

### **3.17 IN-STATE/OUT-OF-STATE STATUS OF ENROLLED STUDENTS**

#### **3.17.1 Purpose**

Oklahoma statute 70 O.S., Supp. 2003, §3218.2 authorizes the State Regents to establish tuition and fees charged at public institutions to in-state/out-of-state postsecondary students. This policy statement establishes definitions, principles, criteria, and guidelines to assist institutional officials in the classification of postsecondary students as in-state/out-of-state students. Also, the policy statement should be helpful to prospective students in the determination of their in-state/out-of-state status prior to enrollment or for those out-of-state students seeking to be reclassified as in-state. Determination of in-state status for purposes of attendance at an institution in the state is based primarily on domicile as defined below.

Since 1890, it has been public policy in Oklahoma to provide comprehensive, public higher education opportunities for citizens make to improve themselves, to upgrade the knowledge and skills of the Oklahoma work force, and to enhance the quality of life in Oklahoma generally. Therefore, residents of Oklahoma are afforded subsidies covering a portion of their educational costs at state colleges and universities. Out-of-state students are also provided educational subsidies, although at lower levels than those provided for permanent in-state students.

Out-of-state tuition waivers provide Oklahoma institutions the ability to attract and graduate out-of-state students with academic abilities and talents who contribute to the economic development, vitality and diversity of the state's campuses. Additionally, Oklahoma institutions located near the state's borders are especially sensitive to serving demographic areas where population, tax dollars, property ownership, etc., cross state borders frequently. Out-of-state tuition waivers allow institutions to serve the community and surrounding area to the benefit of the institution and its students without detriment to Oklahoma residents.

#### **3.17.2 Definitions**

The following words and terms, when used in the Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

“Dependent Person” is one who is under the care, custody, and support of a parent or legal guardian.

“Domicile” is a person's true, fixed, permanent home or habitation. It is the place where he or she intends to remain and to which he or she expects to return. A person can have more than one residence, but only one domicile. Domicile has two components -- residence and the intent to remain. When these two occur, there is domicile.

“Documented foreign national” is a person who was born outside the jurisdiction of the United States (U.S.), is a citizen of a foreign country, and has not become a naturalized U.S. citizen under U.S. law, but has entered the U.S. by way of legal documentation such as a visa.

“Full-Time Active Duty Military Personnel” for the purposes of this policy, are members of the armed forces who are on active duty for a period of more than 30 days (means active duty under a call or order that does not specify a period of 30 days or less). Personnel and their spouse and dependent children may be classified upon admission as in-state as long as they are continuously enrolled.

“Armed Forces” means Army, Navy, Air Force, Marine Corps and Coast Guard. Such term does not include full-time National Guard duty. For details regarding the Oklahoma National Guard, refer to Chapter 4 Budget and Fiscal Affairs policy section 4.18.5.j pertaining to eligibility requirements for the tuition waiver.

“Full-Time Professional Practitioner or Worker” is a U.S. Citizen or Lawful Permanent Resident who has come to Oklahoma to practice a profession on a full-time basis, conduct a business full-time, or work on a full-time basis.

“Full-Time Student” is an undergraduate student enrolled in a minimum of 12 credit hours per semester in an academic year or a minimum of six credit hours in a summer session. A full-time graduate student is one enrolled in a minimum of nine credit hours per semester or as required by the institution.

“Independent person” is one who is responsible for his or her own care, custody, and support.

“In-state” status is a classification for a postsecondary student who has lived continuously in Oklahoma for at least 12 months not primarily as a postsecondary student, has established domicile in Oklahoma, and meets requirements associated with in-state status including sections 3.17.4, 3.17.7 and 3.17.8. Students classified upon admission as in-state are eligible to apply for state scholarship and financial aid programs.

“Lawful permanent resident” is a naturalized alien who has been granted official immigration status as a lawful permanent resident of the U.S. This is evidenced by a lawful permanent resident card (also called a “green card”).

“Out-of-state” status means an individual does not meet in-state requirements defined in this policy unless otherwise allowed by exceptions or provisions in policy.

“Out-of-state tuition waiver” is the portion of tuition that is waived in excess of that paid by students classified as in-state. This is referred to as “Nonresident Tuition Waiver” in State Regents’ *Fiscal Policy*.

“Undocumented student” is a person who was born outside the jurisdiction of the U.S., is a citizen of a foreign country, and has not become a naturalized U.S. Citizen under U.S. Law and has entered the U.S. without documentation. Refer to 3.17.6

“U.S. Citizen” is a person born in the United States, a U.S. Territory or former U.S. Territory or who has been granted citizenship by the U.S. Government.

### 3.17.3 Principles

As part of the admissions process, institutions are responsible for determining students' in-state/out-of-state status consistent with this policy. Administrators interview students, review documentation and are in the best position to determine whether the student may be classified as in-state. Each institution must designate an appropriate administrative official (most often the Admissions Officer) as responsible for administration of this policy. Clarification and additional information including documentation examples and frequently asked questions are in the *Academic Affairs Procedures Handbook*.

The burden of proof to establish in-state status shall be upon the student. Since residence or domicile is a matter of intent, each case will be judged on its own merit by the appropriate administrative official(s) consistent with this policy. Mere assertion by a student such as checking "In-State" on the application for admission is insufficient. The appropriate administrative official must review relevant documents, consider the policy principles and procedures, circumstances, and documentation to determine in-state status. While no set criteria, documentation, or set of circumstances can be used for this purpose, the principles outlined below guide the process.

- A. Attendance at a postsecondary educational institution, albeit a continuous and long-term experience, does not establish in-state status. Therefore, a student neither gains nor loses in-state status solely by such attendance.
- B. Students attending an Oklahoma college or university may perform many objective acts, some of which are required by law (i.e. payment of taxes), and all of which are customarily done by some out-of-state students who do not intend to remain in Oklahoma after graduation, but are situational and necessary and/or voluntary (i.e. registering to vote, obtaining a driver's license). Such acts and/or declarations alone are insufficient evidence of intent to remain in Oklahoma beyond the college experience.
- C. An out-of-state student attending an Oklahoma college or university on more than a half-time basis is presumed to be in the state primarily for educational purposes.
- D. An individual is not deemed to have acquired in-state status until he or she has been in the state for at least a year primarily as a permanent resident and not primarily as a student. Likewise, an individual classified as in-state shall not be reclassified as out-of-state until 12 months after leaving Oklahoma to live in another state.
- E. Unless residency has been established in another state, an individual who resided in Oklahoma at the time of graduation from an Oklahoma high school and has resided in the state with a parent or legal guardian for two years prior to graduation from high school will be eligible for in-state status and as

allowed in 3.17.6, 3.17.7 and 3.17.8.

- F. Each spouse in a family shall establish his or her own status on a separate basis. Exceptions include the following: when an out-of-state status individual marries a person with in-state status, the out-of-state individual may be considered in-state after documentation of the marriage and proof of domicile are satisfied without the 12 month domiciliary waiting period, and as provided in sections 3.17.7 or 3.17.8.
- G. Initial classification as out-of-state shall not prejudice the right of a person to be reclassified thereafter for following semesters or terms of enrollment as in-state provided that he or she establish domicile as defined in this policy. Institutions must establish procedures for students to appeal out-of-state status classification.
- H. Institutions may, but are not required, to waive out-of-state tuition (also known as Nonresident Tuition Waiver) in accordance with current State Regents' *Tuition and Fees Policy* 4.18.5.B that allows any institution in the State System to waive a portion of the out-of-state tuition which amount shall not exceed the difference between out-of-state tuition and the amount paid by in-state students.
- I. When a student transfers from one institution to another, the institution to which the student transfers is not bound by the in-state/out-of-state classification previously determined and may request documentation to determine the student's in-state/out-of-state status.

#### 3.17.4 Dependent and Independent Persons

- A. The legal residence of a dependent person is the postsecondary student's parents or the residence of the parent who has legal custody or the parent with whom the student habitually resides. If the student is under the care of those other than the parents, the legal residence is that of the student's legal guardian.
- B. In-state/out-of-state classifications of postsecondary students with extenuating circumstances (e.g., divorced parents with joint custody when one parent or legal guardian lives out-of-state and/or claimed as a dependent on a tax return, etc.) may be considered on a case-by-case basis. Guidance for administrative officers charged with classifying students will be provided in the procedures manual.
- C. A dependent person may establish independent person status through circumstances including, marriage, formal court action, abandonment by parents, etc. To qualify, a dependent person must have completely separated from the parental or guardian domicile and prove that such separation is complete and permanent. Additionally, the individual must provide evidence that they are responsible for their housing and living expenses. Mere absence from the parental or guardian domicile is not

proof of its complete abandonment. If an applicant can provide adequate and satisfactory evidence of independent status and domicile, they may be granted in-state status.

- D. If an independent person can provide evidence of coming to Oklahoma to establish domicile, the applicant may be granted in-state status at the next enrollment occurring after expiration of 12 months following establishment of domicile in Oklahoma.

### 3.17.5 Documented Foreign Nationals

Documented foreign nationals may attend as postsecondary students if they have appropriate educational visas. These individuals are eligible for in-state classification if they become lawful permanent residents, have resided in Oklahoma for at least 12 consecutive months, and meet domicile requirements as set forth in this policy.

Documented foreign nationals who are present in the U.S. with visas that allow full-time employment for extraordinary ability in sciences, arts, education, business, athletics, as an executive, manager, or specialist of a treaty nation company operating in the U.S. are eligible for out-of-state tuition waivers as long as they remain in full-time working status. Dependents of these documented foreign nationals who are lawfully present in Oklahoma based on the documented foreign national's visa are also eligible for out-of-state tuition waivers.

### 3.17.6 Undocumented Students

In accordance with Title 70, O.S., Section 3242 (2007) (also known as HB1804 of the First Regular Session of the 51st Legislature), an individual who cannot present to the institution valid documentation of United States nationality or an immigration status permitting study at a postsecondary institution but who:

- A. Graduated from a public or private Oklahoma high school;
- B. Resided in this state with a parent or legal guardian while attending classes at an Oklahoma public or private high school in this state for at least two (2) years prior to graduation; and
- C. Satisfies admission standards for the institution.

Individuals who meet the above requirements are eligible for enrollment and/or out-of-state tuition waivers if that individual:

1. Provides the institution with a copy of a true and correct application or petition filed with the United States Citizenship and Immigration Service (USCIS) to legalize the student's immigration status, or
2. Files an affidavit with the institution stating that the student will file an application to legalize his or her immigration status at the earliest opportunity the student is eligible to do so, but in no case later than:
  - a. One (1) year after the date on which the student enrolls for study at the institution, or

- b. If there is no formal process to permit children of parents without lawful immigration status to apply for lawful status without risk of deportation, one (1) year after the date the USCIS provides such a formal process, and
- 3. If the student files an affidavit pursuant to subsection B. above, presents to the institution a copy of a true and correct application or petition filed with the USCIS no later than:
  - a. One (1) year after the date on which the student enrolls for study at the institution, or
  - b. If there is no formal process to permit children of parents without lawful immigration status to apply for lawful status without risk of deportation, one (1) year after the date the USCIS provides such a formal process, which copy shall be maintained in the institution's records for that student.
- 4. Any student who completes and provides the institution with a copy of a true and correct application or petition filed with USCIS to legalize the student's immigration status shall not be disqualified on the basis of the student's immigration status from any scholarships or financial aid provided by this state as long as the student meets the following:
  - a. Graduated from a public or private Oklahoma high school;
  - b. Resided in this state with a parent or legal guardian while attending classes at an Oklahoma public or private high school in this state for at least two (2) years prior to graduation; and
  - c. Satisfies admission standards for the institution.
- 5. This policy shall not impose any additional conditions to maintain eligibility for an out-of-state tuition waiver at a postsecondary educational institution within The Oklahoma State System of Higher Education on a student who was enrolled in a degree program and first received an out-of-state tuition waiver and/or access to state scholarships at that institution during the 2006-2007 school year or any prior year.

#### 3.17.7 Military Personnel

Members of the armed forces who provide evidence that they are full-time active duty in the armed forces stationed in Oklahoma or temporarily present through military orders shall be immediately classified upon admission as in-state status along with their spouse and dependent children. Further, when members of the armed services are

transferred out-of-state, the member, their spouse and dependent children shall continue to be classified as in-state as long as they remain continuously enrolled.

Dependent children of members of the military reserve on full-time active duty shall be immediately classified upon admission as in-state status provided that Oklahoma is the home or record and the student maintains continuous enrollment. These dependent children shall retain in-state status without the 12 month requirement provided that the member of the military reserve was discharged or released under conditions other than dishonorable and as long as the student remains continuously enrolled. For the purpose of this section, “home of record” is the location where the reservist enlisted, reenlisted, or was commissioned into the military.

Former full-time active military personnel who remain in Oklahoma after their service may retain their in-state status without the 12 month requirement if they establish domicile as defined in this policy.

### 3.17.8 Full-Time Professional Practitioner or Worker

A U.S. citizen or Lawful Permanent Resident who provide evidence of having come to Oklahoma to practice a profession on a full-time basis, conduct a business full time, or work on a full-time basis shall be immediately classified as in-state status along with the individual’s spouse and dependents without the 12 month domiciliary requirement so long as they continue in such full-time employment capacity or until such time that they independently establish in-state status as described in section 3.17.3 of this policy.

A full-time professional practitioner or worker who is temporarily assigned to another location but maintains domicile in Oklahoma shall be considered to have in-state status along with the practitioner’s spouse and dependent children.

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