

Title 6—DEPARTMENT OF HIGHER EDUCATION
Division 10—Commissioner of Higher Education
Chapter 3—*[Higher Educational]* Residency *[Determination]* and Transfer

PROPOSED AMENDMENT

6 CSR 10-3.010 Determination of Student Residency. The department is deleting sections (4), (5), and (8); deleting subsections (7)(B), (7)(C), (9)(F), (9)(G), and (9)(H); adding subsections (2)(B), (2)(C), (2)(D), (3)(B), (3)(C), and (3)(D); and amending the chapter title and subsections (1)(B), (1)(E), (1)(F), (1)(G), (1)(H), (1)(I), (1)(J), (2)(A), (3)(A), (6)(B), (6)(C), (6)(D), (7)(A), (9)(A), (9)(C), (9)(D), (9)(E), (9)(H), (10)(A), (10)(B), (11)(B), and (11)(C).

PURPOSE: This amendment eliminates repetition, rephrases with simpler and fewer words, updates word choice, and more logically organizes the criteria and requirements for student residency determinations by institutions and the department. Furthermore, this amendment implements the military tuition benefits provided by SB 968 (2016) and harmonizes state tuition benefits for veterans with more generous federal requirements.

(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 *[within]* **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[n individual or individuals having]* legal *[custody]* **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 *[a]* domicile *[within]* 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 *[individual or individuals having]* legal *[custody]* **custodian(s)** of the student*[s]*.

(2) *[Adult Students]* **Resident tuition eligibility.**

(A) *[For purposes of the determination of fee charges, i]* If a*[n]* **nonresident** adult student*[, not a resident, shall]* or **unemancipated minor student's nonresident legal custodian(s)** presents sufficient proof of *[the establishment of a]* domicile *[within the state of]* in Missouri, *[this]* **such** student shall be granted *[the]* 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) *[Independent Student. For purposes of financial aid eligibility, i]* If a*[n]* **nonresident** independent student*[, not a resident, shall]* or **dependent student's nonresident legal custodian(s)** presents sufficient proof of *[the establishment of a]* domicile *[within the state of]* in Missouri, *[this]* **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) Unemancipated Minor Students.

(A) The domicile of an unemancipated minor or a dependent student is presumed to be that of the individual or individuals having legal custody of the student.

(B) If those having legal custody of the unemancipated minor or dependent student establish a Missouri domicile, that student shall be granted resident status at the first enrollment following the establishment of the Missouri domicile.

(C) Once unemancipated minor or dependent students have established 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 individual or individuals having legal custody of the unemancipated minor or dependent students cease to hold Missouri resident status or the students become adult or independent students.

(5) Emancipated Minor Students.

(A) The domicile of emancipated minor students shall be determined as if they were adults.

(B) A minor may become emancipated through marriage, formal court action, abandonment, or positive action of alienation on the part of the 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.

(C) Mere absence of the student from the domicile of the individual or individuals having legal custody of that minor student shall not constitute proof of emancipation.

(D) In no instance shall a minor student be eligible for emancipation when that student is taken as an income tax deduction by a second party other than a spouse.]

[(6)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 [within the state of]in Missouri pursuant to military orders, their spouses, and [unemancipated minor or dependent children] dependents, as defined at 37 U.S.C. § 401(a) for tuition purposes and at subsection (1)(E) of this rule for state aid purposes, 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 children] dependents, 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 [within the state]in Missouri; and

B. Declares residency [within the state]in Missouri; or

2. In-state, in-district tuition at any public community college, if the individual—

A. Demonstrates presence [within]in the taxing district; and

B. Declares residency [within]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 [6 CSR 10-3.010(6)](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 *[one (1)]three (3) years* after receiving an honorable or general discharge;

2. An individual may demonstrate presence and declare residency *[within the state]***in Missouri** and/or **the** taxing district through a signed statement indicating the individual currently resides *[within the state]***in Missouri** and/or **the** taxing district and intends to make *[the state of] 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).

([7]5) Noncitizens of the United States.

(A) *[Students]***Individuals** who are not citizens of the United States must possess *[resident alien]***a lawful immigration** status, as determined by **the** federal *[authority]***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.**

[(B) Aliens present within Missouri as representatives of a foreign government or at the convenience of the United States or Missouri governments and holding G visas shall be entitled to resident status, except for those who are government-funded students.

(C) Aliens and their dependents holding A or L visas may be granted resident status if determined to be individually designated as representatives of their governments and whose education is not government-funded.

(8) Public Community College Residency.

(A) *Missouri public community college districts have legal geographic boundaries within the state and only residents of each district are eligible for the in-district student fee charge.*

(B) For purposes of establishing district residency, a Missouri resident who resides out-of-district shall meet the same criteria as set forth in this rule for establishing Missouri residency by a person not a resident of Missouri. However, Missouri residency is the only residency requirement germane to student eligibility for financial aid programs restricted to Missouri residents.]

([9]6) Determination of Resident Status.

(A) Attendance at an institution of higher education shall be regarded as a temporary presence *[within the state]***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) *[In determining resident status for the state of Missouri, e]***Either** of the following shall be sufficient proof of domicile *[of a person and his/her unemancipated minor or dependent children within the state of]***in Missouri**:

1. Presence *[within the state of]***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 *[the state of]* Missouri a permanent home for an indefinite period; or

2. Presence *[within the state of]* **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 *[the state of]* Missouri a permanent home for an indefinite period.

(D) In determining whether an adult^[, emancipated minor,] or independent student, or the *[individual or individuals having]* legal *[custody]* **custodian(s)** of an unemancipated minor or dependent student^[, holds an intent] **intends** to make *[the state of]* Missouri a permanent home for an indefinite period, the following factors, although not conclusive, shall be *[given heavy weight]* **considered**:

1. Heavily weighted factors:

A. *[c]* Continuous presence in *[the state of]* Missouri during those periods not enrolled as a student;

B. *[presence within the state of Missouri upon m]* **Marriage** to a Missouri resident and *[the maintenance of a common domicile]* **sharing a home** with the resident spouse **in Missouri**;

C. *[s]* Substantial reliance on sources *[within the state of]* **in** Missouri for financial support;

D. *[f]* Former domicile *[within the state]* **in Missouri** and maintenance of significant connections while absent; and

E. *[o]* Ownership of a home *[within the state of]* **in** Missouri. *[The twelve (12)- month period of presence within the state, as stipulated in paragraph (9)(C)1. of this rule, in and of itself, does not establish resident status in the absence of the required proof of intent.]*

2. *[(E) The following factors shall be given less weight than those in subsection (9)(D) and include]* **Lightly weighted factors:**

A. *[Voting or r]* **Registration** for voting;

B. *[p]* **Part-time** employment;

C. *[l]* **Lease** of living quarters;

D. *[a]* **A written** statement of intent^[ion] to establish *[a]* domicile in Missouri;

E. *[a]* **Automobile** registration or *[operator's]* **driver's** license obtained in Missouri; and

F. *[p]* **Payment** of income, personal, *[and]* **or** property taxes in Missouri. *[The factors listed in this subsection have applicability only as they support the intent to make the state of Missouri a permanent home for an indefinite period.]*

(F) Resident status is one criterion of eligibility for student grant awards administered by the coordinating board. There are additional criteria of eligibility and the establishment of resident status by a student does not guarantee that the student will be awarded a student grant.

(G) The waiver or forgiveness of a nonresident student fee, in full or in part, shall have no bearing on the residency status of a student and shall not be a basis for classification of a nonresident student as a resident.

(H) For those nonresidents who pay Missouri income tax, the nonresident student shall receive a credit against the nonresident student fee in an amount equal to the actual Missouri income tax paid for the previous calendar year except that the remaining fee obligation shall not be less than the amount of the resident student fee. Unemancipated minor students are eligible by reason of payment of Missouri income tax by the nonresident individual or individuals having legal custody of students. 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.]

([10]7) *[Determination of]* **Grace Period for** Loss of Residency Status.

(A) An adult[,]or emancipated minor[, or independent] student will lose Missouri residency status twelve (12) consecutive months after *[establishing a domicile outside of the state of Missouri, unless the absence is for the purpose of attending an institution of higher education in another state and the student remains in compliance with subsections (9)(C)–(E) of this administrative rule]* **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[:

1. *T]*twelve (12) consecutive months after the *[individual or individuals having]* legal *[custody]* **custodian(s)** of that student *[establish a domicile outside of the state of Missouri]* **can no longer demonstrate sufficient proof of domicile**, except as provided *[for]* in subsections *[4]2)(C) and (3)(C)* of this *[administrative]* rule[: or

2. *If the individual or individuals having legal custody of that student establish a domicile outside of the state of Missouri more than twelve (12) consecutive months before the student’s first enrollment at a postsecondary education institution].*

([11]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 *[student]* **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 *[student]* **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), 173.081, 173.1150.3, and 173.1153.4, RSMo Supp. 2013. Original rule filed Aug. 7, 1978, effective March 17, 1979. Amended: Filed December 28, 2016.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may submit a statement in support of or in opposition to this proposed amendment to the attention of General Counsel, Missouri Department of Higher Education, PO Box 1469, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.