

ADMINISTRATIVE MEMORANDUM

SUBJECT Ratified revision of G.S. 116-143.1
(classification of students by residence
for tuition purposes)

NUMBER 47

DATE June 4, 1975

Each of the most recent three sessions of the General Assembly has passed substantial amendments to G.S. 116-143.1, the law by which each constituent institution is to determine individual residence for tuition purposes. No amendment has been more important, however, than the rewriting of that statute ratified as law on Thursday, May 29, 1975. Known also as Senate Bill 616 and Chapter 436 of the 1975 Session Laws, the currently effective version of G.S. 116-143.1 remedies several concerns we have had, but, most important, it removes from the residence/tuition context the old common law presumption that a wife's legal residence (domicile) is presumed to follow that of her husband. Subsection (f) of the new law makes clear that married persons are to be classified by residence for tuition purposes by the same procedures and guidelines as are single persons--by reference to all relevant evidence of domiciliary intent and by a procedure that does not favor or disadvantage a married person of either sex. This does not mean that the fact of marriage is not relevant; it merely means that the ground rules of the residence inquiry are not altered by the fact of marriage.

There is provided hereinbelow a brief summary of the new law, which is appended in proper form. You will note that much of the revised law is simply a reorganization of the substance of prior versions of G.S. 116-143.1 but that there are substantive additions other than subsection (f), for instance, the exception in subsection (e) to application of the prima facie evidence rule with respect to parental residence.

Subsection (a) (definitions)

Subsection (a) defines terms as made necessary by the 1971 Session Laws establishing in-state and out-of-state tuition rates and specifying requirements to qualify for in-state status.

Subsection (b) (residence plus 12 months)

This restates part of the requirements of the former law, making clear that residence must be established and then maintained for 12 months. An amendment added in the progress of S.B. 616 now requires that each applicant for admission state "his length of residence in the State." As your institution is required to use the Residence-and-Tuition Status Application (Appendix B of the Manual), or its approximation, in determining residence for tuition purposes, your institution already

is asking questions whose answers are closely related, if not identical to, the statutorily required statement. (See Questions 19 and 20 of the common residence application form at page 41 of the residence Manual.)

Subsection (c) (purpose of presence in State)

This restates part of the requirements of the former law, which distinguishes bona fide residentiary intent from intent of temporary or transient presence in the State.

Subsection (d) (providing information)

This new subsection makes it clear that a student may not limit the information he or she provides institutional officials to only favorable information but must give enough information to provide a complete, accurate picture of residentiary circumstances. Specifically, this prevents a student from giving only enough information to establish a prima facie case for residence under the rules of subsection (e) concerning parental residence and then withholding other information that might tend to disprove local residence.

Subsection (e) (parents' residence as evidence of student's residence)

This subsection restates in condensed form the prima facie evidence rules of the former law but makes clear what had been strongly implied in the old law--that the prima facie evidence of the student's residence or non-residence based on parental residence may be rebutted or reinforced by other information, including the student's age. Another subsequent amendment to S.B. 616 adds the special bar to operation of the non-resident prima facie evidence rule where the student has "lived," i.e., has merely been abiding, in this State for the five consecutive years prior to enrolling or re-registering at the relevant institution. (Debate on this amendment in the House Higher Education Committee made clear that the amendment is intended to benefit a student who might have lived in North Carolina beginning at a time five years prior to such enrollment or re-registering but who might have worked out of state during the summer prior to re-registering.)

Subsection (f) (residence of married persons)

This subsection establishes that marriage alone does not prevent a person of either sex from becoming or continuing to be a resident for tuition purposes nor does marriage in any circumstance insure that a person will become or continue to be a resident for tuition purposes. Marriage and the legal residence of one's spouse are, however, relevant information in determining residentiary intent. Therefore, subsection (f) bestows uniformity of treatment in residence determination on single and married persons, on male and female spouses.

Subsection (g) (benefit of spouse's residentiary "time")

This subsection permits either spouse to benefit by the other spouse's residentiary time (if it is longer than his or her own time) in meeting the 12-month durational

requirement. This benefit accrues, however, only if both spouses are North Carolina residents. This subsection continues a policy established under the prior law. Although a legislative summary prepared by the Institute of Government described the benefit of this subsection as occurring immediately upon either spouse's attaining 12 months' residence, even to prorating the tuition if the 12-month anniversary date fell within a semester, this office does not understand that to be a proper reading of the degree to which benefit may accrue under subsection (g). Instead, we understand any time benefit accrued to permit a change in tuition rate only with respect to terms that may commence after the 12-month duration is attained or conferred. This understanding rests upon policy within the Manual and provisions for application of the "grace period" in subsection (i) of this law.

Subsection (h) (military service by North Carolinians)

This subsection essentially restates part of the prior law but adds certain words to make clear that a North Carolina resident who is in the armed forces might choose to change his or her residence to a foreign state and thereby lose resident status for tuition purposes (except possibly for the 12-month grace period).

Subsection (i) (12-month grace period)

This subsection restates almost verbatim a part of the prior law. By way of amendment to S.B. 616, though, one proviso was added to subsection (i) appearing to provide that loss of legal residence and commencement of the in-state tuition grace period under this subsection shall not be caused by the act per se of marriage to a non-resident, i.e., that marriage itself "shall not be deemed a culminating circumstance" precipitating the beginning of lost residence. We presently understand this amendment to require that events surrounding the marriage also be examined to give residency significance, if any, to the marriage. Further, while the residency significance of a marriage is supplied at least partly by other events and acts, even the total significance is not of such magnitude as to cause loss of in-state residence. In operation this proviso implies that events at times other than the marriage itself would be the pivotal or "culminating" circumstances.

In light of these significant changes to G.S. 116-143.1 the residence Manual will be substantially revised this summer. The amended law is now in effect, however, and you are hereby requested to see that all appropriate personnel at your institution promptly receive a copy of the new law and the essence of this memorandum so that determinations of residence for tuition purposes will be consistent with the law. In accordance with policy developed following prior amendments to G.S. 116-143.1 and with the provisions of the Session Law embodying the most recent amendment, you should direct that institutional determinations be made under the law summarized herein with effect only as to academic terms commencing on or after May 29, 1975; the effective date of the revised law.

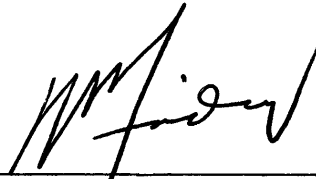
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Because G.S. 116-143.1 as most recently amended is substantially altered, I believe the prompt setting forth of the entire act in institutional publications of general use by students would be appropriate. Under established policy, it would rest with each student, however, to initiate a reclassification inquiry in any case where he or she thinks a change in the law should precipitate a change in his or her resident status for tuition purposes.

If there are additions or corrections to policy reflected in this memorandum, including adoption of a revised Manual by the Board of Governors, you will be promptly notified.

A handwritten signature in black ink, appearing to read "W. Friday", is written over a horizontal line.

William Friday

Attachment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1975

RATIFIED BILL

CHAPTER 436

SENATE BILL 616

AN ACT TO REWRITE G.S. 116-143.1 CONCERNING RESIDENCE FOR TUITION PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116-143.1 is hereby rewritten to read as follows:

"§ 116-143.1. Provisions for determining resident status for tuition purposes.--(a) As defined under this section:

- (1) A "legal resident" or "resident" is a person who qualifies as a domiciliary of North Carolina; a "non-resident" is a person who does not qualify as a domiciliary of North Carolina.
- (2) A "resident for tuition purposes" is a person who qualifies for the in-State tuition rate; a "non-resident for tuition purposes" is a person who does not qualify for the in-State tuition rate.
- (3) "Institution of higher education" means any of the constituent institutions of The University of North Carolina and the community colleges and technical institutes under the jurisdiction of the North Carolina State Board of Education.

(b) To qualify as a resident for tuition purposes, a person must have established legal residence (domicile) in North Carolina and maintained that legal residence for at least 12

months immediately prior to his or her classification as a resident for tuition purposes. Every applicant for admission shall be required to make a statement as to his length of residence in the State.

(c) To be eligible for classification as a resident for tuition purposes, a person must establish that his or her presence in the State currently is, and during the requisite 12-month qualifying period was, for purposes of maintaining a bona fide domicile rather than of maintaining a mere temporary residence or abode incident to enrollment in an institution of higher education.

(d) An individual shall not be classified as a resident for tuition purposes and, thus, not rendered eligible to receive the in-State tuition rate, until he or she has provided such evidence related to legal residence and its duration as may be required by officials of the institution of higher education from which the individual seeks the in-State tuition rate.

(e) When an individual presents evidence that the individual has living parent(s) or court-appointed guardian of the person, the legal residence of such parent(s) or guardian shall be prima facie evidence of the individual's legal residence, which may be reinforced or rebutted relative to the age and general circumstances of the individual by the other evidence of legal residence required of or presented by the individual; provided, that the legal residence of an individual whose parents are domiciled outside this State shall not be prima facie evidence of the individual's legal residence if the individual has lived in his State the five consecutive years prior to enrolling or re-

registering at the institution of higher education at which resident status for tuition purposes is sought.

(f) In making domiciliary determinations related to the classification of persons as residents or non-residents 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 of domiciliary intent. For purposes of this section:

(1) No person shall be precluded, solely by reason of marriage to a person domiciled outside North Carolina, from establishing or maintaining legal residence in North Carolina and subsequently qualifying or continuing to qualify as a resident for tuition purposes;

(2) No person shall be deemed, solely by reason of marriage to a person domiciled in North Carolina, to have established or maintained a legal residence in North Carolina and subsequently to have qualified or continued to qualify as a resident for tuition purposes;

(3) In determining the domicile of a married person, irrespective of sex, the fact of marriage and the place of domicile of his or her spouse shall be deemed relevant evidence to be considered in ascertaining domiciliary intent.

(g) Any non-resident person, irrespective of sex, who marries a legal resident of this State or marries one who later becomes a legal resident, may, upon becoming a legal resident of this

State, accede to the benefit of the spouse's immediately precedent duration as a legal resident for purposes of satisfying the 12-month durational requirement of this section.

(h) No person shall lose his or her resident status for tuition purposes solely by reason of serving in the armed forces outside this State.

(i) A person who, having acquired bona fide legal residence in North Carolina, has been classified as a resident for tuition purposes but who, while enrolled in a State institution of higher education, loses North Carolina legal residence, shall continue to enjoy the in-State tuition rate for a statutory grace period. This grace period shall be measured from the date on which the culminating circumstances arose that caused loss of legal residence and shall continue for 12 months; provided, that a resident's marriage to a person domiciled outside of North Carolina shall not be deemed a culminating circumstance even when said resident's spouse continues to be domiciled outside of North Carolina; and provided, further, that if the 12-month period ends during a semester or academic term in which such a former resident is enrolled at a State institution of higher education, such grace period shall extend, in addition, to the end of that semester or academic term."

Sec. 2. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 29th day of May, 1975.

JAMES B. HUNT, JR.

James B. Hunt, Jr.

President of the Senate

JAMES C. GREEN, SR.

James C. Green, Sr.

Speaker of the House of Representatives