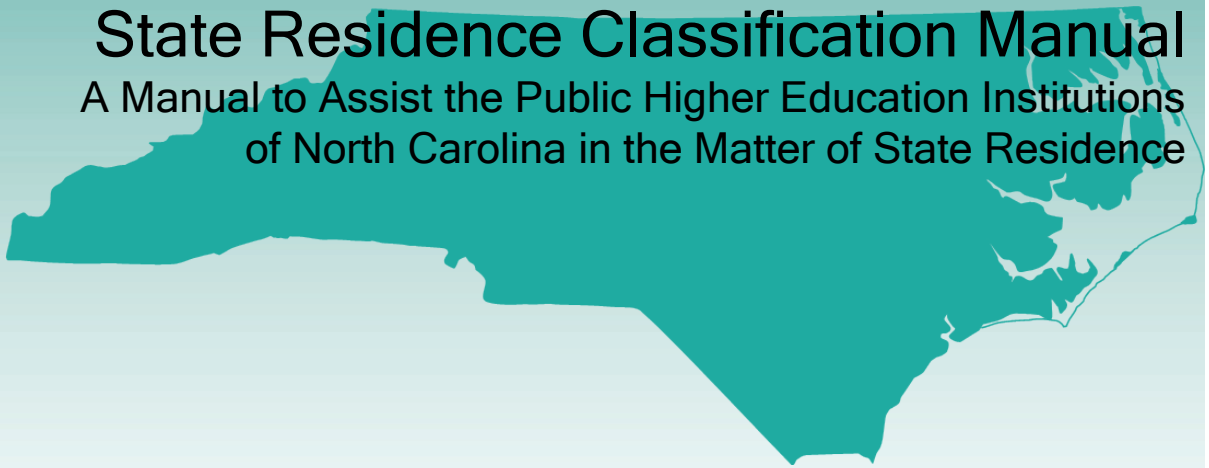


# North Carolina

## State Residence Classification Manual

A Manual to Assist the Public Higher Education Institutions  
of North Carolina in the Matter of State Residence



Fall 2011



the UNIVERSITY of NORTH CAROLINA



NORTH CAROLINA  
COMMUNITY COLLEGES

### **Approval for Use**

This *Manual* was approved on August 4, 2010, by UNC President Thomas W. Ross pursuant to The University of North Carolina Policy Manual Sec. 900.1 for use by constituent institutions of The University of North Carolina. The State Board of Community Colleges endorsed this *Manual* on August 20, 2010, for guidance purposes for North Carolina community colleges.

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# I. Introduction

## A. Public Policy

North Carolina created and maintains its public institutions of higher education<sup>1</sup> primarily for the benefit of the residents of North Carolina, and its institutions are generously supported by the General Assembly and the public at large. This substantial commitment of public resources to higher education is based on the proposition that the state benefits significantly from the existence of large numbers of residents whose capacity for the effective discharge of civic, professional, and social responsibilities has been enhanced by the opportunity for advanced educational experiences. Thus, the state's policy is to provide the benefits of its institutions of higher education at as low a cost as is practicable to those students whose quality and duration of residence in North Carolina render them "people of the State."<sup>2</sup>

While the state has not limited admission only to North Carolina residents, it has determined that nonresidents shall be charged higher tuition than residents,<sup>3</sup> and the General Assembly has enacted detailed laws for determining who does - and who does not - qualify for the lower in-state tuition. The General Assembly has also enacted laws making some categories of students eligible for tuition waivers under certain circumstances,<sup>4</sup> In addition, the General Assembly provides some state funds to assist North Carolina students who attend independent (private) colleges and universities located in this state.

North Carolina's courts have affirmed the state's public policy of providing lower tuition only to North Carolina residents, and have highlighted the importance of the classification process in fulfilling the legal mandates that arise from this public policy:

[O]ur General Assembly and our state universities have a substantial interest in only bona fide state residents for tuition purposes being afforded this status. That is, our state university system has a serious interest in our universities not becoming migratory destinations for out-of-state residents who move here chiefly to take advantage of the low tuition for quality education available to residents at these universities. In addition, given the potentially large number of applicants for state residency status at our state universities, our state university system has a significant interest in efficient and streamlined procedures for reviewing applicant qualifications.<sup>5</sup>

## B. Purpose of Manual

A variety of administrators in North Carolina's institutions of higher education are charged with the duty of implementing the laws governing the determination of residence for tuition purposes. The purpose of this *Manual* is to aid these administrators in carrying out their responsibilities by outlining the relevant laws and procedures necessary to effectively render residence classification decisions.

Independent colleges and universities in North Carolina also follow the definitions of residency in this *Manual* for purposes of determining the number of North Carolina students and licensure students enrolled at private institutions of higher education located in this state who are eligible for the Legislative Tuition Grant, the State Contractual Scholarship Fund, and/or any other State-funded programs of financial assistance.<sup>6</sup>

This *Manual* may also be used by students and their families to assist them in understanding both the legal and procedural requirements of resident classification for tuition purposes at North Carolina's institutions of higher education. Students are encouraged to contact the campus (or campuses) to which they have applied and/or in which they are enrolled for further information about residence classification laws and procedures.

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<sup>1</sup>References in this Manual to public institutions of higher education include the constituent institutions of the University of North Carolina and North Carolina community colleges. See, N.C.GEN. STAT. § 116-143.1(a)(3) (hereinafter G.S.).

<sup>2</sup>North Carolina Constitution, Art. IX, Sec. 8, 9.

<sup>3</sup>G.S. 116-144.

<sup>4</sup>These laws are found in Article 14 of Chapter 116, Chapter 115B, and certain sections of Chapter 115D of the North Carolina General Statutes.

<sup>5</sup>*Norman v. Cameron*, 127 N.C. App. 44, 51; 488 S.E.2d 297, 301 (1997); see also, *Fox v. Trustees of the Consolidated University of North Carolina*, 16 N.C. App. 53; 190 S.E.2d 884 (1972); *Glusman v. Trustees of the University of North Carolina and Lamb v. Trustees of the University of North Carolina*, 284 N.C. 225, 200 S.E.2d 9 (1973).

<sup>6</sup>G.S. 116-22(2), -43.5.

### C. Overview of Residence for Tuition Purposes

Three broad points may be helpful in understanding and implementing state law governing the determination of residency for tuition purposes at institutions of higher education:

**First**, to appreciate the difference between *residence* and *domicile*. Residence is a place of abode, and may be either permanent or temporary. By contrast, domicile is never temporary; rather, it is one's permanent, established home. To be domiciled in a particular place, one must intend to remain there for an indefinite period of time (permanently), and it is the place where one intends to return if absent. A person may have many residences, but may only have one domicile. For purposes of this *Manual*, "domicile" is synonymous with "legal residence."

**Second**, generally speaking, state law mandates that only those who can demonstrate 12 months of uninterrupted *domicile* in North Carolina are eligible for in-state tuition. State law also places on applicants the burden of establishing, by a preponderance of evidence, that they are domiciled, rather than merely residing, in North Carolina. The 12-month (365 days) qualifying period begins at the time that a cluster of domiciliary acts is established as confirmed by valid evidence.

To be eligible for classification as a resident for tuition purposes [in-state tuition], a person must establish that his or her presence in the State currently is, and during the requisite 12-month qualifying period was, for purposes of maintaining a bona fide domicile rather than of maintaining a mere temporary residence or abode incident to enrollment in an institution of higher education.<sup>7</sup>

In short, a 12-month presence in North Carolina, even when coupled with a declaration of intent to remain permanently, does not, in and of itself, entitle an applicant to in-state tuition. Campuses still must evaluate evidence of domiciliary acts and make an independent determination of whether a bona fide domicile has been established.

**Third**, state law also makes the legal residence of an individual's living parents or legal guardian prima facie evidence of the individual's legal residence.<sup>8</sup> This means that, at first view without further investigation or presentation of evidence, the legal residence of the applicant is the same as that of his or her living parent(s) or legal guardian. That prima facie evidence may be rebutted or reinforced by other evidence relative to the applicant's age and general circumstances. Generally speaking, for an applicant with out-of-state parents, the older the applicant and more independent the applicant is from his or her parents, the more likely it is for the applicant to be able to demonstrate domicile in North Carolina.

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<sup>7</sup>G.S. 116-143.1(c).

<sup>8</sup>G.S. 116-143.1(e).

## II. Historical Context

Following the mandate that North Carolina public institutions of higher education charge nonresidents higher tuition than residents, the North Carolina General Assembly enacted a statutory framework to determine the residence status and tuition classification of all students enrolled or reenrolled in those institutions. Prior to 1973, this scheme entailed a fairly simple process to determine residence status for tuition purposes. At that time, state law required that only legal residents of the State who have maintained their domicile in North Carolina for at least 12 months immediately prior to the date of enrollment or re-enrollment were eligible for the resident tuition rate. This law specified that “student status in an institution of higher learning in this State shall not constitute eligibility for residence to qualify said student for in-state tuition.”<sup>9</sup> Because time enrolled as a student could not count towards the 12-month residency requirement, most students retained the tuition classification they received at the time of their initial enrollment throughout their time in the institution of higher education.

In 1973, in response to a decision by the United States Supreme Court,<sup>10</sup> the General Assembly amended the applicable law. Nonresident students were no longer precluded from establishing legal residency in the State during the time of their enrollment, and it became possible for students to use time enrolled to meet the 12-month requirement of residency for tuition purposes. The administrative consequences of this change in the law have been substantial. Previously, the law required that each institution of higher education perform only one inquiry into the residence status of most students at the time of their initial enrollment. Now, a second inquiry process was required to investigate the claims of students initially enrolled as nonresidents, but who wished to petition for the resident tuition rate. This reclassification process calls for a two-fold inquiry. First, had the petitioner become domiciled in North Carolina? Second, had the applicant maintained his or her domicile for at least 12 months immediately prior to the term for which in-state status is sought? To answer these questions, the institution must make a detailed inquiry into each petition for reclassification, as measured by established legal principles regarding the location of one’s place of legal residence.

In the years since the 1973 revision, the General Assembly has refined and expanded the law regarding tuition classification, including changes to emphasize elements of the statutes and include statutory definitions and respond to specific legal challenges; provide benefits to those making a significant contribution to our society; and reflect changes in our social values. In 1974, for example, the General Assembly provided a marriage benefit to some North Carolina residents, and the 1975 revision expressly nullified (for tuition classification purposes) the common law presumption that a wife’s domicile is that of her husband. Over the years, the General Assembly also has addressed specific points of tuition classification for minors, established exceptions for domicile loss and domicile reacquisition, and identified exemptions for special employment circumstances. The first of these occurred in 1984, when G.S. 116-143.3 made nonresident armed service members on active duty while abiding in the State eligible for the in-state tuition rate. The General Assembly later made special provisions for employees of the University of North Carolina and for teachers in the North Carolina public schools. Over the years, the law governing residence-for-tuition classification has not been stagnant, but has evolved as legislators endeavored to best serve the state of North Carolina and its residents consistent with the requirements and intent of our state’s constitution.

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<sup>9</sup>G.S. 116-143.1 (1971).

<sup>10</sup>*Vlandis v. Kline*, 412 U.S. 441, 37 L.Ed.2d 163, 93 S.Ct. 2230 (1973).

## III. Definition of Terms

The language of residency determinations includes many legal terms as well as certain lay terms which have a specialized meaning in the context of this *Manual*. North Carolina law clearly distinguishes “legal resident” from “resident for tuition purposes.”<sup>11</sup> A person may be a legal resident of North Carolina for certain purposes, such as voting, but might not meet all of the requirements under North Carolina law to be a resident for tuition purposes. In order to be a resident for tuition purposes, the person must meet the specific legal requirements under North Carolina law which are described in this *Manual*. This is the basis upon which the determination of residency for in-state tuition is made. To ensure accurate interpretation and application of the law, North Carolina institutions of higher education will use the following definitions when classifying students with regard to North Carolina residency for tuition purposes:

***Bona fide:*** In good faith with earnest intent. A person must demonstrate that he or she has established a bona fide, as opposed to a temporary, domicile when seeking residency classification. A bona fide domicile is one in which the person’s relevant conduct and motivation evidences a genuine desire to establish legal residence in North Carolina as opposed to actions performed for some reason other than to make North Carolina the person’s permanent home (such as to become eligible for in-state tuition).

***Burden of Proof:*** The responsibility borne by the applicant to convince the institution of higher education, by a preponderance of the evidence, that the student is a bona fide domiciliary for tuition purposes; this may be established by providing tangible evidence to support relevant conduct of legal residence and its duration as may be required by officials of an institution of higher education.

***Capacity:*** Legal ability to establish residence unimpeded by other factors such as age or non-immigration status. For purposes of legal residence for tuition purposes, capacity includes the ability to remain in North Carolina permanently through one’s own financial resources (a student’s financial resources *may* sometimes include financial aid; see the definition of “Independent” for further information about financial aid). Generally speaking, a minor cannot come and establish residency since capacity resides with a parent; however, a legally emancipated minor may have the capacity to establish residency for tuition purposes.

***Dependent:*** A person defined as a “qualifying child” or “qualifying relative” for income tax purposes by the Internal Revenue Code at 26 U.S.C. §152 (I.R.C.); 26 C.F.R. §1.152-1.<sup>12</sup> Because the definition of “dependent” is very specifically defined by the Internal Revenue Service, IRS regulations should be consulted (See IRS Publication 501 (2009) and IRS Publication 17 (2009)).

Under current law, to claim someone as a dependent for federal and state income tax purposes, the dependent must be a U.S. citizen, U.S. resident alien, non-resident alien, U.S. national, or resident of Canada or Mexico for some part of the year (there is an exception for certain adopted children). A person’s spouse is never considered that person’s dependent.

To be a dependent for income tax purposes, the following factors must be satisfied:

**1. *Relationship:*** The dependent must be the taxpayer’s son, daughter, stepchild, foster child, brother, sister, half brother, half sister, stepbrother, stepsister, or a descendant of any of these.

**2. *Age:*** The dependent must be

a. under the age of 19 at the end of the tax year and younger than the taxpayer (or the taxpayer’s spouse if filing jointly);

b. under the age of 24 at the end of the tax year, a full-time student, and younger than the taxpayer (or the taxpayer’s spouse if filing jointly); **or**

c. any age if permanently and totally disabled at any time during the year.

For purposes of this definition, a *full-time student* is one who is enrolled for the number of hours or courses that the enrolling institution considered to be full-time attendance. The student must be enrolled at the institution during some part of each of any 5 calendar months of the tax year (the 5 months do not have to be consecutive).

**3. *Residence:*** The dependent must have had the same principal residence as the taxpayer for more than half the tax year (certain exceptions apply, including cases of temporary absences, children of divorced or separated parents, parents who live apart, and kidnapped children).

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<sup>11</sup>G.S. 116-143.1.

<sup>12</sup>Future amendments to state and federal law and IRS regulations regarding the definition of dependent for income tax purposes are incorporated by reference into this *Manual*.

**4. Support:** The dependent did not provide more than one-half of his or her own support for the year.

**5. Tax Filing Status:** The dependent is not filing a joint income tax return for the year (unless only to claim a refund); if the parents of a child can claim that child but choose not to do so, no one else can claim the child (including the child himself or herself) unless that person's adjusted gross income (AGI) is higher than that of the child's parents.

The description of the factors outlined above provides the general requirements of dependency. IRS regulations should be consulted for more specific details and definitions.

It is important to note that a person still may be financially dependent on his or her parents for purposes of determining domicile even if his or her parents do not claim the person as a dependent for income tax purposes. Failure to claim a qualifying child or qualifying relative as a dependent does not, in and of itself, establish that the child or relative is in fact financially independent. Financial independence must be established through detailed inquiry by the institution as part of the residence classification process.

**Domicile:** A person's true, fixed, and permanent home and place of habitation of indefinite duration (for an indefinite period of time); it is the place where he or she intends and is able to remain permanently and to which, whenever the person is absent, he or she expects to return. For purposes of this Manual, "domicile" is synonymous with "legal residence."

Domicile may be established by:

- 1. Birth:** In this case, a child has the domicile of his or her parents;
- 2. Law:** In these instances, domicile is defined by law, as in the case of a minor whose domicile is presumed to be that of his or her parents or legal guardians; or
- 3. Choice:** Upon reaching the age of adulthood (age 18), a person of capacity may independently establish a domicile in the state of his or her choice.

One is not guaranteed under the law, however, to always have a state in which he or she qualifies as a resident for tuition purposes. A person can have multiple residences, but can have only one domicile at a given time.

Evidence of North Carolina domicile for tuition purposes includes actions that would normally be characteristic and expected of any permanent resident. A variety of evidence is considered when evaluating requests for in-state tuition status; however, no single factor or combination of factors may be considered conclusive evidence of domicile. Below is an **illustrative list** of the kinds of information and conduct that may be considered as evidence in determining domicile; however, this is not a checklist, and because each application is considered on its own; even those who meet each element below still may not qualify for in-state tuition:

- Living or not living in the home of one's parents
- Voter registration and voting
- Location of jury duty
- Registering, licensing, and maintaining a motor vehicle
- Driver's license or state ID card
- Location of permanent employment
- Filing of North Carolina state income tax return
- Places where one resides during periods between academic sessions
- Location of personal property
- Property tax assessment
- Ownership of residential real property that is one's primary residence (including maintenance and payment of expenses associated with the property)
- Place from which one graduated from high school
- Place of residence prior to enrollment in an institution of higher education
- Memberships in professional associations, unions, civic organizations, etc.
- Sources of one's financial support
- Citizenship or immigration status

It is important to remember that a person can have multiple residences, but can have only one domicile at a given time.



### III. Definition of Terms

***Domiciliary:*** A person who is a legal resident of (is domiciled in) North Carolina.

***Enrollment:*** The status of being registered as a part-time or as a full-time student for an academic term that has begun.

***Evidence:*** Documents and other proof verifying conduct that is provided to officials of an institution of higher education regarding legal residence and its duration necessary to prove that an applicant is entitled to in-state tuition.

***Independent:*** An independent is a person who is legally entitled to claim, and in fact does claim, himself or herself on income tax returns, is not claimed by another person as a dependent on that person's income tax return, and possesses sufficient funds to live and pay tuition and fees at the person's current residence classification without outside financial assistance. If a student qualifies as "independent" for financial aid purposes, that student's financial aid is not considered "outside financial assistance" for purposes of this *Manual*.

Generally speaking, a student cannot be approved as a resident for tuition purposes if that student is financially dependent upon his or her parents or legal guardian(s) who are not legal residents of North Carolina. Parent-financed, parent-guaranteed, or co-signed loans are considered indicators of financial dependence by the student on the parents.

It is important to note that a person may not be financially independent for purposes of determining domicile even if his or her parents do not claim the person as a dependent for income tax purposes. Failure to claim a person as a dependent does not, in and of itself, establish that the person is in fact financially independent. Financial independence must be established through detailed inquiry by the institution as part of the residence classification process.

Factors relevant to the determination of financial independence include, but are not limited to, the following:

- Employment on a full- or part-time basis within North Carolina
- Current and prior year(s) income
- Sources and extent of financial support from parents or guardians
- Sources and extent of other income, including funds in the student's name but not earned by the student (such as educational funds, 529 accounts, and trust funds in the student's name)
- Parents' federal and state income tax forms which do not claim the student as a dependent for tax purposes
- Student's status as financially independent for purposes of federal and/or state financial assistance
- Independent filing by the student of federal or state income tax return
- Student's assets and liabilities
- Information provided by the student on financial aid applications and related documents

***Initial Classification:*** The first classification of residency for tuition purposes assigned to an applicant for admission to a public institution of higher education based on information received as a part of the application for admission to that institution. Every applicant is initially classified as either a resident or nonresident for tuition purposes prior to actual matriculation. Initial classification decisions by one institution are not binding on another institution, nor are initial classification decisions at one academic level binding on another academic level within that same institution.

***Institution of Higher Education:*** Institutions, both public and private, that offer post-secondary instruction including senior institutions (universities and private liberal arts colleges, graduate or professional schools) and two-year institutions (community colleges, junior colleges, technical institutes, and semi-professional schools). G.S. 116-143.1 defines an institution of higher education as any constituent institutions of the University of North Carolina and the community colleges under the jurisdiction of the State Board of Community Colleges (currently, all community colleges in North Carolina are under the jurisdiction of the State Board of Community Colleges). Independent colleges and universities in North Carolina also follow the definitions of residency in this *Manual* for purposes of administering the Legislative Tuition Grant, the State Contractual Scholarship Fund, and any other State-funded financial aid programs.<sup>13</sup>

***Legal Guardian:*** A person who is court-appointed to act in the place of an individual's parent(s) (usually re-

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<sup>13</sup>G.S. 116-22(2), -43.5.

ferred to as a “guardian of the person” or “general guardian”). A legal guardian may be appointed in cases where the minor’s parents are deceased or have had their parental rights terminated. A legal guardian also may be appointed in cases involving juvenile abuse, neglect, or dependency, or where a juvenile has been determined to be undisciplined or delinquent - these cases do not require the death or termination of the parental rights of the juvenile’s parents for a legal guardian to be appointed by the court. A guardianship ends when the person reaches age 18 or is otherwise emancipated.

For purposes of this *Manual*, there are other arrangements relating to the care of a minor that do not have the same legal status as a guardianship. A person other than a parent who claims the individual as a dependent for income tax purposes may not necessarily be the individual’s legal guardian. Adoptive parent(s) are considered the individual’s parent(s), not legal guardian(s). Persons other than the minor’s natural parents who are awarded custody of the minor are “custodians,” not legal guardians - custody may be awarded by a court for a variety of reasons, but legal guardianship is only awarded in cases of juvenile abuse, neglect, dependency, undisciplined, delinquency, or where the natural parents are deceased or have had their parental rights terminated.

**Legal Residence:** Domicile (see definition above). For purposes of this *Manual*, a legal resident is a domiciliary of North Carolina.

**Legal Resident:** A person who is a domiciliary of (is domiciled in) North Carolina.

**Marriage:** See the definition of *Spouse*.<sup>14</sup>

**Minor:** A person under the age of eighteen (18) years. A minor is generally presumed to have the same domicile as that of his or her parents.

**Misrepresentation:** A false and fraudulent misstatement of fact. If an applicant or someone acting on the applicant’s behalf knowingly makes a misrepresentation in connection with a state residency application or appeal, that misrepresentation could lead to a misdemeanor charge.<sup>15</sup>

**Preponderance of evidence:** The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to the fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt; is still sufficient to include a fair and impartial mind to one side of the issue rather than the other. The most acceptable meaning to be given to the expression, proof by a preponderance, seems to be proof which leads the jury to find that the existence of the contested fact is more probable than its nonexistence.<sup>16</sup>

**Presumption:** A legal inference used to place the burden of proof and of producing supporting evidence on one party to a proceeding in order to overcome that presumption.

**Prima Facie:** At first appearance or first view - before investigation. Under North Carolina law, the legal residence of the applicant’s parents **shall be** prima facie evidence of the applicant’s legal residence.<sup>17</sup> This presumption may be rebutted or reinforced by other evidence relative to the age and general circumstances of the applicant.

**Reclassification:** The process of an applicant’s formal request to review pertinent residency facts to determine the correctness or an update of the initial classification of residency for tuition purposes by public institutions of higher education. The process includes the completed reclassification application and all requested supporting documentation by the deadlines established by the institution and this *Manual*.

**Residence:** A place of abode, whether permanent or temporary. “Permanent residence” means the legal residence or domicile, whereas “temporary residence” means one’s abode for an undetermined or temporary duration. A person may have many residences but only one permanent, legal residence (domicile).

**Resident for tuition purposes:** A person who has established legal residence (domicile) in North Carolina and maintained that legal residence for at least 12 months (365 days) immediately prior to his or her classification as a resident for tuition purposes. The applicant must establish that his or her presence in the State is, and during the required preceding 12 months was, for the purpose of maintaining a bona fide domicile rather than maintaining a temporary residence incident to enrollment in an institution of higher education.<sup>18</sup>

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<sup>14</sup>The complete definition of marriage under North Carolina law can be found at G.S. 51-1.

<sup>15</sup>G.S. 115B-6.

<sup>16</sup>Black’s Law Dictionary at 1301 (9<sup>th</sup> ed. 2009); see also, 2 McCormick, Evidence § 339 at 484-485 (6<sup>th</sup> ed. 2006).

<sup>17</sup>G.S. 116-143.1(e).

<sup>18</sup>G.S. 116-143.1(b), (c).

### III. Definition of Terms

*Spouse:* A person who is legally married to another person in accordance with the provisions of North Carolina law. North Carolina law defines marriage as being between a man and a woman. North Carolina does not recognize marriages between persons of the same gender performed in another state even if those marriages are legally valid under the laws of that state.<sup>19</sup>

*Tuition:* The sum charged to students by an educational institution for credit instruction at the time of registration, regardless of the means by which the instruction is delivered. Tuition does not include any other fees charged by the institution of higher education or the costs of textbooks.

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<sup>19</sup>G.S. 51-1; G.S. 51-1.2.

# IV. Laws Governing Classification Determinations

## A. Fundamental Principles of the Law of Domicile

Since the benefit of in-state tuition is generally provided only to legal residents of North Carolina, understanding the legal principles of domicile is fundamental to a correct interpretation and application of North Carolina laws that regulate tuition classification decisions. The primary North Carolina statute requiring domicile for in-state tuition purposes is G.S. 116-143.1. Outlined in this Section are the fundamental principles of the law of domicile.

### 1. *The Concept of Domicile.*

Domicile and its duration are the bases for the classification system used to determine resident status for tuition purposes under North Carolina law. Residency status for tuition purposes contains two basic elements:

- a person's residential presence in a state; **and**
- that person's particular intent related to that presence.

Under North Carolina law,<sup>20</sup> residence and domicile are not the same. A person may have a residence in one location and his or her domicile in another. While residence is simply the actual location where the person is living at any particular time, domicile is the person's permanent, established home. If a person's actual residence and domicile are in different locations, the domicile is the location to which the person intends to return and remain either permanently or for an indefinite period of time. A domicile is not only a place where a person lives (a residence), it is also the place that the person intends to make his or her home.

A person may have many residences, but may only have one domicile. Once a person has established a particular residence as his or her domicile, it remains that person's domicile unless and until a new domicile is established. The burden of proof in proving a change in domicile falls on the person claiming that there has been a change in domicile. To establish a new domicile, it must be shown that the person:

- abandoned the first domicile with the intention not to return to it; **and**
- established a new domicile with the intention of making the new residence a permanent home.

### 2. *The Beginning Point of Inquiry in Determining Domicile.*

Generally speaking, state law mandates that only those who can demonstrate 12 months of *uninterrupted domicile* in North Carolina are eligible for in-state tuition.<sup>21</sup> This law applies regardless of the age of the student seeking residence classification. Because a significant number of the students who seek residence classifications are minors, the domicile inquiry for these students starts with the domicile of the student's parents or legal guardian.

With few exceptions, students who are minors under state law (under age 18) are **presumed** to have the domicile of their parents or legal guardians. Students who are age 18 or older have the legal capacity, whether they choose to exercise it or not, to establish their own domicile. These students must, however, take affirmative steps to establish their own domicile in order for a domicile other than that of their parents to be recognized.<sup>22</sup>

Under North Carolina law, the domicile of the student's living parent(s) or legal guardian is prima facie evidence of the student's domicile.<sup>23</sup> The student's domicile is therefore presumed to be that of his or her living parent(s) or legal guardian. In these cases, the student has the opportunity to either rebut (argue against) or reinforce (argue for) this legal presumption by the information he or she supplies to the college or university.

If a student has no living parents or legal guardian, there is no prima facie presumption of the student's domicile one way or the other to serve as the beginning point of inquiry in determining residency. In these cases, domicile is determined based on the information supplied by the student with no statutory presumption in favor of any particular piece of evidence.

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<sup>20</sup>*Hall v. Board of Elections*, 280 N.C. 600, at 600-608 (1972). The *Hall* case is a voting rights case; while subsequent court decisions have modified the law of domicile as it relates to [voting rights](#), the *Hall* decision can still be relied on for purposes of residence for tuition determinations. See, *Norman v. Cameron*, 127 N.C. App. 44; 488 S.E.2d 297 (1997).

<sup>21</sup>G.S. 116-143.1(b).

<sup>22</sup>*Hall*, at 608.

<sup>23</sup>G.S. 116-143.1(e).

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The “*Five-Year Rule*” Exception. It is important to note that the General Assembly has carved out an exception to the legal presumption that the student’s domicile is that of his or her parent(s). If the student has lived in North Carolina for five consecutive years immediately prior to enrolling or reregistering at an institution of higher education, the domicile of the student’s parent(s) is *not presumed to be the student’s domicile* (commonly referred to as the “Five-Year Rule”). The parent(s)’s domicile may be considered as part of the overall evidence of the student’s domicile, but it cannot be considered as *prima facie* evidence of the student’s domicile even if the student is a minor.<sup>24</sup> In these cases, as with those of students who have no living parents or legal guardians, domicile is determined based on all the information supplied by the student.

Additional specific rules relating to the domicile of minors are discussed in Section IV.B., below.

### 3. *The Nature of Domiciliary Evidence.*

To determine whether a student has established a domicile in North Carolina, as opposed to a mere temporary residence, one must first determine if the student has capacity to establish residency and then reach a conclusion about the intent of the student, as measured by objectively verifiable conduct of the student. The conduct of the student, taken in total, must demonstrate an intention to make North Carolina his or her permanent dwelling place.

The determination of domicile does not depend on one fact or a required combination of certain circumstances. The determination is made based on all the facts and circumstances taken together and viewed as a whole showing by a preponderance of evidence (more likely than not) that some particular location is the student’s domicile. Oftentimes this evidence will include personal statements provided by the student regarding his or her intention to make a residence his or her domicile. While such statements are appropriate evidence to consider, there is no requirement that they be accepted at face value.<sup>25</sup> Student’s personal statements should be considered carefully, but also cautiously even if there is no concrete evidence that the student is being untruthful. The student’s conduct and actions taken toward establishing a domicile are generally of greater evidentiary value than personal statements, especially when the student’s conduct and actions are inconsistent or in conflict with the student’s statements of intent. Statements of a student’s intent to take actions towards establishing domicile *at some time in the future* generally are not considered sufficient.

### 4. *Weighing and Balancing Domiciliary Evidence; the Burden of Proof.*

For a student to be classified a resident for tuition purposes, the balancing of all the evidence must show that there is a preponderance of evidence supporting the student’s claim of domicile. To satisfy this requirement, more of the evidence than not must consist of a cluster, focus or accumulation of favorable information that the student established a domicile in North Carolina at a point in time at least 12 months prior to the domiciliary classification. Because there is almost always variation among cases and individuals, the domiciliary inquiry is more a function of reasonable review and balancing of the total circumstances of each individual case rather than a formulaic computation.

As described above, under North Carolina law, a showing that the student’s living parents or legal guardians are legal residents of North Carolina is *prima facie* evidence that the student is also a legal resident of North Carolina. As *prima facie* evidence, it is a favorable factor to be weighed along with all other information presented in reaching a conclusion. This presumption can be rebutted by other evidence to the contrary, such as in the case of a student who is an independent adult who has never been domiciled in North Carolina even if the student’s parents have now established domicile in North Carolina.

The law requires examination not only *of what* actions a student took to establish domicile, but also *why* the student performed those actions. If the student has shown by express statements or other actions appearing in the record that his or her entry into the State was motivated by academic enrollment and that the stay in North Carolina is not for the purpose of making North Carolina his or her permanent home, then the student’s intent behind the domiciliary actions must be taken as other than *bona fide* (good faith and genuine) domiciliary intent, and the application for in-state status must be denied.<sup>26</sup>

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<sup>24</sup>G.S. 116-143.1(e), *Fain v. State Residence Committee*, 117 N.C. App. 541; 545, 451 S.E.2d 663, 666 (1995).

<sup>25</sup>*Norman v. Cameron*, 127 N.C. App. 44, 50, 488 S.E.2d 297, 301 (1997).

<sup>26</sup>*Id.*, at 50.

## IV. Laws Governing Classification Determinations

### B. Special Rules under the Law of Domicile

In addition to the fundamental legal principles of domicile discussed in Section IV.A., above, the determination of domicile and residence status for tuition purposes is also affected by special rules set out in the North Carolina statutes. For some (but not all) of these rules, eligible nonresidents remain classified as out-of-state students but are charged the in-state tuition rate. These special rules are discussed in this Section and Section IV.C., below.

#### 1. Minors.

Determining the domicile of a student who is a minor starts with the following basic common law principles:

- A person under 18 years of age is a minor under North Carolina law and deemed, under the common law, dependent on his or her parents for domicile.
- If one parent is deceased, the minor's domicile is that of the surviving parent.
- If a minor is an orphan and has no legal guardian, the minor's domicile is that of the person with whom he or she lives. Otherwise, the minor's domicile remains at the place where he or she last acquired a domicile through a parent or legal guardian.
- If a minor has been legally adopted, the minor's domicile is that of the adoptive parent(s) (the same rules concerning relationships between husband and wife regarding the domicile of a child also apply in the case of adoptive parents).

While these basic common law principles should be considered in determining the domicile of a minor, the specific requirements of the North Carolina General Statutes must be followed regardless of the common law principle, even if the statute appears to be inconsistent with or in conflict with the common law.<sup>27</sup>

The primary North Carolina statute governing determinations of domicile in cases involving a minor is G.S. 116-143.1. This statute includes the general presumption (prima facie evidence) that the domicile of a minor is the same as that of the minor's living parent(s) or legal guardian(s) discussed in Section IV.A.2., above.<sup>28</sup> G.S. 116-143.1 also addresses some specific circumstances involving minors:

**a. Divorced or Separated Parents.** If the minor's parents are divorced, legally separated, or otherwise living apart from each other, the minor's domicile is that of the parent who is legally entitled to claim, and in fact does claim, the minor as a dependent child for North Carolina individual income tax purposes.<sup>29</sup> To qualify under this provision, the parent claiming the minor as a dependent must also be a legal resident of North Carolina. The length of time the minor is deemed to be domiciled in North Carolina under this provision is the time period in which the parent claimed the minor as a dependent. For example, if the North Carolina resident parent claimed the minor as a dependent for 3 years, the minor is deemed to have been domiciled in North Carolina for 3 years.

Many minors who are deemed legal residents under the circumstances described in the paragraph above become adults (reach age 18) during their senior year in high school or in the summer between high school completion and enrollment in college. Practically speaking, most students in this situation are not in a position to establish a new domicile. Therefore, to preserve the domicile status conferred on a minor under the circumstances described above, the student retains his or her domicile status upon turning age 18 if that student then acts like a North Carolina resident as much as possible, and if the person enrolls at a North Carolina institution of higher education not later than the fall term after completion of education requirement for admission (usually high school graduation).

Under this provision, a person might accrue the 12-month period of North Carolina domicile necessary for resident tuition status in several ways, because periods of dependency on a resident parent, emancipated residence in North Carolina, and resident adulthood in North Carolina all may be pieced together to total the necessary 12 months.

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<sup>27</sup> *Fain v. State Residence Committee*, 117 N.C. App. 541, 544; 451 S.E.2d 663, 665 (1995); see also, *Biddix v. Henredon Furniture Industries*, 76 N.C. App. 30, 331 S.E.2d 717 (1985).

<sup>28</sup> G.S. 116-143.1(e). This presumption, which is rebuttable, is not limited to minors, but is applicable to persons of any age if the person is living with his or her parent(s) or legal guardian.

<sup>29</sup> G.S. 116-143.1(j).



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**b. The “Five-Year Rule” for Minors.** In addition to providing that the domicile of a person’s parent(s) is not presumed to be (is not prima facie evidence of) the domicile of that person if that person has lived in North Carolina for the five consecutive years immediately prior to enrolling or reregistering in college,<sup>30</sup> (see discussion of the “Five-Year” Rule Exception in Section IV.A.2., above) there is a specific statutory provision relating to minors who have lived in North Carolina for at least five consecutive years with an adult relative other than their parents.<sup>31</sup>

Under this provision, the benefit of “resident status for tuition purposes,” (not “legal residence” or domicile) is given to minors who, immediately prior to the beginning of the academic term in which they are enrolled and for which in-state status is sought:

- have lived five or more consecutive years in North Carolina in the home of an adult relative, other than a parent, who is domiciled in this State; **and**
- for whom the adult relative has functioned during those years as a de facto guardian and has exercised day-to-day care, supervision, and control of the minor.

It is important to note that, under this provision, it is the actual care of the minor, not necessarily financial support of the minor, that is the determining factor (as opposed to the case of divorced or separated parents discussed above, where financial support as evidenced by a claim of dependent status for income tax purposes is the determining factor).

Under this provision, a minor may satisfy the five-year requirement by living with different relatives (if all are domiciled in North Carolina) for shorter, but consecutive, periods of time that total or exceed the required five-year period. For example, the minor could live for two consecutive years with a grandmother and then the next three consecutive years with an uncle and satisfy the five-year requirement (assuming both the grandmother and the uncle acted as the de facto guardian of the minor during these periods).

This provision also addresses what happens when a minor who qualifies as a resident for tuition purposes under these circumstances becomes an adult. If a minor qualifies for or is awarded in-state status for tuition purposes under this provision immediately prior to the minor’s 18<sup>th</sup> birthday, the minor is deemed to be a legal resident of North Carolina when the minor turns age 18. A student who achieves legal resident status in this manner is deemed to have legal residency in North Carolina of at least 12 months’ duration unless the student abandons his or her legal residence in North Carolina. Thus, achieving majority (turning age 18), whether before or after initial enrollment, does not, of itself, remove the benefit of in-state status under this provision. Only by abandoning his or her North Carolina domicile does the student lose the benefit of in-state status. (Note that the individual may not lose his or her in-state status even then if the 12-month grace period discussed in Section IV.D., below, applies).

**c. Emancipated Minors.** Under certain circumstances, a person who has not achieved the chronological age required by law for adulthood (in North Carolina, age 18) may be treated as an adult for legal purposes. Such a person, called an “emancipated minor,” is legally capable of establishing a domicile independent of that of his or her parents, although he or she must still demonstrate that a separate domicile in fact has been established when seeking in-state status for tuition purposes.

In North Carolina, a minor becomes emancipated (in other words, a legal adult even if the minor is not yet age 18) in one of two ways:

- by a decree of emancipation issued by a District Court Judge in the minor’s county of residence, or
- by becoming legally married.

A minor under the age of 16 cannot become emancipated.<sup>32</sup>

In other states, emancipation might be achieved by other means, and as long as the minor is able to produce a court order, decree of emancipation, or other evidence of emancipation that is legally valid in that state, that minor shall have capacity to apply for in-state tuition with independent status.

A student asserting emancipation as part of a claim of domicile in North Carolina for tuition purposes must be able to present not only legally valid evidence of his or her emancipated status but also all other information re-

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<sup>30</sup>G.S. 116-143.1(e).

<sup>31</sup>G.S. 116-143.1(k).

<sup>32</sup>See, G.S. Chapter 7B, Article 35.

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lated to a claim of domicile as discussed elsewhere in this *Manual*.

### 2. *Members of the Armed Forces and Their Families.*

Active duty personnel in the armed services, and their spouses, dependent children and dependent relatives may be eligible for in-state tuition. An active duty member of the military<sup>33</sup> (and their eligible family members) who qualifies for admission to an institution of higher education in the State may qualify for in-state tuition in two ways:

- as a domiciliary of the State, **or**
- under a special provision of North Carolina and federal law requiring that non-resident active duty military personnel and their eligible family members be charged in-state tuition.<sup>34</sup>

Under the special in-state tuition laws for active duty military personnel and their eligible family members, if a non-resident member of the armed services is stationed in North Carolina because of his or her active duty military service, then the service member as well as his or her spouse, dependent children, and dependent relatives who are living with the service member *shall* be charged the in-state tuition rate along with any applicable mandatory fees. IRS rules are used to determine who qualifies as a dependent of a member of the military, and dependents must also comply with the requirements of the Selective Service System.

Active duty members of the armed services include those serving in the United States Air Force, Army, Coast Guard, Marine Corps, and Navy; the N.C. National Guard; and any Reserve Units of these military units. Military reservists (other than those of the N.C. National Guard) must be on active duty to qualify for the in-state tuition benefit.

Unlike other military personnel, any member of the North Carolina National Guard, regardless of whether the person is a legal resident of North Carolina, is eligible for in-state tuition rate during the Guard member's period of service *whether in a reserve or active status*.<sup>35</sup> However, the in-state tuition benefit *does not apply* to the spouses or dependents of *non-resident* Guard members unless the Guard member is serving in North Carolina on active duty.<sup>36</sup> Spouses or dependents of *non-resident* Guard members can become eligible for in-state tuition when (and only when) the member is activated for National Guard duty in North Carolina.

If a non-domiciled active duty member of the armed services or eligible family member qualifies for the in-state tuition rate and fees and his or her military status changes, the following rules apply:

**a. Reassignment.** If the active duty member is reassigned, meaning the member receives a "Permanent Change in Station" or "PCS orders" to a military base or installation outside of North Carolina, the service member and his or her spouse and dependent relatives will continue to be eligible for the in-state tuition rate as long as the service member, spouse, or dependent is continuously enrolled in the degree or other program in which they were enrolled at the time of reassignment. The service member's dependent must continue to be a dependent to qualify for the benefit.

**b. Retirement.** If the active duty member retires, the service member and his or her spouse and dependent relatives will continue to be eligible for the in-state tuition rate as long as they remain continuously enrolled in the degree or other program in which they were enrolled at the time of retirement. The service member's dependent must continue to be a dependent to qualify for the benefit.

**c. Honorable Discharge.** If the active duty member receives an Honorable Discharge (no other type of discharge will qualify), the service member is eligible for the in-state rate if he or she establishes legal residency in North Carolina within thirty days of discharge and is continuously enrolled in the degree or other program in which he or she was enrolled at the time of Honorable Discharge. A dependent relative of an honorably discharged service member must establish legal residency within thirty days after the discharge, remain continuously enrolled in the degree or other program in which the dependent was enrolled at the time of discharge, and remain a depend-

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<sup>33</sup>Under federal law, "active duty" is defined as a "member of the armed forces who is on active duty for a period of more than 30 days." 20 U.S.C. 1015d, Sec. 135(d).

<sup>34</sup>G.S. 116-143.3; 20 U.S.C. 1015d, Sec. 135(a).

<sup>35</sup>G.S. 116-143.1(h1).

<sup>36</sup>G.S. 116-143.3(b).



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ent of the service member who is honorably discharged to continue to be eligible for the in-state rate.

A North Carolina domiciliary does not lose in-state status simply by joining the armed services or by being assigned outside North Carolina by the military.<sup>37</sup> To determine whether a military member is a legal resident, consider the usual residency factors discussed elsewhere in this *Manual*. The domiciled active duty member who is assigned outside of North Carolina has the burden of proving that North Carolina residency has been maintained by providing documentation in support of that claim.

Federal law allows the spouses of military personnel to retain legal residency (domicile) in the spouse's home state for voting and tax purposes after relocating from that state to accompany the military member when the military member is transferred to another state in compliance with the military member's military orders. Being able to retain legal residency for voting and tax purposes may make it easier for the spouse to retain domicile status in his or her home state.<sup>38</sup>

An individual's eligibility to receive these military-related tuition benefits continues only so long as the requirements described in this Section and any other applicable provisions of state and federal law continue to be met. An individual's continued eligibility may be confirmed at regular intervals as determined by the institution.

### ***3. Non-Military Federal Personnel, Volunteers, and Missionaries.***

The domiciles of non-military personnel employed by the Federal Government, volunteers with organizations that may require volunteers to work in locations outside of their home state, and missionaries are not necessarily affected by assignment in or reassignment out of North Carolina.

Federal employees may establish domicile for themselves and their dependents by the usual requirements of residential acts plus intent. There is not, however, a specific statutory provision under North Carolina law that grants special residence status for tuition purposes for federal personnel (other than active duty military personnel and their families as discussed in the previous section above). Individuals employed by federal agencies such as the United States Foreign Service, State Department, and volunteers with government agencies such as the Peace Corps must establish and maintain domicile for tuition purposes under the general rules of domicile provided in this *Manual*.

Similarly, individuals who participate in programs such as Teach for America or who are missionaries affiliated with religious organizations may establish domicile in this state and maintain that domicile during their absence. There is not, however, a specific statutory provision under North Carolina law that grants special residence status for tuition purposes for these categories of individuals. As with non-military federal personnel, these categories of individuals must establish and maintain domicile for tuition purposes under the general rules of domicile provided in this *Manual*.

### ***4. Non-U.S. Citizens.***

Persons who are not U.S. citizens but who have certain visa and immigration statuses that grant them the legal ability to establish and maintain a bona fide domicile in this country are subject to the same considerations as U.S. citizens in determining residence status for tuition purposes. If it is later discovered that the person's visa or immigration status was obtained fraudulently, the institution shall have the right to seek and collect payment of full, out-of-state tuition, along with fees and costs associated with such collection.<sup>39</sup>

If a person possesses one of the types of documentation listed below, that person has *capacity* to (is legally able to) establish legal residence for tuition purposes; however, that person must still take the actions and have the intent necessary to establish legal residence as discussed elsewhere in this *Manual*. The following types of documentation enable a non-U.S. citizen who is legally present in this state to have the capacity to establish domicile:

a. Evidence of **either** of the following:

(1) A valid A-1, A-2, E-1, E-2, E-3, G-1, G-2, G-3, G-4, H-1B, H-1C, H-4, I, K-1, K-2, K-3, K-4, L-

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<sup>37</sup>G.S. 116-143.1(h).

<sup>38</sup>Military Spouses Residency Relief Act, P.L. 111-97. The provisions of this Act are effective beginning with the 2009 tax (calendar) year.

<sup>39</sup>See Section V.B.2. for further information about providing fraudulent information related to residence for tuition purposes provided by any individual regardless of citizenship status.

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1A, L-1B, L-2, N, O-1, O-3, P-1, P-2, P-3, P-4, R-1, R-2, T-1, T-2, T-3, T-4, T-5, U-1, U-2, U-3, U-4, U-5, V-1, V-2, V-3, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 visa status (eligibility for in-state tuition under these visa statuses lasts only so long as the time frame of the authorized stay under the applicable visa status); or

(2) A pending Application to Adjust Status (Form I-485) and an approved Immigrant Petition (Forms I-130, I-360, or I-140).

b. One of the following:

(1) A Permanent Resident Card I-551; or

(2) A USCIS-issued notice of approval of Application to Adjust Status (I-485);<sup>40</sup> or

(3) A current Conditional Permanent Resident Card.

c. Refugee or asylee status with approval documentation.

A non-U.S. citizen possessing an eligible document identified above is not deemed to have any special residential advantage. They are considered only to have the *capacity and opportunity* to claim and seek to prove eligibility for in-state tuition status under the same residential criteria and burden of proof that is required of U.S. citizens.

In making domiciliary determinations of non-U.S. citizens, institutional officials should consider the precise basis for any entry into the United States and its documentation as part of the residential information upon which to assess the non-U.S. citizen's claim of residence for tuition purposes. With respect to the 12-month (365 days) durational requirement of G.S. 116-143.1(b), claims to domicile of non-U.S. citizens possessing documents identified in any of the eligible classes set forth above should be assessed relative to a time frame beginning not earlier than the effective date of the pertinent documents. The 12-month (365 days) durational requirement must be met prior to the first day of the academic term for which the in-state tuition rate is requested.

Non-U.S. citizens present in the United States under certain visa statuses such as tourists, visitors on business, and temporary foreign/international students do not have the legal capacity to establish a bona fide domicile in this country (and thus, not in North Carolina). As examples, holders of non-immigrant visa statuses such as B, C, D, F, J, M, Q, S, and TN visas (and dependent visas for spouses and children such as a TD visa) cannot establish domicile with these documents, in and of themselves, unless there is a change in their visa status. An Employment Authorization Document (EAD) is a document that provides non-U.S. citizens with the authorization to work in this country. An EAD, in and of itself, does not confer any immigrant or non-immigrant status and does not give the EAD holder the legal capacity to establish residency for tuition purposes in this state.

The provisions of this section apply to both UNC institutions and community colleges. There are additional special provisions under North Carolina law for certain non-U.S. citizens attending community colleges which do not apply to UNC institutions that are described in Section IV.B.11.

### 5. Prisoners/Inmates.

A person neither establishes nor loses legal residence in a state solely by reason of being imprisoned there. While a prisoner is not absolutely precluded from proving that he or she has changed legal residence, a person's domicile generally is not changed by involuntary confinement in a penitentiary or other prison, and in such cases, the former domicile remains. As a practical matter, it is extremely difficult for a prisoner to demonstrate a change in legal residence since a prisoner cannot perform most of the actions indicating domiciliary intent and since any declarations of intent must be weighed against the fact that the prisoner is confined against his or her will.

### 6. Married Persons.

Under North Carolina law,<sup>41</sup> married persons are neither favored nor disadvantaged by being married when

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<sup>40</sup>USCIS Form I-181b (Memorandum of Creation of Lawful Permanent) was previously used as verification that an individual had been granted permanent resident status. The USCIS no longer issues the Form I-181B, so it should not be accepted as verification of permanent status.

<sup>41</sup>G.S. 116-143.1(f).

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determining domicile and classification for tuition purposes.<sup>42</sup> The statutory provision eliminates from tuition status classifications the common law presumption that a wife's domicile is that of her husband. As a result, the domicile of married persons is determined by the same basic procedure as for all other persons - on the merits of all collected relevant domiciliary information. The statute also makes clear, however, that the fact of marriage is relevant evidence to consider in a domicile determination. So, while a person is not precluded from establishing domicile in North Carolina solely because his or her spouse is not a legal resident of North Carolina, nor is a non-resident automatically domiciled in this state simply by marrying a North Carolina resident, the fact that an individual is married and the domicile of his or her spouse are relevant in determining that individual's domicile.

Although a nonresident cannot automatically achieve resident status simply by marrying a person domiciled in North Carolina, a nonresident person who marries a North Carolina legal resident may benefit from the length of time his or her spouse has been domiciled in this state. If the nonresident spouse becomes domiciled in North Carolina, he or she may count the length of time the resident spouse has been domiciled in North Carolina for purposes of satisfying the 12-month requirement for in-state tuition.<sup>43</sup> The qualifying event must have occurred prior to the first day of the term for which the in-state tuition rate is requested. Qualification for this benefit is determined by information provided by the applicant including the North Carolina resident spouse's residency information and legally valid marriage documentation.

North Carolina law grants certain tuition benefits to the spouses of some categories of individuals, namely members of the military (see Section IV.B.2., above) and deceased or disabled Law Enforcement/Emergency Workers (see Sections IV.C.1. and IV.C.2., below). In order to comply with federal laws that protect against discrimination based on marital status and gender during the admission process, questions and information about an applicant's marital status are not asked nor obtained during the admission process. Applicants are notified that tuition benefits may be available to the spouses of certain categories of individuals, and are given the opportunity to apply for those tuition benefits under a process that is separate from that of the admission decision itself.

### **7. *Public School Teachers.* [G.S. 116-143.5 repealed pursuant to Session Law 2011-145, Section 9.13.(b).]**

### **8. *Full-Scholarship Students.***

Regardless of any other legal requirements relating to residence classification for tuition purposes, the Board of Trustees of a constituent institution of The University of North Carolina is authorized to adopt a resolution recognizing as residents of North Carolina all persons who receive full scholarships to that institution from entities recognized by the institution. This benefit is only available to undergraduate students who are receiving full scholarships *other than* athletic scholarships (non-resident students receiving full athletic scholarships are not eligible for in-state tuition status under this provision). Students who qualify for this benefit shall be considered residents of North Carolina for all purposes by The University of North Carolina. Under this provision, "full cost" means an amount calculated by the constituent institution that is no less than the sum of tuition, required fees, and on-campus room and board. A "full scholarship" means a grant that meets the full cost for a student to attend the constituent institution for an academic year. The source of the scholarship funds cannot be the institution itself (although private endowment funds are allowed) or state or federal financial aid grants.<sup>44</sup>

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<sup>42</sup>Under North Carolina law, marriage is defined as being between a male and a female. G.S. 51-1. North Carolina does not recognize marriages between persons of the same gender performed in other states. G.S. 51-1.2.

<sup>43</sup>G.S. 116-143.1(g).

<sup>44</sup>G.S. 116-143.6; UNC Policy Manual, Sec. 900.4[G].

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### ***9. UNC Employees and Their Families.***

Permanent full-time employees of the University of North Carolina who are legal residents of North Carolina qualify as residents for tuition purposes even if they have not maintained legal residency for the required 12 consecutive months prior to residence classification. Spouses and dependent children (using income tax dependency as the standard) of full-time UNC employees who are legal residents also qualify for this benefit. There is no limit on the number or type of courses for which this benefit will apply.<sup>45</sup>

### ***10. The Academic Common Market Program.***

The Southern Regional Education Board (SREB) operates the Academic Common Market. This program allows graduate students in states that are members of the market to attend other institutions in participating states for graduate programs not available in the university system of the student's home state. Out-of-state tuition shall be waived for students who are residents of SREB states participating in the market program. These students will be treated for all purposes by The University as residents of North Carolina as long as the student is enrolled in the graduate program.<sup>46</sup> Similarly, a North Carolina resident meeting the requirements for in-state tuition may attend an institution in another SREB state participating in the common market. Students must have maintained their North Carolina domicile immediately prior to enrolling at an institution through the common market. This benefit is only available for graduate students.

### ***11. Tuition Classification Exemptions for Certain Community College Students.***

The General Assembly has enacted laws that grant resident status for tuition purposes to certain categories of students attending community college programs. These special residency rules do not apply to students attending constituent institutions of The University of North Carolina.

***a. Business-Sponsored Students.*** When an employer (other than the armed services) pays tuition for an employee to attend a community college *and* the employee works at a North Carolina business location, the employer shall be charged the in-state tuition rate.<sup>47</sup>

***b. Business- and Military-Transferred Families.*** A community college may charge in-state tuition to up to one percent (1%) of its out-of-state students (rounded up to the next whole number) to accommodate the families transferred into North Carolina by business or industry, or civilian families transferred into North Carolina by the military.<sup>48</sup> A student seeking this benefit shall provide evidence of the following:<sup>49</sup>

(1) Relocation to North Carolina by the student and if applicable, the student's family, within the 12 months preceding enrollment;

(2) Written certification by the employer on corporate letterhead that the student or some member of the student's family was transferred to North Carolina for employment purposes;

(3) Certification of student's compliance with the requirements of the Selective Service System, if applicable;

(4) If a family member of the transferred individual is applying for this benefit, the family member must also establish the familial relationship with the transferred individual; live in the same residence as the transferred individual; and provide evidence of financial dependence on the transferred individual.

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<sup>45</sup>G.S. 116-143.1(m).

<sup>46</sup>G.S. 116-43.10.

<sup>47</sup>G.S. 115D-39(a).

<sup>48</sup>G.S. 115D-39(a).

<sup>49</sup>23 N.C.A.C. 2D.0201(k).

## IV. Laws Governing Classification Determinations

**c. Students Sponsored by a Non-Profit Entity.** A lawfully admitted nonresident of the United States who is sponsored by a North Carolina non-profit entity is eligible for the in-state resident community college tuition rate. The student is considered to be “sponsored” by a North Carolina nonprofit entity if the student resides in North Carolina while attending the community college *and* the North Carolina nonprofit entity provides a signed affidavit to the community college verifying that the entity accepts financial responsibility for the student's tuition and any other required educational fees. A North Carolina nonprofit may sponsor no more than five nonresident students annually under this provision. This provision does not make a person a resident of North Carolina for any other purpose.<sup>50</sup>

**d. Public School Graduates.** Any person lawfully admitted to the United States who satisfied the qualifications for assignment to a public school under North Carolina law (G.S. 115C-366) and graduated from the public school to which the student was assigned shall be eligible for the State resident community college tuition rate. This provision does not make a person a resident of North Carolina for any other purpose.<sup>51</sup>

**e. Refugees.** A refugee who lawfully entered the United States and who is living in this State shall be deemed to qualify as a domiciliary of this State under G.S. 116-143.1(a)(1) and as a State resident for community college tuition purposes. While the refugee must live in North Carolina to be eligible for in-state tuition, the refugee is not required to be domiciled in North Carolina for the 12-month qualifying period.

**f. Nonresident of the United States.** A nonresident of the United States who has resided in North Carolina for a 12-month (365 days) qualifying period and has filed an immigrant petition (Forms I-130, I-360, or I-140) with the United States Citizen and Immigration Service (USCIS) shall be considered a North Carolina resident for community college tuition purposes.<sup>52</sup>

**g. Federal Law Enforcement Officers.** Federal law enforcement officers, firefighters, EMS personnel, and rescue and lifesaving personnel whose permanent duty stations are within North Carolina are eligible for the State resident community college tuition rate for courses that support their organizations' training needs. The State Board of Community Colleges must approve the courses designed to support law enforcement officers, firefighters, EMS personnel, and rescue and lifesaving personnel's training needs prior to the college awarding the State resident community college tuition rate.<sup>53</sup>

### C. Tuition Waivers

Some categories of students are entitled to a waiver of tuition charges for attendance at public institutions. In these cases, eligible students must still be domiciled in North Carolina in order to be considered for the tuition waiver. Questions of residency and domicile may still arise and should be considered consistent with North Carolina laws governing domicile as discussed elsewhere in this *Manual*. If a student meets the requirements of a tuition waiver category, the student shall not be charged tuition, but the institution is still authorized to charge other fees and costs, including the costs of textbooks.<sup>54</sup> If a student receives a tuition waiver and also is awarded a cash scholarship payable to the campus at which the student is enrolled, the scholarship shall be credited to the student for payment of any incidental expenses of the student's attendance at that campus, and any balance shall be returned to the student if allowed under the terms of the scholarship.<sup>55</sup>

Constituent institutions of The University of North Carolina shall accept students eligible for tuition waivers only if space is available on that campus. A student who is eligible for a tuition waiver must still meet all academic requirements and other standards for admission to the university or community college campus.<sup>56</sup>

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<sup>50</sup>G.S. 115D-39(c). For purposes of this provision, a North Carolina nonprofit entity is a charitable or religious corporation as defined in G.S. 55A-1-40 that is incorporated in North Carolina and that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or a civic league incorporated in North Carolina under Chapter 55A of the General Statutes that is exempt from taxation under Section 501(c)(4) of the Internal Revenue Code.

<sup>51</sup>G.S. 115D-39(b).

<sup>52</sup>G.S. 115D-39(a).

<sup>53</sup>G.S. 115D-39(a1); S.L. 2011-145, Sec. 8.12.(d).

<sup>54</sup>G.S. 115B-1(7).

<sup>55</sup>G.S. 115B-5.1; *see* different rule for Wards of the State under Section IV.C.4. of this *Manual*.

<sup>56</sup>G.S. 115B-2(b).

## IV. Laws Governing Classification Determinations

The following categories of persons are eligible for tuition waivers:

### ***1. Survivors of Deceased Law Enforcement/ Emergency Workers.***

Tuition waivers are available to the surviving spouse and children of a law enforcement officer (including sheriffs), firefighter, volunteer firefighter or rescue squad worker who was killed as a direct result of a traumatic injury sustained in the line of duty (including both active service and training for active duty). The deceased law enforcement/emergency worker must have been a North Carolina legal resident at time of death, and proof of eligibility is required by the applicant. Widows or widowers of law enforcement/emergency workers lose their eligibility for a tuition waiver under this provision if they remarry.<sup>57</sup> The cause of death must be verified by certification by the state or local government agency that employed or had jurisdiction over the law enforcement/emergency worker.<sup>58</sup>

A child's relationship with the deceased parent must be verified by a birth certificate, legal adoption papers, or other evidence required by the institution.<sup>59</sup> A husband or wife's relationship with the deceased spouse must be verified by a marriage certificate or other evidence required by the institution.<sup>60</sup>

### ***2. Families of Disabled Law Enforcement/Emergency Workers.***

Tuition waivers are available to the spouses and children of law enforcement officers (including sheriffs), firefighters, volunteer firefighters, or rescue squad workers who are permanently and totally disabled as a direct result of a traumatic injury sustained in the line of duty (including both active service and training for active service). The disabled law enforcement/emergency worker must have been a North Carolina legal resident at the time of injury and proof of eligibility is required. The disabled law enforcement/emergency worker must be determined permanently and totally disabled for compensation purposes by the North Carolina Industrial Commission.

Children eligible for a tuition waiver under this provision must be between the ages of 17 and 23 (younger than age 24), and the benefit of the tuition waiver cannot be for a time period longer than:

- 54 months (if pursuing a baccalaureate degree), or
- the number of months required to complete the education program to which the child is applying.<sup>61</sup>

A child's relationship with the disabled parent must be verified by a birth certificate, legal adoption papers, or other evidence required by the institution.<sup>62</sup> A husband or wife's relationship with the disabled spouse must be verified by a marriage certificate or other evidence required by the institution.<sup>63</sup>

### ***3. Senior Citizens.***

Persons age 65 or older who are legal residents of North Carolina are eligible for a waiver of tuition charges for up to six hours of credit instruction and one course of non-credit instruction per academic semester at community colleges. This tuition waiver is only available at community college campuses; there is no tuition waiver for persons age 65 or older enrolled at constituent institutions of The University of North Carolina.<sup>64</sup>

### ***4. Wards of the State.***

Wards of the State are orphans or other children who have been placed in the custody of the state. Any child between the ages of 17 and 23 (younger than age 24) who is a ward of the state (or was a ward of the state when the child reached age 18) is eligible for a tuition waiver at both universities and community colleges if the child:

- is a resident of the state, **and**

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<sup>57</sup>G.S. 115B-1(6), -2(a)(2).

<sup>58</sup>G.S. 115B-5(b)(3).

<sup>59</sup>G.S. 115B-5(b)(1).

<sup>60</sup>G.S. 115B-5(b)(2).

<sup>61</sup>G.S. 115B-1(4), -2(a)(3),(4).

<sup>62</sup>G.S. 115B-5(b)(1).

<sup>63</sup>G.S. 115B-5(b)(2).

<sup>64</sup>G.S. 115D-5(b)(11); S.L. 2009-451, Sec. 8.11(a).



## IV. Laws Governing Classification Determinations

- is eligible for services under Chaffee Education and Training Vouchers Program.

The waiver only applies to the extent any tuition is payable after receipt of other financial aid.<sup>65</sup>

### **5. University Employees.**

Permanent full-time faculty and staff employed by The University of North Carolina are eligible for a tuition waiver for up to two courses per year at any UNC institution, including institutions other than the one at which the faculty or staff member is employed. For purposes of this *Manual*, eligible faculty and staff are those who are employed on a permanent recurring basis and who work 30 or more hours per week (75% time or more) for nine or more months per calendar year (this includes personnel assigned to or employed by an ROTC program at a constituent institution of The University). Faculty and staff may not enroll in courses for which tuition is waived if doing so would interfere with their normal employment obligations. UNC campuses are required to adopt policies and procedures necessary to implement this tuition waiver program. For more information, faculty and staff are encouraged to contact their employing institution and the institution at which they plan to enroll (if different from their employing institution).<sup>66</sup>

### **6. High School Students.**

Tuition waivers are available for high school students taking eligible curriculum courses at community colleges. Eligible curriculum courses are those curriculum courses taken consistent with one of the following Career and College pathways: (1) a Career Technical Education Pathway, leading to a certificate or diploma aligned with one or more high school Tech Prep Career Clusters; (2) a College Transfer Pathway, leading to a college transfer certificate requiring the successful completion of thirty semester hours of transfer courses, including English and mathematics, for qualified junior and senior high school students; or (3) a cooperative innovative high schools program approved under Part 9 of Article 16 of Chapter 115C of the General Statutes.<sup>67</sup>

### **7. Other Community College Tuition Waiver Programs.**

The North Carolina State Board of Community Colleges is authorized to adopt regulations waiving tuition and fee charges for a number of specific categories of individuals enrolled in specific courses and programs.<sup>68</sup>

**a. General Waivers.** The following additional groups are exempt from tuition at community colleges:

(1) Persons taking courses leading to a high school diploma or equivalent certificate (Basic Skills Program) who are not enrolled in an elementary or secondary school.

(2) Trainees enrolled in courses conducted under the Customized Training Program.

(3) Individuals who are either unemployed, have received notification of a pending layoff, are working and are eligible for the Federal Earned Income Tax Credit (FEITC), or are working and earning wages at or below two hundred percent of the federal poverty guidelines taking human resources development courses and have signed a verification form acknowledging that they satisfy one of these factors.<sup>69</sup>

(4) Elementary and secondary school employees enrolled in courses in first aid or cardiopulmonary resuscitation (CPR).

(5) Up to six hours of credit instruction and one course of noncredit instruction per academic semester for senior citizens age 65 or older who are qualified as legal residents of North Carolina.

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<sup>65</sup>G.S. 115B-2(a)(5).

<sup>66</sup>G.S. 116-143(d); UNC Policy Manual, Sec. 1000.2.2.1[R].

<sup>67</sup>G.S. 115D-5(b); S.L. 2011-145, Sec. 7.1A.(a).

<sup>68</sup>G.S. 115D-5(b); S.L. 2011-145, Sec. 8.12.(a).

<sup>69</sup>G.S. 115D-5(b)(13); S.L. 2010-31, Sec. 8.4.(a); 23 N.C.A.C. 2D .0319.

## IV. Laws Governing Classification Determinations

**b. Specialized Training Course Waivers.** Upon any of the following entities' request, community colleges shall waive tuition and registration fees for State Board of Community Colleges' approved courses that support that entities' training needs:<sup>70</sup>

- (1) Volunteer fire departments;
- (2) Municipal, county, or State fire departments;
- (3) Volunteer EMS or rescue and lifesaving departments;
- (4) Radio Emergency Associated Citizens Teams (REACT) under contract to a county as an emergency response agency;
- (5) Municipal, county, or State law enforcement agencies.
- (6) The Department of Correction for the training of full-time custodial employees and employees of the Department's Division of Community Corrections required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission;
- (7) The Department of Juvenile Justice and Delinquency Prevention for the training of employees required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission.

To be eligible for waiver, the requested course must be on a specialized course list approved by the State Board of Community Colleges.

### D. The Statutory Grace Periods Following Loss of Resident Status

If a person has been properly classified as a resident for tuition purposes and enjoyed that status while enrolled at an institution of higher education in this state, a change in that person's state of residence does not result in an immediate, automatic loss of entitlement to the in-state tuition rate. Students in this situation are allowed a "grace period" during which the in-state rate will still be applicable even though the student is no longer a legal resident of North Carolina. The grace period can apply under certain circumstances both to currently enrolled students as well as to students who are no longer enrolled or who have graduated.

#### **1. Currently Enrolled Students.**<sup>71</sup>

To qualify for the grace period if the student is currently enrolled, the student must satisfy the following conditions:

**First**, the student must have been properly classified as a resident for tuition purposes on the basis of a valid finding that the student in fact was domiciled in (a legal resident of) North Carolina and had been for the required 12-month period prior to classification; **and**

**Second**, at the time of change of legal residence to a state other than North Carolina, the individual must have been enrolled in an institution of higher education in North Carolina. "Enrolled" shall include both persons who are actually attending the institution during an academic term as well as those whose consecutive attendance of academic terms has been interrupted only by institutional vacation or summer recess periods. A person whose change in legal residence occurred during a period while not enrolled is not entitled to the benefit of the grace period.

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<sup>70</sup>S.L. 2011-145, Sec. 8.12.(a).

<sup>71</sup>G.S. 116-143.1(i).



The grace period extends for 12 months from the date of the change in legal residence, plus any portion of a semester or academic term remaining at the time the change in legal residence occurred. No change in applicable tuition rates resulting from the expiration of the basic 12-month grace period will be effective during a semester, quarter, or other academic term in which the student is enrolled; the change in tuition rates are effective at the beginning of the following semester, quarter, or other academic term. Once perfected, the grace period is applicable for the entire period at any institution of higher education in the State.

## ***2. Students Who Are No Longer Enrolled.***<sup>72</sup>

To qualify for the grace period if the student is no longer enrolled, the student must satisfy the following conditions:

***First***, the student must have been properly classified as a resident for tuition purposes at the time the student ceased to be enrolled at or graduated from an institution of higher education in this state; and

***Second***, if the student subsequently abandons his or her domicile in North Carolina and then reestablishes domicile in this state *within 12 months* of abandonment, the student may reenroll at an institution of higher education in this state as a resident for tuition purposes *without* having to satisfy the 12-month durational requirement *so long* as the student continuously maintains his or her reestablished domicile in North Carolina at least through beginning of the academic term for which in-state tuition status is sought.

It is important to note that a student may benefit from this particular grace period *only once* during his or her life. There is no such limitation on the grace period available to students who experience a change in residence status while still enrolled at an institution of high education in this state.

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<sup>72</sup>G.S. 116-143.1(l).

# V. Procedures

**NOTE:** This section of the *Manual* regarding procedures applies *only* to public institutions of higher education. Independent colleges and universities in North Carolina utilize their own procedures for determining, reviewing, and considering student appeals of residency classification decisions; students at these institutions should contact their institution’s admission, registrar, and/or financial aid office for information about that institution’s procedures.

## A. General Overview

It is the role and responsibility of each public institution of higher education to make an initial classification of each student as in-state or out-of-state for purposes of tuition depending upon the determination of “legal residence” of the student. Students are provided four opportunities to have their classifications reviewed:

**First**, a student’s initial residency determination is based on information provided as a part of the admission process.

**Second**, a student who believes that the initial classification is incorrect or experiences a change in circumstances that the student now believes makes him or her eligible for in-state status may seek re-classification at the institution.

**Third**, a student who believes that the reclassification determination is incorrect may seek an appeal to the Residence Appeals Board at the institution.

**Fourth**, a student who believes that the appeal determination is incorrect may seek a final appeal through the State Residence Committee.

Institutional procedures allow students to build an initial record in support of their applications and have a face-to-face hearing before the Residence Appeals Board at the student’s institution. Ultimately, students may appeal to the State Residence Committee under the policies and procedures of the State Residence Committee and as provided for in this *Manual* to review the decision of the Residence Appeals Board.

Outlined below are the procedures for consideration and determination of residence status for tuition purposes at public institutions of higher education.

## B. Initial Classification

The student’s initial residence classification occurs during the admission process when the student is first admitted to a community college or UNC institution. Once the initial classification is made, it is not changed unless there is either a reclassification of the student’s residence status (See Section V.C., below) or pursuant to a decision by the institution’s Residence Appeals Board or the State Residence Committee (See Sections V.D., V.E., and V.F., below).

The chief executive officer of each institution designates particular officials or offices to evaluate all initial residence classifications and to assign an appropriate classification consistent with the requirements of state law and the provisions of this *Manual*. The admitting institution initially classifies an admitted student either as a resident or as a nonresident for tuition purposes prior to actual enrollment based on the information provided as a part of the admission application process.

Most campuses accept the admission application provided by the College Foundation of North Carolina (CFNC). The CFNC application contains questions pertaining to the applicant’s state of residence. Each campus collects basic residency data on this application for the purpose of making a residency determination. However, the CFNC application is not, in and of itself, intended to be an official determination of residence classification for tuition purposes. Campuses may need and may request additional information in the process of determining a student’s residency classification. The CFNC application is a tool to collect this data; however, each institution is responsible for making the residency determinations for their applicants and enrollees based on all the information gathered through their admission process.

The initial residence classification (as well as any subsequent reclassifications) is not binding on another institution of higher education should the student apply or transfer to a different institution or a different academic level (i.e., undergraduate to graduate) at the same institution. No reclassification review is necessary when a student applies to or changes his or her program at the same academic level unless the classification is rebutted by

new information. Each institution shall assist one another in supplying residency information concerning the student if so requested by the student or institution.

A student who is initially classified as a nonresident and believes he or she meets the requirements of G.S. 116-143.1 or any other applicable laws may request a reclassification review by his or her institution following the deadlines and procedures outlined in Section V.B., below. The institution will not assume responsibility for initiating such an inquiry independently.

Some special circumstances involving initial classifications are worth noting:

**1. *Erroneous classifications and erroneous notices.*** The correctness of a residence classification may be tested through the appeal process described in Sections V.D., V.E., and V.F., below. Such residence determinations, if reversed on appeal, are called “erroneous classifications.” Erroneous classifications are different from undisputed classifications that are communicated erroneously to the classified student or within the classifying institution; these communications are called “erroneous notices concerning classification.” Such erroneous notices may be letters announcing a residence status determination, tuition billing notices or institutional directives or notations for internal use of the classifying institution. Erroneous notices are, by definition, written communications.

If a student who has been classified as a nonresident for tuition purposes receives from an institutional officer an erroneous notice announcing that the student shall be billed as a *resident* for tuition purposes, the student shall not be responsible for paying the out-of-state tuition differential for any enrolled term commencing before the classifying institution gives to the student actual notice in writing, through certified mail, of the erroneous nature of the prior notice.

**2. *Fraudulent residence applications.*** A residency application for in-state tuition status is fraudulent if the residency classification is based on falsified information concerning legal residence and/or a student knowingly withholds correct residential information. An institution shall re-examine an application suspected of being fraudulent, make a residence status redetermination, and change the status of the student, if warranted, retroactively to the beginning of the term in which the fraudulent application was originally made. If a retroactive change is made, the student *shall* be responsible for the tuition differential (the difference between the in-state and out-of-state tuition rate) for the enrolled term(s) intervening between the fraudulent application and its discovery. Providing false information with regard to any response made to any institutional request for information may subject the individual to disciplinary action, up to and including dismissal from the institution.

If a student willfully misrepresents his or her eligibility for a tuition waiver under Chapter 115B of the North Carolina General Statutes, the student, along with anyone who knowingly assists the student in the misrepresentation, may be subject to criminal misdemeanor punishment.<sup>73</sup>

**3. *A change in facts relative to a student's in-state residence status.*** After a student is classified initially as a resident for tuition purposes (granted in-state status), there may be changes in facts or circumstances that would affect this classification. It is the responsibility of the particular student to notify the institution of these changed facts or circumstances. Enrolled students initially classified as a resident for tuition purposes will be granted a 12-month grace period beginning with the date of the residency event causing a reclassification. If the 12-month period ends during a semester or academic term, the grace period extends to the end of that semester or academic term.

Undertaking a conscientious good faith discharge of its administrative responsibilities and where it has reason to believe that there has been a change in facts relative to an individual student's resident status, an institution may investigate any student's residential status.

If a student experiences a change in facts or circumstances that may impact the student's resident status, the student shall advise the institution within one semester, quarter, or term from the date of the change in facts or circumstances. Failure to do so shall be cause for appropriate disciplinary action against the student by the institution, similar to a finding of fraud discussed above. The institution may initiate the reclassification inquiry independently at any time after the initial residential classification.

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<sup>73</sup>G.S. 115B-6.

## C. Reclassification

A student who is initially classified as a nonresident and believes he or she meets the requirements of G.S. 116-143.1, -143.3, or any other applicable laws and regulations may request a reclassification review by the institution. The request for reclassification may be submitted either in direct response to the initial classification (if the student believes the initial classification is erroneous), or at a future time if the student has experienced a change in circumstances that he or she believes makes him or her eligible for in-state resident status. Students must submit requests for reclassification in accordance with procedures provided for in this *Manual*. The institution will not assume responsibility for initiating such an inquiry independently.

Because tuition is not prorated, classification determinations are made at the beginning of an academic term, remain fixed for the duration of that academic term, and are not changed retroactively after the academic term has ended.<sup>74</sup> Consequently, a student's residence status will not be changed once the academic term has begun (note the deadline below in which reclassification applications along with all supporting documentation shall be submitted no later than the 10<sup>th</sup> business day of the academic term), and a request for change in residence status (reclassification) cannot be considered until the beginning of the next academic term for which the change in status is sought. Students do have the opportunity to apply for a change in residence status at the beginning of a subsequent academic term under the reclassification procedures set out in this *Manual*. Students seeking a change in residence status must submit a new application prior to the applicable deadline for applying for reclassification for the next academic term in which the student wishes to have a change in his or her residence status considered.

Outlined below are the general procedures for reclassification:

**1. Deadlines.** Except for deadlines set out in the General Statutes, institutions may set their own deadlines so long as they are not inconsistent with the deadlines provided for in this *Manual*.

The deadline to submit the reclassification application along with all supporting documentation cannot be later than the *10th business day* of the term for which the student is seeking residency reclassification. All conditions necessary for achieving in-state status must still be satisfied *prior* to the beginning of the academic term for which the student is seeking reclassification.

**2. Responsibility for Supplying Information.** It is the student's responsibility to provide the documentation necessary to support his or her claims for in-state residency for tuition purposes by the applicable deadlines. Supporting documents should show evidence of the student's physical presence in North Carolina for the requisite amount of time and creation of his or her domicile in North Carolina. New or additional information may be presented at the reclassification stage since the application itself may not have indicated sufficient information to the initial classification officer. The burden of proof is on the student.

**3. Reclassification Determination.** The reclassification officer reviews the application, including supporting documentation, determines whether or not the student has met the requirements of G.S. 116-143.1, -143.3, and any other applicable laws and requirements (including the provisions of this *Manual*) as of the first day of the academic term, and notifies the student of the determination. The reclassification officer may ask for clarification and additional documentation from the student in order to make the most accurate determination.

If the student is reclassified as a resident for tuition purposes, the change to in-state status is effective at the beginning of the academic term for which application was made, provided that the student is found to have satisfied all requirements of G.S. 116-143.1 and any other applicable laws prior to the beginning of the academic term.

**4. Appeal.** Reclassification determinations may be appealed to the institution's Residence Appeals Board by either the student or the institution, under the provisions of Sections V.D. (student appeals) and V.E. (institutional appeals), below.

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<sup>74</sup>Changes in classification after the beginning of the academic term (including after the end of the academic term) will not be made unless a change in residency law is the cause for the reclassification and the change in residency law was made retroactive to a point in time preceding the expired academic term(s).

## D. Student Appeals to Residence Appeals Board

The Residence Appeals Board (RAB)<sup>75</sup> is an administrative body of a higher education institution that reviews an appeal of a specific residence reclassification of a student enrolled at that institution. The RAB considers all information related to the initial residence classification and reclassification determinations. Information not submitted as part of either the initial classification or the reclassification application may still be submitted to the RAB if authorized by the RAB and in a manner prescribed by procedures adopted by the RAB.

The decision of the official or office of the institution responsible for the reclassification decision may be appealed by the student to the RAB pursuant to such schedule and procedures that the RAB may prescribe. Failure to comply with deadlines and other procedural requirements prescribed by an institution's RAB may result in dismissal of the student's appeal.

Since these proceedings are based primarily on previously submitted evidence and also because the RAB process is administrative and not judicial, the RAB is not required to make a complete record (such as a tape recording, transcript, or summary of evidence) of the hearings held on the applications. The applicant must have the opportunity for a face-to-face meeting before the RAB, but the RAB is not required to allow students to be represented by legal counsel in RAB proceedings. The campus's final decision on the student's appeal should be provided to the student in writing.<sup>76</sup>

The grounds for appeal to the RAB are:

1. That the institutional decision was made in disregard of or mistake with reference to the requirements of law or *Manual* policy;
2. That *Manual* provisions as currently stated do not address the present issue presented by the institutional decision which is alleged to constitute a violation of state and/or federal law;
3. That *Manual* provisions as currently stated are at variance with subsequently developed case law pertinent to the institutional decision; and/or
4. That the institutional decision is not supported by an evidentiary record providing a reasonable basis for the conclusion reached.

Students may appeal an unfavorable decision by the RAB to the State Residence Committee for a final agency determination.

## E. Institutional Appeals to Residence Appeals Board

Classification decisions may be appealed to the Residence Appeals Board by an institution's classifying officer. Residence Appeals Board decisions on institutional appeals may not be appealed by the institution to the State Residence Committee. However, the affected student may appeal the RAB's decision to the SRC pursuant to the institution's policies and procedures for appeals of RAB decisions on institutional appeals. This limitation upon institutional appeals shall not prohibit an institution from making inquiries to the State Residence Committee for purposes of general advice or other assistance.

## F. Appeals to the State Residence Committee

The decision of the institution's Residence Appeals Board may be appealed by the student to the State Residence Committee (SRC) pursuant to such rules and procedures as that Committee may prescribe. These rules and procedures are contained in the *Policies and Procedures of the State Residence Committee*, which the SRC may amend in its discretion consistent with state law and the provisions of this *Manual*. Institutions and students should consult the SRC's *Policies and Procedures* for more information about the SRC appeal process. Major provisions of the SRC's *Policies and Procedures* are outlined below.

**1. Composition.** The State Residence Committee consists of representatives from UNC General Administration, the Community College System Office and university and community college campuses appointed by the President of The University of North Carolina and the President of the Community College System. The specific composition of the Committee and the terms of its members are prescribed in the *Policies and Procedures of the*

<sup>75</sup>As used in this *Manual*, the "Residence Appeals Board" refers to the institutional body that performs the functions described in this section; an institution may designate a different title for its Residence Appeals Board in that institution's discretion.

<sup>76</sup>See, *Norman v. Cameron* at 51-53.

*State Residence Committee*, and may be amended from time to time by the Committee in its discretion. Members recuse themselves during deliberations, discussion, and voting on records from their institutions.

**2. Functions.** The functions of the State Residence Committee are:

- a. To decide cases appropriately appealed to it from a State institution of higher education;<sup>77</sup>
- b. To evaluate the administrative practices and substantive rules associated with implementation of State law relating to residential classification for tuition purposes and to make recommendations, respectively, to the Board of Governors of The University of North Carolina and to the State Board of Community Colleges concerning any perceived need for changes in applicable law or administrative policies and procedures associated with the responsibility of classifying students by residence for tuition purposes;
- c. To evaluate and maintain the document entitled, *A Manual to Assist the Public Higher Education Institutions of North Carolina in the Matter of Student Residence Classifications for Tuition Purposes (the "Manual")*; and
- d. To serve as a source of general advice to and sharing of information with and among affected institutions of higher education concerning residence questions.

**3. Grounds for Appeal.** The sole grounds for appeal to the State Residence Committee from an institution's Residence Appeals Board shall be:

- a. That the institutional decision was made in disregard of or mistake with reference to the requirements of law or *Manual* policy;
- b. That *Manual* provisions as currently stated do not address the present issue presented by the institutional decision which is alleged to constitute a violation of state and/or federal law;
- c. That *Manual* provisions as currently stated are at variance with subsequently developed case law pertinent to the institutional decision; and/or
- d. That the institutional decision is not supported by an evidentiary record providing a reasonable basis for the conclusion reached.

**4. Procedures and Deadlines.** Appeals to the SRC must be taken in accordance with the SRC's *Policies and Procedures*. Included in these procedures are various deadlines for the SRC appeals process as well as other procedural requirements. Appeals that do not comply with these deadlines and other procedural requirements are subject to dismissal by the SRC. Appeals to the SRC must also comply with the procedures and applicable deadlines for review of a reclassification application and appeal at the institutional level (see Sections V.C. (student appeals) and V.D. (institutional appeals), above). Appeals to the SRC that do not comply with institutional procedures and deadlines are also subject to dismissal by the SRC.

**5. Basis of Review.** Because the SRC is an appellate body, it reviews the institution's decision based on the facts presented through information gathered during the institution's decision-making process; the SRC does not conduct its own independent inquiry into the facts of the case by gathering new information not previously received by the institution. The SRC reviews all of the documents that the institution relied on in making all levels of decisions - initial classification, reclassification, and institutional appeal - as well as appeal statements of the student applicant. Information and documents not previously received by the institution may not be submitted to the SRC, and any such information or documents forwarded to the SRC with the student's appeal or contained within the student's statement of appeal *will not* be considered by the SRC. Students therefore have the responsibility to provide *all* information and documents relevant to their request for reclassification to the institution reclassification officer and the institution's Residence Appeals Board. This limitation applies to information submitted by students as well as by institutions; the SRC will not consider information or documents submitted by institutions that were not included as part of the institution's decision-making process.

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<sup>77</sup>The SRC does not consider appeals of students enrolled in independent colleges and universities.

**6. Disposition of Cases.** The SRC renders a final disposition of the appeal by:

- a. sustaining (upholding) or reversing (overturning) an institutional decision; or
- b. issuing a ruling in which the Committee declines to entertain an appeal because of insufficient showing of proper basis for appellate review, including failure to comply with procedural requirements and applicable deadlines at the institutional level and for taking appeals to the SRC.

The SRC may also remand (send back) a case to the institution for further inquiry or for additional action by the institution. If the SRC remands a case back to the institutional level, the remand *does not* constitute a final disposition of that case (the case may be appealed again if the institutional inquiry or action on remand gives rise to a basis for appeal described in Section V.F.3., above).

The SRC's final decision on the student's appeal should be provided to the student in writing. Final disposition of an appeal by the State Residence Committee shall be deemed to exhaust the administrative remedies of the appellant with respect to the institutional classification or reclassification. No further appeal is available within either The University or the Community College System.

### G. Forms Used in the Residency Determination Process

To help ensure consistent compliance with and application of the laws and procedures governing residency determinations made by universities and community colleges, these institutions are encouraged to use common forms adopted by the State Residence Committee.

## VI. Conclusion

Consistent with North Carolina's public policy of providing the benefits of higher education as free as practicable to the people of our state, the General Assembly has placed stringent criteria on who qualifies as a *bona fide* resident of this state for tuition purposes. While each institution of higher education within the state must allow students a chance to demonstrate that they are *bona fide* residents of the state pursuant to the provisions of this *Manual* and applicable laws, the burden of proof of in-state resident status for tuition purposes rests on the student. This *Manual* is intended to provide guidance to institutions of higher education as well as students and their families on the laws and procedures by which residence classification determinations are made.

For additional information on residency matters, links to relevant laws, and other resources, see UNC General Administration's State Residence website at [www.northcarolina.edu/legal/residence/index.htm](http://www.northcarolina.edu/legal/residence/index.htm).



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