

REGULATIONS

SOUTH CAROLINA COMMISSION ON HIGHER EDUCATION CHAPTER 62

Statutory Authority: 1976 Code Sections 59-112 to 59-112-100 Article V. Determination of Rates of Tuition and Fees

Synopsis:

The regulations will simplify resident classification which is essential to fee determination, admission regulations, and other relevant policies of State institutions. The regulations are intended to provide institutions with fair and equitable standards which can be administered consistently and are sensitive to the interests of both students and the State. The Commission hereby establishes regulations for the Statute Governing Residency and Tuition for Fee Purposes to be applied by all South Carolina institutions and related agencies. More specifically, these regulations focus on: definitions, establishing the requisite intent to become a South Carolina domiciliary, maintaining a residence, effect of change of residency, effect of marriage(s), exclusion categories, faculty and administrative employees and their dependents, residents with full-time employment and their dependents, retired persons and their dependents, temporary absence, non-citizens and non-permanent residents, application procedures, institutional role in determining residency status, and an appropriate institutional appeals mechanism.

62.600. Rates of Tuition and Fees.

A. Resident classification is an essential part of fee determination, admission regulations, and other relevant policies of state institutions. It is important that such institutions have fair and equitable regulations which can be administered consistently and are sensitive to the interests of both students and the State. The Commission on Higher Education hereby establishes regulations for the Statute Governing Residency and Tuition for Fee Purposes to be applied consistently by all South Carolina institutions of higher education. These regulations do not address residency matters relating to either in-county or international categories used within the State's technical colleges.

B. Institutions of higher education are required by the Statute to determine the residence classification of applicants. The initial determination of one's resident status is made at the time of admission. The determination made at that time, and any determination made thereafter, prevails for each subsequent semester until the determination is successfully challenged. The burden of proof resides with the students to show evidence as deemed necessary to establish their residency status.

62.601. Codes of Laws Governing Residence.

- A. The rules regarding the establishment of legal residence for tuition and fee purposes for institutions of higher education are governed by the South Carolina Code of Laws.
- B. As prescribed by the code, residence for tuition and fee purposes can be established by
- (1) independent persons,
 - (2) dependent persons,
 - (3) independent immigrants or dependent immigrants.

62.602. Definitions.

A. A "*resident student*" for tuition and fee purposes is defined as an independent person who has abandoned all prior domiciles and has been domiciled in South Carolina continuously for at least twelve months immediately preceding the first day of classes of the term for which resident classification is sought and for whom there is an absence of such evidence in other states or countries, notwithstanding other provisions of the Statute. In the instances of dependent students and their families who are citizens or permanent residents, the domicile of the spouse, parent, and/or guardian for at least the twelve months immediately preceding the first day of classes of the term for which resident classification is sought is considered in determining residency status.

B. "*Reside*" is defined as continuous and permanent physical presence within the State, provided that temporary absences for short periods of time shall not affect the establishment of residence. Temporary absences shall be absences which are a total of thirty days or less during the requisite 12-month waiting period. Absences of more than thirty days may affect the establishment or maintenance of residence for tuition and fee purposes. Excluded are absences required by a program to complete the degree at the home institution in South Carolina and absences for military training service, provided South Carolina domicile is maintained. In the instance of dependents, except for non-resident aliens, where the spouse, parent and/or guardian "*reside*" will be considered in determining residency status.

C. "*Domicile*" is defined as true, fixed, principal residence and place of habitation, indicating where a person intends to remain, or to where one expects to return when away. Applicant must be domiciled in the State for twelve months for residency consideration, notwithstanding other provisions of the Statute.

D. *"Independent Person"* is defined as one in his/her majority (eighteen years or older or an emancipated minor), whose predominant source of income (more than half of the independent person's support) is his/her own earnings or income from employment, investments, or payments for trusts, grants, scholarships, commercial loans, institutional loans, or foundation loans or payments made in accordance with court order. An independent person must provide more than half of his or her support during the twelve months immediately prior to the date that classes begin for the semester for which resident status is requested and cannot be claimed as a dependent or exemption on the federal tax return of his or her parent, spouse, or guardian for the year in which resident status is requested.

E. *"Dependent Person"* is defined as one whose predominant source of income or support is from a parent, spouse, or guardian and who qualifies for and is claimed as a dependent or exemption on the federal income tax return of the parent, spouse, or guardian. A dependent person is also one for whom payments are made, under court order, for child support and the cost of the dependent person's college education.

F. *"Terminal Leave"* is defined as a transition period of no more than 60 days following active employment and immediately preceding retirement (with a pension or annuity), during which the individual may use accumulated leave. ~~If terminal period exceeds 60 days, this provision is not applicable.~~

G. *"Prior"* is defined as a period of time not exceeding ninety days and immediately preceding the first day of classes for the term in question.

H. *"Continue to be Enrolled"* is defined as continuous enrollment without an interruption that would require the student to pursue a formal process of readmission to that institution. Formal petitions or applications for change of degree level shall be considered readmissions.

I. *"Non-resident Alien"* is defined as a person who is not a citizen or permanent resident of the United States. By virtue of their non-resident status "non-resident aliens" generally do not have the capacity to establish domicile in South Carolina.

J. *"Academic Session"* is defined as a term or semester of enrollment.

62.603. Citizens and Permanent Residents.

A. Independent persons who have physically resided and been domiciled in South Carolina for twelve continuous months immediately preceding the date classes begin for the semester for which resident status is claimed may qualify to pay in-state fees. The twelve-month residency period does not start until the independent person begins to take steps which indicate that the independent person intends to establish a permanent home in the State. Absences from the State for more than thirty days during the twelve month period may affect the establishment of permanent residence for fee and tuition purposes. Steps an independent person should take to establish a permanent home in South Carolina are listed in the section entitled "Establishing the Requisite Intent to Become a South Carolina Domiciliary."

B. The resident status of a dependent person is based on the resident status of the person who provides more than half of the dependent person's support and claims the dependent person as a dependent for federal income tax purposes. The residence and domicile of a dependent minor and other dependent person shall be presumed to be that of their parent(s), spouse, or guardian(s).

C. In the case of divorced or separated parents, the resident status of the dependent person may be based on the resident status of the parent who

- 1) supports and/or claims the dependent person as a dependent for tax purposes; or
- 2) has legal custody of the dependent person; or
- 3) is ordered by the court to pay child support and the cost of the dependent's college education.

62.604. Non-Resident Aliens, Non-Citizens, and Non-Permanent Residents.

A. Except as otherwise specified in this section, all non-citizens and non-permanent residents of the United States will be assessed tuition and fees at the non-resident, out-of-state rate. Independent aliens, including refugees, asylees, and parolees and their dependents, may be entitled to resident, in-state classification once they have been awarded permanent resident status by the U.S. Department of Justice and meet all the statutory residency requirements provided that all other domiciliary requirements are met. Time spent living in South Carolina prior to the awarding of permanent resident status may not be counted towards the twelve month residency period. Certain non-resident aliens present in the United States in specified visa classification may be granted in-state residency for tuition and fee purposes as prescribed by the Commission on Higher Education.

B. The Code of Federal Regulations [Title 8, Vol. 1] Part 214.1 (2) will serve as the primary resource reference for defining visa categories.

62.605. Establishing the Requisite Intent to Become a South Carolina Domiciliary.

A. Residence status may not be acquired by an applicant or student while residing in South Carolina for the sole purpose of enrollment in an institution or for access to state-supported programs designed to serve South Carolina residents.

B. If a person asserts his/her domicile has been established in this State, the individual has the burden of proof. Such persons should provide to the designating residency official any and all evidence which the person believes satisfies the burden of proof. The residency official will consider any and all evidence provided concerning such claim of domicile, but will not necessarily regard any single item of evidence as conclusive evidence that domicile has been established.

C. For the independent persons, examples of intent to become a South Carolina resident may include, although any single indicator may not be conclusive, indicia as listed below. The absence of these indicia in other states or countries is required before the student is eligible to pay in-state rates. Indicia may include:

- 1) statement of full-time employment;
- 2) possession of a valid South Carolina voter registration card and voting in South Carolina elections;
- 3) designating South Carolina as state of legal residence on military record;
- 4) possession of a valid South Carolina driver's license, or if a non-driver, a South Carolina identification card;
- 5) possession of a valid South Carolina vehicle registration card;
- ~~6) continuous presence in South Carolina during periods when not enrolled as a student;~~
- 7) paying South Carolina income taxes as a resident during the past tax year, including income earned outside of South Carolina from the date South Carolina domicile was claimed;
- 8) ownership of principle residence in South Carolina;
- 9) licensing for professional practice (if applicable) in South Carolina.

D. These indicia will likewise be considered for spouses, parents, and guardians of dependent persons who wish to establish South Carolina domicile. As noted under "Citizens and Permanent Residents" above, the resident status of a dependent matches that

of the person who provides more than half of the dependent person's support and/or claims the dependent person as a dependent for federal tax purposes.

62.606. Maintaining Residence.

A. A person's temporary absence from the State does not necessarily constitute loss of South Carolina residence unless the person has acted inconsistently with the claim of continued South Carolina residence during the person's absence from the State. The burden is on the person to show retention of South Carolina residence during the person's absence from the State. Steps a person should take to retain South Carolina resident status for fee and tuition purposes include: continuing to use a South Carolina permanent address on all records; retaining South Carolina voter's status; maintaining a South Carolina drivers license; ~~voting by absentee ballot~~; maintaining South Carolina vehicle registration; and satisfying South Carolina resident income tax obligation. Individuals claiming permanent residence in South Carolina are liable for payment of income taxes on their total income from the date that they established South Carolina residence. This includes income earned in another state or country.

B. South Carolina residents (and their dependents) who serve in the military may continue to be eligible to pay in-state fees as long as they continuously claim South Carolina as their state of legal residence during their military service. South Carolina residents who change their state of legal residence while in the military lose their South Carolina resident status for fee and tuition purposes. To re-establish their South Carolina resident status, such persons must establish residence in the State in accordance with the Regulations.

62.607. Effect of Change of Residency.

A. Notwithstanding other provisions of this section, any dependent person, except as otherwise excluded, who has been domiciled with his/her family in South Carolina for a period of not less than three years and whose family's departure does not occur more than 90 days immediately prior to initial enrollment ~~and not to exceed 90 days~~ at State supported colleges and universities may enroll in those institutions of higher learning at in-state rates and may continue to be enrolled at such rates even if the person upon whom he/she is dependent moves his/her domicile from the State. The change of residency must not occur more than 90 days prior to initial enrollment.

B. If a dependent or independent person has been domiciled in South Carolina for less than three years, eligibility for in-state rates shall end on the last day of the academic

session during which domicile is lost.

62.608. Effect of Marriage.

A. In ascertaining domicile of a married person, such a review shall be determined just as for an unmarried person by reference to all relevant evidence of domiciliary intent.

B. If a non-resident marries a South Carolina resident, the non-resident does not automatically acquire South Carolina resident status. The non-resident may acquire South Carolina resident status if the South Carolina resident is an independent person and the non-resident is a dependent of the South Carolina resident.

C. Marriage to a person domiciled outside South Carolina shall not be solely the reason for precluding a person from establishing or maintaining domicile in South Carolina and subsequently becoming eligible or continuing to be eligible for residency.

D. No person shall be deemed solely by reason of marriage to a person domiciled in South Carolina to have established or maintained domicile in South Carolina and consequently to be eligible for or to retain eligibility for South Carolina residency.

62.609. Exclusions.

A. Persons in the following categories may qualify to pay in-state fees without having to establish a permanent home in the state for twelve months. Persons who qualify under any of these categories must meet the conditions of the specific category on or before the first day of classes of the term for which payment of in-state fees is requested.

1) *"Military Personnel and their Dependents"*: Members of the United States Armed Forces (and their dependents) who are stationed in South Carolina on active duty may be considered eligible to pay in-state fees. "Armed Forces" shall mean federal military personnel in the United States Air Force, Army, Marine Corps, Navy, and Coast Guard. When such personnel are ordered away from the State, their dependents may continue to pay in-state fees for an additional twelve months. Such persons (and their dependents) may also be eligible to pay in-state fees for a period of twelve months after their discharge from the military, provided they have demonstrated an intent to establish a permanent home in South Carolina and they have resided in South Carolina for a period of at least twelve months immediately preceding their discharge. The military personnel who are not stationed in South Carolina and/or former military personnel who intend to

establish South Carolina residency must fulfill the twelve month "physical presence" requirement for them or their dependents to qualify to pay in-state fees. To establish South Carolina resident status, such persons must establish residence in accordance with the Regulations.

- 2) *"Faculty and Administrative Employees and their Dependent Children and Spouses (59-112-60)"*: Full-time faculty and administrative employees of South Carolina state-supported colleges and universities are eligible to pay in-state fees. Dependents of such persons are also eligible.
- 3) *"Residents with Full-Time Employment and their Dependents"*: Persons who reside, are domiciled, and are full-time employed in the State and will continue to work full-time until they meet the twelve-month requirement are eligible to pay in-state fees, provided that they have taken the steps to establish a permanent home in the State (see "Establishing the Requisite Intent to Become a South Carolina Domiciliary"). The dependents of such persons are also eligible.
- 4) *"Retired Persons"*: Retired persons and their dependents who are receiving a pension or annuity who reside in South Carolina and have been domiciled in South Carolina as prescribed in the Statute for less than a year may be eligible for in-state rates ~~State supported aid~~ if they maintain residence and domicile in this State.
- 5) Persons on terminal leave and their dependents who have established residency in South Carolina may be eligible for in-state rates even if domiciled in the State for less than one year, if they present documentary evidence from their employer showing they are on terminal leave. The evidence should show beginning and ending dates for the terminal leave period and that the person will receive a pension or annuity when he/she retires. If the terminal period exceeds 60 days, this provision is not applicable.

B. Full-time employment shall mean employment which consists of at least thirty-seven and a half hours on a single job in a full-time status. However, a person who works less than thirty-seven and a half hours a week but receives or is entitled to receive full-time employee benefits shall be considered to be employed full-time.

C. Persons participating in Southern Region Education Board-sponsored programs, including the Contract for Services and the Academic Common Market Programs, must have continuously resided in the State for other than educational purposes for the two years immediately preceding application for consideration and must meet all residency

requirements during this two-year period.

62.610. Application for Change of Resident Status.

A. Persons applying for a change of resident classification must complete a residency application/petition and provide supporting documentation prior to a reclassification deadline as established by the institution.

B. The burden of proof resides with those persons applying for a change of resident classification who must show required evidence to document the change in resident status.

62.611. Incorrect Classification.

A. Except in cases of institutional errors, persons incorrectly classified as residents are subject to reclassification and to payment of all non-resident fees not paid. If incorrect classification results from false or concealed facts, such persons may be charged tuition and fees past due and unpaid at the out-of-state rate. If incorrect classification from institutional errors occurs, the student will be subject to reclassification beginning the next academic session. The violator may also be subject to administrative, civil, and financial penalties. Until these charges are paid, such persons will not be allowed to receive transcripts or graduate from a South Carolina institution.

B. Residents whose resident status changes are responsible for notifying the residency official of such changes.

62.612. Inquiries and Appeals.

A. Inquiries regarding residency requirements and determinations should be directed to the institutional residency official.

B. Each institution will develop an appeals process to accommodate persons wishing to appeal residency determinations made by the institution's residency official. Neither the primary residency official nor appellate official may waive the provisions of the Statute governing residency for tuition and fee purposes.