Determination of Residency Status for Admission and Tuition Purposes

13 KAR 2.045.

Determination of residency status for admission and tuition assessment purposes.


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.

(1) "Academic term" means a division of the school year during which a course of studies is offered, and includes a semester, quarter, or single consolidated summer term as defined by the institution.

(2) "Continuous enrollment" means enrollment in a state-supported postsecondary education institution at the same degree level for consecutive terms, excluding summer term, since the beginning of the period for which continuous enrollment is claimed unless a sequence of continuous enrollment is broken due to extenuating circumstances beyond the student's control, such as serious personal illness or injury, or illness or death of a parent.

(3) "Degree level" means enrollment in a course or program that could result in the award of a:

(a) Certificate, diploma, or other program award at an institution;
(b) Baccalaureate degree or lower, including enrollment in a course by a nondegree-seeking post baccalaureate student;
(c) Graduate degree or graduate certification other than a first professional degree in law, medicine, dentistry, or "Pharm. D"; or
(d) Professional degree in law, medicine, dentistry, or "Pharm. D".

(4) "Dependent person" means a person who cannot demonstrate financial independence from parents or persons other than a spouse and who does not meet the criteria for independence established in Section 5 of this administrative regulation.

(5) "Determination of residency status" means the decision of a postsecondary education institution that results in the classification of a person as a Kentucky resident or as a nonresident for admission and tuition assessment purposes.

(6) "Domicile" means a person's true, fixed, and permanent home and is the place where the person intends to remain indefinitely, and to which the person expects to return if absent without intending to establish a new domicile elsewhere.

(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 Commonwealth of Kentucky primarily for the benefit of qualified residents of Kentucky. The substantial commitment of public resources to postsecondary education is predicated on the proposition that the state benefits significantly from the existence of an educated citizenry. As a matter of policy, access to postsecondary education shall be provided so as to be feasible at reasonable cost to a qualified individual who is domiciled in Kentucky and who is a resident of Kentucky.

(2) In accordance with the duties established in KRS 164.020, the Council on Postsecondary Education may require a student who is neither domiciled in, nor a resident of, Kentucky to meet higher admission standards and to pay a higher level of tuition than resident students.

(3) Unless otherwise indicated, this administrative regulation shall apply to all student residency determinations, regardless of circumstances, including residency determinations made by:

(a) The state-supported institutions for prospective and currently-enrolled students;
(b) The Southern Regional Education Board for contract spaces;
(c) Reciprocity agreements, if appropriate;
(d) The Kentucky Virtual University;
(e) Academic common market programs;
(f) The Kentucky Educational Excellence Scholarship Program; and
(g) Other state student financial aid programs, as appropriate.

Section 3. Determination of Residency Status; General Rules.

(1) A determination of residency shall include:

(a) An initial determination of residency status by an institution:
1. During the admission process;
2. Upon enrollment in an institution for a specific academic term; or
3. For admission into a specific academic program;
(b) A reconsideration of a determination of residency status by an institution based upon a changed circumstance; or
(c) A formal hearing conducted by an institution upon request of a student after other administrative procedures have been completed.

(2) An initial determination of residency status shall be based upon:

(a) The facts in existence when the credentials established by an institution for admission for a specific academic term have been received and during the period of review by the institution;
(b) Information derived from admissions materials;
(c) If applicable, other materials required by an institution and consistent with this administrative regulation; and
(d) Other information available to the institution from any source.

(3) An individual seeking a determination of Kentucky residency status shall demonstrate that status by a preponderance of the evidence.

(4) A determination of residency status shall be based upon verifiable circumstances or actions.

(5) Evidence and information cited as the basis for Kentucky domicile and residency shall accompany the application for a determination of residency status.

(6) A student classified as a nonresident shall retain that status until the student is officially reclassified by an institution.

(7) A student may apply for a review of a determination of residency status once for each academic term.

(8) If an institution has information that a student's residency status may be incorrect, the institution shall review and determine the student's correct residency status.
The effect of a determination that a person is dependent shall be:

(a) A person is dependent if:

(i) The domicile and residency of a dependent person shall be the same as the
parent's; or
(ii) Membership in the National Guard or civilian employment at a military base
in Kentucky shall be a factor in establishing that a student is dependent.

(b) The domicile and residency of a dependent person whose parents are di-
vorced, separated, or otherwise living apart shall be Kentucky if either parent is
domiciled in and is a resident of Kentucky.

(c) An individual who enrolls at an institution immediately following graduation
shall be considered as holding the visa of the parent.

(d) An independent person shall be considered as holding the visa of the parent.

(e) A person who has petitioned the federal government to reclassify his or her
status for purposes of tuition charged at state-supported institutions.

(f) A person attending an out-of-state higher education institution during the
past academic year and paid in-state tuition at that institution.

Section 4. Presumptions Regarding Residency Status.

(1) In making a determination of residency status, it shall be presumed that a
person is a nonresident if:

(a) A person is, or seeks to be, an undergraduate student and admissions
records show the student to be a graduate of an out-of-state high school within
define a student as independent;

Section 5. Determination of Whether a Student is Dependent or Independent.

(1) In a determination of residency status, an institution shall first determine
whether a student is dependent or independent. This provision shall be predicated
on the assumption that a dependent person lacks the financial ability to live inde-
dependently of the person upon whom the student is dependent, and therefore,
lacks the ability to form the requisite intent necessary to establish domicile. A determination that a
student is independent shall be one (1) step in the overall determination of whether a
student is or is not a resident of Kentucky.

(2) In determining the dependent or independent status of a person, the following
information shall be considered, as well as other relevant information available
when the determination is made:

(a) Whether the person has been claimed as a dependent on the federal or
state tax returns of a parent or other person for the year preceding the date of
application for a determination of residency status; or
(b) Whether the person has financial earnings and resources independent of
a parent other than an independent spouse necessary to provide for the
person's own sustenance.

(3) An individual who enrolls at an institution immediately following graduation
from high school and remains enrolled shall be presumed to be a dependent person
unless the contrary is evident from the information submitted.

(4) Domicile may be inferred from the student's permanent address, parent's mail-
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.

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 ei-
ther 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 dis-
vorced, 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.

Section 9. Beneficiaries of a Kentucky Educational Savings Plan Trust.

A beneficiary of a Kentucky Educational Savings Plan Trust shall be granted resi-
dency status if the beneficiary meets the requirements of KRS 164A.330(6).
Section 10. Criteria Used in a Determination of Residency Status.

(1)(a) A determination of Kentucky domicile and residency shall be based upon verifiable circumstances or actions.
(b) A single fact shall not be paramount, and each situation shall be evaluated to identify those facts essential to the determination of domicile and residency.
(c) A person shall not be determined to be a Kentucky resident by the performance of an act that is incidental to fulfilling an educational purpose or by an act performed as a matter of convenience.
(d) Mere physical presence in Kentucky, including living with a relative or friend, shall not be sufficient evidence of domicile and residency.
(e) A student or prospective student shall respond to all requests for information regarding domicile or residency requested by an institution.

(2) The following facts, although not conclusive, shall have probative value in their entirety and shall be individually weighted, appropriate to the facts and circumstances in each determination of residency:
   (a) Acceptance of an offer of full-time employment or transfer to an employer in Kentucky or contiguous area while maintaining residence and domicile in Kentucky;
   (b) Continuous physical presence in Kentucky while in a nonstudent status for the twelve (12) months immediately preceding the start of the academic term for which a classification of Kentucky residency is sought;
   (c) 1. Filing a Kentucky resident income tax return for the calendar year preceding the date of application for a change in residency status; or
      2. Payment of Kentucky withholding taxes while employed during the calendar year for which a change in classification is sought;
   (d) Full-time employment of at least one (1) year while living in Kentucky;
   (e) Attendance as a full-time, nonresident student at an out-of-state institution based on a determination by that school that the person is a resident of Kentucky;
   (f) Abandonment of a former domicile or residence and establishing domicile and residency in Kentucky with application to or attendance at an institution following and incidental to the change in domicile and residency;
   (g) Obtaining a professional or occupational license or certification in Kentucky;
   (h) Payment of real property taxes in Kentucky;
   (i) Ownership of real property in Kentucky, if the property was used by the student as a residence preceding the date of application for a determination of residency status;
   (j) Marriage of an independent student to a person who was domiciled in and a resident of Kentucky prior to the marriage; and
   (k) The extent to which a student is dependent on student financial aid in order to provide basic sustenance.

(3) Except as provided in subsection (4) of this section, the following facts, because of the ease and convenience in completing them, shall have limited probative value in a determination that a person is domiciled in and is a resident of Kentucky:
   (a) Kentucky automobile registration;
   (b) Kentucky driver’s license;
   (c) Registration as a Kentucky voter;
   (d) Long-term lease of at least twelve (12) consecutive months of noncollege 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 student shall be provided with 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.

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;
(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.


(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
   (b) Not be an employee in the same organizational unit as the residency appeals officer.
(3) An institution shall have written procedures for the conduct of a formal hearing that have been adopted by the board of trustees or regents, as appropriate, and that provide for:
   (a) A hearing officer to make a recommendation on a residency appeal;
   (b) Guarantees of due process to a student that includes:
      1. The right of a student to be represented by legal counsel; and
      2. The right of a student to present information and to present testimony and information in support of a claim of Kentucky residency; and
   (c) A recommendation to be issued by the hearing officer.
(4) An institution’s formal hearing procedures shall be filed with the Council on Postsecondary Education and shall be available to a student requesting a formal hearing.

Section 15. Cost of Formal Hearings.

An institution shall pay the cost for all residency determinations including the cost of a formal hearing.

(2) A student shall pay for the cost of all legal representation in support of the student’s claim of residency. (17 Ky.R. 2557; eff. 4-5-1991; Am. 22 Ky.R. 1656; 1998; eff. 5-16-1996; 23 Ky.R. 3380; 3797; 4099; eff. 6-16-1997; 24 Ky.R. 2136; 2705; 25 Ky.R. 51; eff. 7-13-1998; 25 Ky.R. 2177; 2577; 2827; eff. 6-7-1999; 749; 1238; eff. 11-12-2002; 36 Ky.R. 1083; 1951; 2033-M; eff. 4-2-2010; Tam eff. 11-20-2014; 41 Ky.R. 2108; 42 Ky.R. 9; eff. 7-13-2015; Tam 7-13-2015).