

MENDOCINO COLLEGE

CALIFORNIA COMMUNITY COLLEGE RESIDENCY DETERMINATION GUIDE FOR TUITION PURPOSES

Short Guide for Citizen Applicants

Prepared by Kristie Anderson
Director, Admissions and Records

**California Residency Determination Guide
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IMPORTANT NOTES: these excerpts are perhaps the best to highlight to help you understand California Community College Residency Laws.

A residence is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose. A residence cannot be lost until another is gained.

Physical presence within California solely for educational purposes does not allow a student to establish residence, regardless of the length of time present in the state.

The burden is on the student to demonstrate clearly, with proof, both physical presence in California and intent to establish California residence. A person's residence can be changed only by the union of act and intent.

A student who is 19 years of age or older and maintained a home in California continuously for the last two years may be presumed to have the intent to make California the permanent home unless the student has evidenced contrary intent by having engaged in any of the activities listed in the lack of intent section.

A student seeking reclassification as a resident, who was classified as a nonresident in the preceding term, shall be determined financially independent or dependent in accordance with *Education Code, Section 68044*. For purposes of this section, a student is financially independent if he or she meets all of the following requirements:

- ❖ has not and will not be claimed as an exemption for state and federal tax purposes by his or her parent in the calendar years prior to the reclassification application, and
- ❖ has not and will not receive more than seven hundred fifty dollars (\$750) per year in financial assistance from his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, and
- ❖ has not lived and will not live for more than six weeks in the home of his or her parent during the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application.

Students 18 years of age or older are eligible to establish residency as long as they are not financially dependent upon their parents for support (claimed as an exemption for income tax purposes.) Students 18 years of age or older who are financially dependent upon their parents for support, derive their residency from the parent(s) they are financially dependent upon regardless of the amount of time they have resided in California.

Actions that Constitute a Lack of Intent includes but is not limited to:

1. Maintaining voter registration and voting in another state.
2. Being a petitioner for a divorce or lawsuit as a resident of another state.
3. Attending an out-of-state institution as a resident of that state.
4. Declaring non-residence for California income tax purposes.
5. Maintaining a driver's license from another state.
6. Maintaining motor vehicle license plates from another state.

BASIC RESIDENCY INFORMATION FOR OUT OF STATE STUDENTS

General Law

Criteria

To determine a person's place of residence, reference is made to the following statutory rules:

1. Every person has, in law, a residence.
2. Every person who is married or 18 years of age, or older, and not precluded from doing so, may establish residence.
3. In determining the place of residence the following rules are to be observed:
 - a. There can only be one residence.
 - b. A residence is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose.
 - c. A residence cannot be lost until another is gained.
 - d. A residence can be changed only by the union of act and intent.
 - e. A man or woman may establish his or her residence. A person's residence shall not be derived from that of his or her spouse. Many of the objective manifestations of the two may be shared, but each may have some evidence of intent that is not shared, which may indicate different residences.
 - f. The residence of the parent with whom an unmarried minor child maintains his or her place of abode is the residence of the unmarried minor child. When the minor lives with neither parent, his or her residence is that of the parent with whom he or she maintained his or her last place of abode. The minor may establish his or her residence when both parents are deceased and a legal guardian has not been appointed.
 - g. The residence of an unmarried minor that has a parent living cannot be changed by his or her own act, by the appointment of a legal guardian, or by relinquishment of a parent's right of control, unless the student qualifies under the Self-Support or the Two-Year Care and Control exception.
 - h. An alien, including an unmarried minor alien, may establish his or her residence unless precluded by the Immigration and Nationality Act from establishing residence in the United States.
 - i. Physical presence within California solely for educational purposes does not allow a student to establish residence, regardless of the length of time present in the state.

Reference: *ECS 68060, 68061, 68062; T5 54022, 54045*

Residence Questionnaire and Supplemental Residence Questionnaire

When a student does not answer all of the questions on the Residence Questionnaire or on the Supplemental Residence Questionnaire, if one is used, and residency cannot be determined, the student may be classified as a nonresident.

Reference: *T5 54012, 54026*

Residency Determination Guidelines

There are five steps in determining the residency (for fee purposes) status of a student:

Step 1 Determine the student's citizenship status

The following citizenship categories are eligible to establish California residency:

1. Citizen of the United States; or,
2. Nonimmigrant with a visa that allows them to establish residency for tuition purposes; or,
3. Legal Immigrant (alien card or authorization to work card).

Step 2 Determine the length of continuous physical presence in California.

Minimum Requirement

The student must have been physically present in the state of California for one year prior to the residence determination date (one day prior to the first day of the semester) in order to be considered a resident for fee purposes. Continuous presence in the state is required except for absences which can be documented for reasons that show no evidence of intent to establish residence elsewhere.

Reference: *ECS 68018; T5 54022*

Other related laws that would pertain to a student's physical presence in California are as follows:

Absence During Time of Residence

1. A student who is attempting to establish one year of residence in California but who returns to his or her former residence or to the home of his or her parents in another state or country for periods when the institution is not in session, should be subject to question as to whether he or she has the necessary intent to establish residence in California. Absences by the student from California during this period, or if the student is a minor, for reasons of business or vacation may not necessarily indicate a lack of intent to establish or maintain residence.

Reference: *ECS 76143; T5 54022, 54024*

2. For purposes of the nonresident tuition fee, a community college district shall disregard the time during which a student living in the district resided outside the state, if:
 - a. The change of residence to a place outside the state was due to a job transfer and was made at the request of the employer of the student's spouse or, in the case of a student who resided with, and was a dependent of, the student's parents, the change of residence was made at the request of an employer of either of the student's parents; and,

- b. Such absence from the state was for a period of not more than four years; and,
 - c. At the time of application for admission to a college maintained by the district, the student would qualify as a resident if the period of the student's absence from the state was disregarded.
3. A nonresident tuition fee shall not be charged to a student who meets each of the conditions specified in subdivisions a. to c., inclusive.

Reference: *ECSW 76143, T5 54022, 54024*

Resident Student Elsewhere

Classification of a student as a resident for tuition purposes by an out-of-state university or college generally establishes him or her as a nonresident of California as of that time. Normally, he or she will have to establish California residence and hold it for a year until he or she is entitled to similar classification in California. However, it is conceivable that his or her classification in the other state was a result of an exception similar to the exceptions provided in California law. If the student can show this, the pertinence of such classification would be overcome. Of course, the student would still have to affirmatively establish that he or she is a resident of this state.

Reference: *ECS 76143; T5 54024*

Re-Established Residence

If a student or the parents of a minor student relinquish California residence after moving from California, one full year of physical presence, coupled with one full year of demonstrated intent to become a California resident, is required to reestablish residence.

Reference: *T5 54030*

AB540

This law does not affect current Title 5 regulations concerning residency. The law does not grant or amend current residency rules but rather provides for an exemption from nonresident tuition for certain nonresident students. The law became effective on January 1, 2002.

1. Students exempted from paying nonresident tuition pursuant to section 68130.5 do not become residents for eligibility purposes for any state-funded program (e.g., EOPS or for purposes of a BOG Fee Waiver).
2. The exemption from nonresident tuition is mandatory. If a district finds that a student meets all requirements in the law, nonresident tuition may not be charged.
3. If a student is determined eligible for this exemption subsequent to the payment of nonresident tuition, the tuition paid must be refunded to the student. A refund would also be required if a student pays nonresident tuition prior to January 1, 2002 for a term that begins on or after January 1, 2002.

4. Students must meet all requirements in section 68130.5 (a) (1) – (4) to be eligible for the exemption. Each requirement is explored below:
 - a. The student must have attended a California high school for three or more years. There are no provisions for partial attendance (e.g. two years and 7 months). The law does not require consecutive attendance nor require that the student attended the *last* three years in California (in the case of four-year high schools). Such attendance could be at multiple California high schools. Attendance at continuation high schools, charter high schools and K-12 approved independent education is acceptable. Attendance at a home school is not acceptable unless the home schooling was provided in a manner recognized under state law. The law does not distinguish between public and private high schools. There is no time limit on how far in the past the student might have attended a California high school.
 - b. The student must have graduated from a California high school or attained the equivalent thereof (e.g., a GED or a high school proficiency exam). There is no time limit on how far in the past the student might have attained this status.
 - c. Except for nonimmigrant aliens, any nonresident student who meets the first two requirements shall be exempted from nonresident tuition even if he or she is a US citizen or lawful immigrant.
5. The High School transcript is required for determination of eligibility.
6. If a student certifies that all requirements have been met and this certification is subsequently determined to be false, the student shall be liable for the repayment of the nonresident tuition that would have been applicable for all relevant terms of attendance. The student may be subject to disciplinary proceedings per district policy. The student self-certification shall contain a student acknowledgement of this potential liability.
7. Students exempted from paying nonresident tuition pursuant to section 68130.5 are not eligible for the Governor’s Merit Scholar Programs because these scholarships are only available for California residents.

Step 3 Apply Guidelines to Age and Dependency

The next step to making a residency determination is to determine whether the student is a minor (under the age of 19) and/or financially dependent upon their parents for support--or an adult eligible to establish residency. The information on the residency questionnaire will help the college decide which residency regulations apply to the student’s individual circumstances. In some cases, students will be of the age of majority and still be financially dependent upon their parents for support. Special regulations apply to students in the circumstances. The following section will help you make an accurate assessment of the student’s residency status.

Minors - Students **under 18 years of age** derive residency from the parent they currently reside with (regardless of the length of time they have lived in California.)

Adults - Students **18 years of age or older** are eligible to establish residency as long as they are not financially dependent upon their parents for support (claimed as an

exemption for income tax purposes.) Students **18 years of age or older who are financially dependent upon their parents** for support, derive their residency from the parent(s) they are financially dependent upon regardless of the amount of time they have resided in California.

Residence of Unmarried Minor Child

An unmarried minor child under the age of 19 derives their residency from the parent they reside with, regardless of the amount of time they have lived with the parent. If the minor child does not live with either parent, their residency is derived from the parent with whom he or she last resided. A minor may establish his or her own residency when both parents are deceased and a legal guardian has not been appointed.

Reference: *ECS 68060, 68061, 68062; T5 54022, 54024, 54045*

Derived Residence, Special Applications

Because of the language of *Education Code*, Section 68062(f) which gives to a minor the residence of the parent, the following rules apply:

1. Where the residence of the student is derived, the California residence of the person or persons from whom it is derived must satisfy the one year waiting period requirement.
2. A minor adopted by a California resident who has been a resident for one year immediately prior to the residence determination date, immediately takes that resident status. No waiting period applies.
3. A minor child of permanently separated parents takes the resident status of the parent with whom he or she lives, without any waiting period applying. If the minor lives alone, he or she takes the resident status of the parent with whom he or she last lived.

Reference: *ECS 68062 (f), (h), (i)*

Deceased Parents

1. When both parents are deceased, and no legal guardian has been appointed, a minor may establish his or her own residence. Until the minor does so, his or her residence is that of the last parent to die. The one-year waiting period runs from the date of arrival to California or one year from the date of the parent's death. If the residence of the last parent to die was California, the minor's derived residence may be tacked to the newly established residence.
2. If a guardian is appointed for a minor any time after the death of the minor's parents, the minor takes the residence of the legal guardian; if that be California, the one year waiting period runs from the date of appointment, subject to applicable tacking.

Reference: *ECS 68014, 68062*

Parents of Minor Move to California

If the parents of a minor move to California leaving the minor child behind, then the minor child takes the parent's California resident status when acquired. If the minor child remains outside California after reaching the age of majority and then comes to California, the minor is to be treated the same as a person possessing California

residence who had left California and then returned. The minor should be screened with the objective of determining if he or she had acquired out-of-state residence. One factor to be checked in such a screening would be whether the minor had attended an out-of-state educational institution where resident status for tuition purposes had been granted or denied

Reference: ECS 68061, 68062, 68076

Re-established Residence

If a student or the parents of a minor student relinquish California residence after moving from California, one full year of physical presence coupled with one full year of demonstrated intent to be a California resident, is required to reestablish residence.

Reference: *T5 54030*

Self-Support

1. A student who has been entirely self-supporting and actually present in California for more than one year immediately preceding the residence determination date, with the intention of acquiring a residence therein, shall be entitled to resident classification until he or she has resided in the state the minimum time necessary to become a resident.

Requires:

- a) Student must be under 19 on residence determination date.
- b) Student must be entirely self-supporting.

Reference: *ECS 68071*

2. A student claiming application of the self-supporting exception must provide evidence to the admissions office such as:
 - a) Documentation, including W-2 forms or a letter from employer, showing earnings for the year immediately preceding residence determination date of attendance.
 - b) A statement that the student was actually present for said year (short absences from the state for business or pleasure will not preclude the accumulation of time), and
 - c) A statement showing all expenses of the student for said year.
 - 1) A loan made by a bank to the parent who turns over the proceeds to the minor negates self-support.
 - 2) A loan made by a bank to the student without the parent co-signing or endorsing the student's note indicates self-support. Co-signing or endorsement by parent negates self-support, since the student is then being supported by parent's credit.
 - 3) A loan made by parent to the student negates self-support.
 - d) If requirements (1) and (2) are met, the student is treated as having the capacity to establish his or her own residence so he or she would be screened just as would an adult.

Reference: *ECS 68071, T5 54040*

Two-Year Care and Control

A student shall be entitled to resident classification, if immediately prior to enrolling at an institution, he or she has lived with and been under the continuous direct care and control of any adult or adults, other than a parent, for a period of not less than two years, provided that the adult or adults having such control have been domiciled in California during the year immediately prior to the residence determination date. This exception shall continue until the student has attained the age of majority and has resided in California the minimum time necessary to become a resident, so long as continuous full-time attendance is maintained at an institution.

Requires:

- a) The student has lived under the direct care and control of an adult, other than a parent for two years immediately preceding the residence determination date, and
- b) Such adult has, for the year immediately preceding the residence determination date, had California residence, and
- c) Full-time continuous enrollment by the student.

Reference: *ECS 68073; T5 540407*

Financial Independence

Colleges are required to consider financial independence when reclassifying a student who was a nonresident in a previous term, to the resident category. (ECS 68044; Title 5 Section 54032) Financial independence is to be “among the factors to be considered” in reclassification. The law and regulations specify how financial independence should be balanced against other factors, such as the passage of time, the parent’s residence, and the student’s intent to establish residence elsewhere.

1. A student seeking reclassification as a resident, who was classified as a nonresident in the preceding term, shall be determined financially independent or dependent in accordance with *Education Code, Section 68044*. For purposes of this section, a student is financially independent if he or she meets all of the following requirements:
 - a. has not and will not be claimed as an exemption for state and federal tax purposes by his or her parent in the calendar years prior to the reclassification application, and
 - b. has not and will not receive more than seven hundred fifty dollars (\$750) per year in financial assistance from his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, and
 - c. has not lived and will not live for more than six weeks in the home of his or her parent during the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application.
2. Financial dependence in the current or preceding calendar year shall weigh more heavily against California residence than shall financial dependence in earlier calendar years. The ultimate question is whether the student has demonstrated intent to become a California resident.
3. A student who has established financial independence may be reclassified as a

4. resident if the student has met the requirement that there be a union of act and intent as defined in *Title 5, Section 54020*.
5. The *Title 5* regulation would permit one to disregard a finding of financial dependence where there is no intent to establish (or maintain) residence in another state. Since financial status is only one factor to be considered, you may still wish to require some further affirmative showing of objective intent to become a California resident.

Step 4 Intent to Become a California Resident

Evidence of Intent

1. The next step to making a residency determination is to verify evidence of intent to make California the permanent residence, which must also include the absence of ties to any other state. There must be clear, documented evidence of intent to establish California as the permanent residence.
2. Under the *Education Code*, the general rule is that a student must pay nonresident tuition unless the student can qualify as a resident student or meet the requirements of certain special provisions. Since the concept of residence involves subjective intent, this manual cannot anticipate every question that will arise in connection with determining whether such intent exists.

Reference: *ECS 7614, T5 54020*

3. No one factor is controlling, however, the institution may look for certain objective manifestations of subjective intent on the part of one asserting that residence status has been established, or has been maintained in spite of an absence from the state.
 - a. A student who is 19 years of age or older and maintained a home in California continuously for the last two years may be presumed to have the intent to make California the permanent home unless the student has evidenced contrary intent by having engaged in any of the activities listed in the lack of intent section.
 - b. A student who is under 19 years of age may be presumed to have intent to make California the permanent home if both the student and his or her parent maintained a home in California continuously for the last two years unless the student or parent has evidenced a contrary intent by having engaged in any of the activities listed in the lack of intent section.
 - c. A student who does not meet the requirements of subsection a. or b. above, shall be required to provide evidence of intent to make California the permanent home as specified below.

Reference: *T5 54024*

Acceptable evidence of intent to make California the student's permanent home:

1. Ownership of residential property or continuous occupancy of rented or leased property in California.

2. Registering to vote, and voting in California.
3. Licensing from California for professional practice.
4. Carrying on of a business or employment in California.
5. Active resident membership in service or social clubs.
6. Presence of spouse and/or dependent children in the state.
7. Continuous presence in the state except for absences which can be explained without conflicting with establishment of residence.
8. Indicating a California address on California State and Federal Income tax Forms (i.e., W-2, 540, 1040...)
9. Payment of California personal income tax as a resident.
10. Possessing California motor vehicle license plates. Payment of a vehicle license fee is not required of nonresident military personnel. (An exemption may be filed.) Thus, payment of the fee is some indication of intent to be a California resident.
11. Possessing California driver's license or a California Department of Motor Vehicles (DMV) identification card (Vehicle Code Sections 12502 and 12505 require a resident to obtain a California driver's license within 10 days from date residence is established.) For purposes of the DMV, residence is established when, after a move to California, a person rents, leases, or buys property in the state.
12. Maintaining a California address as the home of record in military records and on The Leave and Earnings Statement (LES) while in the armed forces.
13. Maintaining active savings and checking accounts in California banks.
14. Petitioning for a divorce as a resident of California.
15. Possession of hunting or fishing license as a resident of California.

Reference: *T5 54024*

Actions that Constitute a Lack of Intent includes but is not limited to:

7. Maintaining voter registration and voting in another state.
8. Being a petitioner for a divorce or lawsuit as a resident of another state.
9. Attending an out-of-state institution as a resident of that state.
10. Declaring non-residence for California income tax purposes.
11. Maintaining a driver's license from another state.
12. Maintaining motor vehicle license plates from another state.

Reference: *T5 54024; Voluntary Tax Assistant Program Guidelines of 1990, California Franchise Tax Board*

Step 5 Determine any military affiliation.

This section applies only to students who are on active duty in the military or the dependent of an active duty military member.

Active duty military members are granted residency for fee purposes during the period of time they are considered "active" unless they are specifically on duty for educational purposes. **Spouses** of active duty military members given a one year temporary resident status. **Dependent minors** of active duty military members are exempt from non-resident tuition for one year, or until they reach the age of 19 years; whichever comes later.

Reference: *ECS 68074, 68075, 68075.1; T5 54041, 54042*

Home of Record and Permanent Home Address.

A military "home of record" is a historical fact. It is the place recorded on official military documents as the:

1. A change in home of record to California is persuasive evidence of an intent to become a California resident, if coupled with military legal residence being California (DD2058).
2. Less persuasive, but still evidence to be considered, is a listing of California as a "permanent home address" in military records. This can be done during the interim between occurrences of the above listed events. However, once one of those events occurs, failure to change the home of record eliminates the "permanent home address" as an item of proof of intent to be considered. In fact, as just noted, such failure is persuasive evidence of a lack of intent to establish California as the state of residence.

Income Tax

- (1) Personal income from military service is exempt from state income tax levied by a state of which a military person is not a resident (Soldiers and Sailors' Civil Relief Act of 1940). Thus, if a military person pays income tax on his military income to the State of California, such payment would tend to indicate he or she considered himself or herself a resident of California at the time the payment was made.
- (2) Credit is allowed against California income tax for taxes paid by military persons to other states (Rev. and Tax. Code Section 17067) by one temporarily out of the state, as for example, a California resident in military service stationed in another state.

Personal Property Tax

Payment of personal property tax is required of all persons having personal property in the State of California on the assessment date, with the exception of nonresident military personnel. The latter are given immunity to personal property tax by the Soldiers' and Sailors Civil Relief Act of 1940.

Source: *Voluntary Tax Assistant Program Guidelines of 1990 and Legal Ruling Number 300, 1965, California Franchise Tax Board*

Dependents of Military

A student who is a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces of the United States stationed in California on active duty shall be entitled to resident classification until he or she has resided in California the minimum time necessary to become a resident.

Should that member of the armed forces of the United States whose dependent natural or adopted child, stepchild, or spouse is in attendance at an institution, be thereafter transferred on military orders to a place outside the continental United States where the member continues to serve in the armed forces of the United States, the student dependent shall not lose his or her resident classification.

Reference: *ECE 68074, T5 54041*

Entry into Military Service After Establishing California Residence but Before Having that Residence for a Full Year

A person who moves to California with the intention of establishing residence here, and who enters the military service before a year has elapsed, may still be classified as a California resident if he or she has, at the residence determination date, otherwise met the durational requirement, and has not in the interim, established residency elsewhere. In other words, if he or she arrived in California with intent to establish residence in this state, subsequent absences will not preclude the residence-for-a-year from being realized, if he or she did not establish residence elsewhere during the absence.

Reference: *ECS 68074, 68075; T5 54022, 54028*

Burden of Proof

The burden is on the student to demonstrate clearly, with proof, both physical presence in California and intent to establish California residence.

Reference: *ECS 68041; T5 54026*

Student Appeals Procedure

All students shall be notified of the residency classification no later than fourteen calendar days after the beginning of the session for which the student has applied, or fourteen days after the student submits an application for admission, whichever is later.

All students may appeal their residency classification in writing.

Reference: *T5 54070*