

ADMINISTRATIVE MEMORANDUM

SUBJECT Amendments to residence Manual:
 military tuition statute

NUMBER 204

DATE July 27, 1984

By recent action of the Board of Governors and the North Carolina State Board of Community Colleges the residence Manual has been amended. All but one of the substantive changes to the Manual are in response to enactment of Section 57, Chapter 1034, 1984 Session Laws (codified as G.S. 116-143.3). The new statute gives the in-state tuition rate to military personnel, and their dependent relatives living with them, while stationed on active duty in North Carolina if the beneficiary has been academically admitted to the pertinent public institution of higher education. As the new statutory benefit is limited to forgiving in appropriate instances the out-of-state tuition differential, it will apply only to academic work for which there has been established both an in-state tuition rate and an out-of-state tuition rate.

The sole substantive amendment not addressing the new military tuition law adds to those classes of aliens under the Manual deemed capable of establishing domicile in North Carolina (and subsequently qualifying for the in-state tuition rate) those aliens possessing Form I-94 (Arrival-Departure Record) endorsed to show refugee status.

Attached for your immediate use are those pages of the Manual of September 1983 that are amended by the identified changes. (Text that has been added is indicated by underlining.) Included is a new Appendix D, which constitutes an application form to be used by all persons seeking the special military tuition benefit. Generally, applicants for the tuition benefit must apply before the first term for which the benefit is sought begins and then prior to the beginning of each successive academic year. However, the new statute was enacted to be effective July 1, 1984, so that some summer enrollments falling under the new statute commenced before the necessary Manual provisions could be established and distributed. Therefore, you are advised that any person who could have established eligibility for the tuition benefit for a 1984 summer term commencing on or after July 1, 1984, should be accorded a refund of the out-of-state tuition differential if sought in writing by the potential beneficiary not later than 30 days after commencement of fall term 1984 at your institution.

Substitute pages to the 1983 residence Manual incorporating these amendments will be prepared and distributed as soon as possible.

Questions concerning this Administrative Memorandum may be addressed to Mr. David Edwards of this office.



William Friday

Attachment

AMENDMENTS TO THE RESIDENCE MANUAL

for 1984

The 1981 General Assembly, in addition to amending subsection (j) as indicated, enacted a new subsection (l) to facilitate the reacquisition of resident tuition status by persons who had ceased enrollment or graduated while enjoying in-state status, had then abandoned North Carolina domicile, but within 12 months of abandonment had reacquired North Carolina domicile and maintained the reacquired domicile into re-enrollment at an institution of higher education. Subsection (l) provides that such persons need not meet the 12-month durational requirement to reacquire in-state tuition status for the re-enrolled term or any subsequent term while the reacquired domicile is continuously maintained. The benefit of this subsection, however, is available for use only once by any one person.

The 1984 General Assembly enacted a new section, G.S. 116-143.3, to make eligible for the in-state tuition rate any member of the armed services while abiding (living) in this State incident to active military duty. The privilege was made available also to any dependent relative of a member of the armed services upon the condition that the dependent relative share in North Carolina the abode of the service person and that the service person qualify for the benefit. Neither the service person nor a dependent relative is relieved of meeting pertinent admissions requirements of the enrolling institution. G.S. 116-143.3 expressly limits the benefit of its provisions to receiving the in-state tuition rate and disallows a person who is then receiving that rate solely because of G.S. 116-143.3 from qualifying for or being the basis for conferring the benefits of G.S. 116-143.1(g),(h),(i),(j),(k), or (l). The new statute also provides, however, that if the service person who supports

a dependent relative receiving the benefit of G.S. 116-143.3 leaves his or her North Carolina abode during the academic year, the dependent relative may complete that academic year at the in-state tuition rate.

The full texts of G.S. 116-143.1 and 116-143.3 are set forth in Appendix A.

B. Purpose of Manual.

The purpose of this manual is to articulate rules and regulations and set forth collateral law essential to the effective implementation of G.S. 116-143.1 and 116-143.3 and to provide guidance to each institution and its students in meeting their respective responsibilities under the law as to classification of persons by resident for tuition purposes.

G.S. 116-143.1, in its successive revisions, and G.S. 116-143.3 necessitated the development and revision of this manual to insure faithful and effective implementation of the statutes. The public higher education community, in discharging its responsibilities under G.S. 116-143.1, understands that the precepts of "due process" and "equal protection of the laws" dictate that a rigorous classification inquiry be undertaken to insure as fully as possible that persons who are not legal residents for tuition purposes of North Carolina

actual establishment and maintenance of a separate and independent place of residence.

Whether the student claims statutory or common law emancipation, the facts supporting its realization must be presented by the claimant in the process of residency classification.

c. Policy concerning members of the armed forces.

(1) Qualification as a resident for tuition purposes under G.S. 116-143.1. The domicile of a person serving in the armed forces is not necessarily affected by assignment in or reassignment out of North Carolina. Such a person may establish domicile for self and dependents by the usual requirements of residential act plus intent. All the residency evidence is collected and assessed. In the military context this may include the State of Legal Residence Certificate (DD Form 2058), residency information on the Leave and Earnings Statement, and the "home of record." However, the weight to be given the home of record may vary greatly depending upon how recently the home of record was declared and with what branch of service the individual is affiliated. (Some branches do not permit a change in a previously declared home of record.)

(2) Eligibility to be charged the in-state tuition rate under G.S. 116-143.3. One who does not qualify under this Manual as a resident for tuition purposes may yet be eligible to be charged the in-state tuition rate. By reference to G.S. 116-143.3 and to conditions established pursuant to G.S. 116-143.3 by the respective Boards of the institutions of higher education, the conditions for being a beneficiary are these:

(a) The beneficiary must be a member of the "armed services" as defined by G.S. 116-143.3(a), that is, a member of the United States Air Force, Army, Coast Guard, Marine Corps, Navy, North Carolina National Guard, or a Reserve component of the foregoing.

(b) The beneficiary must be abiding (living) in North Carolina incident to active military duty. The duty must be performed at or from a duty station in North Carolina.

(c) The beneficiary must qualify for admission to the institution at which the benefit is sought.

(d) The beneficiary may be a dependent relative of one who satisfies (a) and (b), above, if the dependent relative shares the service member's abode in North Carolina; provided, that a dependent relative after becoming eligible for the benefit may continue to be eligible for the in-state rate during the remainder of the academic year in which the supporting service member moves his or her abode from North Carolina.

(e) A service member is deemed to have moved his or her abode from North Carolina when he or she either (1) voluntarily ceases living in North Carolina other than for vacation or leave purposes or (2) involuntarily is absent from the State under military orders; provided that duty on routine maneuvers and exercises and temporary assignments shall not be deemed to cause a change in abode.

(f) The term "dependent relative" means any of the following:

(1) A son or daughter of a service member, or a descendant of either,

(2) A stepson or stepdaughter of a service member,

(3) A brother, sister, stepbrother, or stepsister of a service member,

(4) The father or mother of a service member, or an ancestor of either,

(5) A stepfather or stepmother of a service member,

(6) A son or daughter of a brother or sister of a service member,

(7) A brother or sister of the father or mother of a service member, or

(8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of a service member, any of whom has "dependent" status at the supporting member's duty station:

(g) The term "academic year" means the period of time commencing with the first day of classes of the fall semester, term, or quarter of an institution of higher education and ending with the last day of the semester, term, or quarter immediately preceding the succeeding fall semester, term, or quarter of that institution.

Eligibility to be charged the in-state tuition rate under G.S. 116-143.3 must be established through submission of an institutional application similar to that set forth in Appendix D.

Application for eligibility to be charged the in-state tuition rate under G.S. 116-143.3 must be made prior to initial enrollment or reenrollment for which the student claims the benefit by submission of the appropriate application to the enrolling institution. Further, application for such eligibility must similarly be made prior to the outset of each successive academic year of enrollment.

Appeals from determinations of eligibility for the in-state tuition rate under G.S. 116-143.3 are limited to those remedies established by the institution at which the tuition benefit is sought.

Receipt of the benefit of the in-state tuition rate under G.S. 116-143.3 alone may not provide the basis for receiving or conferring on another the benefits of G.S. 116-143.1(g), (h), (i), (j), (k), or (l).

d. Policy concerning federal personnel. The domicile of a person employed by the Federal Government is not necessarily affected by assignment in or reassignment out of North Carolina. Such a person may establish domicile for self and dependents by the usual requirements of residential act plus intent.

e. Policy concerning aliens. Aliens whether classified as "immigrant" or "nonimmigrant" are subject to the same considerations as citizens in the determination of residentiary status for tuition purposes unless either of the following pertains:

(1) The alien abides in the United States under a visa conditioned at least in part upon intent not to abandon a foreign domicile. B, F, H, and J visas are so conditioned. (The F visa is for students; the J visa is issued to students, researchers, and professors as well as others participating in programs of the Secretary of State.)

(2) The alien abides in the United States under a visa issued for a purpose so restricted as to be fundamentally incompatible with the assertion by the alien of bona fide resident intent. C, D, and M visas are deemed under this manual to be so restricted. (The C visa is issued to an alien for purposes of transit into and out of the United States; the D visa is issued to alien crewmen of vessels or aircraft for purposes incident to crew service; the M visa is issued for the period of time needed to complete a course of study.)

An alien is deemed to abide in the United States under a visa identified or described in subsection (1) or (2), above, even if it has been physically surrendered to Immigration authorities, until the alien is issued by Immigration authorities a document described in the next paragraph.

Documentation of absence of the visa restrictions identified above may include the following:

- (1) possession of an A, E, G, I, K, or L visa or an immigrant visa;
- (2) possession of Form I-151 (Alien Registration Receipt Card);
- (3) possession of Form I-551 (Temporary Evidence of Lawful Admission for Permanent Residence);
- (4) possession of Form I-94 (Arrival-Departure Record) endorsed to show parole status or refugee status;

116-143.3. Tuition of personnel in the armed services.--

(a) For purposes of this section the term "armed services" shall mean the United States Air Force, Army, Coast Guard, Marine Corps, and Navy; the North Carolina National Guard; and any Reserve Component of the foregoing. The term "abode" shall mean the place where a person actually lives, whether temporarily or permanently; the term "abide" shall mean to live in a given place.

(b) Any member of the armed services, upon qualification for admission to an institution of higher education as defined in G.S. 116-143.1(a)(3), shall be eligible to be charged the in-State tuition rate at that institution while abiding in this State incident to active military duty.

(c) Any dependent relative of a member of the armed services as defined by the Board of Governors of The University of North Carolina and by the North Carolina Board of Community Colleges while sharing the abode of that member shall be accorded the benefit available to that member pursuant to subsection (b), above, if the dependent relative qualifies for admission at an institution of higher education as defined in G.S. 116-143.1(a)(3). In the event the member of the armed services removes his abode from North Carolina during an academic year, the dependent relative shall continue to be eligible for the in-State tuition rate during the remainder of that academic year.

(d) The burden of proving entitlement to the benefit of this section shall lie with the applicant therefor.

(e) A person receiving the in-State tuition benefit solely by reason of this section shall not, during the period of receiving that benefit, qualify for or be the basis of conferring the benefits of G.S. 116-143.1(g), (h), (i), (j), (k), or (l).

APPENDIX C

Notice to Student

Your current residentiary classification, for purposes of applicable tuition rates, is required to be changed if, since original establishment of your current classification, your state of legal residence has changed.

(1) If you currently are classified as a nonresident for tuition purposes, it is your right to petition for a change in classification to that of resident if you claim that you are now and, for at least the twelve-month period immediately preceding the date of such petition, have been a legal resident of the State of North Carolina. If it is determined that in fact you have been a legal resident for the required twelve-month period, the effective date of change in applicable tuition rates shall be the beginning of the academic term next following the date of application for tuition change, provided, that a change in billing rate may be made retroactive to the beginning of an academic term during which application was made if the twelve-month period is found to have been satisfied as of the beginning of that term.

(2) If you currently are classified as a resident for tuition purposes, it is your obligation to petition for a change in classification to that of a nonresident if you have reasonable basis for believing that change in facts requires such a change in classification. Failure to fulfill this obligation may result in appropriate disciplinary action including, but not necessarily limited to, cancellation of enrollment. If it is determined that in fact you have become a nonresident, the effective date of change in applicable tuition rates shall be the next semester, quarter, or term following the date of change in facts which required the change in classification, unless you are deemed eligible to further enjoy the in-state tuition rate under the statutory twelve-month grace period.

If you claim eligibility, as a member of the armed forces or a dependent relative of such a member, to be charged the in-state tuition rate under G.S. 116-143.3, you must submit the appropriate application prior to initial enrollment or reenrollment for which you claim the tuition benefit. You must also submit the application prior to each successive academic year of enrollment.

Copies of the applicable North Carolina law and institutional regulations which govern these determinations are available in the _____
_____ for inspection upon request. You are responsible for being familiar with the contents of these two sources of regulation.

APPENDIX D

Application for the Benefit of the In-State Tuition Rate as a Member of the Armed Services or Dependent Relative Thereof

Under North Carolina General Statutes Section (G.S.) 116-143.3 certain members of the armed services and their dependent relatives may be eligible to be charged the in-state tuition rate whether or not they qualify as residents for tuition purposes under G.S. 116-143.1. The pertinent law and implementing regulations are available for inspection in the _____

and may be examined upon request. Included among the requirements are that the member of the armed services and a relative claiming the benefit through a member be living together in North Carolina incident to the supporting member's active military duty and that the applicant for the benefit qualify for academic admission at the pertinent institution.

This application must be submitted prior to initial enrollment in each academic year for which the in-State benefit is claimed.

DIRECTIONS

1. Respond to all questions within the part of the form that you are to complete. If any question is not applicable to your situation, write "Not Applicable" or "N/A."
2. Print or type all responses. If necessary, write "see attached" in the space provided, and use separate additional sheets, numbering your responses the same as the corresponding question and stapling or taping these sheets to this application form.
3. Be completely accurate to the best of your knowledge and understanding. Knowing falsification of your responses may subject you to disciplinary action including dismissal from the institution. When "date" is requested, give day, month, and year.
4. Sign and date this application where indicated to make those acknowledgments and certifications necessary to render this a viable application.

PART I. FOR APPLICANTS WHO ARE THEMSELVES SERVICE MEMBERS. (If you are not a member of the Armed Services, skip to Part II.)

1. Applicant's full name _____,
rank _____, serial number _____.
2. Social security number (voluntary) _____.
3. Date of birth _____.
4. Check that one of the following armed services in which you are currently serving on active military duty:
U. S. Air Force _____ U. S. Marine Corps _____
U. S. Army _____ N. C. National Guard _____
U. S. Coast Guard _____ U. S. Navy _____
Is this a Reserve Component of the indicated service? Yes ____ No ____.
5. What is your permanent duty station? _____
6. What is the street address or building location at which you are currently living? _____
7. At what institution do you wish the tuition benefit to apply? _____

8. Have you been academically admitted to the designated institution? Yes ____
No ____.
9. Beginning with what academic term are you seeking the tuition benefit? ____
10. Do the orders by which you were assigned to active military duty in North Carolina establish a date on which that duty will cease? Yes ____ No ____.
If "Yes," what is that date? ____.
11. Attach a photocopy of your military ID card.

PART II. FOR APPLICANTS WHO CLAIM THE TUITION BENEFIT AS DEPENDENT RELATIVES OF SERVICE MEMBERS.

1. Applicant's full name _____
2. Social Security number (voluntary) _____
3. Date of birth _____
4. What is the street address or building location at which you are currently living? _____
5. At what institution do you wish the tuition benefit to apply? _____
6. Have you been academically admitted to the designated institution? Yes ____
No ____.
7. Beginning with what academic term are you seeking the tuition benefit? ____
8. For the service member through whom you claim the tuition benefit, provide the following:
 - a. Full name _____
 - b. Rank _____
 - c. Serial Number _____
 - d. Date of birth _____
 - e. Branch of armed service (check one):

U. S. Air Force _____	U. S. Marine Corps _____
U. S. Army _____	N. C. National Guard _____
U. S. Coast Guard _____	U. S. Navy _____

 Is this a Reserve Component of the indicated service? Yes ____ No ____
 - f. Permanent duty station _____
 - g. Street address or building location at which the service member currently lives _____
9. Do the orders by which the service member was assigned to active military duty in North Carolina establish a date on which that duty will cease? Yes ____ No ____.
If "Yes," what is that date? ____
10. Is the service member through whom you claim the tuition benefit in receipt of orders for temporary assignment outside North Carolina? Yes ____ No ____.
If "Yes," what are the beginning and ending dates of that assignment?
Beginning _____, ending _____.
11. What is your relationship to the service member through whom you claim the tuition benefit? _____
12. Attach a photocopy of your military dependent ID card.

-- I hereby acknowledge that completion of Item 2 of Part I or II (Social Security number) is 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.

Applicant's signature

Date

Signature of parent or guardian (if applicant is under 18 years of age)

Date