

November 5, 2014

MEMORANDUM

TO: State Board of Regents

FROM: David L. Buhler

SUBJECT: Revision of Policy R512, Determination of Residency Status

Issue

Regent policy R512, *Determination of Residency Status*, requires revisions to one section to make it clear that under *Utah Code Ann. §53B-8-102, Definition of Resident Student - Exceptions* international students who have obtained refugee or asylum immigration status may be classified as resident student status according to the same criteria applicable to citizens. Commissioner's staff worked with the Utah Attorney General's office and institutional admissions representatives in drafting the revisions.

Background

The key provisions addressed in R512's rewrite include:

- 1) Section 4.4.3. has been added to address international students who have obtained asylum or refugee immigration status. These students are not in the U.S. on a non-immigrant or immigrant visa. They are instead granted an immigration status that allows them to remain in the U.S. indefinitely. As a result, Utah Code Ann. §§ 53B-8-102(9)(a) and (b) do not apply to them. There is nothing in Utah Code Ann. §53B-8-102 that gives any basis for treating these students differently from citizens. Therefore, it is proposed that this group of students be treated similarly to students who have been granted immigrant or permanent resident status.
- 2) The former sections 4.4.3. and 4.5. have been eliminated because they are duplicate policy language that is also found and more aptly placed in R513, *Tuition Waivers and Reductions*. The HB 144 Tuition Waiver as passed during the 2002 legislative session remains available to students without modification.

Commissioner's Recommendation

The Commissioner recommends that the Regents review the proposed revisions and if in agreement with the changes, approve the revisions to policy R512, *Determination of Residency Status*, effective immediately.

David L. Buhler
Commissioner of Higher Education

DLB/GLS/KVO/CRW
Attachment

4.2.2. **Policies for Students Enrolled in Non-Credit Programs.** Because most non-credit applied technology programs are short-term (require less than a year to complete), USHE institutions offering non-credit courses or programs may, at their discretion, implement a policy that does not require residency classification for students enrolled in non-credit courses or programs.

4.2.3. **Exception to Establishing Resident Student Status:** Each institution may, at its discretion, and at the recommendation of the president, implement its own policy regarding the criteria for resident student status for either undergraduate students or graduate students, or both, in credit-bearing degree programs, that deviates from the criteria set forth in this policy. Such a policy shall not be more lenient than requiring a one-year waiting period as set forth here in 5.1.

4.3 **Rebuttable Presumption.** A student who has not previously acquired domicile in Utah and who enrolls at a USHE institution prior to residing in Utah for 12 continuous months will be presumed to not be domiciled in Utah and, therefore, will be classified as a nonresident student for tuition purposes. This presumption may be rebutted by substantial evidence.

4.4 **International Students:**

4.4.1. **Classification of International Students Who are in United States on Nonimmigrant Visas:** Students who are aliens and who are present in the United States on visitor, student, or other visas which authorize only temporary presence in this country, do not have the capacity to intend to reside in Utah for an indefinite period and therefore must be classified as nonresident.

4.4.2. **Classification of International Students Who are in United States on Immigrant Visas:** Students who are aliens and who have been granted immigrant or permanent resident status in the U.S. shall be classified for purposes of resident status according to the same criteria applicable to citizens.

4.4.3. **International Students Who Have Obtained Asylum or Refugee Status: An international student who has obtained asylum or refugee status under U.S. immigration law shall be classified for purposes of resident status according to the same criteria applicable to citizens.**

~~4.4.3. **Foreign National Students Who Are Legally Admitted in the United States:** A student shall be exempt from paying the nonresident portion of total tuition if the student:~~

~~————— 4.4.3.1. is a foreign national legally admitted to the United States;~~

~~————— 4.4.3.2. attended high school in this state for three or more years; and~~

~~————— 4.4.3.3. graduated from a high school in this state or received the equivalent of a high school diploma in this state.~~

~~Example: A student who is an American Indian born in Canada (with at least 50% American Indian blood) cannot be denied admission to the United States and may enter the United States legally without obtaining a visa. If the student attends high school in~~

~~Utah for three or more years and graduates from a Utah high school or received the equivalent of a high school diploma in this state, the student is eligible for resident student tuition. (However, if the student desires to reside permanently in the United States, he or she may apply for a green card after having created a record of admission for permanent residence. Once the green card is received, the student is eligible for resident student status if the criteria for resident student status are met.)~~

~~Example: A foreign national student who is placed involuntarily in Utah as part of a United States or Utah government relocation program for foreign refugees fleeing civil war, religious or racial persecution, political oppression, or other legitimate reason is eligible for resident student tuition if the student attends high school in Utah for three or more years and graduates from a Utah high school or received the equivalent of a high school diploma in this state.~~

~~**4.5. Other Students Who Are Exempt From Paying Nonresident Portion of Total Tuition:**~~

~~If allowed by federal law, a student, other than a nonimmigrant student within the meaning of paragraph (15) of subsection (a) of Section 1101 of Title 8 of the United State Code (see Section 4.4.1. of this policy), shall be exempt from paying the nonresident portion of total tuition if the student:~~

~~4.5.1. attended high school in this state for three or more years;~~

~~4.5.2. graduated from a high school in this state or received the equivalent of a high school diploma in this state;~~

~~4.5.3. registers as an entering student at an institution of higher education not earlier than the fall of the 2002-03 academic year; and~~

~~4.5.4. if the student is without lawful immigration status, files an affidavit with the USHE institution stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so; and~~

~~4.5.4. the student has not registered for college classes prior to the Fall of the 2002-03 academic school year.~~

4.65. Marriage to Utah Resident: A person who marries a Utah resident is eligible to be granted resident student status after he or she has acquired domicile in Utah.

4.76. Burden of Proof: The burden is on the student to prove that he or she is eligible for resident student status prior to the first day of classes for the term the student seeks to attend as a resident student. Except as set forth in section 4.3 of this policy, the standard for establishing resident student status is by a preponderance of the evidence. The institution, through its registrar, or designated person, is authorized to require written documents, affidavits, verifications, or other evidence deemed necessary to determine why a student is in Utah. The institution shall review all relevant evidence that is submitted by the student and shall make the residency determination based on the totality of the circumstances. The evidence submitted by the student shall include the evidence that is specifically required by the applicable section of this policy. In addition, a student may be required to file any or all of the following evidence within applicable timelines established by the institution.

4.76.1. A statement from the student describing employment and expected sources of support;

- 4.76.2. A statement from the student's employer;
- 4.76.3. Supporting statements from persons who might be familiar with the family situation;
- 4.76.4. Birth certificate;
- 4.76.5. Marriage certificate;
- 4.76.6. Documentation of eligibility for state social or rehabilitation services;
- 4.76.7. Documentation of immigration status and placement as political refugee;
- 4.76.8. Indicia of Utah domicile, including Utah voter registration, Utah vehicle registration, Utah driver's license or identification card, Utah state income tax return, rental contract or mortgage documents, bank records, and utility bills.

4.87. Receipt of State Social Services Benefits: A person who has been determined by a Utah governmental social or rehabilitation services agency to be a Utah resident for purposes of receiving state aid to attend a USHE institution is immediately eligible to apply for resident student status. The state aid must, at a minimum, cover the full cost of resident tuition. Upon the termination of such government agency support, the person is governed by the standards applicable to other persons. Any time spent residing in Utah during the time the individual received government aid shall count towards any applicable waiting period for Utah residency for tuition purposes upon termination of the government aid.

4.98. Reciprocity: The determination to grant residency to a student at a USHE institution shall be honored at other USHE institutions, unless:

- 4.98.1. the student obtained resident student status under false pretenses, or
- 4.98.2. the facts existing at the time of the granting of resident student status have significantly changed.

4.109. Reclassification by the Institution: If a student is classified as a resident, or granted residency by a USHE institution, the USHE institution may initiate a reclassification inquiry and in fact reclassify the student, based on any facts, error, or changes in facts or status which would justify such an inquiry, even if the error was on the part of the USHE institution.

4.110. Procedures for Determining Resident Student Status: If a student desires to be granted resident student status, he or she must comply with the following procedures:

- 4.110.1. **Application Deadline:** Students must meet institutional application deadlines for each term. Institutions may establish a policy regarding acceptance of late residency applications for current term consideration. Unless institutional policy allows otherwise, institutions may not accept applications for resident student status or supporting documentation after the third week of the semester or term for which the student seeks resident student status. Ordinarily applications or supporting documentation received after the third week should be considered for the following semester.

- 4.110.2. **Initial Classification:** Each institution shall initially classify all applicants as either resident or nonresident. If there is doubt concerning resident status, the applicant shall be classified as a nonresident.
- 4.110.3. **Application for Reclassification:** Every student classified as a nonresident shall retain that status until he or she is officially reclassified to resident status.
- 4.110.4. **Refund:** A decision favorable to the applicant shall be retroactive to the beginning of the academic period for which application for resident status was made, and shall require a refund of the nonresident portion of any tuition charges paid for that and subsequent academic periods.
- 4.110.5. **Hearings:** Each institution shall be responsible for providing a process for students who have been denied resident student status to be heard. Each institution shall adopt procedures that fit the local campus situation, but the following guidelines shall be followed:
- 4.110.5.1. Procedures for a hearing shall be set out in writing by the institution, subject to approval by the Office of the Commissioner.
 - 4.110.5.2. The institution shall provide a hearing officer or hearing committee with appropriate clerical and other services as necessary to the effective function of the hearing process.
 - 4.110.5.3. The student appealing the decision shall have the responsibility of providing evidence that proves that he or she has met the residency requirements. Students shall be given copies of the Regents' policies pertaining to determination of residency. The student shall also be given an explanation of the rationale of the decision-maker who previously ruled that the student was classified as a nonresident.
 - 4.110.5.4. Both the student and the administration's representative are entitled to representation by counsel.
 - 4.110.5.5. Oral and written evidence may be presented. It is not required that a formal, written, verbatim record of the proceedings be kept, but a written summary of the significant assertions and findings of the hearing shall be prepared.
 - 4.110.5.6. It is not required that formal rules of evidence be followed; administrative hearing rules may be used.
 - 4.110.5.7. Decisions of the hearing officer or hearing committee must be in writing and must give reasons for the decision.

4.121. **Declaration of Financial Independence:** In addition to submitting objective evidence of domicile, a person seeking resident student status must also submit a declaration of financial independence, which must include, at a minimum, evidence that the person is not claimed as a dependent on the most recently filed

federal tax returns of any person who is not a resident of Utah. Institutional residency officers shall require such documentation at the time of initial application for resident student status.

4.132. Penalties for Giving Incorrect or Misleading Information: A student who gives incorrect or misleading information to evade payment of nonresident fees shall be subject to serious disciplinary action and must also pay the applicable nonresident fees for each term previously attended.

4.143. Waivers of Nonresident Tuition—Nonresident Students Exempt from Nonresident Portion of Tuition: The following students who attend a USHE institution may receive a waiver of nonresident tuition under Regents' Policy R513; however, these students may not use time spent in Utah as a student on any of these programs toward ~~the~~ any waiting period that may be required for resident tuition status. For more information on all tuition waivers, please see Regents' Policy R513.

4.143.1. Western Undergraduate Exchange (WUE) Students: A student attending a USHE institution under the Western Undergraduate Exchange program is considered to be domiciled in his/her home state. (See Regents' Policy R513-8 for further details regarding WUE.)

4.143.2. Western Regional Graduate Program (WRGP): A student attending a USHE institution under the Western Regional Graduate Program is considered to be domiciled in his/her home state.

4.143.3. Professional Student Exchange Program/WICHE Students: A student attending a USHE institution under the Professional Student Exchange Program/WICHE Program is considered to be domiciled in his/her home state. (See Regents' Policy R513-8 for further details regarding WICHE.)

4.143.4. Exemption for Alumni Legacy Scholarships: The students attending a USHE institution under this scholarship are considered to be domiciled in his/her home state. (See Regents' Policy R513-17 for further details regarding Alumni Legacy Scholarships.)

4.143.5. Dixie State University's Good Neighbor Students: The students attending DSU under this scholarship are considered to be domiciled in his/her home state. (See Regents' Policy R513-4.2. for further details regarding Good Neighbor Students.)

R512.5. "Student Who Has Come to Utah For the Purpose of Attending an Institution of Higher Education" Exception to Establishing Resident Student Status.

5.1. General Rule: A student who has come to Utah for the purpose of attending an institution of higher education may be granted resident student status if, prior to the first day of classes of the term the student seeks to attend as a resident student, the student has:

5.1.1. maintained continuous Utah residency status for one full year;

5.1.2. submitted a written declaration that the student has relinquished residency in any other state;

4.2.2. **Policies for Students Enrolled in Non-Credit Programs.** Because most non-credit applied technology programs are short-term (require less than a year to complete), USHE institutions offering non-credit courses or programs may, at their discretion, implement a policy that does not require residency classification for students enrolled in non-credit courses or programs.

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4.3 **Rebuttable Presumption.** A student who has not previously acquired domicile in Utah and who enrolls at a USHE institution prior to residing in Utah for 12 continuous months will be presumed to not be domiciled in Utah and, therefore, will be classified as a nonresident student for tuition purposes. This presumption may be rebutted by substantial evidence.

4.4 **International Students:**

4.4.1. **Classification of International Students Who are in United States on Nonimmigrant Visas:** Students who are aliens and who are present in the United States on visitor, student, or other visas which authorize only temporary presence in this country, do not have the capacity to intend to reside in Utah for an indefinite period and therefore must be classified as nonresident.

4.4.2. **Classification of International Students Who are in United States on Immigrant Visas:** Students who are aliens and who have been granted immigrant or permanent resident status in the U.S. shall be classified for purposes of resident status according to the same criteria applicable to citizens.

4.4.3. **International Students Who Have Obtained Asylum or Refugee Status:** An international student who has obtained asylum or refugee status under U.S. immigration law shall be classified for purposes of resident status according to the same criteria applicable to citizens.

4.5. **Marriage to Utah Resident:** A person who marries a Utah resident is eligible to be granted resident student status after he or she has acquired domicile in Utah.

4.6. **Burden of Proof:** The burden is on the student to prove that he or she is eligible for resident student status prior to the first day of classes for the term the student seeks to attend as a resident student. Except as set forth in section 4.3 of this policy, the standard for establishing resident student status is by a preponderance of the evidence. The institution, through its registrar, or designated person, is authorized to require written documents, affidavits, verifications, or other evidence deemed necessary to determine why a student is in Utah. The institution shall review all relevant evidence that is submitted by the student and shall make the residency determination based on the totality of the circumstances. The evidence submitted by the student shall include the evidence that is specifically required by the applicable section of this policy. In addition, a student may be required to file any or all of the following evidence within applicable timelines established by the institution.

- 4.6.1. A statement from the student describing employment and expected sources of support;
- 4.6.2. A statement from the student's employer;
- 4.6.3. Supporting statements from persons who might be familiar with the family situation;
- 4.6.4. Birth certificate;
- 4.6.5. Marriage certificate;
- 4.6.6. Documentation of eligibility for state social or rehabilitation services;
- 4.6.7. Documentation of immigration status and placement as political refugee;
- 4.6.8. Indicia of Utah domicile, including Utah voter registration, Utah vehicle registration, Utah driver's license or identification card, Utah state income tax return, rental contract or mortgage documents, bank records, and utility bills.

4.7. **Receipt of State Social Services Benefits:** A person who has been determined by a Utah governmental social or rehabilitation services agency to be a Utah resident for purposes of receiving state aid to attend a USHE institution is immediately eligible to apply for resident student status. The state aid must, at a minimum, cover the full cost of resident tuition. Upon the termination of such government agency support, the person is governed by the standards applicable to other persons. Any time spent residing in Utah during the time the individual received government aid shall count towards any applicable waiting period for Utah residency for tuition purposes upon termination of the government aid.

4.8. **Reciprocity:** The determination to grant residency to a student at a USHE institution shall be honored at other USHE institutions, unless:

- 4.8.1. the student obtained resident student status under false pretenses, or
- 4.8.2. the facts existing at the time of the granting of resident student status have significantly changed.

4.9. **Reclassification by the Institution:** If a student is classified as a resident, or granted residency by a USHE institution, the USHE institution may initiate a reclassification inquiry and in fact reclassify the student, based on any facts, error, or changes in facts or status which would justify such an inquiry, even if the error was on the part of the USHE institution.

4.10. **Procedures for Determining Resident Student Status:** If a student desires to be granted resident student status, he or she must comply with the following procedures:

- 4.10.1. **Application Deadline:** Students must meet institutional application deadlines for each term. Institutions may establish a policy regarding acceptance of late residency applications for current term consideration. Unless institutional policy allows otherwise, institutions may not accept applications for resident student status or supporting documentation after the third week of the semester or term for which the student seeks resident student status. Ordinarily applications or

supporting documentation received after the third week should be considered for the following semester.

- 4.10.2. **Initial Classification:** Each institution shall initially classify all applicants as either resident or nonresident. If there is doubt concerning resident status, the applicant shall be classified as a nonresident.
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- 4.10.4. **Refund:** A decision favorable to the applicant shall be retroactive to the beginning of the academic period for which application for resident status was made, and shall require a refund of the nonresident portion of any tuition charges paid for that and subsequent academic periods.
- 4.10.5. **Hearings:** Each institution shall be responsible for providing a process for students who have been denied resident student status to be heard. Each institution shall adopt procedures that fit the local campus situation, but the following guidelines shall be followed:
 - 4.10.5.1. Procedures for a hearing shall be set out in writing by the institution, subject to approval by the Office of the Commissioner.
 - 4.10.5.2. The institution shall provide a hearing officer or hearing committee with appropriate clerical and other services as necessary to the effective function of the hearing process.
 - 4.10.5.3. The student appealing the decision shall have the responsibility of providing evidence that proves that he or she has met the residency requirements. Students shall be given copies of the Regents' policies pertaining to determination of residency. The student shall also be given an explanation of the rationale of the decision-maker who previously ruled that the student was classified as a nonresident.
 - 4.10.5.4. Both the student and the administration's representative are entitled to representation by counsel.
 - 4.10.5.5. Oral and written evidence may be presented. It is not required that a formal, written, verbatim record of the proceedings be kept, but a written summary of the significant assertions and findings of the hearing shall be prepared.
 - 4.10.5.6. It is not required that formal rules of evidence be followed; administrative hearing rules may be used.
 - 4.10.5.7. Decisions of the hearing officer or hearing committee must be in writing and must give reasons for the decision.

4.11. **Declaration of Financial Independence:** In addition to submitting objective evidence of domicile, a person seeking resident student status must also submit a declaration of financial independence, which

must include, at a minimum, evidence that the person is not claimed as a dependent on the most recently filed federal tax returns of any person who is not a resident of Utah. Institutional residency officers shall require such documentation at the time of initial application for resident student status.

4.12. Penalties for Giving Incorrect or Misleading Information: A student who gives incorrect or misleading information to evade payment of nonresident fees shall be subject to serious disciplinary action and must also pay the applicable nonresident fees for each term previously attended.

4.13. Waivers of Nonresident Tuition—Nonresident Students Exempt from Nonresident Portion of Tuition: The following students who attend a USHE institution may receive a waiver of nonresident tuition under Regents' Policy R513; however, these students may not use time spent in Utah as a student on any of these programs toward any waiting period that may be required for resident tuition status. For more information on all tuition waivers, please see Regents' Policy R513.

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5.1. General Rule: A student who has come to Utah for the purpose of attending an institution of higher education may be granted resident student status if, prior to the first day of classes of the term the student seeks to attend as a resident student, the student has:

5.1.1. maintained continuous Utah residency status for one full year;

5.1.2. submitted a written declaration that the student has relinquished residency in any other state;

- 5.1.3. submitted objective evidence that the student has taken overt steps to establish permanent residency in Utah and that the student does not maintain a residence elsewhere; and
- 5.1.4. submitted a declaration of financial independence to include documentation that the student is not claimed as a dependent on the tax returns of any person who is not a resident of Utah (see section 4.12 above).

5.2 Evidence Required: Students applying for resident student status under this section are expected to submit as much objective evidence as possible, including, but not limited to, providing evidence of, or explanation of the lack of evidence of, each of the following:

- 5.2.1. A Utah high school transcript issued in the past year confirming attendance at a Utah high school in the previous 12 months;
- 5.2.2. A Utah voter registration dated a reasonable period (generally meaning within the past 90 days) prior to the first day of class of the term for which the student is seeking resident status;
- 5.2.3. A Utah driver license or identification card with an original date of issue or renewal date several months prior to the first day of class of the term for which the student is seeking resident status;
- 5.2.4. A Utah vehicle registration dated a reasonable period (generally meaning within the past 90 days) prior to the first day of class of the term for which the student is seeking resident status;
- 5.2.5. Evidence of employment in Utah for a reasonable period (generally meaning within the past 90 days) prior to the first day of class of the term for which the student is seeking resident status;
- 5.2.6. Proof of payment of Utah resident income tax for the previous year;
- 5.2.7. A rental agreement or mortgage document showing the student's name and Utah address for at least 12 months prior to the first day of class of the term for which the student is seeking resident status ; and
- 5.2.8. Utility bills showing the student's name and Utah address for at least 12 months prior to the first day of class of the term for which the student is seeking resident status resident student status.

5.3. Absence from state: A student will not jeopardize his or her status under this section solely by absence from the state for a period of less than 30 total days during the 12-month period. See *Frame v. Residency Appeals Committee*, 675 P2d. 1157 (Utah 1983). If a student leaves the state for the purpose of satisfying the requirements for institutional internships, institutional courses, study abroad programs, or athletic training, required by the institution the student will not be deemed to be absent from the state for purposes of this section for the period of time that he or she can establish that these purposes were being met. Once a student has been granted resident student status, any future absence from the state will not negatively affect his or her resident student status.