

ADMINISTRATIVE MEMORANDUM

SUBJECT "Policies and Procedures of the State
Residence Committee" as amended January 9, 1991;
request for current residence classification
procedures of the institutions

NUMBER 300
DATE January 29, 1991

This Administrative Memorandum provides you the "Policies and Procedures of the State Residence Committee" as amended January 9, 1991. The substantive amendments are limited to the addition of language at sections D1d(7) and D1e(1), now on page 13, that establishes certain standards of format and legibility for records on appeal to the State Residence Committee. These amendments are the result of receipt by the Committee with increasing frequency of illegible and nonreproducible appeal materials. In addition, the attached "Policies and Procedures" reflect minor corrections of paragraphing and punctuation.

At this time I am also requesting that your institution provide to this office copies of any regulations or procedures that it has established for classifying students by residence for tuition purposes and for hearing appeals at the campus level of initial residentiary determinations. This request was last made to you by Administrative Memorandum Number 191, dated January 17, 1984. The request is being made again, at this time, to permit the State Residence Committee to undertake a current review of institutional classification and appeal processes, which the Committee is charged to make under section IIIG2b of the residence Manual. Materials should be submitted to Mr. David Edwards, Co-Chair, State Residence Committee, at General Administration.

This Administrative Memorandum supersedes Administrative Memorandum Number 227, dated October 21, 1985. Please give it appropriate distribution and response at your institution.


C. D. Spangler, Jr.

Attachment

Amended January 9, 1991

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 North Carolina State Board of Community Colleges 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 one member who shall be an attorney from State government and appointed by the two Presidents. 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 person to serve as secretary for 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, March, and May.

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:

F. 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.

The sole grounds for appeal to the State Residence Committee from the institutional decision on appeal shall be:

a. That the institutional decision was made in disregard of or mistake with reference to the requirements of law or Manual policy;

b. That Manual provisions as currently stated do not address a legal issue presented by the institutional decision;

c. That Manual provisions as currently stated are at variance with subsequently developed case law pertinent to the institutional decision;

d. That the institutional decision is not supported by an evidentiary record providing a reasonable basis for the conclusion reached; or

e. That the institutional decision on appeal was rendered after review by institutional appeal, as provided for hereinafter, and that the contrary, initial determination of resident status when viewed in light of the evidentiary record as augmented by review upon institutional appeal has a reasonable basis in the total evidentiary record.

Final disposition of an 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.

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 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 the institutional decision was made in disregard of or mistake with reference to the requirements of law or Manual policy;

(2) Whether Manual provisions as currently stated do not address a legal issue presented by the institutional decision;

(3) Whether Manual provisions as currently stated are at variance with subsequently developed case law pertinent to the institutional decision;

(4) Whether the institutional decision is not supported by an evidentiary record providing a reasonable 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.

(5) Whether the institutional decision was given review by institutional appeal and the evidentiary record as augmented upon review by institutional appeal provides a reasonable basis for the contrary, initial determination of resident status.

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 proper elements 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.

If the petitioner has stated a reason for the appeal in his or her notice of appeal, the petitioner may, in lieu of submitting a separate statement of appeal, 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 other than a recitation of the substantive information at issue.

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 the 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 Community Colleges (in the case of appeals from an institution which is a component of the Community College System). Because the institution will already have transmitted to the petitioner that part of the record on appeal designated in paragraph (2), above, as the "institutional record," the institution may choose to send to the petitioner at this time only those elements of the record on appeal not previously transmitted to the petitioner. The choice of the institution to do this shall be announced to the petitioner in writing when the remainder of the record on appeal is transmitted to the petitioner.

With the record on appeal but not as part of it, the institution shall transmit to the petitioner and to the appropriate office handling appeals for the State Residence Committee that information or materials that at the time of transmission continue to be the subject of a contention by the petitioner concerning proper constitution of the record on appeal. If the disputed information or materials are identified in the statement of appeal or in a separate writing, such statement or separate writing shall be transmitted in its original form, also, separate from the record on appeal. A statement of appeal or separate writing that identifies the disputed information or materials may appear in the

record on appeal only with the disputed elements deleted. The institution shall see that the record is composed accordingly.

(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 residentiary 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 residence status was made on the petitioner's application, before the petitioner's appeal is transmitted 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. If, however, the petitioner has contested the composition of the record on appeal and the contention continues to be asserted at the time that the record on appeal is transmitted pursuant to (5), above, the written statement of the institution may also address the petitioner's contention concerning composition of the record on appeal and its treatment by the institution.

(7) The institution shall transmit a record on appeal that is legible and capable of being duplicated in legible copies. The individual sheets of the record shall contain information on one side only and shall not be folded. The individual sheets in the record shall ordinarily be standard letter size (approximately 8 1/2 by 11 inches) and, where reasonably possible, the institution shall have reduced so-called "oversized" sheets to standard dimensions. The institution shall not reduce sheets of the record where reduction would produce illegible copies; the institution is not required to reduce oversized sheets when it does not have the necessary reduction capacity on campus.

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, including the determination that the record on appeal is in a form consistent with the requirements of section D1d(7), above;

(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 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 (30) 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 (15) 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 (10) days of the date of decision.

2. Change of circumstance 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 the institutions in the discharge of their statutory and Manual responsibilities and shall assess the adequacy of existing statutory Manual provisions. Any changes in policy or practice that would require action by the Board of Governors or the State Board of Community Colleges shall be the subject of recommendations from the State Residence Committee.

To assist the State Residence Committee to perform continuing oversight of administrative practices of the institutions in the residence classification process, each State institution of higher education shall maintain on file with the State Residence Committee an official description of current procedures used by the institution to classify students by residence for tuition purposes and to hear appeals from initial classifications at the campus level.