

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Resident and Nonresident Classification of Students

NUMBER: 3:2

1. Purposes of Classification

Each person who applies for admission to a university shall be classified as a resident or a nonresident for admissions and tuition and fees purposes (See Policy 2:3 Admissions and Policy 5:5 Tuition and Fees).

2. Information, Burden of Establishing Residency, Reclassification

- A. The decision shall be based upon information provided by the student and all other relevant information.
- B. The institution is authorized to require such written documents, affidavits, verifications, or other evidence as are deemed necessary to establish the residence of the student, including proof of emancipation, adoption, or appointment of a guardian.
- C. Students have the burden of establishing residency by clear and convincing evidence.
- D. Students may appeal the original classification decision by written petition to a reviewing body appointed by the chief executive officer of the institution within thirty (30) days after registration for that semester. The recommendation of the reviewing body shall be submitted to the chief executive officer for a decision.
- E. After twelve months continuous presence in South Dakota, students who were initially classified as nonresidents may petition for reclassification.
- F. Petitions for reclassification shall be filed with the Executive Director, who shall act upon them. The Executive Director shall report his disposition of such petitions to the Board at its regularly scheduled meetings. These reports shall be summarized in a manner consistent with the Family Educational Rights and Privacy Act.
- G. If a petition for reclassification is granted, the reduced tuition rate shall become effective with the first semester or session following the date on which the petition is granted. Students who fail to request resident status prior to a particular semester or

session or to pursue a timely appeal shall be deemed to have waived any claim for reduced tuition for that semester or session.

- H. A student or prospective student who knowingly provides false information or refuses to provide or conceals information for the purpose of improperly achieving resident student status is subject to the full range of penalties, including expulsion, provided for by the Board of Regents.

3. Establishing Bona Fide Residency

For tuition purposes, residence means the place where a person has a permanent home, at which the person remains when not called elsewhere for labor, studies or other special or temporary purposes, and to which the person returns at times of repose. It is the place a person has voluntarily fixed as the person's permanent habitation with an intent to remain in such place for an indefinite period. A person, at any one time, has but one residence and a residence is not lost until another is gained.

- A. The residence of an unemancipated person under twenty-four years of age follows that of the parents or of a legal guardian who has actual custody of the person or administers the property of the person. In the case of divorce or separation, if either parent meets the residence requirements, the person shall be considered a resident.

Students who enter the state for the predominant purpose of attending a Board institution and who are under the custody of a guardian in fact, that is, a person who has been designated in writing by the students' parents or legal guardian to serve as their attorney in fact for purposes related to the individual unemancipated student's affairs, may file a residency petition with the Board at the time of admission.

- B. A person shall be classified as a resident student if the person has continuously resided in South Dakota for at least twelve consecutive months prior to the first scheduled day of classes of the semester or other session in which the individual registers in the regental system, and has not attended another postsecondary institution full-time.
- C. Physical presence in South Dakota for the predominant purpose of attending postsecondary education does not count in determining the twelve month period of residence. However, attending a post-secondary institution on a part-time basis or taking distance education courses does not automatically exclude the student from the 12-month residency requirement.
- D. Unemancipated students whose parents established their residence in South Dakota for reasons not predominantly related to qualifying their children for reduced tuition, may be classified as residents, notwithstanding the fact that they have not resided in South Dakota for the requisite twelve months prior to the first scheduled day of classes.

If it appears that the parents of a person properly classified as a resident student under the provisions of this section have removed their residence from South Dakota, the person shall be reclassified to the status of nonresident unless the parents have been residents for the twelve months immediately preceding such removal. However, no such reclassification is effective until the beginning of a semester next following the removal.

- E. Absence from South Dakota to pursue postsecondary education does not deprive a person of resident student status.
- F. A person once properly classified as a resident student shall be deemed to remain a resident student so long as remaining continuously enrolled in the regental system until the person's degree shall have been earned, subject to the provisions of § 4(B)(1)(a) above.
- G. International students whose visas permit them to establish domiciles in the United States or its territories or protectorates may qualify for resident tuition in the same manner as United States citizens.
- H. Veterans that have established a permanent residence in South Dakota shall be granted resident status and are not subject to the 12-month residency requirement.

4. Factors to Be Considered When Determining Whether Students Have Entered South Dakota for the Predominant Purpose of Attending a Public University

- A. The following factors are relevant in evaluating a requested change in a student's nonresident status and in evaluating whether the person's physical presence in South Dakota is for the predominant purpose of attending an institution of higher education controlled by the Board:
 - 1) The residence of an unemancipated student's parents or guardians;
 - 2) The status of the source of the student's income;
 - 3) To whom a student pays taxes, including property taxes;
 - 4) The state in which a student's automobile is registered;
 - 5) The state issuing the student's driver's license;
 - 6) Where the student is registered to vote;
 - 7) Ownership of property in South Dakota and outside of South Dakota;
 - 8) The residence claimed by the student on loan application, federal income tax returns, and other documents;
 - 9) Admission to a licensed profession in South Dakota;
 - 10) Membership in civic, community, and other organizations in South Dakota or elsewhere; and
 - 11) The facts and documents pertaining to the person's past and existing status as a student.
- B. The existence of one or more of these factors does not require a finding of resident

student status, nor does the nonexistence of one or more require a finding of nonresident student status. All factors shall be considered in combination, and resident student status may not result from the doing of acts which are required or routinely done by sojourners in the state or which are merely auxiliary to the fulfillment of educational purposes.

- C. The fact that a person pays taxes and votes in the state does not in itself establish residence.
- D. Students who do not meet the requirements of this policy may still be classified as residents if their situation presents unusual circumstances and their classification is within the general scope of this policy.

5. Resident Tuition for Active Duty Personnel and Spouse

Any person who is actively serving in the armed forces of the United States and is stationed in South Dakota will be classified as a resident for tuition purposes. This shall also apply to the spouse of the active duty personnel. (SDCL 13-53-41.2)

6. Retention of Residency for High School Graduates

The following high school graduates will be treated as a resident for tuition purposes:

- A. Any citizen or other person entitled under law to establish a residence in the United States that graduates from a South Dakota high school; or
- B. Any citizen or other person entitled under law to establish a residence in the United States who was a South Dakota resident at the time of high school graduation and lived with a parent or legal guardian who was also a South Dakota resident.

7. Resident Tuition for Persons that Marry South Dakota Residents

The Board of Regent shall reclassify any nonresident student to the status of resident student upon timely proof of marriage to a resident of South Dakota.

8. Contested Case Review

After exhausting appeal procedures on campus, students may challenge an institutional residency decision by appeal for a de novo review as provided in chapter 1-26 of the South Dakota Codified laws.

- A. Contested case proceedings will be conducted under protective orders entered pursuant to SDCL §§ 1-26-19 and 15-6-26(c), in order to implement rights guaranteed under the Family Educational Rights and Privacy Act of 1974.

- B. A student who has exhausted institutional procedures, including an appeal to the institutional president, may challenge a decision by mailing a written request for a review under chapter 1-26 with the Executive Director within thirty (30) days after the institution transmits notification of its final decision by depositing with the United States Postal Office written notice addressed to the student's last known mailing address.
 - 1. The notice will not be effective unless the student attaches all documentation provided to the students by the institution detailing the basis for its residency determination.
- C. The Executive Director will have fifteen (15) working days within which to attempt, at his discretion, a resolution through informal means.
- D. If no resolution has been effected within the time allowed under paragraph VII (D), the Executive Director will refer the matter to a hearing examiner for reconsideration pursuant to chapter 1-26 of the codified laws and formulation of recommendations for the disposition of the matter by the Board.

SOURCE: BOR, Apr. 1979; RR, 11:04, 1977; BOR, Apr. 1987; BOR, Jan. 1988; RR, 11:07, 1977; RR, 11:08, 1977; RR, 11:08, 1977; BOR, Apr. 1979; RR, 11:11, 1977; BOR, Apr. 1979; RR, 11:13, 1977; BOR, May 1993; SL 1996, ch. 130 (H.B. 1348); BOR, May 1996; SL 2006, ch 87; BOR, April 2007; BOR, August 2012; BOR, April 2013; BOR, June 2014.