

AGENDA ITEM SUMMARY

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Residency Rule Amendments
Coordinating Board for Higher Education
December 15, 2016

DESCRIPTION

In June 2016, the Coordinating Board approved a number of clarifying amendments to the Department's rule that established criteria for Missouri residency determinations (the "Residency Rule"). The rule guides institutional decisions regarding tuition rates and Department decisions regarding eligibility for state financial aid. The Department has identified several additional amendments to improve the Residency Rule. A redline draft is attached to this item.

Summary of Proposed Amendments

- Strikes the mandatory dollar-for-dollar tuition break for Missouri income taxes paid by non-Missouri residents. The Department can identify no clear policy objective or statutory directive served by this language. Elimination of this break will save an estimated \$2-3 million per year in the aggregate for Missouri's public institutions.
- Implements SB 968 (2016), which extends resident tuition rates to military reservists and Missouri National Guard members.
- Extends resident tuition rates to federally defined "dependents" of military personnel, as specifically directed by § 173.1155, RSMo.
- Harmonizes the rule with the federal Choice Act, which extends resident tuition rates to veterans for three years after discharge from military service (rather than the one-year period in the current rule).

Stakeholder Process

On October 24, the Department distributed a draft copy of the proposed Residency Rule amendments to all presidents and chancellors with an invitation to comment and have staff participate in a conference call discussion devoted to the rule amendments. The conference call was held on November 8, with participants from eight institutions. The Department received feedback expressing enthusiasm specifically for the proposed elimination of the mandatory tuition break for out-of-state taxpayers. We received no suggestions for language modifications.

STATUTORY REFERENCES

Section 173.005.2(7), RSMo – Resident student status
6 CSR 10-3.010 – Higher Educational Residency Determination

RECOMMENDED ACTION

It is recommended that the Coordinating Board direct the Department to execute the proposed amendments to the Residency Rule, as reflected in the attachment to this item.

ATTACHMENT(S)

Redline Proposed Amendments to the Residency Rule (6 CSR 10-3.010)

Coordinating Board for Higher Education
December 15, 2016

Title 6—DEPARTMENT OF HIGHER EDUCATION Division 10—Commissioner of Higher Education Chapter 3—Residency and Transfer

6 CSR 10-3.010 Determination of Student Residency

PURPOSE: This rule sets forth the criteria and requirements for decisions by institutions of higher education relating to the residency status of students, including the determination of student tuition charges and of student eligibility for financial aid administered by the Coordinating Board for Higher Education.

(1) Definitions.

(A) Academic year is the period from July 1 of any year through June 30 of the following year.

(B) Adult student shall mean any emancipated minor student or any student having attained the age of twenty-one (21) years.

(C) Continuous enrollment shall mean enrollment in a Missouri institution in at least one (1) credit or clock hour or the equivalent in at least one (1) semester, excluding summer terms, each academic year.

(D) Coordinating board or board shall mean the Coordinating Board for Higher Education created by section 173.005, RSMo.

(E) Dependent student shall mean, for the purposes of state financial aid eligibility, any student who is not an independent student.

(F) Domicile shall mean presence in a state with an intent of making the state a permanent home for an indefinite period.

(G) Emancipated minor student shall mean any student not having attained the age of twenty-one (21) years and who is not under the care, custody, and support of a legal custodian(s). An unemancipated minor may become emancipated through marriage, formal court action, abandonment, or positive action of alienation on the part of the minor. Mere absence of the minor student from the domicile of his or her legal custodian(s) shall not constitute proof of emancipation. Any minor student taken as an income tax deduction by anyone other than a spouse shall be considered an unemancipated minor. In all instances, alienation from care, custody, and support shall be complete and the burden of satisfactory proof of emancipation shall be that of the minor student.

(H) Independent student shall mean, for the purposes of state financial aid eligibility, any student who qualifies as an independent student under section 480(d) of the Higher Education Act of 1965, as amended, codified at 20 U.S.C. § 1087vv(d).

(I) Residency or resident status shall mean that status which is achieved when sufficient proof of domicile in a state is presented.

(J) Unemancipated minor student shall mean any student not having attained the age of twenty-one (21) years, and who remains under the care, custody, or support of the legal custodian(s) of the student.

(2) Resident tuition eligibility.

(A) If a nonresident adult student or unemancipated minor student's nonresident legal custodian(s) presents sufficient proof of domicile in Missouri, such student shall be granted resident status at the first enrollment following the establishment of the domicile.

(B) Domicile of an unemancipated minor student is presumed to be that of the student's legal custodian(s). In order to establish domicile for an unemancipated minor student, a divorced or separated legal custodian claiming Missouri residency must, in addition to the factors listed in section (6) of this rule, show:

1. A divorce decree or separation agreement giving the resident legal custodian joint or sole legal or physical custody of the unemancipated minor student; or

2. A notarized declaration that the unemancipated minor student resides with the resident legal custodian a majority of the year.

(C) Once an unemancipated minor establishes residency under this rule, they may continue to qualify for resident status so long as they remain continuously enrolled, excluding summer terms, in a Missouri institution of higher education, even if the legal custodian(s) of the unemancipated minor student cease to hold Missouri resident status or the student becomes an adult student.

(D) The criteria set forth in this rule for establishing Missouri residency shall also apply to determinations of in-district residency for public community college districts.

(3) State financial aid eligibility.

(A) If a nonresident independent student or dependent student's nonresident legal custodian(s) presents sufficient proof of domicile in Missouri, such student shall be granted resident status at the first enrollment following the establishment of the domicile.

(B) Domicile of a dependent student is presumed to be that of the student's legal custodian(s). In order to establish domicile for a dependent student, a divorced or separated legal custodian claiming Missouri residency must, in addition to the factors listed in section (6) of this rule, show that his or her information was reported on the student's Free Application for Federal Student Aid.

(C) Once a dependent student establishes resident status under this rule, they may continue to qualify for resident status so long as they remain continuously enrolled, excluding summer terms, in a Missouri institution of higher education, even if the legal custodian(s) of the dependent student ceases to hold Missouri resident status or the student becomes an independent student.

(D) Resident status is one criterion of eligibility for state financial aid awards administered by the coordinating board. Resident status does not guarantee an award of state financial aid.

(4) Members of the Military Forces.

(A) Students shall neither gain nor lose resident status solely as a consequence of military service.

(B) ~~For the purposes of student resident status, m~~ Military personnel, when stationed in Missouri pursuant to military orders, their spouses, and dependents, as defined at 37 U.S.C. § 401(a) for resident tuition purposes and at subsection (1)(E) of this rule for state aid purposes, unemancipated minor or dependent children, shall be regarded as holding Missouri resident status. However, a member of the military forces who is specifically assigned, under orders, to attend a Missouri institution of higher education as a full-time student, shall be classified, along

with his/her spouse and ~~unemancipated minor or~~ dependent ~~s-children~~, as if they had no connection with the military forces.

(C) Any individual who is currently serving in the Missouri National Guard or a reserve component of the military forces of the United States or who is in the process of separating from any branch of the military forces of the United States with an honorable or a general discharge shall have resident status for purposes of admission and—

1. In-state tuition at any public college or university, if the individual—
 - A. Demonstrates presence in Missouri; and
 - B. Declares residency in Missouri; or
2. In-state, in-district tuition at any public community college, if the individual—
 - A. Demonstrates presence in the taxing district; and
 - B. Declares residency in the taxing district.

(D) The following criteria shall be used by an institution for purposes of determining an individual's separation status under subsection (C) of this section:

1. An individual shall be considered to be in the process of separating from any branch of the military forces at any time after receipt of formal separation orders but prior to ~~three~~ (31) years after receiving an honorable or general discharge;
2. An individual may demonstrate presence and declare residency in Missouri and/or the taxing district through a signed statement indicating the individual currently resides in Missouri and/or the taxing district and intends to make Missouri and/or the taxing district a permanent home; and
3. Discharge status shall be determined based on information contained in the Certificate of Release or Discharge from Active Duty (DD 214).

(5) Noncitizens of the United States.

(A) Individuals who are not citizens of the United States must possess a lawful immigration status, as determined by the federal government, prior to consideration for resident status as otherwise provided in this rule, except that individuals and their family members who hold F, J, or M visa status are ineligible for resident status.

(6) Determination of Resident Status.

(A) Attendance at an institution of higher education shall be regarded as a temporary presence inside or outside of Missouri; therefore, a student neither gains nor loses resident status solely by such attendance.

(B) The burden of proof of establishing eligibility for Missouri resident status shall rest with the student.

(C) Either of the following shall be sufficient proof of domicile in Missouri:

1. Presence in Missouri for a minimum of the twelve (12) immediate past, consecutive months coupled with proof of intent, pursuant to subsection (D) of this section, to make Missouri a permanent home for an indefinite period; or
2. Presence in Missouri for the purpose of retirement, full-time employment, full-time professional practice, or to conduct a business full-time coupled with proof of intent, pursuant to subsection (D) of this section, to make Missouri a permanent home for an indefinite period.

(D) In determining whether an adult or independent student, or the legal custodian(s) of an unemancipated minor or dependent student, intends to make Missouri a permanent home for an indefinite period, the following factors, although not conclusive, shall be considered:

1. Heavily weighted factors:
 - A. Continuous presence in Missouri during those periods not enrolled as a student;
 - B. Marriage to a Missouri resident and sharing a home with the resident spouse in Missouri;
 - C. Substantial reliance on sources in Missouri for financial support;
 - D. Former domicile in Missouri and maintenance of significant connections while absent;and

- E. Ownership of a home in Missouri.
2. Lightly weighted factors:
 - A. Registration for voting;
 - B. Part-time employment;
 - B. Lease of living quarters;
 - C. A written statement of intent to establish domicile in Missouri;
 - D. Automobile registration or driver's license obtained in Missouri; and
 - E. Payment of income, personal, or property taxes in Missouri.

~~(E) For those nonresidents who pay Missouri income tax, the nonresident student shall receive a credit against the nonresident student tuition in an amount equal to the actual Missouri income tax paid for the previous calendar year except that the remaining tuition obligation shall not be less than resident student tuition. Students entering in January shall be regarded as entering in the immediately preceding fall for purposes of determining previous calendar year. For students entering after January, previous year means immediate past calendar year.~~

(7) Grace Period for Loss of Residency Status.

(A) An adult or emancipated minor student will lose Missouri residency status twelve (12) consecutive months after he or she can no longer demonstrate sufficient proof of domicile, as provided in this rule.

(B) An unemancipated minor or dependent student will lose Missouri residency status twelve (12) consecutive months after the legal custodian(s) of that student can no longer demonstrate sufficient proof of domicile, except as provided in subsections (2)(C) and (3)(C) of this rule.

(8) Administrative and Compliance.

(A) Each institution shall establish procedures for the determination of institutional decisions in accordance with this rule. These procedures shall adhere to the guidelines set forth in this rule and to the concepts of procedural fairness and reasonableness to the students, to the institution and to the taxpaying public of the state. The procedures shall provide for at least two (2) levels of institutional appeal review and the last stage of the procedure shall be considered final by the institution.

(B) Compliance with the guidelines as set forth in this rule is required of institutions of higher education in order to be determined as eligible institutions under state financial aid programs administered by the coordinating board and for which student eligibility is restricted to residents. For state financial aid purposes, institutions may exercise professional judgment in residency determinations for documented exceptional circumstances.

(C) On complaint of any student or other indication of possible institutional noncompliance with the guidelines set forth in this rule, the coordinating board may review the eligibility of an institution for state financial aid programs, or any other funds administered by the board and may take such actions or make such recommendations relating to the institution's eligibility as the

coordinating board deems appropriate. These actions shall be consistent with any other administrative rules the board has established pertaining to the review of institutional eligibility.

AUTHORITY: sections 173.005.2(7) and 173.1150.3, RSMo Supp. 2013. Original rule filed Aug. 7, 1978, effective March 17, 1979. Rescinded and readopted: Filed July 3, 1985, effective Aug. 1, 1986. Amended: Filed Dec. 16, 1988, effective April 1, 1989. Amended: Filed June 15, 2009, effective Dec. 30, 2009. Amended: Filed April 9, 2013, effective Oct. 30, 2013. Amended: Filed Sept. 16, 2015, effective March 30, 2016.*

**Original authority: 173.005.2(5), RSMo 1973, amended 1983, 1985, 1999, 2003, 2005, 2007, 2010, 2011, 2012, 2013 and 173.1150.3, RSMo 2013.*