

MURRAY STATE UNIVERSITY

Office of the Registrar
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13 KAR 2:045

Determination of residency status for admission and tuition assessment purposes.

RELATES TO: KRS 13B, 164.020, 164.030, 164A.330(6), 38 U.S.C. 3301-3325

STATUTORY AUTHORITY: KRS 164.020(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.020(8) requires the Council on Postsecondary Education to determine tuition and approve the minimum qualifications for admission to a state postsecondary education institution and authorizes the Council to set different tuition amounts for residents of Kentucky and for nonresidents. This administrative regulation establishes the procedure and guidelines for determining the residency status of a student who is seeking admission to, or who is enrolled at, a state-supported postsecondary education institution.

Section 1. Definitions.

(7) "Full-time employment" means continuous employment for at least forty-eight (48) weeks at an average of at least thirty (30) hours per week.

(8) "Independent person" means a person who demonstrates financial independence from parents or persons other than a spouse and who meets the criteria for independence established in Section 5 of this administrative regulation.

(9) "Institution" means an entity defined by KRS 164.001(12) if the type of institution is not expressly stated and includes the Kentucky Virtual University, the Council on Postsecondary Education, and the Kentucky Higher Education Assistance Authority.

(10) "Kentucky resident" means a person determined by an institution for tuition purposes to be domiciled in, and a resident of, Kentucky as determined by this administrative regulation.

(11) "Nonresident" means a person who:

- (a) Is domiciled outside Kentucky;
- (b) Currently maintains legal residence outside Kentucky; or
- (c) Is not a Kentucky resident as determined by this administrative regulation.

(12) "Parent" means one (1) of the following:

- (a) A person's father or mother; or
- (b) A court-appointed legal guardian if:
 - 1. The guardianship is recognized by an appropriate court within the United States.
 - 2. There was a relinquishment of the rights of the parents; and
 - 3. The guardianship was not established primarily to confer Kentucky residency on the person.

(13) "Preponderance of the evidence" means the greater weight of evidence or evidence that is more credible and convincing to the mind.

(14) "Residence" means the place of abode of a person and the place where the person is physically present most of the time for a noneducational purpose in accordance with Section 3 of this administrative regulation.

(15) "Student financial aid" means all forms of payments to a student if one (1) condition of receiving the payment is the enrollment of the student at an institution, and includes student employment by the institution or a graduate assistantship.

(16) "Sustenance" means:

- (a) Living expenses, such as room, board, maintenance, and transportation; and
- (b) Educational expenses, such as tuition, fees, books, and supplies.

Section 2. Scope.

(1) State-supported postsecondary education institutions were established and are maintained by the

(c) A formal hearing conducted by

- (4) Domicile may be inferred from the student's permanent address, parent's mailing address, or location of high school of graduation.
- (5) Marriage to an independent person domiciled in and who is a resident of Kentucky shall be a factor considered by an institution in determining whether a student is dependent or independent.
- (6) Financial assistance from, or a loan made by, a parent or family member other than an independent spouse, if used for sustenance of the student:
 - (a) Shall not be considered in establishing a student as independent; and
 - (b) Shall be a factor in establishing that a student is dependent.

Section 6. Effect of a Determination of Dependent Status on a Determination of Residency Status.

- (1) The effect of a determination that a person is dependent shall be:
 - (a) The domicile and residency of a dependent person shall be the same as either parent. The domicile and residency of the parent shall be determined in the same manner as the domicile and residency of an independent person; and
 - (b) The domicile and residency of a dependent person whose parents are divorced, separated, or otherwise living apart shall be Kentucky if either parent is domiciled in and is a resident of Kentucky, regardless of which parent has legal custody or is entitled to claim that person as a dependent pursuant to federal or Kentucky income tax provisions.
- (2) If the parent or parents of a dependent person are Kentucky residents and are domiciled in Kentucky, but subsequently move from the state:
 - (a) The dependent person shall be considered a resident of Kentucky while in continuous enrollment at the degree level in which currently enrolled; and
 - (b) The dependent person's residency status shall be reassessed if continuous enrollment is broken or the current degree level is completed.

Section 7. Member or Former Member of Armed Forces of the United States, Spouse and Dependents; Effect on a Determination of Residency Status.

- (1) A member, spouse, or dependent of a member whose domicile and residency was Kentucky when inducted into the Armed Forces of the United States, and who maintains Kentucky as home of record and permanent address, shall be entitled to Kentucky residency status:
 - (a) During the member's time of active service; or
 - (b) If the member returns to this state within six (6) months of the date of the member's discharge from active duty.
- (2) (a) A member of the armed services on active duty for more than thirty (30) days and who has a permanent duty station in Kentucky shall be classified as a Kentucky resident and shall be entitled to in-state tuition, as shall the spouse or a dependent child of the member.
 - (b) A member, spouse, or dependent of a member shall not lose Kentucky residency status if the member is transferred on military orders while the member, spouse, or dependent requesting the status is in continuous enrollment at the degree level in which currently enrolled.
- (3) Membership in the National Guard or civilian employment at a military base alone shall not qualify a person for Kentucky residency status under the provisions of subsections (1) and (2) of this section. If a member of the Kentucky National Guard is on active duty status for a period of not less than thirty (30) days, the member shall be considered a Kentucky resident, as shall the spouse or a dependent child of the member.
- (4) A person eligible for benefits under the federal Post-9/11 Veterans Educational Assistance Act of 2008, 38 U.S.C. 3301-3325, or any other educational benefits provided under Chapter 38 of the United States Code shall be entitled to Kentucky resident status for purposes of tuition charged at state-supported institutions.
- (5) A person's residency status established pursuant to this section shall be reassessed if the qualifying condition is terminated.

Section 8. Status of Nonresident Aliens; Visas and Immigration.

- (1) (a) A person holding a permanent residency visa or classified as a political refugee shall establish domicile and residency in the same manner as another person.
 - (b) Time spent in Kentucky and progress made in fulfilling the conditions of domicile and residency prior to obtaining permanent residency status shall be considered in establishing Kentucky domicile and residency.
- (2) A person holding a nonimmigrant visa with designation A, E, G, H-1, H-4 if accompanying a person with an H-1 visa, I, K, L, N, R, shall establish domicile and residency the same as another person.
- (3) (a) An independent person holding a nonimmigrant visa with designation B, C, D, F, H-2, H-3, H-4 if accompanying a person with an H-2 or H-3 visa, J, M, O, P, Q, S, TD, or TN shall not be classified as a Kentucky resident ~~because~~ because that person does not have the capacity to remain in Kentucky indefinitely and therefore cannot form the requisite intent necessary to establish domicile as defined in Section 1(6) of this administrative regulation.

- (d) Long-term lease of at least twelve (12) consecutive months of noncollegiate housing; and
 - (e) Continued presence in Kentucky during academic breaks.
- (4) The absence of a fact contained in subsection (3) of this section shall have significant probative value in determining that a student is not domiciled in or is not a resident of Kentucky.

Section 11. Effect of a Change in Circumstances on Residency Status.

- (1) If a person becomes independent or if the residency status of a parent or parents of a dependent person changes, an institution shall reassess residency either upon a request by the student or a review initiated by the institution.
- (2) Upon transfer to a Kentucky institution, a student's residency status shall be assessed by the receiving institution.
- (3) A reconsideration of a determination of residency status for a dependent person shall be subject to the provisions for continuous enrollment, if applicable.

Section 12. Student Responsibilities.

- (1) A student shall report under the proper residency classification, which includes the following actions:
 - (a) Raising a question concerning residency classification;
 - (b) Making application for change of residency classification with the designated office or person at the institution; and
 - (c) Notifying the designated office or person at the institution immediately upon a change in residency.
- (2) If a student fails to notify an institutional official of a change in residency, an institutional official may investigate and evaluate the student's residency status.
- (3)(a) If a student fails to provide, by the date specified by the institution, information required by an institution in a determination of residency status, the student shall be notified by the institution that the review has been canceled and that a determination has been made.
 - (b) Notification shall be made by registered mail, return receipt requested.
 - (c) Notification shall be made within ten (10) calendar days after the deadline for receipt of materials has passed.
- (4) (a) The formal hearing conducted by an institution and the final recommended order shall be a final administrative action with no appeal to the Council on Postsecondary Education.
 - (b) A formal administrative hearing conducted by the Council on Postsecondary Education for residency determinations related to eligibility for the Academic Common Market and Regional Contract Programs shall be conducted pursuant to the provisions of KRS Chapter 13B and 13 KAR 2:070. The recommended order issued by the President of the Council shall be a final administrative action.
- (5) A student shall not be entitled to appeal a determination of residency status if the determination made by an institution is because a student has failed to meet published deadlines for the submission of information as set forth in subsection (3) of this section. A student may request a review of a determination of residency status in a subsequent academic term.

Section 13. Institutional Responsibilities. Each institution shall:

- (1) Provide for an administrative appeals process that includes a residency appeals officer to consider student appeals of an initial residency determination and which shall include a provision of fourteen (14) days for the student to appeal the residency appeals officer's determination;
- (2) Establish a residency review committee to consider appeals of residency determinations by the residency appeals officer. The residency review committee shall make a determination of student residency status and notify the student in writing within forty-five (45) days after receipt of the student appeal;
- (3) Establish a formal hearing process as described in Section 14 of this administrative regulation; and
- (4) Establish written policies and procedures for administering the responsibilities established in subsections (1), (2), and (3) of this section and that are:
 - (a) Approved by the institution's governing board;
 - (b) Made available to all students; and
 - (c) Filed with the council.

Section 14. Formal Institutional Hearing.

- (1) A student who appeals a determination of residency by a residency review committee shall be granted a formal hearing by an institution if the request is made by a student in writing within fourteen (14) calendar days after notification of a determination by a residency review committee.
- (2) If a request for a formal hearing is received, an institution shall appoint a hearing officer to conduct a formal hearing. The hearing officer shall:
 - (a) Be a person not involved in determinations of residency at an institution except for formal hearings; and

(8) The participation agreement shall ensure that contributions made pursuant to subsections (1) and (2) of this section shall not be made in real or personal property other than cash and shall not exceed the anticipated higher education costs of the beneficiary;

(9) The participation agreement shall provide that the participant and the beneficiary shall not directly or indirectly or otherwise control the investment of contributions or earnings on contributions;

(10) Information obtained from a participant or a beneficiary and other personally identifiable records made by the trust in the administration of this chapter shall not be published or be open for public inspection pursuant to KRS 61.870 to 61.884, except as provided below:

(a) Upon written request, a participant or beneficiary or his legal representative shall be entitled to be advised of the aggregate balance of contributions and earnings for all participation agreements that designate that same beneficiary;

(b) Information may be made available to public employees in the performance of their duties, but the agency receiving the information shall assure the confidentiality, as provided for in this section, of all information so released;

(c) Statistical information derived from information and records obtained or made by the trust may be published, if it in no way reveals the identity of any participant or beneficiary; and

(d) Nothing in this section shall preclude the program administrator or any employee of the board from testifying or introducing as evidence information or records obtained or made by the trust in any proceeding under this chapter, in an action to which the trust is a party, or upon order of a court.

(2) A person claiming independent status shall document independent status under subsection (4) of this section and shall demonstrate by clear and convincing evidence that domicile in Kentucky has been established by that person's acts.

(3) The determination of residency shall be based upon verifiable circumstances or actions. A single fact shall not be paramount, and each situation shall be evaluated to identify those facts which are essential to the determination of domicile.

(4) The following facts, although not conclusive, shall have probative value in support of a claim for resident classification:

(a) Full-time employment in Kentucky or transfer to an employer in contiguous area while maintaining domicile in Kentucky;

(b) Filing of Kentucky resident income tax return for each applicable calendar year of claimed residency status;

(c) Attendance as a full-time, nonresident student at an out-of-state institution of higher education while determined to be a resident of Kentucky;

(d) Abandonment of a fo(den)-1.4 (t)-13.1 (of)-13.2 (a c)-8.1 (l)-8.9 (ai 15.48.3 (es)-813.2 (end)-12.3 (anc)-8 (e)6-c 0.025.