

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Resident and Nonresident Classification of Students

NUMBER: 3.1.1

A. PURPOSE

This policy governs the classification of students for the purpose of tuition eligibility. Each person who applies for admission to an institution shall be classified, and tuition will be established and assessed according to the classifications.

B. DEFINITIONS

1. **Guardian:** A person who has been designated in writing by the student's parents or legal guardians to serve as their attorney in fact for purposes related to the individual unemancipated student's affairs
2. **Institution:** One of the six (6) public universities: Black Hills State University, Dakota State University, Northern State University, South Dakota School of Mines and Technology, South Dakota State University, and the University of South Dakota.
3. **South Dakota Resident:** A student that has been deemed a resident of South Dakota based on information submitted by the student and evaluated pursuant to South Dakota Codified Law (SDCL) and or Administrative Rules of South Dakota (ARSD).
4. **Semester:** Defined as fifteen (15) weeks of instructional activity followed by finals week for Fall and Spring. The duration of weeks may be shorter for the summer semester.
5. **Session:** This is a term established within a semester for which the student is enrolled and receives a bill for tuition and/or fees.
6. **Unemancipated:** A student that is a dependent minor whose legal residence is determined by that of their parents or legal guardians.

C. POLICY STATEMENTS

1. Board of Regents Policy 1.1.1, 1.1.2 and SDCL § 13-49 through § 13-53, and the South Dakota constitution provides the authority to govern the university system.
2. Institutions shall establish internal procedures and deadlines on the implementation of the residency classification process.
3. The system shall provide a common form for requesting an appeal sections G and H of this policy.
4. Confidentiality of student classification and appeal procedures will be governed by BOR Policy 3.3.1 Confidentiality of Student Records.

5. Tuition and fees are governed by BOR Policies 5.5 series (5.5, 5.5.1, 5.5.2, 5.5.3, 5.5.4, and 5.5.5).
6. Academic calendars establishing semesters and terms are governed by BOR Policy 2.1.1.

D. RESIDENCY CLASSIFICATION DESIGNATION

A student's classification for the purpose of the student's responsibility for payment of tuition shall be based on information provided by the student before initial enrollment, upon re-enrollment, or as may otherwise be required. Each residency classification shall be made by authorized institutional employees based on this policy and the implemented SAC procedural guidelines.

E. BURDEN OF ESTABLISHING RESIDENCY CLASSIFICATION

1. The burden is on each student to demonstrate eligibility for classification of residency. The decision shall be based upon information provided by the student and all other relevant information at the time of admission.
2. The institution is authorized to require such written documents, affidavits, verifications, or other evidence that are deemed necessary to establish the residence of the student, including proof of emancipation, adoption, or appointment of a guardian.
3. Students have the burden of establishing residency by clear and convincing evidence.
4. A student initially classified as a nonresident will retain that status unless and until the student is deemed eligible for the classification of resident in a subsequent semester.

F. DOCUMENTATION USED TO ESTABLISH SOUTH DAKOTA 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. For tuition purposes, the following include mechanisms to establish residency.

1. Physical Presence

- 1.1. A person shall be classified as a resident student if the person is 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 post-secondary institution full-time. Physical presence in South Dakota solely for educational purposes does not constitute the establishment of SD residency, regardless of length of stay.
- 1.2. 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.

1.3. 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:

- The residence of an unemancipated student's parents or guardians;
- The status of the source of the student's income;
- To whom a student pays taxes, including property taxes;
- The state in which a student's automobile is registered;
- The state issuing the student's driver's license;
- Where the student is registered to vote;
- Ownership of property in South Dakota and outside of South Dakota;
- The residence claimed by the student on loan application, federal income tax returns, and other documents;
- Admission to a licensed profession in South Dakota;
- Membership in civic, community, and other organizations in South Dakota or elsewhere; and
- The facts and documents pertaining to the person's past and existing status as a student.

1.3.1. 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.

1.3.2. The fact that a person pays taxes and votes in the state does not in itself establish residence.

1.3.3. 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.

2. Unemancipated Persons

2.1. 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.

2.2. 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.

- 2.3. 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 following the removal.
- 2.4. Unemancipated students who enter the state for the predominant purpose of attending an institution and who are under the custody of a guardian may file a residency petition with their institution at the time of admission.

3. Previous South Dakota Residence

Absence from South Dakota to pursue postsecondary education does not deprive a person of resident student status.

4. Classification of Resident

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.

5. International Nonresident Establishing Domicile

International nonresident 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.

6. Military

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. In addition, 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 and eligible tuition at the established South Dakota residency rate. This shall also apply to the spouse of the active-duty personnel.

7. High School Graduates

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

- 7.1. 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
- 7.2. 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.

8. Married Status

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.

G. APPEALING CLASSIFICATION

If a student is initially classified as a non-resident and wishes to appeal this classification, the student may complete the Residency Application Appeal Form and attach supporting documentation within 15 calendar days of being notified of their residency status determination. This appeal request will be routed to the designated residency officer at the institution. The designated officer will evaluate all the documentation provided through the appeal documents and issue a recommended decision regarding the appeal within 10 (ten) business days of receipt of the appeal form. The recommendation will be routed to the president or president's designee. The president will issue a decision within 10 (ten) business days of receipt of the recommendation from the residency officer(s).

H. CONTESTED CLASSIFICATION APPEAL [CASE REVIEW]

A student who has exhausted institutional procedures under Section G of this policy may challenge a decision by submitting an electronic form to request a review under SDCL chapter 1-26 to the Board within thirty (30) days after the president transmits notification of their final decision via email or U.S. Mail to the student's last known mailing address and email address. Note: The notice will not be effective unless the student attaches all documentation provided to the student by the president detailing the basis for their residency determination.

1. Upon receipt of the appeal and required materials, the Executive Director shall select a hearing examiner within fourteen (14) days following receipt of the appeal.
2. The hearing examiner shall hold a hearing pursuant to SDCL ch. 1-26 with all parties involved in the grievance no later than thirty (30) days after the hearing examiner is appointed. The hearing examiner shall prepare a proposed determination including findings of fact and conclusions of law for the Board's consideration. The proposed determination shall be provided to the Board within thirty (30) days of the hearing or fourteen (14) days of the next regularly scheduled Board meeting, whichever is sooner.
 - 3.1. 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.
3. The Board's decision shall be issued to the student within ten (10) days from the date the appeal is considered by the Board. If the Board fails to respond within the specified time period or if the student is not satisfied with the decision, the student may appeal to the circuit court in accordance with SDCL ch. 1-26.

I. RECLASSIFICATION

After twelve months of continuous presence in South Dakota, students who were classified as nonresidents may petition for reclassification. Students classified as nonresidents may also petition for reclassification based on changes in circumstances pursuant to Sections F.2, F.6 and F.8. Petitions for reclassification shall be filed with the residency officer or designee at the institution, who shall act upon them. Petitions for reclassification must include documentation

of any change in circumstances leading to the petition for reclassification.

If a petition for reclassification is granted, the approved 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.

J. MISCLASSIFICATION

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.

FORMS / APPENDICES:

None

SOURCE:

BOR April 1979; RR, 11:04, 1977; BOR April 1987; BOR January 1988; RR, 11:07, 1977; RR, 11:08, 1977; RR, 11:08, 1977; BOR April 1979; RR, 11:11, 1977; BOR April 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; October 2023 (Clerical); BOR December 2025.