Order of Supervision," on "parole" status, visitors possessing a Border Crossing Card (BCC), Bering Straits (BE) agreement entrants, Visa Waiver Program (VWP) entrants under nonimmigrant categories WB and WT, and aliens whose very presence is unlawful, or those who overstay their visas (undocumented or out-of-status).

6. In order to be classified as a resident, what steps must be taken by an alien who is holding one of the visas listed above, is out-of-status or is undocumented?

- (a) He or she must present evidence (usually from USCIS), documenting that he or she has taken appropriate steps to obtain a change of status to a classification which does not preclude establishing domicile through one of the following actions:
 - (1) Applying for permanent resident status
 - (2) Applying for and being granted a change of status to a visa category that permits establishing domicile
 - (3) Applying for and being granted “Deferred Action for Childhood Arrivals” (DACA) status
 - (4) Applying for asylum
 - (5) Applying for refugee status
 - (6) Applying for the Family Unity Program
 - (7) Applying for Temporary Protected Status
 - (8) Applying for VAWA Self-Petition. (Available for battered spouses or children of U.S. citizens or lawful permanent residents.) Authorized under the immigration provisions of the Violence Against Women Act (VAWA).
 - (9) Applying for the Family Unity Program, LIFE Act (LIFE Legalization), and LIFE Act Family Unit Provisions
 - (10) Applying for “withholding of removal” (formerly called “withholding of deportation”) under the Immigration and Nationality Act (INA 241(b)(3)) or under the Convention Against Torture (“CAT”). CAT protections relate to the obligations of the United States under Article 3 of the United Nations Convention Against Torture.
- (b) He or she must meet the requirements of one-year physical presence, coupled with the intent to make California home for other than a temporary purpose. The one-year duration may not begin until application has been made for a change of status noted in (a) above.
- (c) However, aliens seeking a change to a visa category that permits establishing residency under (a)(2) or seeking DACA status under (a)(3), above, cannot be classified as a resident until the application for a new visa or DACA status, as the case may be, has been granted. Once the application has been granted, the one-year durational requirement may be counted from the date of application.

7. What can a student do if he or she does not have documentation from the USCIS as discussed above?

In some circumstances, students may not have the appropriate documents from the USCIS. In such cases, districts may wish to develop policies for permitting

alternative methods of documenting that an application has been filed (e.g., an affidavit from an attorney).

8. Which alien visa statuses are considered eligible to establish residence?

Aliens capable of establishing domicile include, but are not limited to, those holding valid visas in the following categories: A-1, A-2, A-3, E-1, E-2, **E-2C**, E-3, G-1, G-2, G-3, G-4, G-5, H-1B, H-1C, H-4 (if spouse or child of H-1B or H-1C), I, K-1, K-2, K-3, K-4, L-1A, L-1B, L-2, NATO 1-7, N-8, N-9, O-1, O-3 (if spouse or child of O-1), and R-1, R-2, **Special Immigrant Visa (SIV)**, T-1, T-2, T-3, T-4, T-5, **T-6**, U-1, U-2, U-3, U-4, U-5, V-1, V-2, V-3. **Note: In all cases, aliens admitted to the United States on an immigrant visa status would be considered eligible to establish residence even if a particular visa number is not listed here.**

9. When an alien student holds an Employment Authorization Document Card (EAD), is he or she capable of establishing residence?

Please note that in October 2009, the Department of Homeland Security (DHS) announced that the following I-688 EAD's were all expired and they would no longer verify the alien information found on these forms:

- I-688 (Temporary Resident Card)
- I-688A (Employment Authorization Card)
- I-688B (Employment Authorization Card)

Therefore, the I-766 EAD is currently the only EAD card issued by USCIS. It is issued to aliens who have been granted temporary permission to work in the United States, and was designed to replace the I-688B. It allows the recipient to remain and work in the United States, but does not grant any other benefits. In addition to other alien information displayed on the EAD card, the I-766 includes immigration the category/code allowing the alien to work in the United States, which may or may not be eligible to establish residency for tuition purposes. If the district is not able to readily determine whether the indicated immigration category/code is capable of establishing residency for tuition purposes, a request by the admissions office for further information substantiating the person's status would be in order.

10. Can an unmarried minor on a visa that precludes establishing residence derive residence from a parent who is a California resident?

Generally, the residence of an unmarried minor alien may be immediately derived from his/her parents. However, minors who are in this country on visas that preclude establishing domicile or are undocumented, are residents of their country of origin as a matter of federal law. Since there can only be one residence, such alien minors cannot be residents of California, even though state law would otherwise permit them to derive residence from their parents. Once

steps are taken to change their status to one that allows residence, they would derive the parent's residence status immediately (no waiting period).

- 11. What residence status would be given a minor child who is born in the United States and is a citizen, but whose parents are precluded from establishing domicile in the United States (for instance, the parents may be undocumented or on visas that preclude establishing domicile)?**

The minor children of alien parents 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 thus citizens, and otherwise meet applicable residency laws. (Note: These individuals are entitled to the full rights that United States citizenship brings.)

- 12. Are aliens required to provide their Permanent Resident Card (green card) to the admissions staff?**

No. However, the burden of proof of status is with the student. The district may indicate what kind of documentation it needs in the way of proof, but it is inappropriate to just ask to see the green card unless the student volunteers to show it. There must be some evidence that the student is legally in the United States. This means the person should have documents from the USCIS showing that he/she was admitted legally and/or has applied for permanent status (and will probably voluntarily show the "green card").

- 13. Are "B" visitor visa students permitted to attend or enroll in California community colleges?**

As indicated in Legal Advisory 07-01 (Q&A 34), please note that federal immigration law provides that: "An alien who is admitted as, or changes status to, a B-1 or B-2 nonimmigrant on or after April 12, 2002, or who files a request to extend the period of authorized stay in B-1 or B-2 nonimmigrant status on or after such date, violates the conditions of his or her B-1 or B-2 status if the alien enrolls in a course of study." (8 C.F.R. § 214.2(b)(7).) Colleges should consult their legal counsel about the ramifications of the federal restrictions on the admission and enrollment of students who enter the United States in visitor status.

- 14. What is the difference between an "out of status" and "undocumented" alien – is there a difference?**

"Out of Status" refers to a visa holder who violates his visa status by not following the visa requirements, staying longer than the expiration date of the visa and/or I-94, becoming 21 (aging out), or engaging in activities not permitted for the visa. 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.

An “**Undocumented Alien**” is one who entered the country illegally and has not applied for legalization pursuant to provisions of federal law. Undocumented aliens cannot become California residents for tuition purposes because they are precluded by federal law from establishing domicile in the United States.

- 15. Under the federal government’s “Deferred Action for Childhood Arrivals” (DACA) program, students may be approved to receive a deferral of deportation and may apply for employment authorization. Does approval under DACA preclude students from qualifying for the AB540 nonresident tuition fee exemption?**

As it relates to the question concerning AB 540 eligibility for DACA approved students, Legal Advisory 07-01 provides the following concerning the AB 540 Nonresident Tuition Fee exemption:

“This benefit is available to all U.S. citizens, permanent residents of the U.S., and aliens who are not nonimmigrants (including those who are undocumented), who meet all other eligibility criteria.” [emphasis added]

Undocumented students that are being granted “Deferred Action” under the DACA program are not being granted “nonimmigrant” status (“nonimmigrant” status refers to individuals that are permitted to enter the U.S. on a temporary basis, whether for tourism, business, temporary work, or study). Instead, the USCIS DACA FAQs webpage indicates that “Deferred action is a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion” and that “Deferred action does not confer a lawful immigration status.” [emphasis added] Therefore, being approved for DACA does not preclude a student from qualifying for the AB 540 nonresident tuition fee exemption because they do not gain “nonimmigrant” status through DACA approval. For additional information concerning AB 540, please refer to Question 23 (item 1) of this document.

- 16. Are students approved for the “Deferred Action for Childhood Arrivals” (DACA) program eligible to establish California residence for tuition purposes?**

The DACA program was established by the U.S. Department of Homeland Security (DHS) in June 2012. Under this program, individuals meeting specified requirements can apply to have a deportation action deferred for two years, subject to renewal for an additional two years. Students under DACA status are considered by DHS to be lawfully present in the United States during the period of deferred action (DACA approved students will receive an I-821 Approval Notice indicating dates through which DACA status is valid).

On June 5, 2014, the United States Citizenship and Immigration Services (USCIS) updated its Frequently Asked Questions regarding Consideration of Deferred Action for Childhood Arrivals (DACA). Of significance, the USCIS clarified that “individuals granted deferred action are not precluded by federal law from establishing domicile in the U.S.” (Frequently Asked Questions, #5.) Based on this clarification, we have concluded that students who have been granted DACA status have taken appropriate steps to obtain a change of status from the applicable federal agency to a classification which does not preclude establishing domicile. (See, Cal. Code Regs., tit. 5, § 54045(c).) Thus, for residency determinations made for terms starting on or after June 5, 2014, if the student otherwise meets the requirements of California law related to physical presence and the intent to make California home for other than a temporary purpose, the student can be classified as resident for purposes of assessing tuition, awarding Board of Governors Fee Waivers, and determining eligibility for services that require California residency. See Item 6 above for specific criteria.

While DACA status is conferred for only two years, subject to renewal, as a general rule residency classification will not be impacted by the renewal requirement. Once a student has been classified as a resident, colleges are not required to determine the student’s classification again unless the student has not been in attendance for more than one semester or quarter. (Cal. Code Regs., tit. 5, 54010(a).)

See item number 6 above for specific steps that must be taken by DACA approved students, and other alien students, to be classified as a resident.

Note: According to a February 17, 2015 USCIS statement, the existing DACA program discussed above was not affected by a federal District Court’s temporary injunction issued February 16, 2015, which only pertained to the “DAPA” [Deferred Action for Parent’s of Americans and Lawful Permanent Residents] and the “expanded” DACA programs (ultimately, this temporary injunction was made permanent after the U.S. Supreme Court split 4-4 in a case appealing a nationwide injunction on the DAPA and “expanded” DACA programs). Thus, for the existing and still in-effect DACA program, individuals may continue to request an initial grant of DACA or renewal of DACA under the applicable federal guidelines.

17. What is the residence capability of persons from Guam or Puerto Rico (Trust Territories), the Federated States of Micronesia, Palau, Kofrae, Ponape, Truk, Yap, Marshall Islands, American Samoa, and Tonga?

Persons from these geographic areas do not have visas, but are eligible to establish residence, unless they have applied for an F-1 (Student visa), which would preclude establishing domicile in the United States.

STUDENTS ELIGIBLE TO ESTABLISH RESIDENCE

The following citizenship/immigration 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 or to adjust status (Form I-485)
- Applicants for legalization pursuant to Immigration Reform and Control Act (IRCA)
- Asylees and asylum applicants
- **Refugee applicants**
- Applicants for “withholding of removal” (formerly called “withholding of deportation”) under the Immigration and Nationality Act (INA 241(b)(3)) or under the Convention Against Torture (“CAT”). CAT protections relate to the obligations of the United States under Article 3 of the United Nations Convention Against Torture.
- Applicants for the Family Unity Program, LIFE Act (LIFE Legalization), and LIFE Act Family Unity Provisions
- 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.
- Persons from Guam or Puerto Rico (Trust Territories), the Federated States of Micronesia, Palau, Kofrae, Ponape, Truk, Yap, Marshall Islands, American Samoa, and Tonga do not have visas, but are eligible to establish residence, unless they have applied for an F-1 (Student visa), which would preclude establishing domicile in the United States.
- Under the “Jay Treaty,” American Indians born in Canada have the right to pass and re-pass into the United States. They are subject to regulations of the United States Immigration and Naturalization Service. Only Indians who possess at least one-half degree of American Indian blood can take advantage of the border crossing provision of the Treaty. (Canada does not recognize this Treaty and considers American Indians to be subject to the provisions of their Immigration Act.)

- Students granted the “Deferred Action for Childhood Arrivals” (DACA) status (see questions 6, 15, and 16)
- Aliens admitted to the United States on an immigrant visa status would be listed below.

The following visa statuses MAY establish residency:

A-1 to A-3	Foreign government officials, employees, family and servants
E-1, E-2, E-2C, E-3	E-1 and E-2 relate to treaty trader and treaty investor, spouse and children and E-2C relates to long-term foreign investors in the CNMI (Commonwealth of Northern Mariana Islands). The E-3 visa program is for Australian nationals that work in the U.S. in "specialty occupations" and in terms of provisions for presence in the United States is similar to that of the E-1 and E-2 visa types.
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-1B1, 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-1B1, 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
SIV	Special Immigrant Visa (SIV) Special immigrant Afghanistan or Iraq national who worked with the U.S. armed forces as a translator; Special immigrant Iraq national who was employed by or on behalf of the U.S. government; and Special immigrant Afghanistan national who was employed by or on behalf of the U.S. government or in the International Security Assistance Force (ISAF) in Afghanistan.
T-1 to T-6	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 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;

NOTE: Aliens admitted to the United States on an **immigrant** visa status would be above.

STUDENTS INELIGIBLE TO ESTABLISH RESIDENCE

The following visa/immigration 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-1B1	Temporary Worker nonimmigrant visa for citizens of Singapore and Chile. Spouses and/or children on derivative H-4 may not establish residence.
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, H-1B1 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-1B1, 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, S-7	Informant of criminal organization; informant of terrorism information (S-7 is a derivative "S" classification for an alien

spouse, married or unmarried son or daughter or parent of an alien witness or informant under an S-5 or S-6 visa)

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)

- Aliens under an “Order of Supervision” are also not able to establish California residence for tuition purposes. Aliens are released from custody under an “order of supervision” when they are subject to a “final order of removal” that the INS is unable or unwilling to execute. Aliens that are subject to an order of removal are those that have been determined inadmissible or removable according to various provisions of the Immigration and Nationality Act.
- With the exceptions of “advance parole” for individuals with a pending I-485 (*Application to Register Permanent Residence or Adjust Status*), Aliens on “parole” status are admitted only on a temporary basis and as such are not eligible to establish California Residency.
- Visitors possessing a Border Crossing Card (BCC), Bering Straits (BE agreement entrants, Visa Waiver Program (VWP) entrants under nonimmigrant categories WB and WT.
- Any alien whose very presence is unlawful, or those who overstay his/her visa (Undocumented or Out-of-Status).

Entitlement to Residence Classification

17. Are certain students entitled to “automatic” residence classification?

Yes. The California Legislature has granted residence classification to certain persons without the need to prove that they have met the durational or intent requirements usually associated with establishing residence. Of course, if a student claims to fall within one of these exceptions, he or she must be able to provide proof of eligibility.

As discussed below, districts also have the option of granting residence classification in some circumstances. Districts are also required or permitted to exempt certain nonresident students from the payment of nonresident tuition. Full information on all of these matters is beyond the scope of this document, districts should also be familiar with all applicable statutes and regulations that cannot be fully described in this format.

18. ARE MILITARY PERSONNEL AND THEIR DEPENDENTS STILL ENTITLED TO RESIDENT CLASSIFICATION?

Yes, but the law changed somewhat effective January 1, 2013, to allow for a longer period of residence classification for discharged members of the military stationed in California. See also discussion below related to law changes concerning nonresident veterans and in-state tuition eligibility (AB 81 approved by Governor Brown on June 24, 2015, which, among other things, added Education Code section 68075.7).

ACTIVE DUTY MILITARY STUDENTS

EC 68075; T5 54042; LEGAL OPINION 10-05

Students who are members of the armed forces of the United States domiciled or stationed in California on active duty are entitled to resident classification for purposes of determining the amount of tuition and fees for the duration of their attendance at a community college as long as they remain on active duty as of the residence determination date. 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 community college. Please note that exclusions or limitations from residency classification for active duty military students related to students “seeking a graduate degree” or “members of the armed forces who were assigned for educational purposes to state-supported institutions of higher education” are no longer applicable under the current statute and federal law. --- *(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.)*

See Legal Opinion 10-05, which analyzes the effect of the 2008 reauthorization of the federal Higher Education Opportunity Act (HEOA) on tuition rates for members of the armed forces on active duty, their spouses, and dependent children. As indicated in Legal Opinion 10-05, the federal law changes in the HEOA have broadened the applicable situations in which a member of the armed forces and his or her dependents may receive the benefit of state resident status for purpose of tuition and fees, including where the military member is “domiciled” in this state, but not stationed in California on active duty.

DEPENDENTS OF ACTIVE DUTY MILITARY MEMBERS **EC 68074; T5 54041**

A 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 domiciled or 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 so long as he or she remains continuously enrolled at that community college. As noted above, see *Legal Opinion 10-05*.

DISCHARGED MEMBERS OF THE ARMED FORCES EC 68075.5; T5 54041

A student who was a member of the armed forces of the United States stationed in California on active duty for more than one year immediately prior to being discharged shall be exempt from paying nonresident tuition for up to one year if he or she files an affidavit with the community college stating that he or she intends to establish residency in California as soon as possible. This one year exemption shall be used while the student lives in this state and within two years of being discharged (effective January 1, 2013, AB 2478 amended Education Code section 68075.5 to give the student two years to start the one year exemption period as the student may need to temporarily to return to their home state after discharge and may not be able to immediately start their education in California). A former member of the armed forces of the United States who received a dishonorable or bad conduct discharge shall not be eligible for this exemption.

NONRESIDENT VETERANS AB 81 (APPROVED BY GOVERNOR JUNE 24, 2015)

In August 2014, the Veterans Access, Choice, and Accountability Act of 2014 (VACA Act) was signed into law. This required the U.S. Department of Veterans Affairs (VA) to disapprove programs of education under the Montgomery GI Bill-Active Duty (MGIB-AD) and Post-9/11 GI Bill education benefit programs (Chapters 30 or 33, respectively, of Title 38, U.S. Code) at public institutions of higher learning if the school charges qualifying nonresident veterans and other qualifying individuals ("covered individuals") tuition and fees in excess of the in-state rate for resident students for terms beginning after July 1, 2015 therefore, California Community Colleges proceeded to implement "in-state" rates for "covered individuals" effective for academic terms beginning after July, 1 2015 as required by enacted Education Code section 68075.7 (AB 81, 2015). For the specific criteria for determining eligibility for "covered individual status" and other VACA Act implementation guidance, please refer to the linked [August 4, 2015 Chancellor's Office memorandum](#).

EFFECT OF MILITARY RESIDENT CLASSIFICATION EC 68074; 68075

Please note that the resident classification granted under sections 68074 and 68075 is restricted to tuition and fee purposes, such that a student could not, for example, qualify to serve as a student governing board member under Education Code section 72023.5 (which requires that student members be California residents) unless the student otherwise met residency standards.

19. Can the spouse of a member of the military become a California resident if the military spouse has not taken steps to change his/her residence?

Yes, two people who are married do not always have the same residence. Each student's residence must be independently determined. If the student came to California in the company of his/her spouse, who is in the military, transferred to this state, there is a presumption that the student is a nonresident.

20. Are there special provisions for the military person who was a California resident and was transferred on military orders out of the state or country; and, who upon return to California, enrolls at a community college? Is this person automatically considered to be a resident?

The person would remain a California resident if his/her "Leave and Earnings Statement" continues to indicate California as the residence, and the person has done nothing while out of state to relinquish residence.

Members of the military who are stationed out of California are automatically exempt from payment of California state taxes for the time they are absent from the state, if the military income is the sole income. If the military person had income from other sources, the person is subject to California taxes, on all other income wherever earned.

Permissive Grants of Residence Classification.

21. Are districts permitted to grant resident status to some students?

Yes. In addition to those instances when districts must grant resident status, there are circumstances when districts are allowed to grant resident status to students who would not otherwise meet the durational and intent restrictions of residency.

For example, a district may classify a student who has been hired by a California public agency as a peace officer as a resident for purposes of enrollment in police academy training courses. (Ed. Code, § 76140.5.)

A district may classify a student as a resident if he or she lives with a parent who meets the requirements for agricultural laborers, or the student meets the requirements for an agricultural laborer. (Ed. Code, § 68100; T5, § 54048.)

A district may grant resident classification to students who are full-time employees of an institution or state agency or to students who are children or spouses of full-time employees of an institution or state agency until they have resided in California for the minimum time necessary to become a resident. The term "institution" refers to any university or college of the California State

University or Colleges (including the California Maritime Academy), the University of California, or any California Community College. (Caution: under this section, an employee of any state agency is one who is assigned to work outside the state.) (Ed. Code, § 68079.)

Education Code section 68085 also permits the California Community colleges, and other California public postsecondary segments, to classify a foster youth student as a resident for tuition purposes until he or she has resided in the state for the minimum time needed to become a resident, if the student meets the following requirements:

- 1) Currently resides in California
- 2) Is 19 years of age or younger
- 3) Is currently a dependent or ward of the state through California's child welfare system, or was served by this system and is no longer being served either due to emancipation or aging out of the system

As it relates to determining student eligibility for the foster youth residency exception, and as required for numerous other residency exceptions, districts will need to rely on actual evidence and not a self-certification that the student is or was a dependent or ward of the state through California's child welfare system (e.g., standardized documentation currently given to foster youth by county welfare departments as evidence of this transition for financial aid or other purposes, including "Ward of the Court" letters or "Proof of Dependency" cards). Please note that the form of documentation may vary by county, but should include certain essential information, such as "Youth Name," "Date of Birth," "Current Mailing Address and ILP Contact Number," "County Identification Number" or "Probation Identification Number," and "Dependency/Wardship Start Date." The form of documentation provided to emancipating youth by each county is optional. However, a laminated, wallet-sized card is the State Department of Social Services recommended form of dependency verification.

For students who have not emancipated or aged out of care, similar foster care verification can also be obtained from the county welfare departments by the applying student. Districts permitting this residency exception may want to revise its local residency questionnaire to help identify potentially eligible students.

Exceptions to Payment of Nonresident Tuition.

22. Are there times when persons who are not California residents are nevertheless excused from paying nonresident tuition?

Yes. Although the usual consequence of being classified as a nonresident is the requirement to pay nonresident tuition, there are times when nonresident students must be excused from paying nonresident tuition (e.g., AB 540

students), and there are other times when a district has the option of exempting students from paying nonresident tuition (e.g., a district adopts a policy that “all nonresidents who enroll for six or fewer units” will be exempted from nonresident tuition pursuant to Education Code section 76140(a)(1)---see question 24). It is important to remember that being excused from the payment of nonresident tuition does not mean that the student has been classified as a resident and it may also mean that apportionment may not be claimed.

23. When must a district excuse the payment of nonresident tuition?

1. One major exception from the payment of nonresident tuition is often referred to as the “AB 540” exemption. Pursuant to Assembly Bill 540 (Ed. Code, § 68130.5; Cal.Code Regs., tit. 5, §§ 54045.5 and 58003.6), students who attended high school in California for three or more years (or, effective January 1, 2015 pursuant to AB 2000, students who attained credits earned in California from a California high school equivalent to three or more years of full-time high school coursework and attended a total of three or more years in California elementary schools, California secondary schools, or a combination of those schools) 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 (other than “T” or “U” nonimmigrant visa holders in accordance with Education Code section 68122 and effective January 1, 2013 pursuant to AB 1899 of 2012), as defined by federal law, are not eligible for the exemption. Students who are exempt from the payment of nonresident tuition under Education Code section 68130.5 may be reported by a community college district as a full-time equivalent student for apportionment purposes. 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 establishing a domicile in the United States.

The Chancellor's Office has issued guidelines ([Legal Advisory 07-01](#)) for the implementation of Education Code section 68130.5, which is currently being revised to reflect the newly enacted AB 1899 which allows “T” and “U” visa holders to be eligible for AB 540, AB 130 and 131 (2011-the “California Dream Act,” which allows AB 540 eligible students to apply for and receive student financial aid from publicly administered student financial aid sources), and the AB 2000 (2014) provisions noted above. The guidelines address specific issues that

may arise under the section and may be useful to districts in meeting their responsibilities.

2. Pursuant to AB 2364 (Holden, Chapter 299, Statutes of 2016; Ed. Code, § 76140) and effective January 1, 2017, a district must exempt all qualifying nonresident special “part-time” students (other than those with a non-immigrant status, such as those present in the United States on a B Visitor Visa *) from the nonresident tuition fee and expressly allows districts to report their attendance as resident FTES for apportionment purposes. Under an AB 288 (Holden, Chapter 618, Statutes of 2015) College and Career Access Pathways Partnership (CCAP) dual enrollment agreement with a school district, qualifying special part-time student status permits enrollment up to 15 credit units and the units may not constitute more than four community college courses per term in accordance with Education Code section 76004(p). Under non-CCAP dual enrollment, qualifying special part-time student status permits enrollment up to 11.99 credit units per term in accordance with Education Code section 76001(d). Please refer to Legal Opinion 16-02 for more information on the two types of dual enrollment.

Please note that the AB 2364 provisions described above modified the provisions of previously approved SB 150 (Lara, Chapter 575, Statutes of 2013). SB 150 provided that the nonresident tuition exemption applicable to eligible special part-time students was permissive, which under AB 2364 has now been modified to be mandatory. Additionally, under SB 150 the attendance generated by exempted students was not eligible to be reported for apportionment purposes, but under AB 2364 attendance generated by exempted students is eligible to be reported for apportionment purposes.

[* As an interpretation of AB 2364, please note that the Chancellor's Office has determined that nonresident special part-time students that hold a “T” or “U” non-immigrant visa would NOT be excluded from this required nonresident tuition fee exemption and that eligible special part-time students must reside in California during the period of attendance.]

3. Pursuant to SB 141 (Correa, Chapter 576, Statutes of 2013) and effective January 1, 2014, districts are required to exempt from nonresident tuition a nonresident student who is a U.S. citizen and who resides in a foreign country, if that student meets all of the following requirements:
 - i. Demonstrates a financial need for the exemption.
 - ii. Has a parent or guardian who has been deported or was permitted to depart voluntarily under the federal Immigration and Nationality Act.
 - iii. Moved abroad as a result of the deportation or voluntary departure.
 - iv. Lived in California immediately before moving abroad.

- v. Attended a public or private secondary school in California for three or more years.
- vi. Upon enrollment, will be in his or her first academic year as a matriculated student in California public higher education.
- vii. Will be living in California and will file an affidavit with the community college stating that he or she intends to establish residency in California as soon as possible.
- viii. Documentation shall be provided by the student as required by statute as specified in Education Code section 76140(a)(5).

Districts are authorized to claim state apportionment for FTES generated by nonresident students exempted under this provision and their attendance should be reported as resident FTES for state apportionment purposes.

A student receiving a nonresident tuition exemption under SB 141 does not receive resident status for the purpose of fees or financial aid. Rather they are exempt from nonresident tuition fees under this law. These students do not qualify for the BOG Fee Waiver or any other state financial aid until they establish California residency. As citizens, SB 141 students may apply and qualify for federal financial assistance such as Pell, FSEOG and federal student loans.

- 4. Another important exemption from the payment of nonresident tuition is for dependents of any individual killed in the September 11, 2001, terrorist attacks on the World Trade Center in New York City, the Pentagon building in Washington, D.C., or the crash of United Airlines Flight 93 in southwestern Pennsylvania. The exemption applies if the dependent meets the financial need requirements for the Cal Grant A Program under Education Code section 69432.7 and either the dependent was a resident of California on September 11, 2001, or the individual killed in the attacks was a resident of California on September 11, 2001. (Ed. Code, §§ 68121, 76300(j)-(l).)
- 5. Districts are required to exempt students taking noncredit courses from payment of nonresident tuition. (Ed. Code, § 76380.)
- 6. Districts are required to exempt apprentices taking classes of related or supplemental instruction from payment of nonresident tuition. (Ed. Code, §76350 and Lab. Code, §3074.) A student claiming an exemption as an apprentice should provide documentation such as a card or certification from the Joint Apprenticeship Committee, or the student's employer, evidencing apprentice status. Special part-time students who are enrolled only for high school credit should not be charged nonresident tuition because they are covered by the "free school" provisions of the California constitution.

24. When does a district have the option of excusing a student from paying nonresident tuition?

1. A district may exempt all nonresidents who enroll for six or fewer units. This is an “all or nothing” exemption - districts cannot exempt some students taking six or fewer units and charge nonresident tuition to other students who are taking six or fewer units. (Ed. Code, §76140(a)(1).)
2. A district may exempt not more than 10% of its nonresident students who are citizens and residents of a foreign country from nonresident tuition IF the students demonstrate financial need. (Ed. Code, §76140(a)(2).)

It is important to note that the above optional exemptions do not authorize districts to claim apportionment funding for nonresident students who are exempted from nonresident tuition under these provisions.

Collection of Residency Data

25. Are students required to sign the residency questionnaire?

Yes, the California Code of Regulations, title 5 specifies that each student shall be classified as to residence at the time applications for admission are accepted and whenever a student has not been in attendance for more than one semester or quarter; and, title 5, section 54010 clearly requires that the information on which residency determinations are made is to be certified under oath or penalty of perjury by the applicant. Districts should verify to students that if they knowingly provide false information, they may be subject to discipline.

However, pursuant to California Code of Regulations, title 5, section 54300, a district may authorize the electronic submission of any form or document and the use of digital signatures for any documents requiring a signature. Please refer to this section for the technical specifications and standards that must be met in order to use electronic signatures in lieu of manual signatures. The current electronic signatures standard became effective May 9, 2015.

26. Is it necessary to collect residency information from students enrolling only in noncredit classes?

All students should fill out enrollment and residency forms. Nothing in statute or regulations relative to residence determination would allow differential treatment of students. However, students taking noncredit courses are, of course, exempt from paying nonresident tuition.

27. Is it necessary to collect residency information on students enrolled in distance education courses?

Students enrolled in distance education courses are subject to the same residence determination requirements and exemptions as traditional students. If a student enrolling in a distance education course is deemed to be a non-resident, that student is subject to nonresident tuition unless otherwise exempted.

Please also be aware that the Chancellor's Office has determined that the AB 540 exemption from Nonresident Tuition (see item 23, above) is not available for persons who are absent from California, but who are taking distance education courses from California Community Colleges.

28. Is it necessary to collect residency information on special part-time or full-time K-12 students enrolled in college courses?

All special part-time or full-time students enrolled in community college courses are subject to the same residence determination requirements as traditional students. If a student enrolls for college credit, he or she is subject to nonresident tuition unless he or she is entitled to resident classification or an exemption from paying nonresident tuition or unless the district has elected to grant resident classification or an exemption under discretionary statutes. See question 23 (item 2) for mandatory exemption applicable to special part-time students.

29. Is it necessary to collect residency information on students enrolled in contract education courses?

Yes, all students, even via contract education, need to have their resident status determined in accordance with Education Code section 68040. Also consider that although resident students that enroll in Credit contract education can be exempted from the regular enrollment fee pursuant to Education Code section 76300(e)(3), there is no express exemption provided for nonresident students from the nonresident tuition fee, even when enrolling in contract education. Thus, as indicated in legal opinion 01-19, community college districts must charge and report nonresident tuition for students enrolled in for-credit contract education courses who are residents of another state or a foreign country.

Residence Determinations.

- 30. Would someone (other than a member of the military or military dependent) who provides residency documentation of having lived outside of California and earned income, but did not file a California resident income tax return, be classified as a resident?**

Generally, no. A California resident must file a California income tax return on all income, wherever earned. Claiming an exemption from state income tax as a nonresident is inconsistent with a claim of residency for tuition purposes.

- 31. Do students who have been determined to be residents by community colleges automatically retain that status when they transfer to CSU or UC?**

No. CSU and UC make residence determinations for all their students, including transfer students.

The basic laws governing residency determination are generally the same for all three systems of public higher education. However, because CSU and UC have their own regulations and are subject to some different laws, students who were considered residents at a community college or who did not pay nonresident tuition at a community college may find that they must pay nonresident tuition at CSU or UC, often due to the financial independence requirement.

For example, UC-Santa Barbara notifies its students that “University residence regulations require that students who will not reach 24 years of age by December 31st of the calendar year of the term for which classification as a resident is requested, and who are not dependent upon a California resident parent, demonstrate financial independence in addition to the 366 day physical presence and intent requirements. *It should be noted that this requirement makes it extremely difficult for most undergraduates who are not dependent on a parent whose principal place of residence is California, including transfer students from community colleges and other post-secondary institutions, to qualify for classification as a resident at a University of California campus.*”

California Community Colleges
Chancellor's Office
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