Summary

This policy summarizes and clarifies the State University of New York’s (SUNY) definition of residency for purposes of determining eligibility for in-state tuition at SUNY state-operated campuses.

Under the SUNY Board of Trustees regulations, a person (U.S. citizens, permanent residents, or certain non-immigrants) whose domicile has been in the State of New York for a period of at least one year immediately preceding the time of registration for any period of attendance shall be a New York resident for the purpose of determining the tuition rate payable for such period. All other persons shall be presumed to be out-of-state residents for such purpose, unless domiciliary status is demonstrated in accordance with these guidelines. 8 NYCRR §302.1(a)(5).

Notwithstanding a student's domiciliary status, a student will be considered a resident eligible for in-state tuition rates where so required under State or federal law. 8 NYCRR §302.1(a)(6). (See Section III (D) of this policy for exceptions to the domiciliary rule made by State or federal law).

Generally, a student's state of residency is considered the same as that of his or her custodial parent(s) or legal guardian(s), unless an exception under Section III(C) of this policy applies. Furthermore, students aged 24 and older are considered independent of their parents and are not deemed to have the same state of residency at their parent(s) or legal guardian(s).

Policy

I. In General

A. Standard
Students enrolled at University campuses are considered New York State residents if they have established their domicile in New York State one year immediately preceding the date of registration at the respective campus. The term “registration” is defined by individual campuses and will vary among the 29 state-operated institutions. A domicile is a fixed, permanent home to which an individual intends to return whenever absent. Determination of a student’s domicile will be based on the factors set forth in Section III. Students who have not established New York State as their domicile in the one year prior to registration may still be considered residents as described in Section B below.

B. Classifications

1. Persons domiciled in New York State for twelve months or more:

Financially independent students who have maintained their domicile in New York State for a period of at least twelve months prior to registration shall be considered New York State residents (See Section III(C) for financially dependent students with out-of-state parents or guardians). Persons who have been physically present in New York State for at least twelve months but have maintained a fixed, permanent and principal residence outside of New York State shall not be considered New York State residents.

2. Persons domiciled in New York State for less than twelve months:

Financially independent individuals who have maintained their domicile in New York State for a period of less than twelve months prior to registration shall be presumed to be out-of-state residents (See Section III(C) for financially dependent students with out-of-state parents or guardians). These individuals may challenge this presumption by presenting sufficient evidence to prove that they have made New York State their fixed, permanent and principal home. (See Section III(B) below)

II. Implementation

A. Applying for New York State Residency

Students who have not established a New York State domicile for a period of at least one year immediately preceding the time of registration and who wish to be considered eligible for in-state tuition must submit to the campus a standard Application for New York State Resident Status for Tuition Billing Purposes. The campus may require that the application be notarized. Additionally, in situations where the campus seeks to verify a student’s claim of residency, campus officials may request that the student complete this (or a similar) form. Any student who fails to complete the residency application, including the submission of all supporting documentation, after being requested to do so by a campus official, will be charged out-of-state tuition. A student applying for a change to in-state status must furnish all evidence that the student wishes the SUNY institution to consider at the time the application is due. The due date is based on the deadline set forth by the SUNY institution at which the student seeks to enroll.

B. Initial Determination of Residency

The initial determination of residency status should be based on the information provided by the student during the admissions process. For this reason, SUNY’s Application Services Center the (“ASC”) undergraduate application for admission includes a description of residence as follows: "If your principal or permanent home has not been in New York State for a 12-month period immediately prior to the date you intend to enroll, you will be considered an out-of-state student for tuition purposes." To promote consistency, all other application forms (graduate, professional, or any other non-ASC) should be revised to include this definition. In addition, all application forms should solicit information relative to a student's principal or permanent home for the previous twelve-month period.
C. Submission of Residency Applications

Each campus determines the date by which completed residency applications must be submitted in any given academic term.

D. Determination

A residency determination and any supporting documentation shall be placed in the student’s permanent file.

E. Appeals

Each campus shall establish an on-campus procedure for the appeal of residency determinations. The procedure for appeals must be published on the campus’ website. All decisions rendered by the campus appeals officer or board shall be final.

III. Guidelines for Determining Residence/Eligibility for Resident Tuition

A. Domicile

In order to determine residency status, the campus must ascertain whether the student or the student’s parent has established a New York State domicile. The following principles govern the determination of a student’s domicile:

1. A domicile is a fixed, permanent home to which a person intends to return following an absence.

2. A person may have multiple residences but only one domicile.

3. A person retains a domicile until it is abandoned and another domicile is established.

4. A person does not acquire a New York State domicile only by being physically present in New York for the sole purpose of attending a New York State campus.

5. A person does not acquire a New York State domicile solely by being physically present in New York State for a period of twelve months.

6. A student of divorced or legally separated parents is presumed to acquire a New York State domicile if:
   a. The custodial parent is a New York State resident; or
   b. The student resides with a non-custodial parent who is a New York State resident and the student intends to continue to reside with that parent throughout his or her attendance at the SUNY state-operated campus.
   c. The student meets the domicile requirements set forth in Section III(C), Students With Out-of-State Parents or Guardians.

Dependents of a parent or legal guardian who is a full-time active member of the U.S. Armed Forces stationed out-of-state will be considered NYS residents, provided that the parent or legal guardian submits proof of a New York State residency, referred to as a “Home of Record.” Such records are on file at the person’s military base. A home of record designated as part of military service can never be changed, other than if there was an error in the initial assignment or after a break in military service.
Civilian employees of the military and their dependents are not covered under this military “Home of Record” rule.

Civilian employees of the military or other federal agency who are required to work in a non-New York location may still establish domicile in NYS if they can show evidence of domicile listed in Section B below.

**B. Proof of Domicile**

Proof of a New York State domicile is demonstrated by documents that support an applicant’s contention that his or her permanent home is located in New York State, including but not limited to:

1. Duration of the student’s physical presence in New York State for purposes other than education;

2. State of residency of the student's family (i.e., parents, spouse or children). (Students whose parents or legal guardians are out-of-state residents may still qualify as in-state residents, see Sec. III.C or Sec. III D. 4. below);

3. New York State voter registration;

4. New York State driver's license or non-driver identification card (Note for civilian employees of the U.S. State Department working overseas, an international driver’s license issued by the State Department will not disqualify a person from establishing NYS domicile), and such New York State driver’s license or New York State non-driver identification card must have a New York address listed, and any student shall not have an out-of-state driver’s license and New York State non-driver identification card;

5. New York State motor vehicle registration;

6. Proof of ownership of New York State real property;

7. Residential lease for property in New York State;

8. New York State income tax returns;

9. New York State bank accounts;

10. Proof the applicant receives public assistance from New York State or from a city, county, or municipal agency in New York State;

11. Proof the applicant paid New York State income tax on all taxable income including all taxable income earned outside the State and has filed a New York tax return; and

12. For civilian employees of a federal agency who are working in a non-NY location, the “Home of Record” listed on their personnel records. Federal agencies do allow civilian employees to designate Home of Record or Home Leave, which is basically where the civilian employee intends to return after leaving federal employment. Evidence of this type of Home of Record does not carry the same weight of evidence of domicile as it does for military personnel, since it can be changed by the civilian employee. It can, however, be treated as one form of documentary evidence of domicile.

An applicant need not submit all of the above documentation in order to demonstrate a New York State domicile; however, the campus should examine the totality of the circumstances in each individual case and should have at least three forms of the above-referenced documentation.

**C. Students With Out-of-State-Resident Parents or Guardians**
Generally a dependent student’s state of residency is considered the same as their custodial parent(s) or legal guardian(s). Students aged 24 and older are considered independent of their parents and are not deemed to have the same state of residency as their parent(s) or legal guardian(s).

To be designated a New York State resident, a student with out-of-state parent(s) or legal guardian(s) must fall under an exception to the Domicile rule set forth in Section D below or present evidence of domicile in NY, and that either:

1. The student, despite being financially dependent on out-of-state parents or guardians, has changed their domicile. Such a showing must be made by clear and convincing evidence. Students who claim that New York is their domicile are expected to have a New York State driver’s license or New York State-issued identification card dated a minimum of twelve (12) months prior to the start of the semester, and a student shall not provide a New York State-issued identification card while holding any out-of-state driver’s license. The student shall not have an out-of-state address listed on the New York State driver’s license if such is to be used as proof of domicile. In addition, a student is expected to submit documentary evidence indicating he/she has changed his/her domicile to New York, such as the following:
   a. Evidence that the student has filed a New York State resident income tax return for the previous calendar year;
   b. Evidence that the student resided in the State of New York for at least twelve (12) months for other-than-educational purposes prior to attending SUNY;
   c. Evidence that the student resides in property owned by the student or his/her parent(s) or legal guardian(s) in the State of New York;
   d. Evidence showing that the student uses his/her New York address as their sole address of record for all purposes including on health and auto insurance records, bank accounts, tax records, loan and scholarship records, school records, military records, leases and similar kinds of documents.

2. The student is financially independent from their parents. Independent students are totally responsible for paying all of their educational costs. The amount of income claimed by the student must equal or exceed educational expenses, including those expenses associated with living in non-University housing. The term income includes any financial aid received as an independent student. Proof of this financial independence must be documented. Factors relevant to the determination of financial independence include, but are not limited to, the following:
   a. Employment on a full- or part-time basis within New York State;
   b. Sources and extent of financial support from parents or guardians;
   c. Sources and extent of other income;
   d. Parents’ federal and state income tax forms which do not claim the student as a dependent;
   e. Student’s place of residence during the summer or other academic term recess;
   f. Student’s status as financially independent for purposes of federal and/or state financial assistance;
   g. Independent filing by the student of federal or state income tax return; and
   h. Student’s assets and liabilities.

D. Exceptions to the Domicile Rule
Persons with the following status or participating in the following programs shall be accorded the benefits of in-state status for the period in which they hold such status or are engaged in such programs:

1. Members of the U. S. Armed Forces who provide documentation showing that they are on full-time active duty and stationed in New York State, regardless of the actual location of their domicile. Spouses and dependents of full-time active duty personnel stationed in New York State shall also be deemed New York State residents for tuition purposes. (Refer to NYS Education Law §355 (Regulation of Tuition Generally) and 8 NYCRR §302 (Tuition and Fees).

2. Individuals who meet the eligibility requirements for educational assistance under federal GI bills, even if the individual is not actually receiving or using such benefits. In order to prove veteran status, a student must provide U.S. Department of Defense Form DD214 or a Certificate of Eligibility from the U.S. Department of Defense or the Veterans Administration. (See Attached Chart)

3. Spouses and dependents who are eligible for educational assistance under federal GI bills. Generally, these are the spouses or dependents of service members who died or were disabled by their service, or to whom the veteran has transferred his/her veterans’ educational benefits. In order to prove status as a child or spouse of veteran, the child or spouse must provide a Certificate of Eligibility from the U.S. Department of Defense or the Veterans Administration. (See attached Military/Veteran Chart).

4. Individuals using education assistance under the U.S. Department of Veterans Affairs for the “Vocational Rehabilitation and Employment Program” (VR&E Program) (See 38 USC §3679(c).

5. Persons who:
   a. are not non-immigrant aliens within the meaning of 8 USC §1101(a)(15)(See Other Related Information below), and
   b. attended an approved New York State high school for two or more years, graduated from an approved New York State high school and applied for admission to SUNY within five years of receiving a New York State high school diploma; or
   c. attended an approved New York State program for a General Equivalency Diploma (GED) exam preparation, received a GED and applied for admission to the University within five years of receiving the GED; and
   d. If the student is without lawful immigration status, the student submits to the campus a notarized affidavit stating that the student has filed an application to legalize his or her immigration status, or will file such an application as soon as he or she is eligible to do so. (See NYS Education Law §355(h) (8)). Such affidavit shall be viewed by the appropriate campus official, and either destroyed or returned to the student. The appropriate campus official making the residency determination shall fill out a form indicating that the student has provided all the appropriate information to the campus if the student is then eligible for in-state tuition. (See attached Sample Form for Residency Determination)

For other information regarding programs for non-resident veterans that confer in-state tuition rates, see attached Military/Veteran Chart.

IV. Qualifying Immigrant Statuses and Non-immigrant Statuses

A. Lawful Permanent Residents (Resident Aliens)

Current Permanent Resident Status
Resident aliens may lawfully reside in the United States on a permanent basis. There are two acceptable methods for verifying status as a resident alien. The first method is that a student who has requested Federal financial aid, which has been verified by the Federal Financial Aid Central Processor, has his/her status automatically matched by the USCIS, which will be evident through SUNY’s coding of the student as a lawful permanent resident or resident alien. In that case, there is no need for a student to submit a Permanent Resident Card or any other form of documentation regarding permanent residence.

The second way a student can prove he/she is a resident alien if not confirmed through the above match is such student must present proof of their status by providing the campus with a Permanent Resident Card (formerly known as the “Alien Registration Card” and commonly known as a “green card”) prior to registration.

The following proofs are acceptable:

- Permanent Resident Card: Form I-151 (old) and Form I-551 (new). Expired cards may be accepted; or
- Unexpired Conditional Permanent Resident Card: Form I-551 with a two (2) year expiration date; or
- Receipt for USCIS Form I-751: Petition to Remove the Conditions on Residence; or
- Receipt for USCIS Form I698: Application to Adjust Status from temporary to Permanent Resident; or
- I-551 Stamp in Passport indicating evidence of lawful permanent residence. Expired stamps may be accepted; or
- Copy of USCIS Form I-90: Application to Replace Permanent Resident Card (old: Alien Registration Card), along with a U.S. Postal Service return receipt or with a cancelled check or money order.

Once a student’s immigrant status has been verified, the student may then establish New York State residency by meeting the criteria set forth in Section III (B).

**Pending Permanent Resident Status**

A student may also provide a valid application for permanent residency status and upon verification that the application is pending; the student may then also apply for New York State residency status. Proper documentation indicating that a valid application for permanent residency is pending includes:

- A receipt for USCIS Form I-485 (Adjust Status), which must include the petitioner’s name; or
- A USCIS Receipt Notice for the Adjustment of Status Application: Form I-797C indicating that the receipt is for an I-485 Adjustment of Status application; or
- A USCIS Receipt indicating that the fee for the adjustment application has been received. This receipt usually lists application type, name of applicant, alien number (“A” number) and the amount paid; or
- Employment Authorization Card (I-766) with the code (c)(9) or (c)(24)

Note: Students who filed or have an approved petition (Form I-130 or I-140), but have not yet applied for adjustment of status are NOT eligible for in-state or resident tuition.

**Dependent Student’s Parents With Immigration Status Permanently Abandon New York State Domicile**

In cases where a dependent student’s parents have established immigrant status but subsequently abandon their New
York State domicile, the student also loses New York State residency status and the in-state tuition benefit, unless the student can establish New York State domicile under the criteria specified above in Sec. III(C)- Students With Out-of-State-Resident Parents or Guardians

B. Students In Certain Non-Immigrant Statuses

The United States Supreme Court has held that certain non-immigrant aliens have the legal ability to establish New York as their domicile. Non-immigrant aliens are those aliens who enter the United States on a temporary basis for a specific purpose. Non-immigrants are grouped in categories depending on the type of visa presented at the port of entry. Non-immigrants admitted to the United States in categories which prohibit them from establishing a United States residence would not be eligible for in-state tuition. Non-immigrants included in categories which permit them to establish a United States residence may be eligible for in-state tuition if they meet the criteria set forth in Section III(B)(See lists below for categorization). To seek in-state tuition, persons included in non-immigrant alien categories permitting establishment of U.S. residency must provide documentation of residency in accordance with Section III(B), above.

Non-immigrant Status Eligible for U.S. Residency

The following is a list of the visa categories of non-immigrant aliens who under federal law have the capacity to make New York State their domicile and therefore may qualify for the resident rate of tuition if they otherwise meet the requirements:

- A – Ambassador, diplomats and certain other foreign officials and their families
- E – Treaty trader/Treaty investor, spouse and children
- G – Certain government or international organization officials and their families
- H-1B – Temporary worker in specialty occupation
- H-1C – Temporary worker performing essential nursing services
- H-4 – Spouse or children of alien classified as H-1B or H-1C
- I – Representatives of foreign information media and their spouse and children
- K – Fiancé(e) or Spouse of a U.S. citizen and dependent children
- L – Intra-company transferee (such as managers who have worked abroad for a branch of a U.S. firm) and their spouse and children
- N – Parents and children of certain officers and employees of international organizations who were in turn granted permanent residency as special immigrants
- O – Aliens who possess extraordinary ability in the sciences, arts, education, Business or athletics, motion pictures or television (Note: O-1 and O-3 visa holders are eligible, and O-2 visa holders are not eligible).
- R – Religious workers and their spouse and children
- S – Crime witnesses and their spouse and children
- T – Victims of severe forms of human trafficking
- U – Victims of serious crimes
- V – Certain spouses and children of lawful permanent residents who have a relative petition filed on their behalf before December 21, 2000 which has been pending for at least three (3) years

A student who is in one of the above categories must provide proof of such status by furnishing his/her I-94 Arrival/Departure record with either the notation Duration of Status (D/S) or an expiration date not yet reached.

Note on applications for extension of stay: Where a qualified non-immigrant has made a timely application for an extension of stay as evidenced by a filing receipt for USCIS Form I-539, he/she remains eligible for in-state tuition. To “timely” file an application means that a person must file the application before his/her current period of authorized stay expires.

Non-immigrant Status Not Eligible for U.S. Residency

The following visa categories of non-immigrant aliens do not qualify for the resident rate of tuition:

- B – Temporary visitors for business or pleasure
- C – Visitors in transit
- D – Crewmen
- E-3 – Certain specialty occupation professionals from Australia
- F – Academic students
- H-2 – Temporary workers performing special services
- H-3 – Trainees
- H-4 – Families of H-2 and H-3 visa holders (Note: H-4 family of an H-1B or H-1C are eligible)
- J – Exchange visitor (student, scholar, professor)
- M – Vocational students
- O – Aliens who possess extraordinary ability in the sciences, arts, education, Business or athletics, motion pictures or television (O-2 visa holders are the only O category ineligible).
- P – Athletes, group entertainers, reciprocal exchange programs
- Q – Participant in international cultural exchange programs
- TN – Temporary workers under NAFTA Trade Agreement

C. Students Admitted As Refugees, Or Granted Asylum, Or Granted Withholding Of Deportation Or Removal

Refugees and asylees may also reside permanently in the United States. Students submitting proof of refugee or asylee status or application pending status should be treated as immigrant aliens and permitted to provide evidence of a New York State domicile (See Related Information for Acceptable Documentation).

It should be noted that a person whose evidence of Refugee or Asylum status has expired is nevertheless eligible for in-state tuition. The following are acceptable proofs of this status:

- Decision from USCIS or the Immigration Judge granting Asylum or Withholding of Deportation or Removal; or
- Refugee Travel Document; or
- I-94 Arrival/Departure record with Employment Authorization Stamp and the notation “Asylum granted” or “Refugee granted”; or
- Employment Authorization Document (EAD or work permit) (I-766) with the following codes: (A)(3) for Refugee, (A)(5) for Asylee, and (A)(10) for Withholding of Deportation or Removal.
D. Temporary Protected Status

Foreign nationals may also be granted Temporary Protected Status (TPS) by the U.S. Department of Homeland Security. As long as the individual has TPS, he or she can establish domiciliary status, because the underlying non-immigrant visa status is superseded by the TPS. If the student loses TPS, he or she will revert to the underlying non-immigrant visa status, unless it changed. For example, an F-1 student who has TPS can establish domicile for the time she is in such status. If during the time the student is in school, she loses TPS, then she will revert to F-1 status, and would not be eligible to establish domicile. If her underlying status changed from F-1 to asylee or asylee pending, then she could continue to establish domicile and therefore be considered and in-state resident for the duration of her tenure as a student.

The following are acceptable proofs of this status:

- A USCIS Receipt of Application for TPS (Form I-821); or
- A USCIS letter granting TPS; or
- Employment Authorization Document (I-766) with the codes (a)(12) or (c)(19).

E. Undocumented Aliens and Others without Lawful Immigration Status

Pursuant to the Federal Immigration and Nationality Act (8 U.S.C. §1623), students who are unable to present valid documentation of their alien status are not eligible for in-state tuition rates. Effective July 1, 1998, aliens not lawfully present in the United States are not eligible on the basis of residence within a state for any postsecondary educational benefit unless citizens or nationals of the United States are eligible for the same benefit without regard to state residency. However, certain undocumented aliens or others without lawful immigration status may be eligible for the resident tuition rate pursuant to Section III(D) above.

F. Jay Treaty

The Jay Treaty grants dual citizenship to certain persons for the United States and Canada. Students with citizenship under the Jay Treaty, however, do not qualify for the resident rate of tuition because they cannot establish domicile in New York if they reside in Canada.

A student may rebut such presumption of ineligibility by providing documentation to establish eligibility for the resident rate of tuition under section III of the policy.

Definitions

**Domicile** – a fixed, permanent home to which an individual intends to return whenever absent.

**Home of Record (Military)** – a state of residency from which an individual enters military service. Once designated by the member of the military, it cannot be changed other than if there were an error in the initial assignment or after a break in military service.

**Home of Record or Home Leave (Civilian Employees of Federal Government)** – a state of residency designated by the individual civilian employee. This can be changed by the individual civilian employee.
Non-Resident – a person whose domicile is not New York State

Glossary of Immigration Terms – United States Citizenship and Immigration Services ("USCIS") (formerly "INS")

Other Related Information

The following link to FindLaw's New York State Laws is provided for users' convenience; it is not the official site for the State of New York laws.

NYS Education Law §6301 (Residency definition for tuition at community colleges)

In case of questions, readers are advised to refer to the New York State Legislature site for the menu of New York State Consolidated.

8 USC §1101(a) (15) (Definition of term, immigrant)(Shows nonimmigrant categories ineligible for exception in III.C (3))

8 U.S.C. §1623 (Limitations of eligibility of aliens)

22 CFR §41.12 (Classification symbols)

Summary of Acceptable Documentation (Please note that proper documentation indicating that a valid application for permanent residency is pending is identified in section IV (Immigrant Aliens) of this policy.)

Procedures

There are no procedures relevant to this policy.

Forms

Affidavit - Students Displaced from Puerto Rico and the U.S. Virgin Islands

Application for Residency Status/Resident Tuition Parts A, B, C

Military/Veteran Chart

Sample Form for Residency Determination

Affidavit - Students Displaced from the Bahamas

USCIS Document Verification Request

Authority

The following links to FindLaw's New York State Laws are provided for users' convenience; it is not the official site for the State of New York laws.

NYS Education Law §355(2)(h) (Regulation of Tuition Generally)

NYS Education Law §355(2)(h)(3) (Exception to domiciliary rule for military stationed in NYS)
NYS Education Law §355(2)(h)(8) (Exception to domiciliary rule for attendance in NYS high school)

In case of questions, readers are advised to refer to the New York State Legislature site for the menu of New York State Consolidated. Tuition, Fees and Charges (8 NYCRR 302)

State University of New York Board of Trustees Resolution 05-151, adopted September 20, 2005

History

Memorandum to presidents from vice chancellor and chief operating officer dated August 16, 2002.

Memorandum to presidents from the office of University counsel and vice chancellor for legal affairs dated October 1, 1991.

Memorandum to vice chancellor for finance and business and associate vice chancellor for marketing and enrollment management from University associate counsel dated June 18, 1998.

Memorandum to presidents from the office of University counsel and vice chancellor for legal affairs and office of the provost dated April 20, 1987.

Memorandum to presidents from the office of vice chancellor for finance and business and the office of University counsel and vice chancellor for legal affairs dated April 30, 1986.

Memorandum to presidents from the office of the chancellor dated April 15, 1983.

Memorandum to presidents from the office of the executive vice chancellor dated December 2, 1982.

Memorandum to presidents from the office of University counsel and vice chancellor for legal affairs dated April 24, 1979.

Appendices

There are no appendices relevant to this policy.