



HIGHER EDUCATION COORDINATING COUNCIL

To: The Honorable Mike Haridopolos
The Honorable Dean Cannon
T. Willard Fair, Chair, State Board of Education
Ava Parker, Chair, Board of Governors

From: Marshall M. Criser, III, Co-Chair
Jon Moyle, Sr., Co-Chair

Date: March 28, 2011

Re: s 1009.21, F.S., Resident Status for Tuition Purposes

According to Section 1004.015, Florida Statutes, the Higher Education Coordinating Council serves as an advisory board to the Legislature, the State Board of Education, and the Board of Governors. Furthermore, in s. 1009.21(11), F.S., the Council is directed to “...consider issues related to residency determinations and make recommendations relating to efficiency and effectiveness of current law.”

After input from Florida’s education delivery systems and from the Articulation Coordinating Committee, on March 11, 2011 the Council unanimously approved the following recommendation to modify Section 1009.21, Florida Statutes. The Council’s recommendation to change five sections of the aforementioned statute is intended to clarify existing provisions for the determination of resident status for tuition purposes and to align with federal tax code and financial aid.

On behalf of the Council, we respectfully submit this recommendation to the Florida Legislature, State Board of Education and Board of Governors for all due consideration.

Summary of Proposed Revisions to s. 1009.21, F.S.

1. **Subsection (1)(a)** – Clarifies the definition of a dependent by referencing federal financial aid guidelines for independent status to avoid discrepancy between the determination of dependent or independent status for residency for tuition purposes and the determination of such status for financial aid eligibility
2. **Subsection (1)(d)** – Revises the definition of legal resident to clarify that only US citizens and certain non-US citizens are eligible to establish residency for tuition purposes
3. **Subsection (1)(f)** – Adds stepparent to the definition of parent to align with federal tax code
4. **Subsection (5)** – Provides that an initial residency classification may be made on the basis of marriage to a Florida citizen to align with a similar provision for reclassification (See subsection 6(d) regarding marriage and reclassification)
5. **Subsection (10)(l)** – Clarifies that students who are eligible for certain tuition waivers and exemptions are automatically considered as Florida residents for tuition purposes for the duration of their eligibility for the waiver/exemption

1009.21 Determination of resident status for tuition purposes.

Students shall be classified as residents or nonresidents for the purpose of assessing tuition in postsecondary educational programs offered by charter technical career

centers or career centers operated by school districts, in
¹community colleges, and in state universities.

(1) As used in this section, the term:

(a) "Dependent child" means any person, whether or not living with his or her parent, who is eligible to be claimed by his or her parent as a dependent under the federal income tax code or does not meet the criteria for independent status as established for federal financial aid purposes.

(b) "Initial enrollment" means the first day of class at an institution of higher education.

(c) "Institution of higher education" means any charter technical career center as defined in s. 1002.34, career center operated by a school district as defined in s. 1001.44, ¹community college as defined in s. 1000.21(3), or state university as defined in s. 1000.21(6).

(d) "Legal resident" or "resident" means a person who is a U.S. citizen or a non U.S. citizen who is legally present in the United States under federal law as defined in State Board of Education rule and Board of Governors regulation and who can meet the residency requirements set forth herein ~~has maintained his or her residence in this state~~

~~for the preceding year, has purchased a home which is occupied by him or her as his or her residence, or has established a domicile in this state pursuant to s. 222.17.~~

(e) "Nonresident for tuition purposes" means a person who does not qualify for the in-state tuition rate.

(f) "Parent" means the natural or adoptive parent, step parent, or legal guardian of a dependent child.

(g) "Resident for tuition purposes" means a person who qualifies as provided in this section for the in-state tuition rate.

(2) (a) To qualify as a resident for tuition purposes:

1. A person or, if that person is a dependent child, his or her parent or parents must have established legal residence in this state and must have maintained legal residence in this state for at least 12 consecutive months immediately prior to his or her initial enrollment in an institution of higher education.

2. Every applicant for admission to an institution of higher education shall be required to make a statement as to his or her length of residence in the state and,

further, shall establish that his or her presence or, if the applicant is a dependent child, the presence of his or her parent or parents in the state currently is, and during the requisite 12-month qualifying period was, for the purpose of maintaining a bona fide domicile, rather than for the purpose of maintaining a mere temporary residence or abode incident to enrollment in an institution of higher education.

(b) However, with respect to a dependent child living with an adult relative other than the child's parent, such child may qualify as a resident for tuition purposes if the adult relative is a legal resident who has maintained legal residence in this state for at least 12 consecutive months immediately prior to the child's initial enrollment in an institution of higher education, provided the child has resided continuously with such relative for the 5 years immediately prior to the child's initial enrollment in an institution of higher education, during which time the adult relative has exercised day-to-day care, supervision, and control of the child.

(c) The legal residence of a dependent child whose parents are divorced, separated, or otherwise living apart will be deemed to be this state if either parent is a legal resident of this state, regardless of which parent is

entitled to claim, and does in fact claim, the minor as a dependent pursuant to federal individual income tax provisions.

(3) (a) An individual shall not be classified as a resident for tuition purposes and, thus, shall not be eligible to receive the in-state tuition rate until he or she has provided such evidence related to legal residence and its duration or, if that individual is a dependent child, evidence of his or her parent's legal residence and its duration, as may be required by law and by officials of the institution of higher education from which he or she seeks the in-state tuition rate.

(b) Except as otherwise provided in this section, evidence of legal residence and its duration shall include clear and convincing documentation that residency in this state was for a minimum of 12 consecutive months prior to a student's initial enrollment in an institution of higher education.

(c) Each institution of higher education shall affirmatively determine that an applicant who has been granted admission to that institution as a Florida resident meets the residency requirements of this section at the time of initial enrollment. The residency determination must be documented by the submission of written or

electronic verification that includes two or more of the documents identified in this paragraph. No single piece of evidence shall be conclusive.

1. The documents must include at least one of the following:

- a. A Florida voter's registration card.
- b. A Florida driver's license.
- c. A State of Florida identification card.
- d. A Florida vehicle registration.
- e. Proof of a permanent home in Florida which is occupied as a primary residence by the individual or by the individual's parent if the individual is a dependent child.
- f. Proof of a homestead exemption in Florida.
- g. Transcripts from a Florida high school for multiple years if the Florida high school diploma or GED was earned within the last 12 months.

h. Proof of permanent full-time employment in Florida for at least 30 hours per week for a 12-month period.

2. The documents may include one or more of the following:

a. A declaration of domicile in Florida.

b. A Florida professional or occupational license.

c. Florida incorporation.

d. A document evidencing family ties in Florida.

e. Proof of membership in a Florida-based charitable or professional organization.

f. Any other documentation that supports the student's request for resident status, including, but not limited to, utility bills and proof of 12 consecutive months of payments; a lease agreement and proof of 12 consecutive months of payments; or an official state, federal, or court document evidencing legal ties to Florida.

(4) With respect to a dependent child, the legal residence of the dependent child's parent or parents is prima facie evidence of the dependent child's legal residence, which

evidence may be reinforced or rebutted, relative to the age and general circumstances of the dependent child, by the other evidence of legal residence required of or presented by the dependent child. However, the legal residence of a dependent child's parent or parents who are domiciled outside this state is not prima facie evidence of the dependent child's legal residence if that dependent child has lived in this state for 5 consecutive years prior to enrolling or reregistering at the institution of higher education at which resident status for tuition purposes is sought.

(5) A person who marries a legal resident of the state or marries a person who becomes a legal resident of the state may, upon becoming a legal resident of the state, become eligible for classification as a resident for tuition purposes upon submitting evidence of his or her own legal residency in the state, evidence of his or her marriage to a person who is a legal resident of the state, and evidence of the spouse's legal residence in the state for at least 12 consecutive months immediately preceding the application for classification. ~~In making a domiciliary determination related to the classification of a person as a resident or nonresident for tuition purposes, the domicile of a married person, irrespective of sex, shall be determined, as in the~~

~~case of an unmarried person, by reference to all relevant evidence.~~

~~(a) A person shall not be precluded from establishing or maintaining legal residence in this state and subsequently qualifying or continuing to qualify as a resident for tuition purposes solely by reason of marriage to a person domiciled outside this state, even when that person's spouse continues to be domiciled outside of this state, provided such person maintains his or her legal residence in this state.~~

~~(b) A person shall not be deemed to have established or maintained a legal residence in this state and subsequently to have qualified or continued to qualify as a resident for tuition purposes solely by reason of marriage to a person domiciled in this state.~~

~~(c) In determining the domicile of a married person, irrespective of sex, the fact of the marriage and the place of domicile of such person's spouse shall be deemed relevant evidence to be considered in ascertaining domiciliary intent.~~

(6) (a) Except as otherwise provided in this section, a person who is classified as a nonresident for tuition

purposes may become eligible for reclassification as a resident for tuition purposes if that person or, if that person is a dependent child, his or her parent presents clear and convincing documentation that supports permanent legal residency in this state for at least 12 consecutive months rather than temporary residency for the purpose of pursuing an education, such as documentation of full-time permanent employment for the prior 12 months or the purchase of a home in this state and residence therein for the prior 12 months while not enrolled in an institution of higher education.

(b) If a person who is a dependent child and his or her parent move to this state while such child is a high school student and the child graduates from a high school in this state, the child may become eligible for reclassification as a resident for tuition purposes when the parent submits evidence that the parent qualifies for permanent residency.

(c) If a person who is a dependent child and his or her parent move to this state after such child graduates from high school, the child may become eligible for reclassification as a resident for tuition purposes after the parent submits evidence that he or she has established legal residence in the state and has maintained legal residence in the state for at least 12 consecutive months.

(d) A person who is classified as a nonresident for tuition purposes and who marries a legal resident of the state or marries a person who becomes a legal resident of the state may, upon becoming a legal resident of the state, become eligible for reclassification as a resident for tuition purposes upon submitting evidence of his or her own legal residency in the state, evidence of his or her marriage to a person who is a legal resident of the state, and evidence of the spouse's legal residence in the state for at least 12 consecutive months immediately preceding the application for reclassification.

(7) A person shall not lose his or her resident status for tuition purposes solely by reason of serving, or, if such person is a dependent child, by reason of his or her parent's or parents' serving, in the Armed Forces outside this state.

(8) A person who has been properly classified as a resident for tuition purposes but who, while enrolled in an institution of higher education in this state, loses his or her resident tuition status because the person or, if he or she is a dependent child, the person's parent or parents establish domicile or legal residence elsewhere shall continue to enjoy the in-state tuition rate for a statutory

grace period, which period shall be measured from the date on which the circumstances arose that culminated in the loss of resident tuition status and shall continue for 12 months. However, if the 12-month grace period ends during a semester or academic term for which such former resident is enrolled, such grace period shall be extended to the end of that semester or academic term.

(9) Any person who ceases to be enrolled at or who graduates from an institution of higher education while classified as a resident for tuition purposes and who subsequently abandons his or her domicile in this state shall be permitted to reenroll at an institution of higher education in this state as a resident for tuition purposes without the necessity of meeting the 12-month durational requirement of this section if that person has reestablished his or her domicile in this state within 12 months of such abandonment and continuously maintains the reestablished domicile during the period of enrollment. The benefit of this subsection shall not be accorded more than once to any one person.

(10) The following persons shall be classified as residents for tuition purposes:

(a) Active duty members of the Armed Services of the United States residing or stationed in this state, their spouses, and dependent children, and active drilling members of the Florida National Guard.

(b) Active duty members of the Armed Services of the United States and their spouses and dependents attending a public ¹community college or state university within 50 miles of the military establishment where they are stationed, if such military establishment is within a county contiguous to Florida.

(c) United States citizens living on the Isthmus of Panama, who have completed 12 consecutive months of college work at the Florida State University Panama Canal Branch, and their spouses and dependent children.

(d) Full-time instructional and administrative personnel employed by state public schools and institutions of higher education and their spouses and dependent children.

(e) Students from Latin America and the Caribbean who receive scholarships from the federal or state government. Any student classified pursuant to this paragraph shall attend, on a full-time basis, a Florida institution of higher education.

(f) Southern Regional Education Board's Academic Common Market graduate students attending Florida's state universities.

(g) Full-time employees of state agencies or political subdivisions of the state when the student fees are paid by the state agency or political subdivision for the purpose of job-related law enforcement or corrections training.

(h) McKnight Doctoral Fellows and Finalists who are United States citizens.

(i) United States citizens living outside the United States who are teaching at a Department of Defense Dependent School or in an American International School and who enroll in a graduate level education program which leads to a Florida teaching certificate.

(j) Active duty members of the Canadian military residing or stationed in this state under the North American Air Defense (NORAD) agreement, and their spouses and dependent children, attending a ¹community college or state university within 50 miles of the military establishment where they are stationed.

(k) Active duty members of a foreign nation's military who are serving as liaison officers and are residing or stationed in this state, and their spouses and dependent children, attending a ¹community college or state university within 50 miles of the military establishment where the foreign liaison officer is stationed.

(l) Individuals who receive a tuition exemption or waiver under ss. 112.191 (3), 112.19(3), 961.06(1)(b), 1009.25(2)(c)(d)(f), or 1009.26(8)(10).

(11) Once a student has been classified as a resident for tuition purposes, an institution of higher education to which the student transfers is not required to reevaluate the classification unless inconsistent information suggests that an erroneous classification was made or the student's situation has changed. However, the student must have attended the institution making the initial classification within the prior 12 months, and the residency classification must be noted on the student's transcript. The Higher Education Coordinating Council shall consider issues related to residency determinations and make recommendations relating to efficiency and effectiveness of current law.

(12) Each institution of higher education shall establish a residency appeal committee comprised of at least three members to consider student appeals of residency determinations, in accordance with the institution's official appeal process. The residency appeal committee must render to the student the final residency determination in writing. The institution must advise the student of the reasons for the determination.

(13) The State Board of Education and the Board of Governors shall adopt rules to implement this section.

History. s. 2, ch. 2002-270; s. 400, ch. 2002-387; s. 14, ch. 2004-230; s. 132, ch. 2007-217; s. 7, ch. 2009-60; s. 2, ch. 2009-123; s. 10, ch. 2010-155.

¹ Note.

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Section 21, ch. 2010-70, directs the Division of Statutory Revision to prepare a reviser's bill to substitute the term "Florida College System institution" for the terms "Florida college," "community college," and "junior college" where those terms appear in the Florida K-20 Education Code.