

STUDENT SERVICES

AP 5015 RESIDENCE DETERMINATION

References:

Education Code Sections 68000 et seq., 68130.5, 68074, 68075.7, 68086, and other cited sections
Title 5 Sections 54000 et seq.
38 U.S. Code Section 3679

Residence Classification

Residence classifications shall be determined for students at the time of each application for admission and whenever a student has not been in attendance for more than one semester. A student seeking to enroll exclusively in career development and college preparation courses, and other courses for which no credit is given, shall not be subject to this residency classification requirement.

To be classified as a resident, there must be a union of act and intent. Each person capable of establishing residence must couple their physical presence with objective evidence of their intent to reside in California for other than a temporary purpose.

Resident

A student who has been a bona fide resident of the state for one year prior to the residence determination date and has demonstrated clear intent to make California a permanent home.

Nonresident

A student who has not resided in the state for more than one year immediately preceding the residence determination date.

One-Year Waiting Period

The one-year residence period which a student must meet to be classified as a resident does not begin to run until the student both is present in California and has manifested clear intent to become a California resident.

Burden of Proof

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

Reestablished Residence

If a student or the parents of a minor student relinquish California residence after moving from the state, one full year of physical presence, coupled with one full year of demonstrated intent to be a California resident, is required to reestablish residence for

tuition purposes, except as provided in Education Code section 68070.

Rules Determining Residence (Education Code 68062)

Unless precluded by the Immigration and Nationality Act from establishing domicile in the United States, the following rules are to be observed:

- Every person who is married or eighteen years of age, or older, and under no legal disability to do so, may establish residence.
- A person may have only one residence.
- A person capable of establishing residence in California must be physically present in California for a minimum of one year prior to the residence determination date to be classified as a resident student.
- A residence is the place where one remains when not called elsewhere for labor or other special or temporary purpose and to which one returns in seasons of repose.
- A residence cannot be lost until another is gained.
- The residence can be changed only by the union of act and intent.
- A person may establish their residence. A person's residence shall not be derivative from that of their spouse. The two may share some of the objective manifestations of intent, however may have differing evidence of intent which would indicate different residences.
- The residence of the parent with whom an unmarried minor child maintains their place of abode is the residence of the unmarried minor child. When the minor lives with neither parent, the minor's residence is that of the parent with whom the last place of abode was maintained, provided the minor may establish their residence when both parents are deceased and a legal guardian has not been appointed.
 - Note: The conditions for a minor apply unless the Immigration and Nationality Act precludes the minor from establishing domicile (residence) in the United States.
- The residence of an unmarried minor who has a parent living cannot be changed by the minor's own act, by the appointment of a legal guardian, or by relinquishment of a parent's right of control, unless the minor qualifies under the Self-Support or the Two-Year Care and Control exceptions.
- A non-citizen, including an unmarried minor non-citizen, may establish their residence unless precluded by the Immigration and Nationality Act from establishing residence in the United States.
- Physical presence in California solely for educational purposes does not allow the student to establish residence, regardless of the length of presence in the state.

Financial Independence (Education Code 68044)

Amongst the factors to be considered when a student is seeking a residence reclassification is financial independence. Financial independence shall be balanced against other factors such as passage of time, parents' residence, and the student's intent to establish residence elsewhere. A finding of financial dependence shall be considered strongly against a claim of California residence than a finding of financial independence. Financial dependence in the current or preceding calendar year shall weigh more heavily against a finding of California residence than shall financial dependence in earlier calendar years.

A student will be considered financially independent if the following requirements are met:

- I. The student has not and will not be claimed as an exemption for state and/or federal tax purposes by their parent in the calendar year the reclassification request is made and in any of the three calendar years prior to the reclassification request,
- II. The student has not and will not receive more than seven hundred fifty dollars (USD \$750) per year in financial assistance from their parent, in the calendar year the reclassification request is made and in any of the three calendar years prior to the reclassification request, and
- III. The student has not lived and will not live for more than six weeks in the home of their parent during the calendar year the reclassification request is made and in any of the three calendar years prior to the reclassification request.

A student who has established financial independence as well as met the requirements of the union of act and intent may be reclassified as a resident. Financial dependence in the current or preceding calendar year shall be overcome only if:

- I. The parent on whom the student is financially dependent is a California resident, or
- II. There is no evidence of the student's continuing residence in another state.

Some examples of demonstrated intent are:

- Residing in California on a continuous basis for one year
- Owning residential property or continuous occupancy of rented or leased property in California
- Registering to vote and voting in California
- Obtaining a license from California for professional practice
- Holding active membership in California in professional, merchant, religious, service organizations or social clubs
- Showing a California address on federal tax returns
- Having spouse, children or other close relatives reside in California

- Filing California state tax return as a resident*
- Maintaining a California driver's license or California ID*
- Maintaining a California motor vehicle registration*
- Maintaining California as legal state on Leave and Earnings Statement and W-2 Form while in the armed forces
- Maintaining a home of record in California or permanent military address in California while in the armed forces
- Establishing and maintaining active California bank accounts
- Petitioning for divorce in California
- Remaining in California while on academic breaks
- Indicating a California address on Selective Service registration

Some examples of intent inconsistent with a claim of California residency (including but not limited to):

- Maintaining voter registration and voting in another state
- Petitioning for divorce in another state
- Attending an out-of-state institution as a resident of that state
- Declaring non-residency for state income tax purposes; paying taxes in another state or country as a resident of that state or country or not fulfilling tax obligations to the State of California

***Palomar College Considers these factors more important when determining residence status**

Non-Citizens (Education Code 68062, T5 54045)

The district will admit any non-citizen. The non-citizen may establish their residence unless precluded by the Immigration and Nationality Act from establishing domicile in the United States provided that the student has had residence in California for more than one year prior to the residence determination date for the semester for which attendance at the college is proposed. If the non-citizen is undocumented or precluded from establishing domicile in the United States by the Immigration and Nationality Act, the student shall be classified as a nonresident. The nonresident classification shall continue until a year after the student has taken the appropriate steps to obtain a change of status from the United States Citizenship and Immigration Services to a classification that does not preclude establishing domicile in the United States and the student has had residence in California for more than one year. Students who are without lawful immigration status may be exempted from nonresident tuition under the Assembly Bill 540 or Assembly Bill 2000 nonresident tuition exemptions as long as the requirements of the exemptions are met, as noted in Ed Code 76140.

Nonresident Tuition Exemption for Students Enrolled in Six or Fewer Units Ed Code 76140

Pursuant to Education Code section 76140(a) (1), the district may exempt all nonresidents who enroll for six or fewer units from paying nonresident tuition, if a policy is adopted. This is an “all or nothing” exemption – the district cannot exempt some students taking six or fewer units and charge nonresident tuition to other students who are taking six or fewer units.

Exceptions for Military

For purposes of this section, “Armed Forces of the United States” means the Air Force, Army, Coast Guard, Marine Corps, Navy, and the reserve components of each of those forces, the California National Guard, the California State Guard, and the California Naval Militia.

Military Stationed in California

A student who is a member of the Armed Forces of the United States domiciled or stationed in California, as of the residence determination date is entitled to resident classification for tuition fees purposes. If that member of the Armed Forces of the United States, who is in attendance at the institution, is thereafter transferred to a place outside of California where the member continues to serve in the Armed Forces of the United States, the member shall retain resident classification as long as the member is continuously enrolled at the institution. This exception does not apply to students seeking a graduate degree or members who are assigned for educational purposes to state-supported institutions of higher education.

Dependents of Military Personnel (Education Code 68074)

- a) A student who is a natural or adopted child, stepchild, or spouse who is a dependent of a member of the Armed Forces of the United States stationed in this state on active duty is entitled to resident classification only for the purpose of determining the amount of tuition and fees.
- b) If that member of the Armed Forces of the United States, whose dependent natural or adopted child, stepchild, or spouse is in attendance at, or has been admitted to, a public postsecondary institution, (1) is thereafter transferred on military orders to a place outside this state where the member continues to serve in the Armed Forces of the United States, or (2) is thereafter retired as an active member of the Armed Forces of the United States, the student dependent shall not lose their resident classification so long as they remains continuously enrolled at that institution.

Recently Separated Military Members (Education Code 68075.5)

A student who was a member of the Armed Forces of the United States that was stationed in California on active duty for one year immediately prior to being separated shall be exempt from payment of nonresident tuition for up to one year

if the student files and affidavit with the institution stating that they intend to establish California residence as soon as possible. This one-year exemption shall be used while the student lives in California and within two years from being separated. Members who received a dishonorable or bad conduct discharge are not eligible for this exemption.

Veterans Access, Choice and Accountability Act (Education Code 68075.7)

The following students who meet the below listed "covered individual" requirements shall be exempt from nonresident tuition for a period of up to three years' from the service members discharge or death (in the line of duty):

1. A veteran eligible for educational assistance under either the Montgomery GI Bill-Active Duty (MGIB-AD) or Post-9/11 GI Bill education benefit programs who resides (lives) in California (regardless of their formal state of residence) and enrolls in the community college from a period of active-duty service of 90 days or more.
2. An individual eligible for transferred education benefits under either the Montgomery GI Bill-Active Duty (MGIB-AD) or Post-9/11 GI Bill education benefit programs who resides (lives) in California (regardless of their formal state of residence) and enrolls in the community college from a period of active-duty service of 90 days or more.
3. An individual eligible for transferred Post-9/11 G.I. Bill benefits while the transferor is on active duty who resides (lives) in California (regardless of their formal state of residence) as described in 38 USC 3679(c)(2)(B)(ii)(II).
4. An individual eligible for benefits under the Marine Gunnery Sergeant John David Fry Scholarship (provides Post-9/11 GI Bill benefits to the children and surviving spouses of service members who died in the line of duty while on active duty) who resides (lives) in California (regardless of their formal state of residence)
5. Individuals eligible for rehabilitation under 38 U.S. Code § 3102 pursuing a course of education with education assistance from the Training and Rehabilitation for Veterans with Service-Connected Disabilities (Chapter 31) education benefits program.

Federal Civil Service Employee Relocated due to Military Mission Realignment (Education Code 68084)

A student who is a federal civil service employee and their natural or adopted dependent children are entitled to resident classification if the parent has moved to this state as a result of a military mission realignment action that involves the relocation of at least 100 employees. This classification shall continue until the student is entitled to be classified as a resident, so long as the student continuously attends an institution of public higher education.

Exceptions for Minors

Parent was California Domiciliary Who Left

A student who is a minor and remains in California after the parent, who was previously domiciled in California for at least one year immediately prior to leaving, and has, during the student’s minority, and within one year immediately prior to the residence determination date, established residence elsewhere, shall be entitled to retain resident classification until the student has attained the age of majority and resided in the state the minimum time necessary to become a resident, so long as continuous attendance is maintained at the institution once enrolled.

Self-Support (Education Code 68071)

A student who is under the age of 19 on the residence determination date and who provides evidence of being entirely self- supporting and actually present in California for more than one year immediately preceding the residence determination date with the intention of acquiring a residence therein, shall be entitled resident classification until they have resided in the state the minimum time necessary to become a resident. The following would negate the student’s self-support claim:

- A loan made by a bank to the parent who in turn provides the student with the funds.
- A loan made by a bank requiring a parent to co-sign.
- A loan made by a parent to the student.

Two-Year Care and Control

A student who, immediately prior to enrolling at the institution, has lived with and been under the continuous direct care and control of any adult or adults, other than a parent, for a period of not less than two years and the adult or adults having such control have been domiciled in California during the year immediately prior to the residence determination date, shall be entitled to resident classification until the student has reached the age of majority as long as continuous full-time attendance is maintained at the institution.

Tacking

In instances that a student's parent:

- Becomes deceased and the derivative residence shifts from the deceased parent to the living parent or
- Both of the student's parents become deceased and a guardian has been appointed to a minor, or if none appointed, to the minor's own elected residence,

The immediate pre-majority derived California residence may be added to the post-majority residence to satisfy the one-year durational requirement.

Senate Bill 150

A special part-time student, other than a nonimmigrant (apart from T and U visas) who resides in California and has both parental permission and a recommendation by the principal of the pupil's school to attend a community college and who enrolls in 11.99 units or fewer per semester shall be exempt from the requirement to pay nonresident tuition. For the purposes of this section, "special part-time student" refers to students who have been recommended by the principal of the pupil's school and have parental permission to attend a community college during any session or term and who enroll in 11.99 or fewer units per semester. This exception does not apply to special full-time students.

Other Exceptions

Adult Dependent Child of California Resident (Education Code 68076)

A student who has not been an adult resident of California for more than one year and is either the dependent child of a California resident who has had residence in California for more than one year prior to the residence determination date or has a parent who has both contributed court-ordered support for the student on a continuous basis and has been a California resident for a minimum of one year, shall be entitled to resident classification. This exception shall continue until the student has resided in the state the minimum amount of time necessary to become a resident as long as continuous attendance is maintained by the student at the institution.

Continuous Attendance for residence determination purposes at a community college, means active, continuous, fulltime enrollment for a normal academic year at such institution since the beginning of the period or which attendance is claimed. Nothing in this section shall require a student to attend summer intersession or other terms beyond the normal academic year in order to render the student's attendance "continuous."

American Indian Attending School Administered by Bureau of Indian Affairs Located Within the Community College District

A student who is a Native American is entitled to resident classification if the student is also attending a school administered by the Bureau of Indian Affairs located within the community college district. As used in this section, "Native American" means an American Indian.

Graduate of a California School Operated by United States Bureau of Indian Affairs

A student who is a graduate of any school located in California that is operated by the United States Bureau of Indian Affairs, including, but not limited to, the Sherman Indian High School, shall be entitled to resident classification. This exception shall continue as long as continuous attendance is maintained at the institution.

Employees of Public Schools (Education Code 68078)

- A. A student holding a valid credential authorizing service in the public schools of California, who is employed by a school district in a full-time position requiring certification qualifications for the college year in which the student enrolls in an institution, shall be entitled to resident classification if each student meets any of the following requirements:
- The individual holds a provisional credential and is enrolled in courses necessary to obtain another type of credential authorizing service in the public schools.
 - The individual holds a credential issued pursuant to Education Code Section 44250 and is enrolled in courses necessary to fulfill credential requirements.
 - The individual is enrolled in courses necessary to fulfill the requirements for a fifth year of education prescribed by subdivision (b) of Education Code Section 44259.
- B. notwithstanding any other provision of law a student holding a valid emergency permit authorizing service in the public schools of California, who is employed by a school district in a full-time position requiring certification qualifications for the academic year in which the student enrolls at an institution in courses necessary to fulfill teacher credential requirements, is entitled to resident classification only for the purpose of determining the amount of tuition and fees for no more than one year. Thereafter, the student's residency status will be determined under the other provisions of this procedure.

Nonresident Employees and/or Their Dependents (Education Code 68079)

A student who is a full-time employee of the institution or of any state agency, or a student who is a child or spouse of a full-time employee of the institution or of any state agency, may be entitled to resident classification until they have resided the minimum amount of time necessary to become a resident. For purposes of this section, the “employee of any state agency” must be assigned to work outside of the state.

Amateur Student Athlete (Education Code 68083)

Any amateur student athlete in training at the United States Olympic Training Center in Chula Vista is entitled to resident classification until they have resided in the state the minimum amount of time necessary to become a resident. For the purposes of this section, “amateur student athlete” means any student who meets the eligibility standards established by the national governing body for the sport in which the athlete competes.

Federal Civil Service Employee Relocated due to Military Mission Realignment (68084)

A student who is a federal civil service employee and their natural or adopted dependent children are entitled to resident classification if the parent has moved to this state as a result of a military mission realignment action that involves the relocation of at least 100 employees. This classification shall continue until the student is entitled to be classified as a resident, so long as the student continuously attends an institution of public higher education.

Ward of the State of California (Education Code 68085)

A student who resides in California and is 19 years of age or under at the time of enrollment, who is currently a dependent or ward of the state through California's child welfare system or was served by California's child welfare system and is no longer being served either due to emancipation or aging out of the system, may be entitled to resident classification until they have resided in the state the minimum time necessary to become a resident.

Agricultural Employment (Education Code 68100)

A student who lives with a parent who earns a livelihood primarily by performing agricultural labor for hire in California and other states, and the parent has performed such labor in this state for at least two months per year in each of the two preceding years, and the parent resides in this District and the parent of the student has claimed the student as a dependent on his state or federal personal income tax return if they have sufficient income to have personal income tax liability shall be entitled to resident classification. A student who earns a livelihood primarily by performing agricultural labor for hire in California and other states and who has performed this labor in California for at least two months per year in each of the two preceding years.

Apprentices

A student who is an apprentice and is taking classes of related or supplemental instruction shall be exempt from payment of nonresident tuition.

United States Citizens Whose Parent or Guardian was Deported or Permitted to Depart Voluntarily under the Federal Immigration and Nationality Act

A United States Citizen who resides in a foreign country and meets the following requirements:

- i. Demonstrates a financial need for the exemption.
- ii. Has a parent or guardian who has been deported or was permitted to depart voluntarily under the federal Immigration and Nationality Act.
- iii. Moved abroad as a result of the deportation or voluntary departure.
- iv. Lived in California immediately before moving abroad.
- v. Attended a public or private secondary school in California for three or more years.
- vi. Upon enrollment, will be in their first academic year as a matriculated student in California public higher education.
- vii. Will be living in California and will file an affidavit with the community college stating that they intend to establish residency in California as soon as possible.
- viii. Documentation shall be provided by the student as required by statute as specified in Education Code section 76140(a)(5).

Dependent of Individual Killed in the September 11, 2001, Terrorist Attacks

A student who is a surviving dependent of any individual killed in the September 11, 2001 terrorist attacks on the World Trade Center in New York City, the Pentagon building in Washington D.C., or the crash of United Airlines Flight 93 in southwestern Pennsylvania shall be exempt from the payment of nonresident tuition if the student meets the financial requirements for the Cal Grant A program under Education Code 69432.7 and either the dependent or the individual killed was a California resident on September 11, 2001.

Public Agency Employee Hired as a Peace Officer

A student who has been hired by a public agency that intends to classify the student as a peace officer, may be classified as a resident for purposes of enrollment and completion of police academy courses at the community college if the student has passed all other requirements of the public agency and if written assurances are provided by the public agency that it intends to classify the student as a peace officer upon complete of the police academy training course.

Assembly Bill 540/Assembly Bill 2000

With the exception of nonimmigrant visa holders (apart from T and U visas), students who are physically present in California and either:

- Attended a combination of California high school, adult school, and California Community College for the equivalent of three years or more, or
- Attained credits earned in California from a California high school equivalent to three or more years of full-time high school course work and attended a combination of elementary, middle and/or high schools in California for a total of three or more years,

AND

- Graduated from a California high school or attained the equivalent prior to the start of the term (for example, passing the GED or California High School Proficiency exam), or
- Completed an associate degree from a California Community College, or Completed the minimum requirements at a California Community College for transfer to the California State University or the University of California

Shall be exempt from payment of nonresident tuition provided they meet the above listed requirements as well as:

- The student must register as an entering student at, or current enrollment at, an accredited institution of higher education in California, and
- The student must file an affidavit with the college or university stating that if the student is a non-citizen without current or valid immigration status, the student has filed an application to legalize immigration status, or will file an application as soon as the student is eligible to do so.

Further information:

A year's equivalence at a California Community College is a minimum of 24 semester units of credit.

For noncredit courses, a year's attendance is a minimum of 420 hours.

Attendance in credit courses at a California Community College towards the attendance requirements shall not exceed two years of full-time attendance.

Full-time attendance at a California adult school is a minimum of 420 hours of attendance for each school year.

Nonresident students meeting the criteria will be exempted from the payment of nonresident tuition, but they will *not* be classified as California residents. They continue to be “nonresidents”.

Assembly Bill 343-Special Immigrant Visa Holders and Refugee Students who Settled in California Upon Entering the United States

Education Code 68075.6 grants an immediate nonresident tuition fee exemption to eligible Special Immigrant Visa (SIV) holders, refugee students, T and U visa holders who settled in California upon entering the United States. This exemption is granted for one year from the date the student settled in California upon entering the United States.* **After the expiration of this exemption the student will be subject to residence requirements.**

This exemption applies to the following:

- Iraqi citizens or nationals (and their spouses and children) who were employed by or on behalf of the United States Government in Iraq (Pub.L. No. 110-181, § 1244)
- Afghan and Iraqi translators (and their spouses and children) who worked directly with the United States Armed Forces (Pub.L. No. 109-163, § 1059)
- Afghanistan nationals who were employed by or on behalf of the U.S. government or in the International Security Assistance Force (ISAF) in Afghanistan (Pub. L. No. 111-8, § 602)
- Refugee students admitted to the United States under Section 1157 of Title 8 of the United States Code
- T and U visa holders

*Please note that this exemption does not include students who resided in another state first before coming to California.

RECLASSIFICATION, PROVISIONS, APPEALS

Reclassification

A student previously classified as a nonresident may request to be reclassified by completing a supplemental residence questionnaire and submitting both the questionnaire and supporting documentation to Enrollment Services by the end of the term for which the student is requesting reclassification for.

Residence classifications are to be made in accordance with the following provisions:

- A residence determination date is that day immediately preceding the opening day of instruction for any session during which the student proposes to attend.
- Residence classification is the responsibility of Enrollment Services.
- Students must be notified of residence determination within 14 calendar days of submission of application.
- The District shall publish the residence determination date and summary of the rules and regulations governing residence determination and classification in the District catalog or addenda thereto.
- A person can only have one permanent place of residence at any given time.

Right to Appeal

Students whose reclassification request has been denied, may make a written appeal of that decision. The appeal and additional supporting documentation that was not included with the initial reclassification request shall be submitted to Enrollment Services for reconsideration.

Appeal Procedure

Enrollment Services will review additional documentation submitted by the student and inform the student regarding the final residence determination. If the appeal is denied, the determination shall state specific facts on which the decision was made.

Office of Primary Responsibility: Student Services