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# CHAPTER 21. STUDENT SERVICES

## SUBCHAPTER B. DETERMINATION OF RESIDENT STATUS

Section

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### 21.21. Authority and Purpose.

Texas Education Code, Section 54.075, requires the Board to adopt rules to carry out the purposes of Texas Education Code, Subchapter B, concerning the determination of resident status for tuition purposes.

### 21.22. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Census date--The date in an academic term for which an institution is required to certify a person's enrollment in the institution for the purposes of determining formula funding for the institution.

(2) Clear and Convincing Evidence--That degree of proof that will produce a firm conviction or a firm belief as to the facts sought to be established. The evidence must justify the claim both clearly and convincingly.

(3) Coordinating Board or Board--The Texas Higher Education Coordinating Board.

(4) Core Residency Questions--The questions promulgated by the Board to be completed by a person and used by an institution to determine if the person is a Texas resident. For enrollments prior to the 2008-2009 academic year, institutions may use the core questions developed and distributed by the Board in 1999 or later, including the core questions included in the ApplyTexas Application, or the core questions set forth in current Board rules or posted on the Texas Higher Education Coordinating Board web site. The core questions to be used for enrollments on or after the 2008-2009 academic year shall be the core questions in the ApplyTexas Application or core questions posted on the Board web site.

(5) Dependent--A person who:

(A) is less than 18 years of age and has not been emancipated by marriage or court order; or

(B) is eligible to be claimed as a dependent of a parent of the person for purposes of determining the parent's income tax liability under the Internal Revenue Code of 1986.

(6) Domicile--A person's principal, permanent residence to which the person intends to return after any temporary absence.

(7) Eligible for Permanent Resident Status--A person who has filed an I-485 application for permanent residency and has been issued a fee/filing receipt or notice of action by the United States Citizenship and Immigration Services (USCIS) showing that his or her I-485 has been reviewed and has not been rejected.

(8) Eligible Nonimmigrant--A person who has been issued a type of nonimmigrant visa by the USCIS that permits the person to establish and maintain domicile in the United States.

(9) Erroneously classifies a person as a nonresident--An action done if an institution, in spite of information to the contrary that is provided by the student by the census date of a given semester, fails to classify an otherwise eligible student as a resident.

(10) Established domicile in Texas--Physically residing in Texas with the intent to maintain domicile in Texas for at least the 12 consecutive months immediately preceding the census date of the term of enrollment, allowing for documented temporary absences.

(11) Financial need--An economic situation that exists for a student when the cost of attendance at an institution of higher education is greater than the resources the family has available for paying for college. In determining a student's financial need an institution must compare the financial resources available to the student to the institution's cost of attendance.

(12) Gainful employment--Employment intended to provide an income to a person or allow a person to avoid the expense of paying another person to perform the tasks (as in child care) that is sufficient to provide at least one-half of the individual's tuition, fees and living expenses as determined in keeping with the institution's student financial aid budget or that represents an average of at least twenty hours of employment per week. A person who is self-employed or who is living off his/her earnings may be considered gainfully employed for purposes of establishing residency, as may a person whose primary support is public assistance. Employment conditioned on student status, such as work study, the receipt of stipends, fellowships, or research or teaching assistantships does not constitute gainful employment.

(13) General Academic Teaching Institution--As the term is defined in Texas Education Code, Section 61.003.

(14) Independent institution--As defined in Texas Education Code, Section 61.003(15).

(15) Institution or institution of higher education--Any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, Section 61.003(8).

(16) Legal guardian--A person who is appointed guardian under the Texas Probate Code, Chapter 693, or a temporary or successor guardian.

(17) Maintain domicile--To physically reside in Texas such that the person intends to always return to the state after a temporary absence. The maintenance of domicile is not interrupted by a temporary absence from the state, as provided in paragraph (30) of this section.

(18) Managing conservator--A parent, a competent adult, an authorized agency, or a licensed child-placing agency appointed by court order issued under the Texas Family Code, Title 5.

(19) Nonresident tuition--The amount of tuition paid by a person who does not qualify as a Texas resident under this subchapter unless such person qualifies for a waiver program under Subchapter SS of this title (relating to Waiver Programs for Certain Nonresident Persons).

(20) Nontraditional secondary education--A course of study at the secondary school level in a nonaccredited private school setting, including a home school.

(21) Parent--A natural or adoptive parent, managing or possessory conservator, or legal guardian of a person. The term would not otherwise include a step-parent.

(22) Possessory conservator--A natural or adoptive parent appointed by court order issued under the Texas Family Code, Title 5.

(23) Private high school--A private or parochial school in Texas.

(24) Public technical institute or college--The Lamar Institute of Technology or any campus of the Texas State Technical College System.

(25) Regular semester--A fall or spring semester, typically consisting of 16 weeks.

(26) Residence--A person's home or other dwelling place.

(27) Residence Determination Official--The primary individual at each institution who is responsible for the accurate application of state statutes and rules to individual student cases.

(28) Resident tuition--The amount of tuition paid by a person who qualifies as a Texas resident under this subchapter.

(29) Residential real property--Real property on which a dwelling is located.

(30) Temporary absence--Absence from the State of Texas by a person who has established domicile in the state, with the intention to return, generally for a period of less than five years. For example, the temporary absence of a person or a dependent's parent from the state for the purpose of service in the U. S. Armed Forces, U. S. Public Health Service, U. S. Department of Defense, U. S. Department of State, as a result of an employment assignment, or for educational purposes, shall not affect a person's ability to continue to claim that Texas is his or her domicile.

(31) United States Citizenship and Immigration Services (USCIS)--The bureau of the U.S. Department of Homeland Security that is responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities.

21.23. Effective Date of this Subchapter.

Each institution shall apply these rules beginning with enrollments for the Fall Semester, 2006. Changes to these rules adopted in January 2011 are effective with residency decisions made after the census date of the Fall Semester, 2011.

21.24. Determination of Resident Status.

(a) The following persons shall be classified as Texas residents and entitled to pay resident tuition at all institutions of higher education:

(1) a person who:

(A) graduated from a public or accredited private high school in this state or, as an alternative to high school graduation, received the equivalent of a high school diploma in this state, including the successful completion of a nontraditional secondary education, and

(B) maintained a residence continuously in this state for:

*(i)* the thirty-six months immediately preceding the date of graduation or receipt of the diploma equivalent, as applicable; and

*(ii)* the 12 months preceding the census date of the academic semester in which the person enrolls in an institution.

(2) a person who:

(A) established domicile in this state not less than 12 months before the census date of the academic semester in which the person enrolls in an institution; and

(B) maintained domicile continuously in the state for the 12 months immediately preceding the census date of the academic semester in which the person enrolls in an institution.

(3) a dependent whose parent:

(A) established domicile in this state not less than 12 months before the census date of the academic semester in which the person enrolls in an institution; and

(B) maintained domicile continuously in the state for the 12 months immediately preceding the census date of the academic semester in which the person enrolls in an institution.

(b) The student has the burden of proof to show by clear and convincing evidence that residence or domicile, as appropriate, has been established and maintained in accordance with subsections (a)(1), (a)(2), and (a)(3) of this section.

(c) The following non-U. S. citizens are eligible to establish and maintain domicile in this state for the purposes of subsection (a)(2) or (3) of this section:

(1) a Permanent Resident;

(2) a person who is eligible for permanent resident status, as defined in subsection 21.22(7) of this title (relating to Definitions);

(3) an eligible nonimmigrant who holds one of the types of visas posted on the Coordinating Board's web site;

(4) a person classified by the USCIS as a Refugee, Asylee, Parolee, Conditional Permanent Resident, or Temporary Resident;

(5) a person holding Temporary Protected Status, and Spouses and Children with approved petitions under the Violence Against Women Act (VAWA), an applicant with an approved USCIS I-360, Special Agricultural Worker, and a person granted deferred action status by USCIS;

(6) a person who has filed an application for Cancellation of Removal and Adjustment of Status under Immigration Nationality Act 240A(b) or a Cancellation of Removal and Adjustment of Status under the Nicaraguan and Central American Relief Act (NACARA), Haitian Refugee Immigrant Fairness Act (HRIFA), or the Cuban Adjustment Act, and who has been issued a fee/filing receipt or Notice of Action by USCIS; and

(7) a person who has filed for adjustment of status to that of a person admitted as a Permanent Resident under 8 United States Code 1255, or under the "registry" program (8 United States Code 1259), or the Special Immigrant Juvenile Program (8 USC 1101(a)(27)(J)) and has been issued a fee/filing receipt or Notice of Action by USCIS.

(d) The domicile of a dependent's parent is presumed to be the domicile of the dependent unless the dependent establishes eligibility for resident tuition under subsection (a)(1) of this section.

(e) Although not conclusive or exhaustive, the following factors occurring throughout at least 12 consecutive months immediately preceding the census date of the semester in which a person seeks to enroll may lend support to a claim regarding his/her intent to establish and maintain domicile in Texas:

(1) sole or joint marital ownership of residential real property in Texas by the person seeking to enroll or the dependent's parent, having established and maintained domicile at that residence;

(2) ownership and customary management of a business, by the person seeking to enroll or the dependent's parent, in Texas which is regularly operated without the intention of liquidation for the foreseeable future;

(3) gainful employment in Texas by the person seeking to enroll or the dependent's parent;

(4) marriage, by the person seeking to enroll or the dependent's parent, to a person who has established and maintained domicile in Texas.

(f) An individual whose initial purpose for moving to Texas is to attend an institution of higher education as a full-time student will be presumed not to have the required intent to make Texas his or her domicile; however, the presumption may be overruled by clear and convincing evidence.

(g) An individual shall not ordinarily be able to establish domicile by performing acts which are directly related to fulfilling educational objectives or which are required or routinely performed by temporary residents of the State.

(h) A member of the United States Armed Services whose Home of Record with the military is Texas is presumed to be a Texas resident, as are his or her spouse and dependent children. A member whose Home of Record is not Texas but who provides the institution Leave and Earnings Statements that show the member has claimed Texas as his or her place of residence for the 12 consecutive months prior to enrollment is presumed to be a Texas resident, as are his or her spouse and dependent children.

21.25. Information Required to Initially Establish Resident Status.

(a) To initially establish resident status under Section 21.24 of this title (relating to Determination of Resident Status),

(1) a person who qualifies for residency under Section 21.24 (a)(1) shall provide the institution with:

(A) a completed set of Core Residency Questions; and

(B) if the person is not a Citizen of the United States or a Permanent Resident of the U.S., the person shall, in addition to the other requirements of this section, provide the institution with a signed affidavit (in the form provided in Chart I, which is incorporated into this subchapter for all purposes), stating that the person will apply to become a Permanent Resident of the U.S. as soon as the person becomes eligible to apply.

(2) a person who qualifies for residency under Section 21.24 (a)(2) or (3) shall provide the institution with a completed set of Core Residency Questions.

(b) An institution may request that a person provide documentation to support or clarify the answers to the Core Residency Questions. Appropriate documents are not limited to those listed in Chart II, which is incorporated into this subchapter for all purposes. In addition, the institution may request documents that support the information the student may provide in the Core Residency Questions, Section H.

(c) An institution shall not impose any requirements in addition to the requirements established in this section for a person to establish resident status.

21.26. Continuing Resident Status.

(a) Except as provided under subsection (c) of this section, a person who was enrolled in an institution for any part of the previous state fiscal year and who was classified as a resident of this state under Subchapter B, Chapter 54, Texas Education Code, in the last academic period of that year for which the person was enrolled is considered to be a resident of this state for purposes of this subchapter, as of the beginning of the following fall semester. If an institution acquires documentation that a person is a continuing student who was classified as a resident at the previous institution, no additional documentation is required. The person is not required to complete a new set of Core Questions.

(b) Except as provided by subsection (c) of this section, a person who has established resident status under this subchapter is entitled to pay resident tuition in each subsequent academic semester in which the person enrolls at any institution.

(c) A person who enrolls in an institution after two or more consecutive regular semesters during which the person is not enrolled in a public institution shall submit the information required in Section 21.25 of this title, (relating to Information Required to Initially Establish Resident Status), and satisfy all the applicable requirements to establish resident.

21.27. Reclassification Based on Additional or Changed Information.

(a) If a person is initially classified as a nonresident based on information provided through the set of Core Residency Questions, the person may request reclassification by providing the institution with supporting documentation as described in Revised Chart II, which is incorporated into Section 21.25(b) of this title (relating to Information Required to Initially Establish Resident Status).

(b) A person shall provide the institution with any additional or changed information which may affect his or her resident or nonresident tuition classification under this subchapter.

(c) An institution may reclassify a person who had previously been classified as a resident or nonresident under this subchapter based on additional or changed information provided by the person.

(d) Any change made under this section shall apply to the first succeeding semester in which the person is enrolled, if the change is made on or after the census date of that semester. If the change is made prior to the census date, it will apply to the current semester.

21.28. Errors in Classification.

(a) If an institution erroneously permits a person to pay resident tuition and the person is not entitled or permitted to pay resident tuition under this subchapter, the institution shall charge nonresident tuition to the person beginning with the semester following the date that the institution discovers the error.

(b) Not later than the first day of the following semester, the institution may notify the person that he or she must pay the difference between resident and nonresident tuition for each previous semester in which the student should not have paid resident tuition, if:

(1) the person failed to provide to the institution, in a timely manner after the information becomes available or on request by the institution, any information that the person reasonably should know would be relevant to an accurate classification by the institution under this subchapter information; or

(2) the person provided false information to the institution that the person reasonably should know could lead to an erroneous classification by the institution under this subchapter.

(c) If the institution provides notice under subsection (b) of this section, the person shall pay the applicable amount to the institution not later than the 30th day after the date the person is notified of the person's liability for the amount owed. After receiving the notice and until the amount is paid in full, the person is not entitled to receive from the institution a certificate or diploma, if not yet awarded on the date of the notice, or official transcript that is based at least partially on or includes credit for courses taken while the person was erroneously classified as a resident of this state.

(d) If an institution erroneously classified a person as a resident of this state under this subchapter and the person is entitled or permitted to pay resident tuition under this subchapter, that person is not liable for the difference between resident and nonresident tuition under this section.

(e) If an institution erroneously classifies a person as a nonresident and the person is a resident under this subchapter, the institution shall refund the difference in resident and nonresident tuition for each semester in which the student was erroneously classified and paid the nonresident tuition rate.

21.29. Residence Determination Official.

Each institution shall designate an individual who is employed by the institution as a Residence Determination Official who shall be knowledgeable of the requirements set out in this subchapter and the applicable statutes.

21.30. Special Procedures for Documenting Compliance.

(a) Signed affidavits, acquired by public or independent institutions of higher education in keeping with Section 21.25(a)(1)(B) of this chapter, must be retained in a paper or electronic format permanently by the institution or until the students (current and former) provide proof that they have applied for Permanent Resident status.

(b) A public or independent institution of higher education that classifies a person who is not a Citizen or Permanent Resident of the United States as a resident under Section 21.24(a)(1) of this chapter shall:

(1) instruct such students upon admission, annually while the students are enrolled, and upon graduation of their obligation to apply for Permanent Resident status as soon as eligible to do so, and

(2) refer students to the appropriate federal agency for instructions on how to achieve such status.

(c) The provisions of this section apply to all persons who are not Citizens or Permanent Residents of the United States and who are enrolled and classified as residents under Section 21.24(a)(1) of this chapter by a public or independent institution of higher education during any part of the 2011-2012 academic year or later.

Adopted January 2012

Figure: 19 TAC §21.25(c)

**Chart I**

**AFFIDAVIT**

**STATE OF TEXAS** §
§
**COUNTY OF** _____ §

Before me, the undersigned Notary Public, on this day personally appeared _____, known to me, who being by me duly sworn upon his/her oath, deposed and said:

1. My name is _____. I am ___ years of age. I have personal knowledge of the facts stated herein and they are all true and correct.

2. I graduated or will graduate from a Texas high school or received my GED certificate in Texas.

3. I resided in Texas for thirty-six months leading up to graduation from high school or receiving my GED certificate.

4. I have resided or will have resided in Texas for the 12 months immediately preceding the census date of the semester in which I will enroll in _____ (college/university).

5. I have filed or will file an application to become a permanent resident of the United States as soon as I am eligible to do so.

In witness whereof, this _____day of _____, _____.

_____
(Signature)

_____
(Printed Name)

_____
(Student I.D.#)

_____
(Student Date of Birth)

**SUBCRIBED TO AND SWORN TO BEFORE ME**, on the _____ day of

_____, _____, to certify which witness my hand and official seal.

_____ Notary Public in and for the State of Texas

Adopted January 2012

**Revised Chart II**
**Documentation to Support Establishing and Maintaining Domicile in Texas**

The following documentation may be requested by the institution regarding a person's responses to the Core Residency Questions. Documents that may be used as proof that:

(1) The person or the dependent's parent established domicile in Texas, and

(2) The person or the dependent's parent has maintained domicile in Texas continuously for at least 12 consecutive months immediately preceding the census date of the term in which the person enrolls,

include but are not limited to the following:

**Part A**
**Documents that may Support the Establishment of Domicile in Texas and Maintenance of Domicile in Texas**

1. SIGNIFICANT GAINFUL EMPLOYMENT

   a. An employer's statement of dates of employment in Texas (beginning and current or ending dates) that encompass at least 12 consecutive months immediately preceding the census date of the term in which the person enrolls. However, employment conditioned on student status, such as work study, the receipt of stipends, fellowships, or research or teaching assistantships does not constitute gainful employment.

   b. Other documents that show the person or the dependent's parent, for at least 12 consecutive months immediately preceding the census date of the term in which the person enrolls:
      1) has been engaged in employment intended to provide an income to the person or allow the person to avoid the expense of paying another to perform tasks (as in child care) that is sufficient to provide at least one-half of the individual's tuition and living expenses or represents an average of at least 20 hours per week; or
      2) is self-employed in Texas or is living off his/her earnings; or
      3) is primarily supported by public assistance in Texas.

   c. For a person living on public assistance, written statements from the office of one or more social service agencies located in Texas that attest to the provision of services to the person for the 12 consecutive months immediately preceding the census date of the term in which the person enrolls.

2. SOLE OR JOINT MARITAL OWNERSHIP OF RESIDENTIAL REAL PROPERTY

   Title to residential real property in Texas with documentation to verify 12 consecutive months of ownership immediately preceding the census date of the term in which the person enrolls, such as a Warranty Deed, with the person or the dependent's parent having established and maintained domicile at that residence.

3. MARRIAGE TO A PERSON WHO HAS ESTABLISHED AND MAINTAINED DOMICILE IN TEXAS

   Marriage Certificate or Declaration of Registration of Informal Marriage with documentation

to support that spouse has established and maintained domicile in Texas for the 12 consecutive months preceding the census date of the term in which the person enrolls.

4. OWNERSHIP OF A BUSINESS ENTITY

Documents that evidence the organization of the business in Texas that reflect the ownership interest of the person or dependent's parent, and the customary management of the business by the person or dependent's parent without the intention of liquidation for the foreseeable future.

**Part B**
**Documents that May Provide Support to a Claim of Residence in Texas for the 12 Consecutive Months Immediately Preceding the Census Date of the Term in which the Person Enrolls**

1. Utility bills for the 12 consecutive months preceding the census date;

2. A Texas high school transcript for full senior year immediately preceding the census date;

3. A transcript from a Texas institution showing presence in the state for the 12 consecutive months preceding the census date;

4. A Texas driver's license or Texas ID card that has not expired and, if it reflects an origination date, shows an origination date at least 12 months prior to the census date;

5. Cancelled checks that reflect a Texas residence for the 12 consecutive months preceding the census date;

6. A current credit report that documents the length and place of residence of the person or the dependent's parent to be in Texas and the length of residence to be at least 12 consecutive months preceding the census date.

7. Texas voter registration card that was issued at least 12 months prior to the census date.

8. Pay stubs for the 12 consecutive months immediately preceding the census date, reflecting significant gainful employment in Texas;

9. Bank statements reflecting a Texas address for the 12 consecutive months immediately preceding the census date;

10. Written statements from the office of one or more social service agencies, attesting to the provision of services for at least the 12 consecutive months immediately preceding the census date.

11. Lease or rental of residential real property in the name of the person or the dependent's parent for the 12 consecutive months immediately preceding the census date.

## Part C
## Other Documents that May be Used to Lend Support To or Clarify an Individual's Claim of Domicile or Residence, as Appropriate, in Texas

Among other documents that may be used to lend support to or clarify an individual's claim of having established and maintained domicile or residence, as appropriate, in Texas are the following:

1. Tax return of the student or parent(s).

2. Visa, passport or other pertinent immigration documents.

3. Leave and Earnings Statements (LES).

4. Documents or statements to clarify answers to Core Residency Questions.

5. A Texas high school transcript to verify thirty-six months' presence in the state and graduation from a Texas high school.

6. State of Texas or local (Texas) licenses to conduct a business or practice a profession in this state.