

ADMINISTRATIVE MEMORANDUM

SUBJECT Amendment to G.S. 116-143(j) (legal residence
 for certain minors in the context of residentiary
 status for tuition purposes) NUMBER 153
 DATE June 1, 1981

By Administrative Memorandum Number 117 (dated May 2, 1979) you were informed of action by the 1979 General Assembly that conferred North Carolina legal residence (in the context of residentiary status for tuition purposes) on minors, usually children of broken homes, living out of state, as with a nonresident custodial parent, but dependent on a North Carolina resident parent to a degree that the resident parent is entitled to claim and does in fact claim the minor as a dependent under North Carolina individual income tax provisions. Several of the means by which a minor might under the statute accrue legal residence of sufficient duration to acquire in-State tuition status were set forth in Administrative Memorandum Number 117 and later incorporated into the residence Manual of August 1979 at pages 33 through 36.

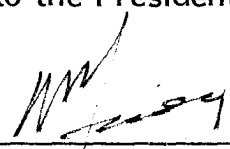
It was later discovered, however, that few students actually come to enjoy in-State status under G.S. 116-143.1(j) because achievement of majority by entering freshmen before enrollment, a frequent occurrence in the senior high school year or the subsequent summer, intervened to extinguish the legal residence supplied by legal fiction under subsection (j). This, of course, would occur at a time when few students could, as a practical matter, undertake in North Carolina those actions that would preserve the legal residence established by the statute during minority. The 1981 General Assembly has addressed this problem by enacting Chapter 471, 1981 Session Laws, which amends subsection (j) to allow a student to preserve the benefit conferred on him or her as a minor when that student becomes an adult before enrollment at an institution of higher education. The remedy is accomplished by statutorily extending the legal residence conferred on the minor if the person involved (1) upon becoming an adult, "acts, to the extent that the person's degree of actual emancipation permits, in a manner consistent with bona fide legal residence in North Carolina" and (2) "begins enrollment at an institution of higher education not later than the fall academic term next following completion of education prerequisite to admission to such institution." The burden, then, on the student seeking to continue as an adult the residence first conferred under subsection (j) is to progressively and timely strengthen his or her ties to North Carolina at a pace dictated by the student's transition from necessary social reliance on a nonresident custodial parent or other nonresident society to opportunity for self-determination. The statutory burden also requires that the student advance from preparatory school to college enrollment at a pace no slower than the normal sequence of college entry in the first fall after high school graduation.

This enactment was made effective upon its ratification, which was accomplished May 28, 1981, and should be administered immediately to appropriate applications for resident tuition status. For your convenience there is attached hereto both the amending session law and subsection (j) as amended. The amendment to subsection (j) will, of course, be incorporated into the residence Manual upon its revision this

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summer. As a matter of fair notice to applicants for residence status determination, though, you are urged in the interim to insert this Administrative Memorandum into all your copies of the residence Manual of August 1979 and otherwise to give wide distribution of this memorandum to your staff concerned with residence status determinations for tuition purposes.

Questions from University staff concerning this Administrative Memorandum may be addressed to Mr. David Edwards, Special Assistant to the President.



William Friday

Attachments

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1981
RATIFIED BILL

CHAPTER 471

HOUSE BILL 844

AN ACT TO PERMIT CERTAIN INDIVIDUALS AS ADULTS TO PRESERVE LEGAL RESIDENCE CONFERRED ON THEM AS MINORS IN THE CONTEXT OF RESIDENTIARY STATUS FOR TUITION PURPOSES BY REASON OF G.S. 116-143.1(j).

The General Assembly of North Carolina enacts:

Section 1. G.S. 116-143.1(j) is hereby amended by adding at the end thereof a new paragraph to read as follows:

"Any person who immediately prior to his or her eighteenth birthday would have been deemed under this subsection a North Carolina legal resident but who achieves majority before enrolling at an institution of higher education shall not lose the benefit of this subsection if that person:

- (1) upon achieving majority, acts, to the extent that the person's degree of actual emancipation permits, in a manner consistent with bona fide legal residence in North Carolina; and
- (2) begins enrollment at an institution of higher education not later than the fall academic term next following completion of education prerequisite to admission at such institution."

Sec. 2. This act is effective upon ratification.

**In the General Assembly read three times and ratified,
this the 28th day of May, 1981.**

JAMES C. GREEN

James C. Green

President of the Senate

LISTON B. RAMSEY

Liston B. Ramsey

Speaker of the House of Representatives

Attachment 2

(j) Notwithstanding the prima facie evidence of legal residence of an individual derived pursuant to subsection (e), notwithstanding the presumptions of the legal residence of a minor established by common law, and notwithstanding the authority of a judicially determined custody award of a minor, for purposes of this section, the legal residence of a minor whose parents are divorced, separated, or otherwise living apart shall be deemed to be North Carolina for the time period relative to which either parent is entitled to claim and does in fact claim the minor as a dependent pursuant to the North Carolina individual income tax provisions of G.S. 105-149(a)(5). The provisions of this subsection shall pertain only to a minor who is claimed as a dependent by a North Carolina legal resident.

Any person who immediately prior to his or her eighteenth birthday would have been deemed under this subsection a North Carolina legal resident but who achieves majority before enrolling at an institution of higher education shall not lose the benefit of this subsection if that person:

- (1) upon achieving majority, acts, to the extent that the person's degree of actual emancipation permits, in a manner consistent with bona fide legal residence in North Carolina; and
- (2) begins enrollment at an institution of higher education not later than the fall academic term next following completion of education prerequisite to admission at such institution.