

# Residency Determination Service (RDS) Guidebook



## ***A policy guide on State Residence Classification for Tuition Purposes and State Financial Aid***

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## **I. Introduction**

### ***A. Purpose of the RDS Guidebook***

Under the authority of the North Carolina State Education Assistance Authority (SEAA), the Residency Determination Service (RDS) is charged with implementing the laws governing the classification of residence for tuition purposes and state financial aid eligibility. The purpose of this Guidebook is to outline the laws and policies necessary to accurately and effectively render residence classification decisions.

This Guidebook may also be used by students and their families to assist in understanding the legal and procedural requirements of resident classification for tuition purposes, and eligibility for the Legislative Tuition Grant, the Need Based Grants and Scholarships, and/or any other State-funded programs of financial assistance<sup>1</sup> at North Carolina's institutions of higher education.

### ***B. Administrative Authority***

The standards for determining resident status for tuition purposes are set forth in North Carolina General Statute section (G.S.) 116-143.1. Session Law 2015-241 authorized the SEAA to perform all functions necessary to apply the criteria in G.S. §116-143.1 using a coordinated, centralized process. Session Law 2015-241 also directed the University of North Carolina General Administration (UNCGA) and the North Carolina Community College System (NCCCS) to take the actions necessary to facilitate an orderly transition from the campus-based residency classification system to the coordinated and centralized process.

For a limited time, two separate processes for residency classification will be in place while RDS is implemented for undergraduate students (Phase 1) and then for graduate students (Phase 2). Both processes are derived from G.S. §116-143.1. For undergraduate and non-degree seeking students, the coordinated and centralized RDS process, conducted under the auspices of the SEAA, will be the administrative authority. For graduate level enrollment, the current campus-based process, subject to the applicable policies of UNCGA as set forth in the State Residency Manual, will be the administrative authority.

Once RDS is fully implemented for both undergraduate and graduate students, the SEAA will be the sole authority conducting residency classification for the state of North Carolina.

### ***C. Overview of Residence for Tuition Purposes and Eligibility for State Grants***

Three broad points may be helpful in understanding and implementing state law governing the determination of residency for tuition purposes at institutions of higher education:

- establishment of domicile in NC,
- duration of domicile in NC, and
- use of parent information as “prima facie,” or primary, evidence of domicile.

**First**, when determining residency for tuition and state grant purposes, there is a difference between residence and domicile. Residence is a place of abode, and may be either permanent

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<sup>1</sup> [G.S. 116-22\(2\),-43.5 Repealed by Session Laws 2011-145, s. 9.18\(c\), effective July 1, 2012.](#)

or temporary. By contrast, domicile is never temporary; rather, it is one's permanent, and primary established home. To be domiciled in a particular place, one must intend to remain there for an indefinite period of time (permanently), and it is the place where one intends to return if absent. A person may have many residences, but may only have one domicile at a given time.

For purposes of this Guidebook, "domicile" is synonymous with "legal residence." Domicile may be established by:

- *Birth*: In this case, a child has the domicile of his or her parents;
- *Law*: In these instances, domicile is defined by law, as in the case of a minor whose domicile is presumed to be that of his or her parents or legal guardians; or
- *Choice*: Upon reaching the age of adulthood (age 18), a person of capacity may independently establish a domicile in the state of his or her choice.

Evidence of North Carolina domicile for tuition purposes includes actions that would normally be characteristic and expected of any permanent resident. A variety of evidence is considered when evaluating requests for in-state tuition status; however, no single factor or combination of factors may be considered conclusive evidence of domicile. Below is an illustrative list of the kinds of information and conduct that may be considered as evidence in determining domicile; it should not be considered a checklist for establishing residency. Each residency determination request is considered on its own, and even those who meet each element below still may not qualify for in-state tuition:

- Living or not living in the home of one's parents
- Voter registration and voting
- Registering, licensing, and maintaining a motor vehicle
- Driver's license or state ID card
- Location of permanent employment
- Filing of North Carolina state income tax return
- Places where one resides during periods between academic sessions
- Location of personal property
- Property tax assessment
- Ownership of residential real property that is one's primary residence (including maintenance and payment of expenses associated with the property)
- Place from which one graduated from high school
- Place of residence prior to enrollment in an institution of higher education
- Sources of one's financial support
- Citizenship or immigration status

**Second**, generally speaking, state law mandates that only those who can demonstrate at least 12 months of uninterrupted domicile in North Carolina are eligible for in-state tuition and state financial aid. State law also places on applicants the burden of establishing, by a preponderance of evidence, that they are domiciled, rather than merely residing, in North Carolina. The 12-month (365 days) qualifying period begins at the time that a cluster of domiciliary acts is established as confirmed by valid evidence.

To be eligible to be determined as a resident for tuition purposes and state financial aid (in-state tuition and state grants), a person must establish that his or her presence in the State currently is, and during the requisite 12-month qualifying period was, for purposes of maintaining a bona fide domicile rather than of maintaining a mere temporary residence to enroll in an institution of higher education.<sup>2</sup>

In short, a 12-month presence in North Carolina, even when coupled with a declaration of intent to remain permanently, does not, in and of itself, entitle an applicant to in-state tuition. RDS still must evaluate evidence of domiciliary acts and make an independent determination of whether a bona fide domicile has been established.

**Third**, state law also makes the legal residence of an individual's living parent(s) or legal guardian prima facie evidence of the individual's legal residence.<sup>3</sup> This means that, at first view without further investigation or presentation of evidence, the legal residence of the applicant is the same as that of his or her living parent(s) or legal guardian. This evidence may be rebutted or reinforced by other evidence relative to the applicant's age and general circumstances. Generally speaking, for an applicant with non-resident parents, the older the applicant and more independent the applicant is from his or her parents, the more likely it is for the applicant to be able to demonstrate domicile in North Carolina.

The language of residency classifications includes many legal terms as well as certain lay terms which have a specialized meaning in the context of this Guidebook. North Carolina law clearly distinguishes “legal resident” from “resident for tuition purposes.”<sup>4</sup> A person may be a legal resident of North Carolina for certain purposes, such as voting, but might not meet all of the requirements under North Carolina law to be a resident for tuition purposes or state financial aid. In order to be a resident for tuition purposes and state financial aid eligibility, the person must meet the specific legal requirements under North Carolina laws which are described in this Guidebook. This is the basis upon which the classification of residency for in-state tuition and state financial aid eligibility is made.

## II. Laws Governing Classification Determinations

### ***A. Fundamental Principles of the Law of Domicile***

Since the benefit of in-state tuition and state financial aid is generally provided only to legal residents of North Carolina, understanding the legal principles of domicile is fundamental to a correct interpretation and application of North Carolina laws that regulate residency decisions. The primary North Carolina statute requiring domicile for in-state tuition purposes is G.S. 116-143.1. Primary rules and policies requiring domicile for the eligibility of state-funded financial aid programs are found within each program policy.<sup>5</sup> This Section outlines the

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<sup>2</sup> [G.S. 116-143.1\(c\)](#)

<sup>3</sup> [G.S. 116-143.1\(e\)](#)

<sup>4</sup> [G.S. 116-143.1](#)

<sup>5</sup> North Carolina State Education Assistance Authority. (2012). Rules Governing the North Carolina Need-Based Scholarship Program; North Carolina State Education Assistance Authority (2006). Rules Governing the Education Lottery Scholarship Program, Research Triangle Park, NC 27709.

fundamental principles of the law of domicile.

### 1. The Concept of Domicile

Domicile and its duration are the bases for determining resident status for tuition purposes and eligibility for state financial aid under North Carolina law. Residency status contains two basic elements: a person's residential presence in a state **and** that person's particular intent related to that presence.

Under North Carolina law<sup>6</sup>, residence and domicile are not the same. A person may have a residence in one location and his or her domicile in another. While residence is simply the actual location where the person is living at any particular time, domicile is the person's permanent, established home. If a person's actual residence and domicile are in different locations, the domicile is the location to which the person intends to return and remain either permanently or for an indefinite period of time. A domicile is not only a place where a person lives (a residence), it is also the place that the person intends to make his or her home.

A person may have many residences, but may only have one domicile. Once a person has established a particular residence as his or her domicile, it remains that person's domicile until she establishes a new domicile. The burden of proof in proving a change in domicile falls on the person claiming that there has been a change in domicile. To establish a new domicile, it must be shown that the person abandoned the first domicile with the intention not to return to it **and** established a new domicile with the intention of making the new residence a permanent home.

### 2. The Beginning Point of Inquiry in Determining Domicile

Generally speaking, state law mandates that only those who can demonstrate 12 months of uninterrupted domicile in North Carolina are eligible for in-state tuition.<sup>7</sup> This law applies regardless of the age of the student seeking residence classification. Under North Carolina law, the domicile of the student's living parent(s) or legal guardian is prima facie evidence of the student's domicile.<sup>8</sup> The student's domicile is therefore presumed to be that of his or her living parent(s) or legal guardian. In these cases, the student has the opportunity to either rebut (argue against) or reinforce (argue for) this legal presumption by the information he or she supplies to the RDS.

If a student has no living parents or legal guardian, there is no prima facie presumption of the student's domicile one way or the other to serve as the beginning point of inquiry in determining residency. In these cases, domicile is determined based on the information supplied by the student with no statutory presumption in favor of any particular piece of evidence.

With few exceptions, students under age 18 are presumed to have the domicile of their parents or legal guardians. Students who are age 18 or older have the legal capacity, whether they

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<sup>6</sup> [Hall v. Board of Elections, 280 N.C. 600, at 600-608 \(1972\)](#). The *Hall* case is a voting rights case; while subsequent court decisions have modified the law of domicile as it relates to [voting rights](#), the *Hall* decision can still be relied on for purposes of residence for tuition determinations. See, [Norman v. Cameron, 127 N.C. App. 44; 488 S.E.2d 297 \(1997\)](#).

<sup>7</sup> [G.S. 116-143.1\(b\)](#)

<sup>8</sup> [G.S. 116-143.1\(e\)](#)

choose to exercise it or not, to establish their own domicile. These students must, however, take affirmative steps to establish their own domicile in order for a domicile other than that of their parents to be recognized.<sup>9</sup>

### 3. The Nature of Domiciliary Evidence

A number of factors are considered when determining whether a student has established a domicile in North Carolina, as opposed to a mere temporary residence. First, the student must have capacity to establish residency. Second, intent to establish residency is considered and measured by objectively verifiable conduct of the student. The conduct of the student, taken in total, must demonstrate an intention to make North Carolina his or her permanent dwelling place. Third, the determination of domicile does not depend on one fact or a required combination of certain circumstances. The determination is made based on all the facts and circumstances taken together and viewed as a whole showing by a preponderance of evidence (more likely than not) that some particular location is the student's domicile. Oftentimes this evidence will include personal statements provided by the student regarding his or her intent to make a residence his or her domicile. While such statements are appropriate evidence to consider, there is no requirement that they be accepted at face value.<sup>10</sup> Students' personal statements should be considered carefully, but also cautiously even if there is no concrete evidence that the student is being untruthful. The student's conduct and actions taken toward establishing a domicile are generally of greater evidentiary value than personal statements, especially when the student's conduct and actions are inconsistent or in conflict with the student's statements of intent. Statements of a student's intent to take actions towards establishing domicile *at some time in the future* generally are not considered sufficient.

### 4. Weighing and Balancing Domiciliary Evidence; the Burden of Proof

For a student to be classified a resident for tuition purposes, the balancing of all the evidence must show that there is a preponderance of evidence supporting the student's claim of domicile. To satisfy this requirement, more of the evidence than not must consist of a cluster, focus or accumulation of favorable information that the student established a domicile in North Carolina at a point in time at least 12 months (365 days) prior to the residency determination.

As described above, under North Carolina law, a showing that the student's living parents or legal guardians are legal residents of North Carolina is prima facie evidence that the student is also a legal resident of North Carolina. As prima facie evidence, it is a favorable factor to be weighed along with all other information presented in reaching a conclusion. This presumption can be rebutted by other evidence to the contrary, such as in the case of a student who is an independent adult who has never been domiciled in North Carolina even if the student's parents have now established domicile in North Carolina.

The law requires examination not only *of what* actions a student took to establish domicile, but also *why* the student performed those actions. If the student has shown by express statements or other actions appearing in the record that his or her entry into the State was motivated by

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<sup>9</sup> [Hall, at 608.](#)

<sup>10</sup> [Norman v. Cameron, 127 N.C. App. 44, 50, 488 S.E.2d 297, 301 \(1997\)](#)

academic enrollment and that the stay in North Carolina is not for the purpose of making North Carolina his or her permanent home, then the student's intent behind the domiciliary actions must be taken as other than bona fide (good faith and genuine) domiciliary intent, and the request for residency determination for in-state status must be denied.<sup>11</sup>

### ***B. Special Rules under the Law of Domicile***

In addition to the fundamental legal principles of domicile discussed in Section A, above, the determination of domicile and residence status for tuition purposes is also affected by special rules set out in the North Carolina statutes. For some (but not all) of these rules, eligible out-of-state students remain classified as nonresidents but are charged the in-state tuition rate. These special rules are discussed in this Section and Section III, below.

#### **1. Minors**

Determining the domicile of a student who is a minor starts with the following basic common law principles:

- A person under 18 years of age is a minor under North Carolina law and deemed, under the common law, dependent on his or her parents for domicile.
- If one parent is deceased, the minor's domicile is that of the surviving parent.
- If a minor is an orphan and has no legal guardian, the minor's domicile is that of the person with whom he or she lives. Otherwise, the minor's domicile remains at the place where he or she last acquired a domicile through a parent or legal guardian.
- If a minor has been legally adopted, the minor's domicile is that of the adoptive parent(s) (the same rules concerning relationships between husband and wife regarding the domicile of a child also apply in the case of adoptive parents).

While these basic common law principles should be considered in determining the domicile of a minor, the specific requirements of the North Carolina General Statutes must be followed regardless of the common law principle, even if the statute appears to be inconsistent with or in conflict with the common law.<sup>12</sup> The primary North Carolina statute governing determinations of domicile in cases involving a minor is G.S. 116-143.1. This statute includes the general presumption (prima facie evidence) that the domicile of a minor is the same as that of the minor's living parent(s) or legal guardian(s).<sup>13</sup> G.S. 116-143.1 also addresses some specific circumstances involving minors:

#### **a. Divorced or Separated Parents**

If the minor's parents are divorced, legally separated, or otherwise living apart from each other, the minor's domicile is that of the parent who is legally entitled to claim, and in fact does claim, the minor as a dependent child for North Carolina individual income tax purposes.<sup>14,15</sup> To

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<sup>11</sup> *Id.*, at 50

<sup>12</sup> [Fain v. State Residence Committee](#), 117 N.C. App. 541, 544; 451 S.E.2d 663, 665 (1995); see also, *Biddix v. Henredon Furniture Industries*, 76 N.C. App. 30, 331 S.E.2d 717 (1985)

<sup>13</sup> [G.S. 116-143.1\(e\)](#); This presumption, which is rebuttable, is not limited to minors, but is applicable to persons of any age if the person is living with his or her parent(s) or legal guardian.

<sup>14</sup> [G.S. 116-143.1\(j\)](#)

<sup>15</sup> [The Tax Simplification and Reduction Act \(House Bill 998\)](#) was signed into law on July 23, 2013 and made significant changes to the individual income tax law for tax years beginning on or after January 1, 2014; RDS will use Federal Tax forms to validate a parent legally claiming a student

qualify under this provision, the parent claiming the minor as a dependent must also be a legal resident of North Carolina. The length of time the minor is deemed to be domiciled in North Carolina under this provision is the time period in which the parent claimed the minor as a dependent. For example, if the North Carolina resident parent claimed the minor as a dependent for three years, the minor is deemed to have been domiciled in North Carolina for three years.

Many minors who are deemed legal residents under the circumstances described in the paragraph above become adults (reach age 18) during their senior year in high school or in the summer between high school completion and enrollment in college. Practically speaking, most students in this situation are not in a position to establish a new domicile. Therefore, to preserve the domicile status conferred on a minor under the circumstances described above, the student retains his or her domicile status upon turning age 18 if that student then acts like a North Carolina resident as much as possible, and if the person enrolls at a North Carolina institution of higher education not later than the fall term after completion of education requirement for admission (usually high school graduation).

Under this provision, a person might accrue the 12-month period of North Carolina domicile necessary for resident tuition status in several ways, because periods of dependency on a resident parent, emancipated residence in North Carolina, and resident adulthood in North Carolina all may be pieced together to total the necessary 12 months (365 days).

Students living full time with a custodial biological parent in North Carolina may be considered to be domiciled in North Carolina (subject to meeting the requirements of G.S. 116-143.1) even if the student is not claimed as a tax dependent.

#### **b. The “Five-Year Rule” for Minors**

The “Five-Year Rule” for minors is a specific statutory provision relating to minors who have lived in North Carolina for at least five consecutive years with an adult relative other than their parents.<sup>16</sup> Also see the discussion of the “Five-Year” Rule for Non-Minors in Section B.1.c.2.)

Under this provision, the benefit of resident status for tuition purposes (not legal residence or domicile), is given to minors who, immediately prior to the beginning of the academic term in which they are enrolled and for which resident status is sought, have lived five or more consecutive years in North Carolina in the home of an adult relative, other than a parent, who is domiciled in this State; **and** for whom the adult relative has functioned during those years as a de facto guardian and has exercised day-to-day care, supervision, and control of the minor.

It is important to note that, under this provision, it is the actual care of the minor, not necessarily financial support of the minor, that is the determining factor (as opposed to the case of divorced or separated parents discussed above, where financial support as evidenced by a claim of dependent status for income tax purposes is the determining factor).

Under this provision, a minor may satisfy the five-year requirement by living with different

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on tax forms when needed.

<sup>16</sup> [G.S. 116-143.1\(k\)](#)

relatives (if all are domiciled in North Carolina) for shorter, but consecutive, periods of time that total or exceed the required five-year period. For example, the minor could live for two consecutive years with a grandmother and then the next three consecutive years with an uncle and satisfy the five-year requirement (assuming both the grandmother and the uncle acted as the de facto guardian of the minor during these periods).

This provision also addresses what happens when a minor who qualifies as a resident for tuition purposes under these circumstances becomes an adult. If a minor qualifies for, or is awarded, resident status for tuition purposes under this provision immediately prior to the minor's 18<sup>th</sup> birthday, the minor is deemed to be a legal resident of North Carolina when the minor turns age 18. A student who achieves legal resident status in this manner is deemed to have legal residency in North Carolina of at least 12 months' duration unless the student abandons his or her legal residence in North Carolina. Thus, achieving majority (turning age 18), whether before or after initial enrollment, does not, of itself, remove the benefit of in-state status under this provision. Only by abandoning his or her North Carolina domicile does the student lose the benefit of in-state status. (Note that the individual may not lose his or her resident status even then if the 12-month grace period discussed in Section III applies).

### **c. Emancipated Minors**

Under certain circumstances, a person who has not achieved the chronological age required by law for adulthood (in North Carolina, age 18) may be treated as an adult for legal purposes. Such a person, called an "emancipated minor," is legally capable of establishing a domicile independent of that of his or her parents, although he or she must still demonstrate that a separate domicile in fact has been established when seeking in-state status for tuition purposes.

In North Carolina, a minor becomes emancipated (in other words, a legal adult even if the minor is not yet age 18) in one of two ways: by a decree of emancipation issued by a District Court Judge in the minor's county of residence, or by becoming legally married. A minor under the age of 16 cannot become emancipated.<sup>17</sup>

In other states, emancipation might be achieved by other means, and as long as the minor is able to produce a court order, decree of emancipation, or other evidence of emancipation that is legally valid in that state, that minor shall have capacity to apply for in-state tuition with independent status.

A student asserting emancipation as part of a claim of domicile in North Carolina for tuition purposes must be able to present not only legally valid evidence of his or her emancipated status, but also all other information related to a claim of domicile as discussed elsewhere in this Guidebook.

## **2. The "Five-Year Rule" for Non-Minors**

It is important to note that the General Assembly has carved out an exception to the legal presumption that the student's domicile is that of his or her parent(s). If the student has lived in North Carolina for five consecutive years immediately prior to enrolling or reregistering at an

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<sup>17</sup> [See G.S. Chapter 7B, Article 35](#)

institution of higher education, the domicile of the student's parent(s) is not presumed to be the student's domicile (commonly referred to as the "Five-Year Rule"). The parent(s)'s domicile may be considered as part of the overall evidence of the student's domicile, but it cannot be considered as prima facie evidence of the student's domicile even if the student is a minor. In these cases, as with those of students who have no living parents or legal guardians, domicile is determined based on all the information supplied by the student. Additional information on the "Five-Year Rule" for minors is provided in Section II.B.1.b.

### 3. Members of the Armed Forces and Their Families

Active duty personnel in the armed services, and their spouse, dependent children and dependent relatives may be eligible for in-state tuition. An active duty member of the military<sup>18</sup> (and their eligible family members) who qualifies for admission to an institution of higher education in the State may qualify for in-state tuition in two ways:

- a domiciliary of the State, as attested by the state indicated on the member's Leave and Earning Statement (LES) for the most recent 12 months; or
- under a special provision of North Carolina and federal law requiring that non-resident active duty military personnel and their eligible family members be charged in-state tuition.<sup>19</sup>

Under the special in-state tuition laws for active duty military personnel and their eligible family members, if a non-resident member of the armed services is stationed in North Carolina because of his or her active duty military service, then the service member as well as his or her spouse, dependent children, and dependent relatives who are living with the service member shall be charged the in-state tuition rate along with any applicable mandatory fees. IRS rules are used to determine who qualifies as a dependent of a member of the military, and dependents must also comply with the requirements of the Selective Service System.

A person charged less than the out-of-state tuition rate solely by reason of this special provision shall not, during the period of receiving the reduced tuition benefit, qualify for or be the basis of conferring the certain benefits outlined in G.S. 116-143.1(g), (h), (i), (j), (k), or (l).

Active duty members of the armed services include those serving in the United States Air Force, Army, Coast Guard, Marine Corps, and Navy; the N.C. National Guard; and any activated Reserve Units of these military units. Military reservists (other than those of the N.C. National Guard) must be on active duty to qualify for the in-state tuition benefit. Unlike other military personnel, any member of the North Carolina National Guard, regardless of whether the person is a legal resident of North Carolina, is eligible for in-state tuition rate during the Guard member's period of service whether in a reserve or active status.<sup>20</sup> However, the in-state tuition benefit does not apply to the spouse or dependents of non-resident Guard members unless the Guard member is serving in North Carolina on active duty.<sup>21</sup> Non-domiciled spouses

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<sup>18</sup> [Under federal law, "active duty" is defined as a "member of the armed forces who is on active duty for a period of more than 30 days."](#) 20 U.S.C. 1015d, Sec. 135(d)

<sup>19</sup> [G.S. 116-143.3; 20 U.S.C. 1015d, Sec. 135\(a\)](#)

<sup>20</sup> [G.S. 116-143.1\(h1\)](#)

<sup>21</sup> [G.S. 116-143.3\(b\)](#)

or dependents of non-resident Guard members can become eligible for in-state tuition when (and only when) the member is activated for National Guard duty in North Carolina.

If a non-domiciled active duty member of the armed services or eligible family member qualifies for the in-state tuition rate and fees and his or her military status changes, the following rules apply:

**A. Reassignment**

If the active duty member is reassigned, meaning the member receives a “Permanent Change in Station” or “PCS orders” to a military base or installation outside of North Carolina, the service member and his or her spouse and dependent relatives will continue to be eligible for the in-state tuition rate as long as the service member, spouse, or dependent is continuously enrolled in the degree or other program in which they were enrolled at the time of reassignment. The service member’s dependent must continue to be a dependent to qualify for the benefit.

**B. Retirement**

If the active duty member retires, the service member and his or her spouse and dependent relatives will continue to be eligible for the in-state tuition rate as long as they remain continuously enrolled in the degree or other program in which they were enrolled at the time of retirement. The service member’s dependent must continue to be a dependent to qualify for the benefit.

**C. Honorable Discharge**

If the active duty member receives an Honorable Discharge (no other type of discharge will qualify), the service member is eligible for the in-state rate, if he or she establishes legal residency in North Carolina within thirty days of discharge and is continuously enrolled in the degree or other program in which he or she was enrolled at the time of Honorable Discharge. A dependent relative of an honorably discharged service member must establish legal residency within thirty days after the discharge, remain continuously enrolled in the degree or other program in which the dependent was enrolled at the time of discharge, and remain a dependent of the service member who is honorably discharged to continue to be eligible for the in-state rate.

A North Carolina resident does not lose in-state status simply by joining the armed services or by being assigned outside North Carolina by the military.<sup>22</sup> To determine whether a military member is a legal resident, consider the usual residency factors discussed elsewhere in this Guidebook. The domiciled active duty member who is assigned outside of North Carolina has the burden of proving that North Carolina residency has been maintained by providing documentation in support of that claim.

Federal law allows the spouses of military personnel to retain legal residency (domicile) in the spouse’s home state for voting and tax purposes after relocating from that state to accompany the military member when the military member is transferred to another state in compliance

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<sup>22</sup> [G.S. 116-143.1\(h\)](#)

with the military member's military orders. Being able to retain legal residency for voting and tax purposes may make it easier for the spouse to retain domicile status in his or her home state.<sup>23</sup>

An individual's eligibility to receive these military-related tuition benefits continues only so long as the requirements described in this Section, and any other applicable provisions of state and federal law, continue to be met. An individual's continued eligibility may be confirmed at regular intervals as determined by the institution. The definition of "continuous enrollment" discussed in this Guidebook does not apply to active duty military.

#### 4. Veterans

Under G.S. 116-143.3A certain veterans and other individuals entitled to federal education benefits under 38 U.S.C. Chapter 30 or 38 U.S.C. Chapter 33 may be eligible to be charged the in-state tuition rate and applicable mandatory fees for enrollment without satisfying the 12-month residency requirement under G.S. 116-143.1.

A veteran, under this provision, is a person who served active duty for not less than 90 days in the Armed Forces, the Commissioned Corps of the U.S. Public Health Service, or the National Oceanic and Atmospheric Administration (NOAA) and who was discharged or released from such service under conditions other than dishonorable.

A veteran will qualify if he or she meets **all** of the following criteria:

- The veteran lives in North Carolina and applies for admission to a North Carolina institution of higher education.
- Enrolls within three years of the veteran's discharge or release from the Armed Forces, the Commissioned Corps of the U.S. Public Health Service, or the National Oceanic and Atmospheric Administration.
- The veteran qualifies for, and uses, educational benefits pursuant to 38 U.S.C. Chapter 30 or 38 U.S.C. Chapter 33.
- The veteran provides the institution of higher education at which the veteran intends to enroll a letter of intent to establish residence in North Carolina.

A covered individual under this provision is defined as:

- A Veteran who lives in the state in which the Institution of Higher Learning (IHL) is located (regardless of formal state of residence) who enrolls in the school within three years of discharge from a period of active duty service of 90 days or more.
- A spouse or child of a Veteran using transferred benefits who lives in the state in which the IHL is located (regardless of his/her formal state of residence) and enrolls in the school within three years of the transferor's discharge from a period of active duty service of 90 days or more.
- A spouse or child of active duty member using transferred benefits who lives in the state in which the IHL is located (regardless of his/her formal state of residence).

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<sup>23</sup> [Military Spouses Residency Relief Act, P.L. 111-97](#)

- A spouse or child using benefits under the Fry Scholarship who lives in the state in which the IHL is located (regardless of his/her formal state of residence)The person qualifies for admission to the institution of higher education as defined in G.S. 116-143.1(a)(3) and enrolls in the institution of higher education within three years of the veteran’s discharge or release from the Armed Forces, the Commissioned Corps of the U.S. Public Health Service, or the National Oceanic and Atmospheric Administration.
- The person is the recipient of transferred federal educational benefits pursuant to 38 U.S.C. Chapter 30 or 38 U.S.C. Chapter 33.
- The person’s abode is in North Carolina.
- The person provides the institution of higher education at which the person intends to enroll a letter of intent to establish residence in North Carolina.

#### 5. Non-Military Federal Personnel, Volunteers, Missionaries, and Expatriates

The domiciles of non-military personnel employed by the Federal Government, volunteers with organizations that may require volunteers to work in locations outside of their home state, and missionaries and expatriates (individuals employed and living outside North Carolina) are not necessarily affected by assignment in or reassignment out of North Carolina.

Federal employees, volunteers, missionaries, and expatriates may establish domicile for themselves and their dependents by the usual requirements of residential acts plus intent. There is not, however, a specific statutory provision under North Carolina law that grants special residence status for tuition purposes for federal personnel (other than active duty military personnel and their families as discussed in the previous section above). Individuals employed by federal agencies such as the United States Foreign Service, State Department, and volunteers with government agencies such as the Peace Corps or expatriates transferred by an employer outside of the United States must establish and maintain domicile for tuition purposes under the general rules of domicile provided in this Guidebook.

Similarly, individuals who participate in programs such as Teach for America, or who are missionaries affiliated with religious organizations, may establish domicile in this state and maintain that domicile during their absence. There is not, however, a specific statutory provision under North Carolina law that grants special residence status for tuition purposes for these categories of individuals. As with non-military federal personnel, these categories of individuals must establish and maintain domicile for tuition purposes under the general rules of domicile provided in this Guidebook.

#### 6. Non-U.S. Citizens

Persons who are not U.S. citizens but who have certain visa and immigration statuses that grant them the legal ability to establish and maintain a bona fide domicile in this country are subject to the same considerations as U.S. citizens in determining residence status for tuition purposes. If it is later discovered that the person’s visa or immigration status was obtained fraudulently, the institution shall have the right to seek and collect payment of full, out-of-state tuition, along with fees and costs associated with such collection.<sup>24</sup>

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<sup>24</sup>See Section IV.C.1 for further information about providing fraudulent information related to residence for tuition purposes provided by any individual regardless of citizenship status [IV.C.1](#)

If a person possesses one of the types of documentation listed below, that person has capacity to (is legally able to) establish legal residence for tuition purposes; however, that person must still take the actions and have the intent necessary to establish legal residence as discussed elsewhere in this Guidebook. The following types of documentation enable a non-U.S. citizen who is legally present in this state to have the capacity to establish domicile:

- a. Evidence of **either** of the following:
  - A valid A-1, A-2, E-1, E-2, E-3, G-1, G-2, G-3, G-4, H-1B, H-1C, H-4, I, K-1, K-2, K-3, K-4, L-1A, L-1B, L-2, N, O-1, O-3, P-1, P-2, P-3, P-4, R-1, R-2, T-1, T-2, T-3, T-4, T-5, U-1, U-2, U-3, U-4, U-5, V-1, V-2, V-3, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 visa status (eligibility for in-state tuition under these visa statuses lasts only so long as the time frame of the authorized stay under the applicable visa status); **OR**
  - A pending Application to Adjust Status (Form I-485) **and** an approved Immigrant Petition (Forms I-130, I-360, or I-140).
- b. One of the following:
  - A Permanent Resident Card I-551; **OR**
  - A USCIS-issued notice of approval of Application to Adjust Status (I-485)<sup>25</sup>; **OR**
  - A current Conditional Permanent Resident Card (issued for a two year period).
- c. Refugee or asylum status with approval documentation or an Employment Authorization Document (EAD card) with the following category codes: Refugee status A-03, Paroled refugee status A-04, Asylee status A-05.
- d. Temporary Protected Status (TPS) with approval documentation or an Employment Authorization Document (EAD card) with the category code A-12 or C-19.

A non-U.S. citizen possessing an eligible document identified above is not deemed to have any special residential advantage. They are considered only to have the capacity and opportunity to claim and seek to prove eligibility for in-state tuition status under the same residential criteria and burden of proof that is required of U.S. citizens.

In making domiciliary determinations of non-U.S. citizens, RDS will consider the precise basis for any entry into the United States and its documentation as part of the residential information upon which to assess the non-U.S. citizen's claim of residence for tuition purposes. With respect to the 12-month (365 days) durational requirement of G.S. 116-143.1(b), claims to domicile of non-U.S. citizens possessing documents identified in any of the eligible classes set forth above should be assessed relative to a time frame beginning not earlier than the effective date of the pertinent documents. The 12-month (365 days) durational requirement must be met prior to the first day of the academic term for which the in-state tuition rate is requested.

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<sup>25</sup> USCIS Form I-181b (Memorandum of Creation of Lawful Permanent) was previously used as verification that an individual had been granted permanent resident status. The USCIS no longer issues Form I-181b so it is not accepted as verification of permanent status.

Non-U.S. citizens present in the United States under certain visa statuses such as tourists, visitors on business, and temporary foreign/international students do not have the legal capacity to establish a bona fide domicile in this country (and thus, not in North Carolina). As examples, holders of non-immigrant visa statuses such as B, C, D, F, J, M, Q, S, and TN visas (and dependent visas for spouses and children such as a TD visa) cannot establish domicile with these documents, in and of themselves, unless there is a change in their visa status. An Employment Authorization Document (EAD) is a document that provides non-U.S. citizens with the authorization to work in this country. An EAD, in and of itself, does not confer any immigrant or non-immigrant status and does not give the EAD holder the legal capacity to establish residency for tuition purposes in this state.

Deferred Action for Childhood Arrivals (DACA) students are not eligible for consideration as residents for tuition purposes. Under federal law, 8 U.S.C. § 1621, individuals with DACA status are not eligible to receive the benefit of in-state tuition unless a specific state statute provides otherwise<sup>26</sup>. North Carolina law does not provide for in-state tuition for these students.

There are additional special provisions under North Carolina law for certain non-U.S. citizens attending community colleges which do not apply to UNC institutions or private institutions that are described in Section III.

#### 7. Married Persons

Under North Carolina law<sup>27</sup>, married persons are neither favored nor disadvantaged by being married when determining domicile and classification for tuition purposes. The domicile of married persons is determined by the same basic procedure as for all other persons - on the merits of all collected relevant domiciliary information. The statute also makes clear, however, that the fact of marriage is relevant evidence to consider in a domicile determination. So, while a person is not precluded from establishing domicile in North Carolina solely because the person's spouse is not a legal resident of North Carolina, nor is a nonresident automatically domiciled in this state simply by marrying a North Carolina resident, the fact that an individual is married and the domicile of the person's spouse are relevant in determining that individual's domicile.

Although a nonresident cannot automatically achieve resident status simply by marrying a person domiciled in North Carolina, a nonresident person who marries a North Carolina legal resident may benefit from the length of time the person's spouse has been domiciled in this state. If the nonresident spouse becomes domiciled in North Carolina, the nonresident spouse may count the length of time the resident spouse has been domiciled in North Carolina for purposes of satisfying the 12-month requirement for in-state tuition<sup>28</sup>. The qualifying event must have occurred prior to the request for residency classification. Qualification for this benefit is determined by information provided by the applicant including the North Carolina resident spouse's residency information and legally valid marriage documentation.

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<sup>26</sup> [8 U.S.C. § 1621\(d\)](#)

<sup>27</sup> [G.S. 116-143.1\(f\)](#)

<sup>28</sup> [G.S. 116-143.1\(g\)](#)

North Carolina law grants certain tuition benefits to the spouses of some categories of individuals, namely members of the military (see Section II.B.3) and deceased or disabled Law Enforcement/Emergency Workers (see Section III).

#### 8. Independent

An independent is a person who is legally entitled to claim, and in fact does claim, himself or herself on income tax returns, is not claimed by another person as a dependent on that person's income tax return, and possesses sufficient funds to live and pay tuition and fees at the person's current residence classification without outside financial assistance. If a student qualifies as "independent" for financial aid purposes, that student's financial aid is not considered "outside financial assistance" for purposes of this Guidebook.

Generally speaking, a student cannot be approved as a resident for tuition purposes if that student is financially dependent upon his or her parent(s) or legal guardian(s) who are not legal residents of North Carolina. Parent-financed, parent-guaranteed, or co-signed loans are considered indicators of financial dependence by the student on the parents.

It is important to note that a person may not be financially independent for purposes of determining domicile even if his or her parents do not claim the person as a dependent for income tax purposes. Failure to claim a person as a dependent does not, in and of itself, establish that the person is in fact financially independent. Financial independence must be established through detailed inquiry by the RDS as part of the residence classification process. Factors relevant to the determination of financial independence include, but are not limited to, the following:

- Employment on a full- or part-time basis within North Carolina
- Current and prior year(s) income
- Sources and extent of financial support from parents or guardians
- Sources and extent of other income, including funds in the student's name but not earned by the student (such as educational funds, 529 accounts, and trust funds in the student's name). In general, this income is not considered earned for the purposes of proving independence.
- Parents' federal and state income tax forms which do not claim the student as a dependent for tax purposes
- Student's status as financially independent for purposes of federal and/or state financial assistance
- Independent filing by the student of federal or state income tax return
- Student's assets and liabilities
- Information provided by the student on the Free Application for Federal Student Aid (FAFSA) and all related documents

#### 9. Dependent

A dependent is a person defined as a "qualifying child" or "qualifying relative" for income tax

purposes by the Internal Revenue Code at 26 U.S.C. §152 (I.R.C.);C.F.R. §1.152-1.<sup>29</sup> Because the definition of “dependent” is very specifically defined by the Internal Revenue Service, IRS regulations should be consulted (See IRS Publication 501 (2009) and IRS Publication 17 (2009)). Under current law, to claim someone as a dependent for federal and state income tax purposes, the dependent must be a U.S. citizen, U.S. resident alien, non-resident alien, U.S. national, or resident of Canada or Mexico for some part of the year (there is an exception for certain adopted children). A person’s spouse is never considered that person’s dependent. To be a dependent for income tax purposes, the following factors must be satisfied:

- a. *Relationship*: The dependent must be the taxpayer’s son, daughter, stepchild, foster child, brother, sister, half-brother, half-sister, stepbrother, stepsister, or a descendant of any of these.
- b. *Age*: The dependent must be
  - i. under the age of 19 at the end of the tax year and younger than the taxpayer (or the taxpayer’s spouse if filing jointly); or
  - ii. under the age of 24 at the end of the tax year, a full-time student, and younger than the taxpayer (or the taxpayer’s spouse if filing jointly); or
  - iii. any age if permanently and totally disabled at any time during the year.

For purposes of this definition, a *full-time student* is one who is enrolled for the number of hours or courses that the enrolling institution considered to be full-time attendance. The student must be enrolled at the institution during some part of each of any 5 calendar months of the tax year (the 5 months do not have to be consecutive).

- c. *Residence*: The dependent must have had the same principal residence as the taxpayer for more than half the tax year (certain exceptions apply, including cases of temporary absences, children of divorced or separated parents, parents who live apart, and kidnapped children).
- d. *Support*: The dependent did not provide more than one-half of his or her own support for the year.
- e. *Tax Filing Status*: The dependent is not filing a joint income tax return for the year (unless only to claim a refund); if the parents of a child can claim that child but choose not to do so, no one else can claim the child (including the child himself or herself) unless that person’s adjusted gross income (AGI) is higher than that of the child’s parents.

The description of the factors outlined above provides the general requirements of dependency. IRS regulations should be consulted for more specific details and definitions.

It is important to note that a person still may be financially dependent on his or her parents for purposes of determining domicile even if his or her parents do not claim the person as a dependent for income tax purposes. Failure to claim a qualifying child or qualifying relative as a dependent does not, in and of itself, establish that the child or relative is in fact financially independent. Financial independence must be established through detailed inquiry by RDS as part of the residency determination process.

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<sup>29</sup> Future amendments to state and federal law and IRS regulations regarding the definition of dependent for income tax purposes are incorporated by reference into this Guidebook.

## 10. Legal Guardian

A legal guardian is a person who is court-appointed to act in the place of an individual's parent(s) (usually referred to as a "guardian of the person" or "general guardian"). A legal guardian may be appointed in cases where the minor's parents are deceased or have had their parental rights terminated. A legal guardian may also be appointed in cases involving juvenile abuse, neglect, or dependency, or where a juvenile has been determined to be undisciplined or delinquent – these cases do not require the death or termination of the parental rights of the juvenile's parents for a legal guardian to be appointed by the court. A guardianship ends when the person reaches age 18 or is otherwise emancipated.

For purposes of this Guidebook, there are other arrangements relating to the care of a minor that do not have the same legal status as a guardianship. A person other than a parent who claims the individual as a dependent for income tax purposes may not necessarily be the individual's legal guardian. Adoptive parent(s) are considered the individual's parent(s), not legal guardian(s). Persons other than the minor's natural parents who are awarded custody of the minor are "custodians," not legal guardians – custody may be awarded by a court for a variety of reasons, but legal guardianship is only awarded in cases of juvenile abuse, neglect, dependency, undisciplined, delinquency, or where the natural parents are deceased or have had their parental rights terminated.

### **III. Exceptions, Tuition Waivers, and Grace Period**

Other than the Active Military Benefit and the North Carolina National Guard, all exceptions and tuition waivers are handled at the campus level, not by RDS. Generally, the role of RDS is to determine whether a student is a resident or non-resident; the RDS role is NOT to determine the eligibility the student may or may not have for an exception or tuition waiver. The information in this section (Section III) is provided purely for informational purposes. If a student believes she may qualify for an exception, waiver, or the grace period the student should contact their campus for information.

#### ***A. Statutory Exceptions and Administrative Exceptions***

Multiple legislative exceptions are available to students with respect to residency classifications. These exceptions permit campuses to override students' tuition status and charge in-state tuition to students classified as non-residents. Because some exceptions are available based upon campus-specific conditions, such as enrollment, RDS cannot provide final answers with respect to eligibility since RDS does not have insight into those campus-specific factors. To assist campuses in identifying students who *may* be eligible for an exception, RDS poses questions regarding some exceptions based on the information a student provides during her online interview – RDS does not determine if the student is eligible. It is a campus responsibility to determine eligibility for the below benefits.

1. Veteran's Choice Act – A full description of this benefit for certain veterans is on Page 14.<sup>30</sup>

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<sup>30</sup>[G.S. 116-143.3\(A\)](#).

## 2. Full-Scholarship Students

Regardless of any other legal requirements relating to residence classification for tuition purposes, the Board of Trustees of a constituent institution of The University of North Carolina is authorized to adopt a resolution recognizing as residents of North Carolina all persons who receive full scholarships to that institution from entities recognized by the institution. This benefit is only available to undergraduate students who are receiving full scholarships other than athletic scholarships (non-resident students receiving full athletic scholarships are not eligible for in-state tuition status under this provision). Students who qualify for this benefit shall be considered residents of North Carolina for all purposes by The University of North Carolina. Under this provision, “full cost” means an amount calculated by the constituent institution that is no less than the sum of tuition, required fees, and on campus room and board. A “full scholarship” means a grant that meets the full cost for a student to attend the constituent institution for an academic year. The source of the scholarship funds cannot be the institution itself (although private endowment funds are allowed) or state or federal financial aid grants.<sup>31</sup>

## 3. UNC Employees and Their Families

Permanent full-time employees of the University of North Carolina who are legal residents of North Carolina qualify as residents for tuition purposes even if they have not maintained legal residency for the required 12 consecutive months prior to residence classification. Spouses and dependent children (using income tax dependency as the standard) of full-time UNC employees who are legal residents also qualify for this benefit. There is no limit on the number or type of courses for which this benefit will apply.<sup>32</sup>

### **B. UNC Specific Exceptions**

The General Assembly has enacted laws that grant resident status for tuition purposes to certain categories of students attending UNC institutions. These special tuition rules do not apply to students attending constituent institutions of North Carolina Community College System.

- Full-Scholarship Students
- 

### **C. North Carolina Community College Specific Exceptions**

The General Assembly has enacted laws that grant resident status for tuition purposes to certain categories of students attending community college programs. These special tuition rules do not apply to students attending constituent institutions of The University of North Carolina.

- Business-Sponsored Students

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<sup>31</sup> [G.S. 116-143.6](#); UNC Policy Manual, Sec. 900.4[G].

<sup>32</sup> [G.S. 116-143.1\(m\)](#).

- Business- and Military-Transferred Families
- Students Sponsored by a Non-Profit Entity
- Public School Graduates
- Refugees
- Nonresident of the United States
- Federal Law Enforcement Officers

#### ***D. Tuition Waivers***

Some categories of students are entitled to a waiver of tuition charges for attendance at public institutions. In these cases, eligible students must still be domiciled in North Carolina in order to be considered for the tuition waiver. The role of RDS is to determine whether a student is a resident or non-resident; the RDS role is NOT to determine the eligibility the student may or may not have for a tuition waiver. All tuition waiver eligibility reviews are handled on the campus. The following categories of persons may be eligible for tuition waivers:

- Survivors of Deceased Law Enforcement/Emergency Workers
- Families of Disabled Law Enforcement/Emergency Workers
- Wards of the State
- University Employees
- High School Students (Career and College Promise)
- Other Community College Tuition Waiver Programs

#### ***E. Grace Period***

If a person has been properly classified as a resident for tuition purposes and enjoyed that status while enrolled at an institution of higher education in this state, a change in that person's state of residence does not result in an immediate, automatic loss of entitlement to the in-state tuition rate. Students in this situation are allowed a "grace period" for tuition during which the in-state rate will still be applicable even though the student is no longer a legal resident of North Carolina. The grace period can apply under certain circumstances both to currently enrolled students as well as to students who are no longer enrolled or who have graduated. The grace period does not apply to state funded financial aid. Grace periods are handled at the campus level.

### **IV. RDS Residency Procedures**

It is the role and responsibility of RDS to classify each student as resident or non-resident for purposes of tuition and eligibility for state financial aid. Students are provided four opportunities to have their classifications reviewed: Initial Consideration, Reconsideration, RDS Appeal, and SEAA Appeal. Initial consideration, reconsideration, and appeal of residency decisions by the RDS and SEAA are binding on all North Carolina higher education institutions for undergraduate admissions and/or state financial aid.

It is the student's responsibility to provide the information and documentation necessary to support his or her claims for residency in accordance with the applicable deadlines outlined in this document. Supporting documents should show evidence of the student's physical presence in North Carolina for the requisite amount of time and creation of his or her domicile in North Carolina. The burden of proof is on the student.

### **A. Validation**

As part of the residency determination process, RDS validates the accuracy of the information provided in the RDS online interview with federal and North Carolina state agencies. All students are required to provide a unique identification number such as social security number (SSN), individual taxpayer identification number (ITIN), alien registration number (ARN/A-number), or US Citizenship and Immigration Service number (CIS) to complete a residency determination. Identification numbers may also be required for parents and/or spouses, dependent upon the information provided during the online interview. If a student is unwilling to provide one of these identification numbers, RDS is unable to validate the information with federal and state agencies and the student will be classified a non-resident for tuition purposes and eligibility for state financial aid. RDS conducts electronic validation with the following entities:

- North Carolina Department of Commerce, Division of Employment Security
- North Carolina Department of Health and Human Services
- North Carolina Department of Public Instruction
- North Carolina Department of Revenue
- North Carolina Department of Transportation
- North Carolina Grant System
- North Carolina State Board of Elections
- United States Department of Defense
- United States Department of Education Central Processing System
- United States Department of Homeland Security
- Third party data aggregators under contract with RDS

### **B. Residency Certification Number (RCN), Expiration, and Gap in Continuous Enrollment**

Students receive a Residency Certification Number (RCN) upon completing the RDS residency determination process. The RCN is unique to the student and provides confirmation that the student has completed the RDS residency determination process. When a student applies for admission and/or a state grant at any NC college, the college may ask for the student's RCN in order to request her residency determination from RDS. Colleges use the RDS residency classification to determine the student's tuition rate and eligibility for state financial aid.

A student's RCN never changes; even if a student requests a reconsideration or appeal and the classification is changed from nonresident to resident, the RCN remains the same. Residency classifications are valid for 15 months (455 days), and only need to be completed once as long as the student maintains continuous enrollment.

Continuous enrollment, for purposes of RDS, means a student is consecutively enrolled at the same North Carolina higher education institution in fall and spring semesters. The course in which a student is enrolled must be creditable toward a degree, diploma, or certificate for which tuition is charged. A gap in continuous enrollment for RDS occurs when a student is not enrolled in two consecutive semesters (i.e. fall and spring or spring and fall). After a gap of continuous enrollment students are required to request a residency classification again. Students are not required to be enrolled during the summer term(s) to maintain continuous enrollment for purposes of RDS.

### **C. Initial Consideration**

The initial consideration is the first step in the residency process. Every applicant is initially classified as either a resident or nonresident. Applicants for admission to a state supported college or university and students seeking to establish their eligibility for state grants may complete the initial residency consideration process before, during, or after submitting an application for admission. The majority of students will complete only this first step in the residency determination process and will be finished with RDS after initial consideration. RDS will share the student's classification with each school, ensuring consistency across schools.

Once the initial consideration is made, the initial classification is not changed unless a student fails validation or the classification is reversed through the reconsideration or appeal process. The initial consideration by the RDS (as well as any subsequent reconsideration) is binding on all institutions of higher education in North Carolina. A student who is initially classified as a nonresident and believes he or she meets the requirements of G.S. 116-143.1 or any other applicable laws may request a reconsideration or an appeal to RDS following the deadlines and procedures outlined in this Section.

Some special circumstances involving initial classifications are worth noting:

#### **1. Fraudulent residence requests**

A residency determination request is fraudulent if the student falsifies information concerning legal residence and/or a knowingly withholds correct residential information. RDS will re-examine a residency determination request suspected of being fraudulent, make a residency redetermination, and change the residency classification of the student, if warranted, retroactively to the effective date in which the fraudulent residency request was originally made. If a retroactive change is made the campus will be notified and the student *shall* be responsible for the tuition differential (the difference between the in-state and out-of-state tuition rate) for the enrolled term(s) intervening between the fraudulent claim of residency and its discovery. Providing false information with regard to any response made to any RDS request for information may subject the individual to disciplinary action, up to and including dismissal from the institution.

#### **2. A change in facts relative to a student's in-state residence classification**

After a student is classified initially as a resident for tuition purposes, there may be changes in facts or circumstances that would affect this classification. It is the responsibility of the particular student to notify RDS of these changed facts or circumstances. Enrolled students initially classified as a resident for tuition purposes and state financial aid eligibility will be granted a 12-month grace period beginning with the date of the residency event causing reconsideration. If the 12-month period ends during a semester or academic term, the grace period extends to the end of that semester or academic term.

#### **3. Initial Consideration Procedures**

The following information provides the general process for completing an initial consideration residency determination request.

- A. Students can access RDS to request an initial consideration in one of three ways:
- Directly from the homepage of the RDS website ([www.ncresidency.org](http://www.ncresidency.org))
  - From their CFNC account (students must be logged in) using the CFNC Applications Hub
  - Directly from their admissions application through links provided by the campus to which they are applying
- B. To begin the initial consideration, a student will be requested to login using their CFNC account information and confirm their profile. If the student does not have a CFNC account, and does not wish to create an account, the student may complete an “express” profile. Once the student has set-up an express profile or logged in and confirmed her information in CFNC, she will be directed to review the RDS Consent and Authorization and will then begin the initial consideration online interview. Students will be asked a series of questions regarding physical address, time living in NC, and other domiciliary acts.
- C. Students have **25 calendar** days to complete the online residency interview in full and have the ability to start, stop, and come back to the online interview as needed. If the completed interview is not submitted within **25 calendar days**, the request will be cancelled and the student will be required to begin another initial consideration request when she returns.
- D. Most students will receive a residency classification of “resident” or “non-resident” and a tuition classification of “in-state” or “out-of-state” immediately following their initial consideration request. These classifications will appear on the screen and be emailed to the student’s email account listed in the profile. Students will also have the ability to print or save the classification information. Some students may be identified as a non-resident but still be classified for in-state tuition based on their circumstances (such as Active Duty Military).
- E. If the student receives a “non-resident” classification, the student has the option to complete a reconsideration or appeal request. Information on reconsiderations and appeals can be found below in this Section.
- F. If the student receives a “resident” classification, the classification is contingent upon passing validation and the submission of any required documentation. Students may upload, fax, or mail document(s).
- **Validation:** RDS will validate information provided by the student. This validation confirms the accuracy of information provided in the RDS online interview both electronically and manually through required documentation. If the student fails validation, the student’s residency classification will change from “resident” to “non-resident” and the student and campus will be notified.
  - **Required documentation:** If a student is required to submit documentation to support the RDS classification, a listing of required documents will appear on the student’s determination screen at the end of the interview. Not all students will be required to submit documentation. The student has 25 calendar days from the date of their initial consideration for documentation to be RECEIVED by RDS. If the documentation is not submitted and received by RDS within 25 calendar days, the student’s residency classification will change from

“resident” to “non-resident.” No extensions are permitted with documentation deadlines.

- Uploading documents is the fastest and easiest way to submit documentation. If students choose to fax or mail documentation to RDS, the student should log back in to RDS and verify the documentation faxed or mailed is attached to their account. RDS is not responsible for missing faxed or mailed documents.
- Students choosing to fax or mail documents must use the cover sheet provided on the student’s home screen. This cover sheet ties the student’s documentation to the student’s account when received at RDS.
- **The 25 calendar day deadline INCLUDES time for receiving and processing faxes or mailed documentation. Allow at least three days for RDS to receive and process faxes and at least seven to ten days for RDS to receive and process mail.**
- Do not mail original documents. Paper documents will not be returned and RDS is not responsible for missing mail.

G. Campuses will ask students to provide the RCN they receive as part of the RDS process. Campuses use the RCN to download students’ residency status data. If a student requests reconsideration or appeal, the student needs to notify their campus that their determination has been changed or updated. It is the responsibility of the student to provide the RCN to the campus. If the student does not provide an RCN, the campus will bill the student as a non-resident.

#### ***D. Reconsideration***

The RDS reconsideration process is for students who:

- need to correct certain errors in the data submitted during the RDS online interview,
- have had a change in personal circumstances since completing their current determination
- did not submit the required documentation within the initial consideration deadlines, or
- were requested by their campus to complete a reconsideration.

Students who request reconsideration will be required to complete the online interview again.. Submitting a request for reconsideration does not guarantee the residency classification will change from non-resident to resident. Students are limited to three reconsideration requests every 90 days.

Unlike an initial consideration, students requesting reconsideration will be required to submit documentation identified during the interview along with the reconsideration request. As with any other RDS request, students have 25 calendar days to complete the submission process. If the reconsideration request and required documentation is not submitted within the time allotted, the student’s request will be cancelled and his status will remain non-resident. As with the initial consideration, RDS will validate the answers provided in reconsideration with state and federal agencies. Students may be contacted to provide additional documentation

upon review of the reconsideration request. RDS will review requests in the order they are received.

### 1. Reconsideration Procedures

The following information provides the general process for completing a reconsideration request.

- A. Student logs in to RDS (accessed via CFNC, a campus admissions application, or on the RDS website) with their RDS user name and password.
- B. On the student's primary RCN screen, click the "Think You Determination is Incorrect? Click Here." text.
- C. Select the Reconsideration option
- D. Indicate the specific reason for requesting reconsideration by selecting at least one of the approved reasons from the list provided. If the student has experienced multiple changes, the student may select more than one.
- E. Student completes the RDS online interview based upon the current situation.
- F. Once initiated, students have 25 calendar days to complete the reconsideration request in full and have the ability to start, stop, and come back to the online interview as needed. If the request is not submitted within 25 calendar days, the request will automatically be cancelled and the student's status will remain unchanged. Note that a request for reconsideration cannot be submitted until all required documentation is provided. Students should account for this in planning their submission.

Required documentation: If a student is required to submit documentation to support the RDS classification, a listing of required documents will appear on the student's RCN screen. Not all students will be required to submit documentation. The student has 25 calendar days from the date of their initial consideration for documentation to be RECEIVED by RDS. If the documentation is not submitted and received by RDS within 25 calendar days, the student's residency classification will change from "resident" to "nonresident." No extensions are permitted with documentation deadlines.

- Uploading documents is the fastest and easiest way to submit documentation. If students choose to fax or mail documentation to RDS, the student should log back in to RDS and verify the documentation faxed or mailed is attached to their account. RDS is not responsible for missing faxed or mailed documents.
  - Students choosing to fax or mail documents must use the cover sheet Provided on the student's home screen. This cover sheet ties the student's documentation to the student's account when received at RDS.
  - The 25 calendar day deadline INCLUDES time for receiving and processing faxes or mailed documentation. Allow at least three days for RDS to receive and process faxes and seven to ten days for RDS to receive and process mail.
  - Do not mail original documents. Paper documents will not be returned and RDS is not responsible for missing mail.
- G. Once the reconsideration request is submitted, RDS will validate the answers provided with state and federal agencies, review the request and any documentation, and make

a determination. Status of the RDS review will be available on the student's home RCN page in RDS. The student will be notified of the reconsideration decision via email and also online in the student's RDS account.

- H. It is the student's responsibility to notify their campus of any change in classifications. Once the campus is notified, the campus will have access to any change in classification and the effective date and the campus is to download this data. This effective date is the exact date the student submits a completed reconsideration request. This date is critical for the school and student to determine which academic term a residency change (and any resulting change in tuition rate) should be applied. RDS does NOT set the campus deadline for determining the date or term in which a change in residency status applies; RDS only provides the date in which the reconsideration request was submitted in full. It is a campus responsibility to assign the academic term of a residency change.

Should the student receive the same classification through the RDS reconsideration process and disagree with the reconsideration classification, then the student has the option to request an RDS Appeal.

#### ***E. RDS Appeal***

The RDS Appeal process is for students whose circumstances have not changed but who believe their residency classification is incorrect. Students have the ability to provide additional information and documentation relating to their appeal request and participate in a face-to-face appeal hearing with RDS should it be needed.

**Students have ten calendar days from the date of the determination they are appealing, or a status change due to a failed validation, to submit a Notification of Appeal through the RDS online system.**

Should the student miss the appeal deadline, the student can request a Reconsideration and then an RDS Appeal. Requests for appeals are not accepted after the deadline and the student's classification will remain non-resident. In order to submit a Notification of Appeal, students are required to complete all of the following:

- Read an overview of the appeal process;
- Read the RDS Guidebook;
- Read the North Carolina state laws specific to residency for tuition purposes; and
- Certify they have read the required appeal information.

These reviews provide students with basic information about what is relevant to determining residency and help them develop a more complete and accurate appeal. All of the information a student provides during the online interview and through supporting documentation is taken into consideration and is used to determine whether a preponderance (or greater weight) of evidence supports the establishment of North Carolina domicile at least 12 months prior to a request for residency.

## 1. RDS Appeal Procedures

The following information provides the general process for completing an RDS appeal.

### A. **Completing a Notification to Appeal**

- Log into RDS (accessed via CFNC, a campus admissions application, or on the RDS website). On the Residency Status screen, click the “Reconsideration/Appeal” button.
- Select the “RDS Appeal” option.
- Review the appeal information: an overview of the appeal process, the RDS Guidebook, and the North Carolina state laws specific to residency.
- Certify review of the required information and submit the Notification of Appeal. **Student has 10 calendar days from the date of the determination they are appealing, or a status change due to a failed validation, to complete this step.**
- Once the student has submitted the Notification of Appeal, the student has 25 days to complete the RDS Appeal.

### B. **Completing an RDS Appeal Request**

- Following the Notification of Appeal submission, the student is directed to the RDS appeal request. Students have the ability to complete the request immediately following the Notification to Appeal submission or may log back into RDS at a later day and time to complete the remainder of the RDS appeal request. Students have 25 calendar days from the date of the Notification to Appeal submission to complete the appeal request AND provide documentation relevant to their appeal. Requests for appeals will not be accepted after 25 calendar days from the date of the student’s Notification to Appeal submission.
- To complete the RDS Appeal, answer the following questions:
  - Why are you requesting an RDS Appeal?
  - List all high schools and/or institutions you have attended in the last five years and the dates of enrollment. If you have not attended high school or college within the last five years please enter the State in which you graduated high school.
  - Were you born in NC?
  - Have you ever moved from North Carolina and then returned to North Carolina?
  - Please provide any additional circumstances, events, or acts including employment, community service, memberships, professional, civic, religious and social organizations that demonstrates how you have made and continue to make North Carolina your permanent home.
  - Do you have additional information you would like to provide in support of your appeal?
  - If needed, would you like to participate in a 30 minute appeal review with RDS staff?

- Provide any other details about the situation that supports the appeal. Include details of any specific additional documents being provided in support of the appeal.
- Provide any required documentation listed on the appeal request. Not all appeals will require documentation.
- Provide the additional documentation specified in the narrative. Do not include documents that have not been explained as part of the appeal request narrative.
- Submit the appeal request.
  - A request for appeal cannot be submitted until all identified documents (required and optional) are provided and linked to the request. Students may upload the document(s) directly to their request and submit the request immediately.
  - Students choosing to fax, or mail documents as part of their appeal **MUST** log back into RDS and click submit once documents have been received and processed by RDS. **RDS has no way to know if a student is providing non-required documentation. Therefore, if a student chooses to fax, or mail documentation the student MUST log back in to RDS, verify the documentation is processed, and submit the appeal request.**
  - The 25 day deadline for RDS to receive the documentation INCLUDES time for receiving and processing faxes or mailed documentation. Student's choosing to fax or mail documents must use the cover sheet provided on the student's home screen. This cover sheet ties the documentation to the student's request when received at RDS. RDS is not responsible for missing faxed, or mailed documentation.
  - Allow at least two to three days for RDS to receive and process faxes and at least seven to ten days for RDS to receive and process mailed documents. Do not mail original documents. Paper documents will not be returned and RDS is not responsible for missing mail.
- RDS staff will review the appeal request, supporting documentation, original determination information, and validation information.
- RDS staff may contact the student for additional information, to ask questions, or to offer an appeal hearing regarding the appeal request. RDS will contact students using the information provided in the user profile; students should ensure profile information contains correct email and telephone contact information. RDS is NOT responsible for the inability to contact a student as a result of incorrect contact information.
- Failure to comply with a RDS request for additional documentation or failure to comply with deadlines will forfeit your opportunity to an appeal hearing and RDS will make an informed decision using the information on file. Appeals to the North Carolina State Education Assistance Authority (NCSEAA) that do not comply with RDS procedures and deadlines will no longer have the ability to appeal to the NCSEAA.
- The optional appeal hearing provides an opportunity for the student to discuss the information they have provided and answer any additional questions that may impact their case for appeal. Hearings may be conducted in person, video conference, or over the telephone.

- If the student chooses to schedule a hearing, the classification will be decided following the appeal hearing. If the student does not choose to schedule an appeal hearing, or does not attend the scheduled hearing, RDS will make a decision on the student's appeal request.
- Upon final determination of the RDS Appeal, the student is notified of the final decision, any change of classification is updated in RDS. Because the SEAA is exempt from the North Carolina Administrative Procedure Act (except for judicial review), and such entities are not required to give reasons for their decisions, the RDS will not state reasons for its decision.<sup>33</sup>
- It is the student's responsibility to notify their campus of any change in classification. Campuses have access to any change in classification and the effective date. This date is critical for the school and student to determine which academic term a residency change (and any resulting change in tuition rate) should be applied. RDS does NOT set the campus deadline for determining the date in which a change in residency status applies; RDS only provides the date in which the request was submitted in full. In the case of an appeal request, the effective date is the date of the student's request that is being appealed (i.e. the initial consideration or reconsideration submission date).

Should the student receive the same classification through the RDS appeal process and disagree with the appeal determination, then the student has the option to request an SEAA Appeal Committee decision.

#### ***F. SEAA Appeal – Level 2 Appeal***

The SEAA Appeal process is for students who disagree with the RDS appeal determination. This appeal process is the final step in the residency process unless a student chooses to move forward with judicial review.

##### **1. Composition**

The SEAA Appeals Committee is comprised of practitioners from NCICU, NCCCS, and UNC and administered by SEAA. The specific composition of the Committee and the terms of its members are prescribed in the Policies and Procedures of the SEAA Appeals Committee, and may be amended from time to time by the SEAA in its discretion. Members recuse themselves during deliberations, discussion, and voting on records from their institutions.

##### **2. Functions**

The purpose of the SEAA Appeal Committee is:

- A. To review the residency determination information and process experienced by the student;
- B. To decide cases appropriately appealed to it from RDS;

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<sup>33</sup> Accord, [Wilson v. SRC, 92 N.C. App. 355 \(1988\)](#); [Norman v. Cameron, 127 N.C App. 44 \(1997\)](#)

- C. To evaluate the administrative practices and substantive rules associated with the implementation of the State law relating to residency determination for tuition and state financial aid purposes and to make recommendations, respectively, to the SEAA 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;
- D. To evaluate and maintain the document entitled “RDS Guidebook”; and
- E. To serve as a source of general advice to, and sharing of, information with RDS.

### 3. Basis of Review

Because the SEAA Appeals Committee is an appellate body, it reviews the RDS decision based on the facts presented through information gathered during the RDS decision-making process; the Committee does not conduct its own independent inquiry into the facts of the case by gathering new information not previously received by the RDS. The Committee reviews all of the documents that RDS relied on in making all levels of decisions – initial consideration, reconsideration, and RDS appeal – as well as residency record statements. The SEAA Appeals Committee will not consider information submitted by RDS that were not included as part of the RDS decision-making process.

Appeals to the North Carolina State Education Assistance Authority (NCSEAA) that do not comply with RDS procedures and deadlines will no longer have the ability to appeal to the NCSEAA.

### 4. Disposition of Cases

The SEAA Appeals Committee renders a final disposition of the appeal by sustaining (upholding) or reversing (overturning) the RDS Appeal decision; or issuing a ruling in which the Committee declines to entertain an appeal because of insufficient showing of proper basis for appellate review, including failure to comply with procedural requirements and applicable deadlines at the RDS and SEAA level.

Final disposition of an appeal by the SEAA Appeals Committee shall be deemed to exhaust the administrative remedies of the appellant with respect to the RDS classification. No further appeal is available.

### 5. SEAA Appeal Procedures

Students are not permitted to provide any additional information or documentation to support their appeal request in the SEAA Appeal. **Students have 10 calendar days from the RDS appeal determination to submit a notification to appeal.** The following information provides the general process used by a student to complete an SEAA Appeal:

- A. Log into RDS (accessed via CFNC, a campus admissions application, or on the RDS website). On the Residency Status screen, click the “Reconsideration/Appeal” button.
- B. Select the “You believe the RDS Appeal classification is incorrect and you would like to appeal your decision to the SEAA Appeal Committee” radio button.

- C. Review the Overview of the SEAA Appeal Process and submit the Notification to Appeal; **students have 10 calendar days from the date of the RDS Appeal classification to complete this step.** Students will not be permitted to submit a notification to appeal after 10 calendar days from the RDS Appeal determination decision. Following the Notification to Appeal submission, students have 25 days to complete and submit the SEAA Appeal.
- D. To complete the SEAA Appeal, provide the following information:
1. Identify the ground(s) for appeal. The sole grounds for appeal to SEAA are:
    - RDS disregarded or made a mistake interpreting the requirements of the law or RDS Guidebook when making the decision.
    - The RDS Guidebook contains no policy that specifically addresses my circumstances, so the RDS decision is unsupported by policy.
    - The policies as currently stated in the RDS Guidebook do not reflect the current state of law.
    - The RDS decision is not reasonably supported by the evidence as presented in the record.
  2. For each of the grounds for appeal indicated, provide a description of how the ground(s) for appeal specifically applies to the appeal case or situation.
- E. Following the Notification to Appeal submission, review the residency record. This record contains all materials which constituted the basis of the RDS determination, including the student's responses to the RDS online interview, any required documentation, validation results, and any additional information or documentation supplied by the student in reference to the determination. If the student believes the record is incomplete or defective (in that it either omits materials which were a part of the RDS determination or that it includes written materials which were not a part of the RDS determination), the student may request modification of the residency record by providing a statement on the SEAA Appeal determination request form.<sup>34</sup>
- F. Submit the SEAA Appeal request **within 25 days from the date of the Notification to Appeal submission.**
- G. Once the request is complete, an appeal hearing will be scheduled by SEAA with the SEAA Appeals Committee. All appeals will be considered and resolved on the basis of the residency record. No appearances – whether in person or via technology – will be permitted by the student either personally, through a representative, or from RDS.
- H. RDS will notify the student of the SEAA Appeals Committee decision within ten days of the date of the decision. Because the SEAA is exempt from the North Carolina Administrative Procedure Act (except for judicial review), and such entities are not required to give reasons for their decisions<sup>35</sup>, the SEAA Appeals Committee will not state reasons for its decision.

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<sup>34</sup> RDS agrees with the student's contention, RDS will modify the residency record and ensure the student is notified through the RDS system and possesses the modified residency record. If RDS does not agree with the student's contention, RDS will note so in a response and provide a notification to the student through the RDS system. The residency record, the student's statement of contention on the residency record, and the RDS response will be submitted for an appeal hearing.

<sup>35</sup> Accord, *Wilson v. SRC*, 92 N.C. App. 355 (1988); *Norman v. Cameron*, 127 N.C. App. 44 (1997)

## **APPENDIX A – Definition of Terms**

**Active Duty Military:** A current active duty member of one of the following; United States Air Force, Army, Coast Guard, Marine Corps, and Navy; any activated reserve component of the foregoing or the North Carolina National Guard.

**Bona fide:** In good faith with earnest intent. A person must demonstrate that he or she has established a bona fide, as opposed to a temporary, domicile when seeking residency classification. A bona fide domicile is one in which the person’s relevant conduct and motivation evidences a genuine desire to establish legal residence in North Carolina as opposed to actions performed for some reason other than to make North Carolina the person’s permanent home (such as to become eligible for in-state tuition).

**Burden of Proof:** The responsibility borne by the applicant to convince, by a preponderance of the evidence, that the student is a bona fide domiciliary for tuition purposes; this may be established by providing tangible evidence to support relevant conduct of legal residence and its duration as may be required by officials of the Residency Determination Service.

**Capacity:** Legal ability to establish residence unimpeded by other factors such as age or immigration status. For purposes of legal residence for tuition purposes, capacity includes the ability to remain in North Carolina permanently through one’s own financial resources (a student’s financial resources *may* sometimes include financial aid; see the definition of “Independent” for further information about financial aid). Generally speaking, a minor cannot come and establish residency since capacity resides with a parent; however, a legally emancipated minor may have the capacity to establish residency for tuition purposes.

**RDS Continuous Enrollment Gap:** A student is continuously enrolled at a North Carolina higher education institution if the student is consecutively enrolled at the same North Carolina higher education institution in fall and spring semesters in courses or prerequisites creditable toward a degree, diploma, or certificate for which tuition is charged. Solely for purposes of the Residency Determination Service (RDS), a gap in enrollment of two consecutive semesters (i.e. fall and spring or spring and fall) requires a student to request a residency determination again. Students are not required to be enrolled during the summer term(s) to maintain continuous enrollment for purposes of RDS.

**Custodian:** Persons other than the minor’s natural parents who are awarded custody of the minor are “custodians,” not legal guardians – custody may be awarded by a court for a variety of reasons.

**Dependent:** A person defined as a “qualifying child” or “qualifying relative” for income tax purposes by the Internal Revenue Code at 26 U.S.C. §152 (I.R.C.);C.F.R. §1.152-1. Because the definition of “dependent” is very specifically defined by the Internal Revenue Service, IRS regulations should be consulted (See IRS Publication 501 (2009) and IRS Publication 17 (2009)). Under current law, to claim someone as a dependent for federal and state income tax purposes, the dependent must be a U.S. citizen, U.S. resident alien, non-resident alien, U.S. national, or resident of Canada or Mexico for some part of the year (there is an exception for certain adopted children). A person’s spouse is never considered that person’s dependent.

**Domicile:** A person’s true, fixed, and permanent home and place of habitation of indefinite

duration (for an indefinite period of time); it is the place where he or she intends and is able to remain permanently and to which, whenever the person is absent, he or she expects to return. For purposes of this Manual, “domicile” is synonymous with “legal residence.”

Domiciliary: A person who is a legal resident of (is domiciled in) North Carolina.

Enrollment: The status of being registered as a part-time or as a full-time student for an academic term that has begun.

Evidence: Documents and other proof verifying conduct that is provided to officials of the Residency Determination Service regarding legal residence and its duration necessary to prove that an applicant is entitled to in-state tuition.

Exceptions: Exceptions are handled at the campus. Exceptions permit campuses to charge in-state tuition to students determined by RDS to be non-residents. Because some exceptions are available based upon campus-specific conditions, such as enrollment, RDS cannot provide final answers with respect to eligibility since RDS does not have insight into those campus-specific factors. The exception for active duty military personnel based upon PCS/PDS is the only exception evaluation RDS completes.

Independent: An independent person is legally entitled to claim, and in fact does claim, himself or herself on income tax returns, is not claimed by another person as a dependent on that person’s income tax return, and possesses sufficient funds to live and pay tuition and fees at the person’s current residence classification without outside financial assistance. Independence overrides the prima facie consideration of parents’ domicile when determining residency for tuition purposes. RDS assesses students who request to be considered as independent.

Initial Consideration: The first classification of residency assigned to a student for tuition purposes and state grant eligibility. Every applicant is initially classified as either a resident or nonresident.

Institution of Higher Education: Institutions, both public and private, that offer post-secondary instruction including senior institutions (universities and private liberal arts colleges, graduate or professional schools) and two-year institutions (community colleges, junior colleges, technical institutes, and semi-professional schools). G.S. 116-143.1 defines an institution of higher education as any constituent institutions of the University of North Carolina and the community colleges under the jurisdiction of the State Board of Community Colleges (currently, all community colleges in North Carolina are under the jurisdiction of the State Board of Community Colleges). Independent colleges and universities in North Carolina also follow the definitions of residency in this Guidebook for purposes of administering the Legislative Tuition Grant, the State Contractual Scholarship Fund, the State Need Based Scholarship and any other State-funded financial aid programs.<sup>36</sup>

Legal Guardian: A person who is court-appointed to act in the place of an individual’s parent(s) (usually referred to as a “guardian of the person” or “general guardian”).

Legal Residence: Domicile (see definition above). For purposes of this *Guidebook*, a legal resident is a domiciliary of North Carolina.

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<sup>36</sup> G.S. 116-22(2), -43.5 § 116-22: Repealed by Session Laws 2011-145, s. 9.18(c), effective July 1, 2012.

Legal Resident: A person who is a domiciliary of (is domiciled in) North Carolina.

Marriage: See the definition of Spouse.<sup>37</sup>

Minor: A person under the age of eighteen (18) years. A minor is generally presumed to have the same domicile as that of his or her parents.

Misrepresentation: A false and fraudulent misstatement of fact. If a student, or someone acting on the student's, behalf knowingly makes a misrepresentation in connection with a state residency determination request (initial consideration, reconsideration, RDS Appeal, and/or SEAA Appeal) that misrepresentation could lead to a misdemeanor charge.<sup>38</sup>

NCCCS: North Carolina Community College System

NCICU: North Carolina Independent Colleges and Universities

Preponderance of evidence: Preponderance of evidence refers to a cluster of significant events demonstrating domicile (physical presence and intent) to establish legal residence. The most acceptable meaning to be given to the expression, proof by preponderance, seems to be proof which leads a jury to find that the existence of the contested fact is more probable than its nonexistence.<sup>39</sup>

Presumption: A legal inference used to place the burden of proof and of producing supporting evidence on one party to a proceeding in order to overcome that presumption.

Prima Facie: At first appearance or first view – before investigation. Under North Carolina law, the legal residence of the applicant's parents shall be prima facie evidence of the applicant's legal residence.<sup>40</sup> This presumption may be rebutted or reinforced by other evidence relative to the age and general circumstances of the applicant.

Reconsideration: Reconsideration is a residency determination available to students after the completion of the initial consideration classification; reconsiderations may be requested three times every ninety days.

Residence: A place of abode, whether permanent or temporary. "Permanent residence" means the legal residence or domicile, whereas "temporary residence" means one's abode for an undetermined or temporary duration. A person may have many residences but only one permanent, legal residence (domicile).

Residency Certification Number (RCN): The Residency Certification Number ("RCN") is a unique identifier that connects a student's residency determination to her admissions application and/or eligibility for state financial aid. The RCN provides confirmation that a student has completed the residency determination process.

Residency Determination Service (RDS): The authoritative source for all centralized residency determinations. The Residency Determination Service is administered by the North Carolina State Education Assistance Authority.

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<sup>37</sup> The complete definition of marriage under North Carolina law can be found at G.S. 51-1

<sup>38</sup> G.S. 115B-6

<sup>39</sup> Black's Law Dictionary at 1301 (9<sup>th</sup> ed. 2009); see also, 2 McCormick, Evidence § 339 at 484-485 (6<sup>th</sup> ed. 2006)

<sup>40</sup> [G.S. 116-143.1](#)

Resident for Tuition and State Financial Aid Purposes: A person who has established legal residence (domicile) in North Carolina and maintained that legal residence for at least 12 months (365 days) immediately prior to his or her determination as a resident for tuition purposes and state financial aid eligibility.

SEAA: North Carolina State Education Assistance Authority. \_\_\_\_\_

Spouse: A person who is legally married to another person.

Tuition: The sum charged to students by an educational institution for credit instruction at the time of registration, regardless of the means by which the instruction is delivered. Tuition does not include any other fees charged by the institution of higher education or the costs of textbooks.

UNCGA: The University of North Carolina General Administration

Validation: As part of the residency determination process, RDS validates the accuracy of the information provided in the RDS online interview with federal and North Carolina state agencies.

Veteran: A person who served active duty for not less than 90 days in the United States Army, Air Force, Coast Guard, Marine Core, Navy, the Commissioned Corps of the U.S. Public Health Service, or the National Oceanic and Atmospheric Administration and who was discharged or released from such service.

## **APPENDIX B – History of Residency Law**

Following the mandate that North Carolina public institutions of higher education charge non-residents higher tuition than residents, the North Carolina General Assembly enacted a statutory framework to determine the residence status and tuition classification of all students enrolled or reenrolled in those institutions. Prior to 1973, this scheme entailed a fairly simple process to determine residence status for tuition purposes. At that time, state law required that only legal residents of the State who have maintained their domicile in North Carolina for at least 12 months immediately prior to the date of enrollment or re-enrollment were eligible for the resident tuition rate. This law specified that “student status in an institution of higher learning in this State shall not constitute eligibility for residence to qualify said student for in-state tuition.”<sup>41</sup> Because time enrolled as a student could not count towards the 12-month residency requirement, most students retained the tuition classification they received at the time of their initial enrollment throughout their time in the institution of higher education.

In 1973, in response to a decision by the United States Supreme Court,<sup>42</sup> the General Assembly amended the applicable law. Nonresident students were no longer precluded from establishing legal residency in the State during the time of their enrollment, and it became possible for students to use time enrolled to meet the 12-month requirement of residency for tuition purposes. The administrative consequences of this change in the law have been substantial. Previously, the law required that each institution of higher education perform only one inquiry into the residence status of most students at the time of their initial enrollment. Now, a second inquiry process was required to investigate the claims of students initially enrolled as nonresidents, but who wished to petition for the resident tuition rate. This reclassification process calls for a two-fold inquiry. First, had the petitioner become domiciled in North Carolina? Second, had the applicant maintained his or her domicile for at least 12 months immediately prior to the request for residency determination? To answer these questions, the Residency Determination Service must make a detailed inquiry into each student’s initial residency information and any subsequent reconsideration request, as measured by established legal principles regarding the location of one’s place of legal residence.

In the years since the 1973 revision, the General Assembly has refined and expanded the law regarding tuition classification, including changes to emphasize elements of the statutes and include statutory definitions and respond to specific legal challenges; provide benefits to those making a significant contribution to our society; and reflect changes in our social values. In 1974, for example, the General Assembly provided a marriage benefit to some North Carolina residents, and the 1975 revision expressly nullified (for tuition classification purposes) the common law presumption that a wife’s domicile is that of her husband. Over the years, the General Assembly also has addressed specific points of tuition classification for minors, established exceptions for domicile loss and domicile reacquisition, and identified exemptions for special employment circumstances. The first of these occurred in 1984, when G.S. 116-143.3 made nonresident armed service members on active duty while abiding in the State eligible for the in-state tuition rate. The General Assembly later made special provisions for employees of the University of North Carolina and for certain veterans and other covered

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<sup>41</sup> [G.S. 116-143.1 \(1971\)](#).

<sup>42</sup> [Vlandis v. Kline, 412 U.S. 441, 37 L.Ed.2d 163, 93 S.Ct. 2230 \(1973\)](#)

individuals. Over the years, the law governing residence-for-tuition classification has not been stagnant, but has evolved as legislators endeavored to best serve the state of North Carolina and its residents consistent with the requirements and intent of our state's constitution.

In 2013, Session Law 2013-360 directed the University of North Carolina (UNCGA), the North Carolina Community College System (NCCCS), the North Carolina State Education Assistance Authority (SEAA), and the North Carolina Independent Colleges and Universities (NCICU) to create a centralized, uniform process for determining residency for tuition purposes and for administration of state financial aid. Following passage of the law, these partners created a structure to design and develop the Residency Determination Service (RDS), both to satisfy the mandate and to provide accurate, consistent, timely, and cost effective residency determination in support of the admissions application process for North Carolina colleges and universities. RDS also supports establishing residency eligibility for NC state grant consideration.

In 2015, Session Law 2015-241 authorized the State Education Assistance Authority to perform all functions necessary to implement the coordinated and centralized process to apply the criteria in G.S. §116-143.1 and directed UNCGA and the NCCCS to take the necessary actions to facilitate an orderly transition from the campus-based residency classification system to the coordinated and centralized process.