

ADMINISTRATIVE MEMORANDUM

SUBJECT Revisions to "Policies and Procedures of the
State Residence Committee" effective
July 21, 1976

NUMBER 66

DATE August 18, 1976

By action of the State Residence Committee on July 21, 1976, the "Policies and Procedures of the State Residence Committee" were amended to make more efficient and convenient the process of advancing appeals of residentiary classifications for tuition purposes to the Committee. Virtually all the substantive amending is to be found in Section D 1 d.

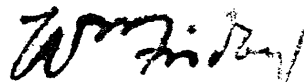
The revisions to Section D 1 d establish a procedure whereby a petitioner, believing that the institutional record which he or she has received contains material extraneous to the prior classification process or believing that it omits materials that were in fact a part of that process, may seek accommodation of that belief by communicating his or her concern to the institution before the institution forwards the record on appeal to the State Residence Committee. The institution then has an opportunity to respond to the petitioner as the institution deems appropriate. (Heretofore the task of establishing the proper contents of a record on appeal had awkwardly fallen to the staff of the Committee with no prior opportunity of the institution to consider the petitioner's concern.)

Also to be found within Subsection D 1 d are new procedural deadlines. These are designed to afford a petitioner who may have departed the campus during an academic recess a reasonable opportunity to advance his or her appeal in timely fashion.

These changes to the "Policies and Procedures" will require some modification of each institution's procedures for handling appeals by students to the State Residence Committee. I request, then, that you provide the attached "Policies and Procedures of the State Residence Committee" to officers and agencies of your institution concerned with the filing of appeals to the State Residence Committee or with informing students of procedures for such filing.

You may direct any questions about this Administrative Memorandum to Mr. David Edwards of this office.

Attachment



William Friday

POLICIES AND PROCEDURES OF THE STATE RESIDENCE COMMITTEE

The functions of the State Residence Committee, as prescribed in A Manual to Assist the Public Higher Education Institutions of North Carolina in the Matter of Student Residence Classification for Tuition Purposes, are:

- a. To decide cases appropriately appealed to it from a State institution of higher education;
- b. To evaluate the administrative practices and substantive rules associated with implementation of State law relating to residential classification for tuition purposes and to make recommendations, respectively, to the Board of Governors of The University of North Carolina and to the State Board of Education concerning any perceived need for changes in applicable law or administrative policies and procedures associated with the responsibility of classifying students by residence for tuition purposes; and
- c. To serve as a source of general advice to and sharing of information with and among affected institutions of higher education concerning residence questions.

The following policies and procedures are adopted by the State Residence Committee to effectuate the discharge of those responsibilities prescribed by the Manual.

A. MEMBERSHIP.

The membership of the State Residence Committee, as prescribed in the Manual, shall consist of one individual appointed by the President of The

University of North Carolina from the staff of the Office of General Administration of The University; one individual appointed by the President of the Community College System from the staff of the System; six institutional members appointed by the President of The University; six institutional members appointed by the President of the Community College System; and, ex officio, a representative appointed by the Attorney General from his staff. The terms of the members shall be of indefinite duration, until such time as successors are appointed, respectively, by the President of The University and the President of the Community College System.

B. OFFICERS.

The State Residence Committee shall be co-chaired by two individuals, one designated from the membership by the President of The University and one designated from the membership by the President of the Community College System. In addition, the membership shall select a secretary to the State Residence Committee.

C. MEETINGS AND BYLAWS.

1. Meetings.

a. Regular meetings.

Regular meetings of the State Residence Committee shall be held at the Office of General Administration in Chapel Hill on the second Wednesday of the months of September, November, January, and March.

b. Special meetings.

Special meetings shall be held at the call of the co-chairmen at such times and at such places as the co-chairmen shall designate; provided,

that notice of special meetings shall be provided to the membership at least ten days in advance of such meetings.

2. Conduct of business.

a. Quorum.

A quorum for the conduct of business by the Committee shall consist of a majority of the authorized membership; provided, that such majority shall include, for purposes of a quorum, at least two Committee members from the Community College System and at least two Committee members from The University.

b. Votes.

All matters put to a vote of the Committee shall be resolved by simple majority. All members of the Committee shall be eligible to vote, except as otherwise specified herein. No vote concerning any matter under consideration by the Committee may be cast in absentia, by mail, telegraph, telephone, or proxy.

c. Rules of order.

Except as modified by regulations adopted by the Committee, Robert's Rules of Order (latest edition) shall constitute the rules of procedure applicable to all meetings of the Committee.

d. Minutes.

Minutes of each meeting of the Committee shall be taken by the secretary and, following approval at the next succeeding meeting, shall be maintained on file by the Committee through its secretary.

e. Referral to subcommittees.

Any matter of business coming before the Committee may be referred to such subcommittee or subcommittees as may be established by the Committee.

D. FUNCTIONS.

1. Appellate proceedings.

a. Jurisdiction.

The jurisdiction of the State Residence Committee to hear and resolve residence classification cases appealed from institutional determinations is based on the following Manual provision:

III.E. Appeals.

The decision of the official or office of the institution responsible initially for residence classification or reclassification decisions may be appealed by the affected individual as follows:

1. To the chief executive officer of the institution, or the officer's delegate (who may be either an individual official or a committee designated by the chief executive officer), pursuant to such rules and procedures as may be prescribed by the chief executive officer; if not satisfied with the disposition of the complaint, the individual may then appeal

2. To the State Residence Committee pursuant to such rules and procedures as that Committee may prescribe.

Grounds for appeal to the State Residence Committee from the institutional decision on appeal shall be that the institutional disposition of the application for classification or reclassification violated State or federal law or was inconsistent with the provisions of this manual. There shall be no other grounds for appeal. Final disposition of the appeal by the State Residence Committee shall be deemed to exhaust the administrative remedies of the appellant with respect to the institutional classification or reclassification action appealed from.

The decision of the official or office of the institution responsible initially for residence classification or

reclassification decisions may be appealed by the institution to an institutional appeals agent or body designated by the institution's chief executive officer. Only the institution's chief executive officer or his or her duly appointed agent shall have the authority to enter an institutional appeal. If an initial residence classification is appealed by the institution to the institutional appeals agency and the initial residence classification is confirmed upon that appeal, the initial classification may not be further appealed by the institution to the State Residence Committee. This limitation upon institutional appeals shall not prohibit institutional inquiry to the State Residence Committee for purposes of general advice or other assistance.

For purposes of acquiring jurisdiction of appeals by the State Residence Committee the terms "initial classification" and "reclassification" shall mean an institutional decision that the individual either has or has not satisfied the statutorily prescribed qualifying standards for entitlement to the in-state tuition rate with reference to a specified term of enrollment. Thus, prospective advisory opinions on residence status by an institution will not support an appeal. The Committee will, furthermore, decline jurisdiction to hear an appeal on a residence status application that is premature on its face. In determining that an application is premature on its face, the date of the initial classification decision shall be taken as the date of the classification inquiry and, thus, the time perspective from which to view the application; provided, that such date of initial classification shall be deemed the certification date for assessment of the residentiary information given by the pertinent institution pursuant to the requirements of paragraph d(6)(c), below.

b. Bases for appeal to the State Residence Committee.

Consistent with the general restrictive language of the Manual concerning bases for appeal to the State Residence Committee, appeals will be entertained by the Committee only in those instances where the Committee concludes, on the basis of the statement of appeal and the supporting record, that one or more of the following substantial questions is presented:

(1) Whether or not there was disregard of or mistake with reference to the requirements of law or Manual policy;

(2) Whether or not the adoption or modification of Manual policy arguably is necessary in order to resolve definitively a particular case or class of cases; for example, if Manual policy provisions as currently stated do not purport to address a subsequently discovered type of legal issue or if a Manual provision is shown to be at variance with subsequently developed case law;

(3) Whether or not there was clear abuse of discretion in interpreting and weighing data; i.e., where there appears in the evidentiary record no substantial basis for the conclusion reached. Such a situation is to be contrasted with situations in which reasonable persons could reasonably differ as to the correct inferences and conclusions to be drawn on the basis of the total evidentiary record. In the latter situation, normally the institutional decision will be honored on appeal.

c. Legal effect of disposition by the State Residence Committee.

As prescribed by the Manual, disposition of an appeal by the State Residence Committee shall be deemed to exhaust the administrative appellate

procedures available within The University or the Community College System; no further appeal is available. An individual denied relief may, of course, seek judicial relief from the disposition rendered by the State Residence Committee. Final disposition by the Committee shall be understood to mean either a ruling in which the Committee affirms, modifies, or reverses an institutional decision or a ruling in which the Committee declines to entertain an appeal because of insufficient showing of proper bases for appellate review by the Committee. Any ruling or disposition by the Committee which causes a case to be remanded to the institutional level for further inquiry shall not constitute final disposition of that case, and such case may be appealed if such further inquiry gives rise to a basis of appeal as described in Section b., above.

d. Filing appeals with the State Residence Committee.

(1) Following final disposition of a case at the institutional level, notice of the decision shall be given to the petitioner in writing. A petitioner who remains dissatisfied with the disposition of the case may file notice of appeal to the State Residence Committee. Such notice must be in writing, must be delivered to the chief executive officer of the institution or his or her delegate within ten (10) days of the date of receipt by the petitioner of notice of final disposition of the case at the institutional level, must contain a simple declaration of intention to process an appeal before the State Residence Committee, and must be personally signed by the petitioner.

(2) Following receipt of notice of appeal, the chief executive officer of the institution or his or her delegate shall compile the institutional record and transmit to the petitioner a copy of the institutional record with a

letter acknowledging receipt of the petitioner's notice of appeal. The institutional record so transmitted shall contain all written materials which constituted a part of or the basis of the institutional inquiry, including the common informational form (questionnaire), together with any additional data or documentation deemed essential to a reliable determination by the responsible institutional official or office, any materials submitted with respect to the inquiry by the petitioner to the institution, and any materials generated by the institution in connection with the inquiry.

(3) If, following receipt of a copy of the institutional record, the petitioner believes that the record is incomplete or defective (in that it either omits written materials which were a part of the institutional inquiry or that it includes written materials which were not a part of the institutional inquiry), the petitioner may within ten (10) days of receipt of a copy of the institutional record request modification of the institutional record by submitting, as through mailing, such request to the institutional official from whom the institutional record was received. If the institution agrees with the petitioner's contention, the institution will modify the institutional record accordingly and insure that the petitioner is notified in writing of and possesses the modified institutional record. If the institution does not agree with the petitioner's contention, it shall so notify the petitioner in writing. The petitioner shall then have the option to acquiesce in the institutional record as then constituted, or to state the petitioner's contentions relative to the contents of the institutional record in the statement of appeal prescribed in paragraph d(4), below. Failure of the petitioner during the 10-day period specified to object to the institutional record on the grounds set forth above shall permit institutional staff to proceed with

the appeal on the assumption that the petitioner finds the institutional record to be properly assembled.

(4) Within twenty (20) days of receipt by the petitioner of an institutional record whose contents he or she does not contest, or within twenty (20) days of receipt by the petitioner of written notice of institutional response to his or her contentions about the contents of the institutional record, the petitioner shall prepare and submit, as through mailing, to the institution a written statement of appeal. This statement should set forth clearly and concisely the reasons for requesting appellate review beyond the institutional level and may also present contentions of the petitioner with reference to unresolved concerns he or she may have about the contents of the institutional record, as noted in paragraph d(3), above. The petitioner need not articulate reasons for appeal with legalistic exactitude; the petitioner should set forth a reason for appeal based in good faith upon his or her personal belief that it constitutes a substantial reason for making the appeal. The statement of appeal shall be limited in scope to the evidence and issues developed in the proceedings from which the appeal is taken and any arguments addressed thereto. It shall not include any factual allegations or assertions which were not made by the petitioner in the proceedings at the institutional level. In lieu of submitting a separate statement of appeal, the petitioner may request in writing that his or her notice of appeal serve also as the statement of appeal. This may be accomplished within the notice of appeal itself or by separate writing; provided, that whenever a petitioner objects to the institutional record as being incomplete or defective and the institution does not accommodate the objection by modifying

the institutional record, the petitioner may include in a statement of appeal the grounds for the objection. Any writing offered as the statement of appeal or as notice that another writing is to constitute the statement of appeal shall be personally signed by the petitioner.

(5) Within ten (10) days of receipt by the institution of petitioner's statement of appeal or notice that the notice of appeal is to serve also as the statement of appeal, the chief executive officer of the institution or his delegate shall compile the record on appeal and transmit it to:

(a) The petitioner, and

(b) The Office of General Administration of The University of North Carolina (in the case of appeals from an institution which is a component of The University) or the Department of Community Colleges, North Carolina State Board of Education (in the case of appeals from an institution which is a component of the Community College System).

(6) The record on appeal shall consist of:

(a) The statement of appeal. The chief executive officer of the institution or his or her delegate shall, before forwarding the record on appeal, insure that the record on appeal contains either a separate statement of appeal or the petitioner's written request that the notice of appeal serve also as the statement of appeal. The record on appeal shall not be deemed definitive and official, and as a consequence will not be entertained, if it does not include the petitioner's statement of appeal.

(b) The institutional record as described in paragraph d(2), above.

(c) A letter from the institution transmitting the record on appeal and certifying the exact date down to which the petitioner's residential information had been viewed by the institution as current and susceptible to consideration toward satisfaction of the statutory durational requirement of 12 months. The date so certified by the institution shall not postdate the date on which final institutional determination of resident status was made on the petitioner's application, before the petitioner's appeal to the State Residence Committee.

(d) At the option of the institution, a written statement by the responsible institutional official setting forth the basis for the previous institutional disposition of the case, which shall be limited in scope to the evidence and issues developed in the proceedings from which the appeal is taken and any arguments addressed thereto.

e. Initial staff processing of records on appeal.

With respect to each record on appeal transmitted, respectively, either to the Office of General Administration or the Department of Community Colleges, it shall be the responsibility of the co-chairmen:

- (1) To confirm that the record on appeal is definitive and official;
- (2) To determine whether the record on appeal presents a substantial question which complies with the prescribed bases of appeal set forth hereinbefore;
- (3) To transmit to the membership of the State Residence Committee the complete records on appeal for all cases deemed by staff to present substantial

questions warranting appellate review by the Committee and, further, to furnish to the membership a list, with appropriate supporting explanation, of all cases with respect to which the co-chairmen recommend that no appeal be entertained because of the absence of a substantial question.

f. Action upon discovery of omission from or other deficiency in the record.

(1) The required determination of the co-chairmen (personally or through delegated authority of their staff), as to whether a record on appeal is definitive and official, may include inquiry to appropriate institutional officials or other parties. Based upon that determination the co-chairmen or their delegated staff may delete or add materials to the record on appeal so as to accurately reflect the institutional decision. This process of deletion or addition may even require physical return of the record on appeal to the institution, but such transmittal shall be only for conforming modification to the record on appeal and not to be considered a remand of the case. The petitioner shall be informed promptly of any deletion or addition to the record on appeal that is accomplished by the co-chairmen or their delegated staff.

(2) When, however, the perceived deficiency in the record on appeal puts into question the adequacy of the institutional inquiry itself, the Committee must first be presented the case on appeal and any remand or transmittal of the record to the institution shall require formal vote of the Committee.

(3) Where a perceived deficiency to the record is based upon an applicant's willful failure to supply all information requested by the institution or knowing falsification of the information supplied, the applicant may be subject

to institutional disciplinary action, but the record itself shall be treated as in other appeals in which the scope of the institutional determination is questioned.

g. Consideration of appeals by the State Residence Committee.

(1) No appellate case will be considered by the State Residence Committee at a scheduled meeting unless the record on appeal was received by the co-chairmen at least thirty days prior to the scheduled meeting date and, in turn, was received by the membership of the Committee from the co-chairmen at least fifteen days prior to the scheduled meeting date; provided, that by majority vote such time restrictions may be waived.

(2) All appeals shall be considered and resolved on the basis of the written record on appeal, and no appearances shall be permitted by the petitioner, either personally or through a representative, or by the affected institution. No member of the State Residence Committee who is appointed from an institution which is a party to an appeal being considered by the Committee shall participate in the consideration or disposition of such case.

(3) A recommendation by the co-chairmen that a particular case not be considered by the Committee on appeal because of the absence of a substantial question shall not constitute a ruling of the Committee until such time as the recommendation has been accepted and confirmed by majority vote of the Committee.

(4) On motion of any member of the State Residence Committee, further preliminary analysis may be undertaken, by the full Committee, of a case with respect to which the co-chairmen have recommended that no appeal be entertained because of the absence of a substantial question. Following such

further analysis, the Committee may by majority vote place the case on the agenda for appellate consideration.

(5) Decisions of the State Residence Committee shall be forwarded in writing to the petitioner and the affected institution within ten days of the date of decision.

2. Change of circumstances in a case pending on appeal.

When a change of circumstances in a case while the case is still pending on appeal before the Committee is brought to the attention of the co-chairmen, the co-chairmen or their delegated staff may inquire of the institution or other parties about such change and assess its materiality. If the change in circumstances appears capable of materially altering the outcome of the case, the co-chairmen or their delegate may return the case for institutional reconsideration in light of the changed circumstances. Return in such a situation shall always be a discretionary action, however; and the co-chairmen may instead present the case to the Committee for its judgment in the matter. If the case is so brought forward, the Committee shall review the materiality of the change in circumstances before otherwise considering the petition. If the Committee finds the change in circumstances to be material, it may remand the case, without further deliberation, for reconsideration at the institutional level.

3. Advisory opinions.

The State Residence Committee will rule on and decide only actual appellate cases which are properly docketed with it and with respect to which it chooses to exercise jurisdiction consistent with the prescribed bases of

appeal. The Committee will not offer advisory opinions with respect to particular cases being considered at the institutional level and which could eventuate in an appeal from the institutional disposition to the State Residence Committee. However, in response to institutional requests, the Committee will, at its option, offer interpretive rulings with respect to the meaning of various Manual provisions and the requirements of various pertinent legal principles when such questions are framed in general terms designed to explicate general problem areas being encountered by an interested institution or institutions in connection with administration of applicable statutory and Manual requirements.

4. Informational function.

A summary of interpretive rulings, decisions, and aspects of appellate activities having general value for the higher education community may be distributed by the Committee from time to time as the Committee deems appropriate to any interested party or institution. The purpose shall be to insure common understanding by all interested parties of evolving principles and practices, in the interest of appropriately uniform institutional disposition of questions encountered in residency determinations.

5. General review of policies and procedures.

The State Residence Committee shall maintain continuing oversight with respect to the administrative practices employed by institutions in the discharge of their statutory and Manual responsibilities and shall assess the adequacy of existing statutory and Manual provisions. Any changes in policy or practice that would require action by the Board of Governors or the State

Board of Education shall be the subject of recommendations from the State
Residence Committee.