

ADMINISTRATIVE MEMORANDUM

SUBJECT Residence Manual of July 1977;
content and distribution

NUMBER 86

DATE September 20, 1977

By action of the Board of Governors on July 15, 1977, and the State Board of Education on August 12, 1977, amendments were made to A Manual to Assist the Public Higher Education Institutions of North Carolina in the Matter of Student Residence Classification for Tuition Purposes. These amendments were presented for action of the Boards in part through the attached list of proposed amendments and explanation. The proposed amendments were in fact adopted and appear in the Manual of July 1977 but, because of space adjustments, not necessarily at the pages identified in the list.

The residence Manual of July 1977 is being transmitted in some quantity to the constituent institutions under separate cover. It should be promptly distributed to institutional personnel concerned with classification of persons by residence for tuition purposes and used upon receipt in place of the residence Manual of July 1976.

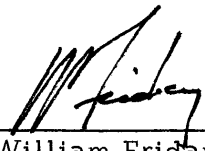
Distribution of the residence Manual of July 1977 will be according to the following policies:

- (1) Each constituent institution will receive initially 10 copies of the Manual free of charge.
- (2) Any constituent institution, through the office of its Chancellor, may request in writing additional copies of the Manual and receive additional copies free of charge to the extent that available supplies permit.
- (3) The Chancellor of each constituent institution, or his delegate, shall have authority to provide the Manual by loan or gift to any person or agency requesting the Manual. Each Chancellor may establish such policies and procedures as he may deem necessary or desirable to effect distribution of the Manual by loan or gift.
- (4) The Librarian of the General Administration shall have authority to provide Manuals free of charge to the constituent institutions pursuant to paragraph (2), above, or to any other person or agency. However, the Librarian may refer Manual requests from officers, faculty, staff, students, or applicants for enrollment of a constituent institution to the institution for response.
- (5) Requests for the Manual pursuant to paragraph (4), above, may be mailed to:
Librarian, General Administration
The University of North Carolina
P. O. Box 2688
Chapel Hill, North Carolina 27514

or delivered to:

Room 013
General Administration Building
The University of North Carolina
910 Raleigh Road
Chapel Hill, North Carolina

I request that the contents of this Administrative Memorandum be provided to those of your institution concerned with the classification of persons by residence for tuition purposes.



William Friday

Attachments

Explanation of Proposed Manual Amendments

The major substantive changes are proposed so as to incorporate into the Manual the new law conferring in-State tuition status on Indochina refugees who meet certain statutory conditions (G. S. 116-143.2). These changes are found at items 7, 15, 16, and 21.

Also with reference to statutes, items 17, 18, 20, and 22 are proposed to make obvious our conformance of the residence classification process to requirements of the federal Family Educational Rights and Privacy Act of 1974 ("Buckley Amendment") and the "Privacy Act of 1974."

Items 1 and 8 standardize meaning of the term "enrollment" as used in the residence/tuition classification law (G. S. 116-143.1) so as to avoid inequality of application of certain provisions of the law among the institutions of higher education.

To insure that the Manual accords even with the technical aspects of the general law of North Carolina, there are proposed certain amendments (items 2, 4, 5, 9, 10, 11, and 12) concerning the term "prima facie evidence," which appears in G. S. 116-143.1.

In a somewhat related matter, burden of proof, items 6, 11, and 13 are proposed to insure consistency of language within the Manual.

Item 3 is offered to incorporate into the Manual a policy formed by the State Residence Committee in resolving a recent student appeal.

Item 14 would add a useful observation to a detailed residence case analysis set forth in the Manual.

Item 19 would correct an editorial oversight in the Manual of July 1976.

Though not presented formally, there would also be confirming changes in the Manual paragraph designations, cover, and contents page.

PROPOSED MANUAL AMENDMENTS

Item

1. At page 7, ADD:

"C. Enrollment; Enrolled - the status of one who is registered with respect to an academic term that has begun. G. S. 116-143.1(e) and (i) contain statutory benefits conditioned upon enrolled status. [Paragraph IV.B.7.b., below, further defines 'enrolled' in the context of G. S. 116-143.1(i).] "

2. At page 8, DELETE:

"H. Prima facie - by a first or initial showing (of facts to support some conclusion or circumstance). A prima facie showing has the effect of placing the burden of disproof on the party opposing the conclusion or circumstance. [G. S. 116-143.1(e) contains a prima facie evidence rule relating the domicile of a student to that of his or her parents. Read along with the rest of subsection (e) and with reference to subsection (d), however, this rule is transformed by the whole statute from the burden of proof function into simply a substantive beginning point of inquiry for the residence classification.] "

At page 8, ADD:

"I. Prima Facie - by a first or initial showing (of the minimum evidence needed to support some conclusion of fact or law). G. S. 116-143.1(e), in part, makes the domicile of a student's parents prima facie evidence of the student's domicile. Read along with the rest of subsection (e) and with reference to subsection (d), however, this provision is transformed by the whole status from the minimum evidence function into simply a substantive beginning point of inquiry for the residence classification."

Item

3. INSERT at page 11 immediately before paragraph 1:

"This Section B shall not be construed to prohibit either an applicant for residency classification nor an institution of higher education from seeking reclassification with respect to a term or semester for which a residency determination has already been rendered, except as limited by the provisions of paragraphs 1 and 2, below."

4. At page 18, line 2 DELETE "may be rebutted" and ADD "may or may not be sustained."

5. At page 26, paragraph a, line 7, DELETE "places upon the student a burden to come forward with compelling evidence that he or she is a legal resident of North Carolina, and has been so for the required twelve months," and ADD "starts the student out on the 'minus side' in his or her effort to establish by a preponderance of all the evidence the right to in-State status."

6. At page 27, second full paragraph, line 2, DELETE "clear" and ADD "the" before word "evidence."

7. At page 30, ADD to paragraph e:

"Under G. S. 116-143.2 certain aliens not possessing permanent resident status are yet eligible to be charged the in-State tuition rate. To receive this benefit an alien (1) must have been paroled into the United States after March 31, 1975, under the United States Immigration and Nationality Act as a refugee or orphan from the Republic of Vietnam, Laos, or Cambodia; (2) must have been properly admitted to an institution of higher education (as defined in G. S. 116-143.1);

Item

(3) must have completed 12 consecutive months presence in this State; and

(4) must continue to abide in this State so long as the in-State tuition rate is to be conferred. Aliens contemplated under G. S. 116-143.2 will possess the Arrival-Departure Record (Form I-94) endorsed to show parole status. By its own provisions G. S. 116-143.2 was effective June 16, 1977 (ratification) and may confer the in-State tuition rate only as to academic terms that will have ended on or before July 1, 1982. [G. S. 116-143.2 is set forth in Appendix A.] "

8. At page 36, DELETE:

"b. At the time of subsequent change of legal residence to a state other than North Carolina, the individual must have been enrolled in a public institution of higher education in North Carolina. 'Enrolled' as here used shall include both persons who are actually attending the institution during an academic term as well as those whose consecutive attendance of academic terms in pursuit of a degree has been interrupted only by vacation or summer recess periods. A person who effects a change in legal residence during a period while not enrolled is not entitled to the benefit of the grace period (e.g., after completing one degree program and prior to admission to another; while absent from a regular term, at the instance either of the student or of the institution; prior to admission to the institution as a student eligible to matriculate and classification of the individual by the institution as a resident for tuition purposes). "

item

At page 36, ADD:

"b. At the time of subsequent change of legal residence to a state other than North Carolina, the individual must have been enrolled in a public institution of higher education in North Carolina. 'Enrolled' as here used shall include both persons who are actually attending the institution during an academic term as well as those whose consecutive attendance of academic terms has been interrupted only by institutional vacation or summer recess periods. A person who effects a change in legal residence during a period while not enrolled is not entitled to the benefit of the grace period."

9. At page 39, section 5, line 7, DELETE "presumed" and ADD "found."
10. At page 39, section 6, line 4, DELETE "presumably" and ADD "likely."
11. At page 42, DELETE:

"The ultimate question presented, then, is whether the student has satisfied the requirements of the statute that he be a bona fide domiciliary of the State for a period of twelve months prior to eligibility for classification as a resident for tuition purposes. The aggregate of the activities of the individual in and out of North Carolina as required to be reported to the relevant institution will be assessed by officials to determine whether or not a clear preponderance of all the evidence is favorable to a claim of residence for twelve months. The student starts in this assessment process as a prima facie (or presumed) nondomiciliary because of his parents' nonresidence. He then either overcomes or remains subject to the presumption in light of all other evidence. The burden

Item

of rebutting the adverse prima facie evidence requires that he produce compelling evidence in favor of the in-state claim."

At page 42, ADD as a second paragraph to section 1.b.:

"The ultimate question presented, then, is whether the student has satisfied the requirements of the statute that he be a bona fide domiciliary of the State for a period of twelve months prior to eligibility for classification as a resident for tuition purposes. The aggregate of the activities of the individual in and out of North Carolina as required to be reported to the relevant institution will be assessed by officials to determine whether or not the preponderance of all the evidence is favorable to a claim of residence for twelve months. The student starts in this assessment process prima facie (or initially) as a nondomiciliary because of his parents' nonresidence. He then either overcomes or remains subject to that initial evidence in light of all other evidence. The burden of overcoming the prima facie evidence of nondomiciliary status in effect increases the student's burden in establishing in-State status, by a preponderance of all the evidence.

12. At page 43, paragraph 2, line 7, DELETE "presumed" and ADD "considered."

13. At page 43, paragraph 2, line 12, DELETE "in order to achieve in-state tuition status" and ADD "unencumbered by an adverse evidentiary beginning point."

14. At page 46, ADD to the first full paragraph:

"Because the student had withdrawn from enrollment and then sought to re-enroll, there must be a reclassification inquiry, also, pursuant to Section III.A., above."

Item

15. At page 51, ADD after the editorial note:

"§ 116-143.2. Tuition of Indochina refugees.-- Any alien paroled into the United States after March 31, 1975, under the United States Immigration and Nationality Act as a refugee or orphan from the Republic of Vietnam, Laos, or Cambodia shall, if properly admitted to an institution of higher education as defined in G. S. 116-143.1, be eligible to be charged the in-State tuition rate immediately after completing 12 consecutive months presence in this State and continuing so long as the parolee abides in this State.

This act shall become effective upon ratification [June 16, 1977] , and it shall expire absolutely on July 1, 1982; the act shall not apply to, and no person shall be eligible for the act's special circumstances in-State tuition rate for, any term or semester which will end after July 1, 1982."

16. At page 52, ADD to the introductory statement within the Residence-and-Tuition Status Application:

"Under G. S. 116-143.2 Indochina refugees paroled into the United States after March 31, 1975, may receive in-State tuition privileges if they have abided in North Carolina for 12 consecutive months."

17. At page 52, DELETE from the directions on the residence status application:

"4. Sign and date this application where indicated to certify that your responses are correct and that the information you have given may be used by the institution for whatever purposes or inquiries flow legally from your responses."

Item

At page 52, ADD to the directions:

"4. Sign and date this application where indicated to make those acknowledgments and certifications necessary to render this a viable application."

18. At page 52, question #2 after the phrase "Social Security number" ADD
"(voluntary)."

19. At page 55, question #24i, ADD "Date" above the third column of blank lines.

20. At page 56, question #31, DELETE "(such as a parent, legal guardian, spouse, or other relative)" and ADD "who is a relative by blood, marriage, or court order or a legal guardian of the person."

21. At page 57, ADD as an additional question, numbered "33":

"33. If you are a refugee or orphan from Vietnam, Laos, or Cambodia, do you possess an Arrival-Departure Record (Form I-94) Parole Edition? (Yes) _____
(No) _____. If so, what parole date appears on the Form I-94?

_____. "
(month) (day) (year)

22. At page 57, DELETE:

"I certify that these responses are true to the best of my knowledge, pursuant to reasonable inquiry where needed, and that this form as completed may be used by the institution for whatever purposes of inquiry flow legally from their contents, including verification of my responses by city, county, state, and Federal agencies where permissible under law."

At page 57, following question to be numbered "34," ADD:

" --I hereby acknowledge that completion of Item 2 (Social Security number) is

tem

voluntary, is requested by the institution solely for administrative convenience and record-keeping accuracy, and is requested only to provide a personal identifier for the internal records of this institution.

--I hereby certify that all information I have set forth herein is true to the best of my knowledge, pursuant to my reasonable inquiry where needed.

--I hereby acknowledge that the institution may verify the information set forth herein from sources accessible under law to the institution but that the institution may divulge the contents of this application only as permitted under the Family Educational Rights and Privacy Act of 1974 if I am, or have been, in attendance at this institution."