

POSTSECONDARY RESIDENCY REQUIREMENTS:  
AUTHORIZATION AND REGULATION

Monograph 82-2

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The lowering of the age of majority, declining enrollments, increased mobility of the U.S. population, and changing roles of women have each affected traditional notions of residency. Of course, even traditional notions of residency being determined by the state where a student's parents lived never were comprehensive enough to anticipate all situations. Litigation in cases as early as 1882<sup>1</sup> indicated that strict residency requirements did not always fit every student's situation. By the 1960's, however, a patchwork of residency requirements had been assembled by the states, reflecting societal changes and the evolution of mass public higher education.

Lowering the age of majority to 18 had considerable impact upon student's ability to declare financial independence, to establish residency by means not previously available (as in owning property, acquiring credit, and voting), and to secure a domicile different than that of their parents.<sup>2</sup> The increased mobility of students is a function of increased societal mobility, as well as the improved marketing technology being applied to college admissions and recruiting. This increased

interest by public institutions in non-resident students is itself a reflection of declining enrollments and funding formulae that require larger student bodies for additional revenue.<sup>3</sup> Additionally, the major demographic shift in college attendance patterns, that of women enrolling in large numbers, and the larger societal and political changes accompanying this shift rendered the many wife-exemption practices obsolete. These changes have disentangled women's attendance status from their husbands' residency,<sup>4</sup> but overall, have not resulted in a reasoned, orderly pattern of state residency requirements.

Efforts to systematize state requirements have failed, for reasons that have not often been clear. The Education Commission of the States (ECS), in a 1970 report, noted the "inconvenience and even injustice, to which such dissimilarity [in requirements] gives rise" and concluded that "this heterogeneity is neither in the interest of the students, of the states, nor of the nation."<sup>5</sup> ECS was led to this conclusion by its study that discovered little consistency

in definitions and determinations of residency, and an extraordinary pattern of exemptions that provided "end runs" around the requirements; indeed, only one state appeared to have no exemptions to their requirements. A 1977 study by ECS updated the earlier data, but did not examine statutory changes or categorize exemptions.<sup>6</sup>

It is these statutory changes and exemptions, though, that constitute the heart of residency requirements. Strict state requirements interpreted generously by institutions may prove to be more beneficial to students than would moderate state requirements interpreted strictly by institutions. Frequently, there are considerable redefinition and interpretation that occur between the enactment of statutes and determination of student status. When practically all the states have different statutes, a plethora of exemptions to residency requirements, and institutional autonomy to decide individual student cases, there is a strong likelihood that students similarly situated will be treated unlike each other, often even by the same institutions. In short, because there is no consistent promulgation or interpretation of residency requirements, it is unclear that states' fiscal integrity is being maintained or that public policies are being implemented.

The ECS report of 1970 speculated, "the fact that a student might be treated differently by two public colleges in a given state opens residency regulations to the charge that they are arbitrary and discriminatory."<sup>7</sup>

Neither arbitrary classifications nor discriminatory impact can be gauged with the present state of knowledge. Recent litigation has concentrated upon irrebuttable presumptions (i.e., that once a student is a non-resident, he or she may not become a resident),<sup>8</sup> and only rarely upon inconsistent treatment of students by institutions.<sup>9</sup> Therefore, an essential first step in understanding residency requirements is a thorough and comprehensive analysis of state statutes, agency and institutional regulations, and specific exemptions.<sup>10</sup>

That vague statutes and inconsistent applications of residency requirements are a problem is incontestable. Not only has litigation in this area increased, but the increased mobility of students has created so many technical and conceptual problems that federal data on migration no longer include reference to "residence."<sup>11</sup> The data reported in

in this study were gathered by a comprehensive questionnaire completed by state coordinating officers (SHEEO - State Higher Education Executive Officers) that provided statutory and regulatory information. All responses were codified, cross-checked with the statutes and regulations, and verified by the respondents. In several states, only sketchy statutes or regulations exist, and informal institutional practices have evolved, while in other states, institutions were given autonomy to determine their own residency practices; in each of these states, major institutions were surveyed to determine their practices. Therefore, public institutions in many states, particularly in states with complex multiple systems, may have different durational requirements and residency criteria. This data base updates the 1970 ECS study and its less-detailed 1977 version; the report has retained the aggregate categories of the 1970 study to measure changes over the decade.

Several cautions are in order. First, these data are current through summer 1982, but are evolving quickly. Footnotes to Maryland, Massachusetts, and Utah refer to major



changes pending for residency in those states. Many other states have residency requirements under consideration, rendering any such list fluid. Second, imposition of any categories may be Procrustean, and the diversity of practices makes this exercise at best a schematic. For example, indices of residence and burdens of persuasion for students may vary even among states with similar durational requirements. Third, this listing does not codify all the exemptions or requirements beyond domicile or duration; in order to gain residency status, students may have to meet standards of financial independence or other characteristics deemed important for preferential treatment. A forthcoming study will report these data, although this report does list all statutory or regulatory citations to these exemptions and requirements.

In sum, these data represent the basic governance of postsecondary residency requirements. It is best to read from right to left, or to determine whether the locus of authority is institutional, regulatory, or legislative. If the institutions in the state are authorized to make

residency decisions, this is designated as "Institutional Board (s)," and a statutory reference is given, if one exists. In most states, a major institution was then surveyed for its practices (policy documents or handbooks are underlined); the durational requirement for that institution is in parentheses. If there are regulations or statewide policies (publications underlined), they are codified under "Regulation." In each instance, the regulatory body was a statewide coordinating or governing board. For states with multiple systems, the senior college systems are included. Because of the difference in junior and community college governance, in which district or local residency is determined, not all two-year college systems were reported in this study. They are forthcoming. The "Statute" column includes all legislation assigning residency authorization. Many states<sup>12</sup> have no specific residency legislation except within broad responsibilities assigned to statewide or institutional boards.

Finally, the author would appreciate any revisions, suggestions, or reactions to these data. More compre-

hensive reports on the exemptions, including case studies and analysis of the residency requirements, are forthcoming.

## REFERENCES

- 1 Priest v. Regents of the University of Wisconsin,  
54 Wis. 159, 11 N.W. 472 (1882).
- 2 The Residence of Students for Voting Purposes, 44  
A.L.R. 3d 797, 908 (1971); Spenser, "The Legal  
Aspects of the Nonresident Tuition Fee," 6  
Oreg. L. Rev. 332 (1927); Barkin, "Legal Implica-  
tions of Office of Education Criteria for the Self-  
Supporting Student," 2 J. Coll. U.L. 229 (1974).
- 3 Hendrickson and Jones, "Nonresident Tuition: Student  
Rights v. Fiscal Integrity," 2 J.L. & Ed. 443 (1973).
- 4 Kreps, Sex in the Marketplace: American Women at  
Work. Baltimore: Johns Hopkins University Press,  
1971. See Clark v. Redeker, 259 F. Supp. 117  
(1966), in which a husband challenged the wife-  
only spouse exemption of Iowa.
- 5 Carbone, Resident or Nonresident? Tuition Class-  
ification in Higher Education in the States.  
Denver: ECS, 1970, p. 4.
- 6 Higher Education in the States, 6, No. 3 (1978),

125-145.

7 Carbone, 1970, p. 27.

8 Toll v. Moreno, 99 S. Ct. 2044 (1979); 50 U.S.L.W. 4879 (June 28, 1982); Vlandis v. Kline, 412 U.S. 441 (1973); Landwehr v. Regents of University of Colorado, 156 Colo. 1, 396 P. 2d 451 (1964).

9 Segal, "Residency, Tuition, and the 12-month Dilemma," 7 Houston L. Rev. 241 (1969)

10 However, simply compiling these paper requirements would be insufficient, particularly for understanding the dynamics of the residency requirement interpretation by institutions and determination for students. Therefore, it is essential that case studies be conducted to understand these dynamics in institutional settings, usually registrar or admissions offices, where statutes and regulations are interpreted and applied to student applications. While many cases will be easily categorized as resident or non-resident, the

discretionary administration of exceptions, exemptions, and appeals is an important component of this problem.

11 Peterson and Smith, Migration of College Students.

DC: NCES, (1977). iii. Previous studies and the instrument for the data contained in the 1977 report were labeled, "Residence and Migration Studies."

12 Only the 50 states and DC responded and are included in this survey.

TYPE OF AUTHORIZATION

STATE	STATUTE	REGULATION	INSTITUTIONAL
ALABAMA (12 months)	ALA. CODE Title 16 §16-5-13 16-33A-5	No	Individual Institutional Governing Boards. ALA. CODE Title 16 §16-5-13 -University of Alabama Resolution by the Executive Committee of the Board of Trustees of the University of Alabama.
ALASKA 12 months	ALASKA STAT. §14.40.170	No	University of Alaska Board of Regents. ALASKA STAT. §14.40.170 Policies of the Board of Regents. p. 36.
ARIZONA 12 months	ARIZ. REV. STAT. §15-1801 et. seq., §15-1626	Arizona Board of Regents (Arizona State, Univ. of Arizona, Northern Arizona University) <u>Information and Guidelines For Determining Tuition Status.</u>	No
ARKANSAS 6 months ) 12 months)	ARK. STAT. ANN. §80-3301, 3302, 3359, 3363, 3366, 3367.  ARK. STAT. ANN. §80-2812, 2874, 2893	Arkansas Department of Higher Education, Residency Regulations, Public Colleges and Universities.  No	Institutional Boards ARK. STAT. ANN. §80-3301  Institutional Board, Univer- sity of Arkansas. ARK. STAT. ANN. §80-2812 <u>Criteria for Reclassification as Arkansas Resident for Fee Purposes.</u>

TYPE OF AUTHORIZATION

STATE	STATUTE	REGULATION	INSTITUTIONAL
CALIFORNIA 12 months	CAL. EDUC. CODE §68100-68130, 68044, §68071, 68074, 68076, §68077, 68081, 68083, §89705-89707.5, 90403.	(University of California) <u>Establishment of Legal Residence For Tuition Purposes at the University of California;</u> (California Community Colleges) C.A.C. Title 5, Part VI, §54000, §41900-41914	No
COLORADO 12 MONTHS	COL. REV. STAT. §23-7-101 to 103, §23-1-113, §23-52-105, §23-52-202	No	No
CONNECTICUT (6 months )	CONN. GEN. STAT. §10-329b to 329i, §10-108c, §10-116 §10-119a, 10-38h	Board of Higher Education CONN. GEN. STAT. §10-329g	Individual Institutional Governing Boards. CONN. GEN. STAT. §10-329h
DELAWARE 12 months )	DEL. CODE Title 14 §5106	No	Institutional Board of Trustees DEL. CODE Title 14 §5106
DISTRICT OF COLUMBIA 90 days	D.C. Law 1-36 §31-1711(a), §31-1716(c)	No	Board of Trustees D.C. Law 1-36 §31-1716(i), (n), (q)



TYPE OF AUTHORIZATION

STATE	STATUTE	REGULATION	INSTITUTIONAL
FLORIDA 12 months	FLA. STAT. §240: 203, 209, 233, 235, 321, 345, 445	State Board of Education Rule 6C - 7.05 through .08	Board of Regents FLA. STAT. §240.209(i), (3)(e); 240.233
GEORGIA 12 months	GA. CODE ANN. §32-169	Board of Regents (University System of Georgia) <u>Manual for Interpreting Residence Status; Regents Rules Governing the Classi- fication of Students as Residents and Nonresidents,</u> 1980.	NO
HAWAII 12 months	HAW. REV. STAT. Ch. 9 and 304	NO	University of Hawaii Board of Regents HAW. REV. STAT. §304-4
IDAHO 12 months	IDAHO CODE §33-3717	Idaho State Board of Education and Board of Regents of the University of Idaho IDAHO CODE §33-3717 (1), (3), (7) Idaho State Board of <u>Education Policy Manual</u> 701.43 to 701.48	NO

TYPE OF AUTHORIZATION

STATE	STATUTE	REGULATION	INSTITUTIONAL
ILLINOIS (3 Months)	ILL. ANN. STAT. Ch. 144 §40b, 40c, 600, 602, 651, 658, 659, 190 (Smith - Hurd)	No	Individual Governing Boards - Southern Illinois University Policies of the Board of Trustees. Chapter 3, Section A: Residency Status Policies
(6 Months)	ILL. ANN. STAT. Ch. 144 §22, 40b, 40c, 190 (Smith - Hurd)	No	- University of Illinois Regulations Governing the Determination of Residency Status for Admission and Assessment of Student Tuition.
INDIANA (12 months )	IND. CODE ANN. §20-12-1 (Burns)	No	Individual Institutional Governing Boards. IND. CODE ANN. §20-12-1 (Burns)
IOWA 12 months	IOWA CODE §262(7), (9)	Iowa State Board of Regents Regulations. IOWA CODE §720-1.4(1)	No
KANSAS 12 months	KAN. STAT. §76-729 and §76-730	State Board of Regents K.A.R. §88-2-1 to §88-3-9	No
6 months	KAN. STAT. §72-6504	State Board of Education authorized but not adopted.	Washburn University of Topeka
Community Colleges 6 months	KAN. STAT. §71-401 to §71-406	State Board of Education K. A. R. §91-25-1a to §91-25-4	No

TYPE OF AUTHORIZATION

STATE	STATUTE	REGULATION	INSTITUTIONAL
KENTUCKY (12 months)	KY. REV. STAT. §164.020(3), §164.400	Kentucky Council on Public Higher Education, KY. REV. STAT. §164.020(3) <u>Policy on Classification of Students For Fee Assessment Purposes At State-Supported Institutions of Higher Education.</u>	Institutional Boards KY. REV. STAT. §164.400
LOUISIANA (12 months)	LA. REV. STAT. ANN. §17.3130 (West)	Board of Trustees for State <u>Colleges and Universities</u> <u>Policies and Procedures</u> <u>Manual</u> Part VI, Section 6.5	Individual Governing Boards (Board of Trustees For State Colleges and Universities.) <u>Policies and Procedures</u> <u>Manual Part VI, Sec. 6.5:</u> (Grambling State University, University of New Orleans, Louisiana Tech University, McNeese State University, Nicholls State University, Northeastern Louisiana Uni., Northwestern State University of Louisiana, Southeastern Louisiana Univ., University of Southwestern Louisiana).
MAINE 12 months	ME. REV. STAT. Title 20 §2272	NO	Board of Trustees, University of Maine. <u>Rules Governing Residence.</u>

TYPE OF AUTHORIZATION

STATE	STATUTE	REGULATION	INSTITUTIONAL
*MARYLAND (6 months)	MD. EDUC. CODE ANN. § 13-104	No	Institutional Board of Regents - University of Maryland Determination of In-State Status For Admission, Tuition and Charge - Differential Purposes. MD. EDUC. CODE ANN. §13-104
MASSACHUSETTS (12 months)	MASS. GEN. LAWS ANN. Ch. 73 §1A, §6	*NO	Individual Institutional Governing Boards. MASS. GEN. LAWS ANN. Ch. 73 §1A, §6
MICHIGAN (12 months)	MICH. COMP. LAWS ANN. §390.1	No	Individual Institutional Governing Boards. MICH. COMP. LAWS ANN. §390.1
MINNESOTA 12 months	MINN. STAT. §136.11	State University Board, <u>Common Policy of Resident Tuition Status.</u>	No
MISSISSIPPI 12 months	MISS. CODE ANN. §37-103-1 to §37-103-29	<u>By Laws and Policies, State Board of Trustees of State Institutions of Higher Learning in Mississippi,</u> pp. 17-20.	No

TYPE OF AUTHORIZATION

STATE	STATUTE	REGULATION	INSTITUTIONAL
MISSOURI 12 months	MO. REV. STAT. §172.360, §173.140, §174.120, §174.130, §175.040	Coordinating Board for Higher Education, <u>Residency Determination Procedure,</u> 6CSR 10-3.010.	No
MONTANA 12 months	MONT. REV. CODES ANN. §20-25-421(2), §20-25-501 to 505	Regents of the Montana University System MONT. REV. CODES ANN. §20-25-501(2)	No
NEBRASKA (180 days)	NEB. REV. STAT. §85-501 to §85-504	No	Individual Institutional Governing Boards
NEVADA 6 months	NEV. REV. STAT. §10.020, §396.540	Board of Regents, University of Nevada System. <u>Nevada Rules of Civil Procedures,</u> pp. 679-80, 15057-8	No
NEW HAMPSHIRE 12 months	N.H. REV. STAT. ANN. §187:29(II)	No	<u>Rules Governing Tuition Rates For The University of N.H. System.</u> N.H. REV. STAT. ANN. §187:29(II), §187:30, 187:30-a, 187:31

TYPE OF AUTHORIZATION

STATE	STATUTE	REGULATION	INSTITUTIONAL
NEW JERSEY 12 months	N. J. STAT. ANN. §18A.62-4	Board of Higher Education, N.J.A.C. 9:5-1.1 et. seq.	No
NEW MEXICO 12 months	N.M. STAT. ANN. §21-1-4	State of New Mexico Board of Education, N.M. STAT. ANN. §21-1-4 (E), §21-1-6 <u>Finance Policy on Residence Status.</u>	No
NEW YORK 12 months	N.Y. EDUC. LAW §355(2)(i); §6301(4) and §6305	Official Compilation of Codes, Rules, and Regula- tions, §302.1(6) and §602.10 <u>State University of New York Administrative Policy,</u> Item 010.1	No
NORTH CAROLINA 12 months	N.C. GEN. STAT. §116-143, §116-143.1, §116-143.2, §116-143.4 N.C. GEN. STAT. §116-143 to 116-144	A Manual to Assist the <u>Public Higher Education Institutions of North Carolina in the Matter of Student Classification for Tuition Purposes</u> (The Board of Governors, The University of North Carolina; The North Carolina State Board of Community Colleges).	No

TYPE OF AUTHORIZATION

STATE	STATUTE	REGULATION	INSTITUTIONAL
PENNSYLVANIA 12 months	PA. STAT. ANN. Title 24 §5203, 5206, 5208 (Purdon)	22 PA. CODE §35.29b Board of Trustees	No
RHODE ISLAND 12 months	R. I. GEN. LAWS §16-31-5	Board of Governors for Higher Education <u>Regulations on Determination Of Residency.</u> R. I. GEN. LAWS §16-31-5	No
SOUTH CAROLINA 12 months	S. C. CODE §59-112-10 to §59-112-100	Commission on Higher Education S. C. CODE §59-112-100	No
SOUTH DAKOTA 12 months	S. D. COMPILED LAWS ANN. §13-49-1, §13-53-4, §13-53-6	Commission on Higher Education Board of Regents <u>Resident and Non-Resident Tuition, 1.2.2</u>	No
TENNESSEE No time specified	TENN. CODE ANN. §49-3224  TENN. CODE ANN. §49-3342	State University and Community College System <u>Regulations for Reclassifying Students In-State and Out-of- State for the Purpose of Pay- ing College or University Fees and Tuition and for Admission Purposes.</u>  <u>Rules of the University of Tennessee (All campuses)</u> Ch. 1720-1-1 Residency Classification.	No

TYPE OF AUTHORIZATION

STATE	STATUTE	REGULATION	INSTITUTIONAL
NORTH DAKOTA 12 months	N.D. CENT. CODE §15-10-18, §15-10-19	North Dakota State Board of Higher Education	No
OHIO 12 months	OHIO REV. CODE §3333.31	Ohio Board of Regents, Rule 3333-1-10 <u>Ohio Student Residency for State Subsidy and Tuition Surcharge Purposes.</u>	No
OKLAHOMA 12 months	OKLA. STAT. Title 70 Ch. 50	Oklahoma State Regents for Higher Education <u>Residence Status of Enrolled Students in the Oklahoma State System of Higher Ed. OKLA. STAT. Title 70 Chapter 50, §3206, §3207</u>	No
OREGON 6 months	OR. REV. STAT. §351	Board of Higher Education, Oregon Administrative Rules §580-10-015 to §580-10-050	No
PENNSYLVANIA 12 months  (12 months)	PA. STAT. ANN. Title 24 §20-2003.2, 20-2003.3 (Purdon)  PA. STAT. ANN. Title 24 §2510-202, 2510-205, §2510-206 (Purdon)	22 PA. CODE §153.1 Pennsylvania Board of State College and University Directors  22 PA. CODE §45.31, 46.5 Board of Commonwealth Trustees	No  Institutional Governing Board. - University of Pittsburgh <u>Guidelines for Determining Eligibility for Reduced Tuition Rates.</u>



TYPE OF AUTHORIZATION

STATE	STATUTE	REGULATION	INSTITUTIONAL
<p>TEXAS 12 months</p>	<p>TEX. EDUC. CODE, Title 3, §54.051 - §54.061</p>	<p>Coordinating Board, Texas College and University System, <u>Rules and Regulations For Determining Residence Status.</u></p>	<p>No</p>
<p>UTAH 12 months</p>	<p>UTAH CODE ANN. §53-34-2.2</p>	<p>Board of Regents, <u>Rules and Regulations For Determining Residence Status In the Utah System of Higher Education.</u> UTAH CODE ANN. §53-34-2.1 §53-34-2.2 (7)</p>	<p>No</p>
<p>VERMONT (12 months)</p>	<p>VT. STAT. ANN. Title 16 §2282, 2822 (i)</p>	<p>No</p>	<p>Institutional Governing Boards</p>
<p>VIRGINIA 12 months</p>	<p>VA. CODE §23-7</p>	<p>State Council of Higher Education, VA. CODE §23-7 (G)</p>	<p>No</p>
<p>WASHINGTON 12 months</p>	<p>WASH. REV. CODE §28B.15.010 to §28B.15.014</p>	<p>No</p>	<p>No</p>

TYPE OF AUTHORIZATION

STATE	STATUTE	REGULATION	INSTITUTIONAL
WEST VIRGINIA 12 months	W. VA. CODE §18-26-8	West Virginia Board of Regents, Policy Bulletin No. 34, <u>Policy Regarding Classification of Residents and Non-residents for Admission and Fee Purposes.</u>	No
WISCONSIN 12 months	WIS. STAT. §36.27(2)	Wis. Adm. Code, UWS 20. Board of Regents of the University of Wisconsin System, <u>Non-resident Tuition Determination Procedures and Appeals.</u>	No
WYOMING 12 months	WYO. STAT. §21-340	No	Regulations of the Trustees of the University of Wyoming Ch. VIII, Sec. 3 <u>Student Classification for Fee Purposes.</u>

\*MARYLAND - Institutional provisions for G-4 Aliens will be revised to comply with Toll v. Moreno, No. 80-2178 (June 28, 1982)

\*MASSACHUSETTS - In March 1981, Massachusetts reorganized its public higher education governance structure, and established a State Board of Regents (15AS14). It has not yet affected residency requirements, although a change is pending.

\*UTAH - H.B. No. 5, passed in January, 1980, has amended the Utah law, although the provisions have not yet been recodified.