

Rules Amending Title 20
Hawaii Administrative Rules

March 17, 2005

1. Chapter 4 of Title 20, Hawaii Administrative Rules, entitled "Determination of Residency as Applied to Tuition Payments and Admission" is amended and compiled to read as follows:

HAWAII ADMINISTRATIVE RULES

TITLE 20

UNIVERSITY OF HAWAII

CHAPTER 4

DETERMINATION OF RESIDENCY AS APPLIED TO

TUITION PAYMENTS AND ADMISSION

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Historical Note: This chapter is based substantially upon "Rules and Regulations Governing Determination of Residency as Applied to Tuition Payments and Admission at All Institutions under the Jurisdiction of the Board of Regents of the University of Hawaii" promulgated by the University of Hawaii board of regents. [Eff 10/19/74; am 12/16/76; R 6/22/81]

SUBCHAPTER 1

GENERAL PROVISIONS

§20-4-1 Statement of purpose. The purpose of these rules is to define the term "residence" to provide a procedure whereby the determination of residence status shall be made for all prospective students; to provide appeal mechanisms for those students who feel that their residency classification is in error; and to provide sanctions for misrepresentation. [Eff 6/22/81; comp **JUL 15 2006**] (Auth: HRS §304-4) (Imp: HRS §304-4)

§20-4-2 Definitions. As used in this chapter:

"Adult" means a person who has reached majority.

"Board" means the board of regents of the University of Hawaii.

"Dependent" means those persons who are defined as dependents by law, e.g., spouse, minor child, those who are defined as dependents under Internal Revenue Service rules, and those who are defined as authorized dependents by the Armed Forces of the United States provided that the dependents other than the spouse are no more than twenty-three years of age.

"Employee" means and includes the full-time faculty, staff, and line members, and also graduate teaching and research assistants (though not full-time), employed at the university.

"Guardian" means a person invested by a court of law with the power, and charged with the duty, of taking care of the person and managing the property and other rights of a minor.

"Hanai" means a child taken permanently to be reared, educated and loved by someone other than natural parents—traditionally a grandparent or other relative. The child is given outright; natural parents renounce all claims to the child. Usually the child is given at infancy.

"Majority" means the age specified under section 577-1 HRS. That age is presently eighteen years.

"Minor" means a person who has not reached majority.

"Parents" includes legal guardian and legal adoptive parent, except where the guardianship or adoption was acquired primarily to obtain resident status for the ward or adopted child. It shall also include a person who can legally claim an unmarried minor as a dependent for federal income tax purposes, but only when such person has been in loco parentis to the minor for the twelve-month period immediately preceding the residency determination date.

"President" means the president of the University of Hawaii and shall include authorized subordinates.

"Domicile" means the place where an individual has a true, fixed, and permanent home and to where, whenever absent, the individual has the intention of returning. No individual can claim more than one domicile at any given time.

"Residence" as used in this chapter for tuition purposes, shall have the meaning set forth in section 304-4(c), HRS, as amended from time to time, and as more particularly described in this chapter.

"Residency determination date" means the first day of officially scheduled instruction for any semester or term in which the student is enrolling at the particular campus involved.

"Residency officer" means the registrar, director of admissions or other staff member designated by each campus to determine the residency status of students. Only the residency officer's determination represents the official university's determination of residency.

"Student" means every full-time and part-time graduate and undergraduate student enrolled at the university.

"University" means the several institutions and each of them that fall under the jurisdiction of the board.

[Eff 6/22/81; am 3/12/84; am 4/04/88; am and comp JUL 15 2006] (Auth: HRS §304-4) (Imp: HRS §304-4)

§20-4-3 Delegation of authority. The board hereby delegates its authority to administer the out-of-state tuition program at the university to the president. [Eff 6/22/81; comp JUL 15 2006] (Auth: HRS §304-4)

§20-4-4 REPEALED. [Eff 6/22/81; R 3/12/84]

§20-4-5 Board exemptions. The board may exempt certain nonresidents from payment of the nonresident tuition differential. Students may consult campus residency officers for further information on these exemptions. [Eff 6/22/81; am 3/12/84; am 4/04/88; am and comp JUL 15 2006] (Auth: HRS §304-4) (Imp: HRS §304-4)

§20-4-6 Residence criteria. The university's definition of "resident" for tuition purposes may be different from the definitions developed by other non-university agencies. The university does not necessarily recognize declarations of resident status made by other agencies. Thus, a person who is a Hawaii resident for tax or voting purposes, for example, is not necessarily a resident for University of Hawaii tuition and admission purposes. To qualify for the resident tuition fee, the following criteria shall be met:

- (1) The adult student, or in the case of a minor student, the student's parents or guardians, has been a bona fide resident of this state for at least twelve consecutive months next preceding the student's residence determination date; and
- (2) The adult or minor student has not been claimed as a dependent for tax purposes for at least twelve months next preceding the residency determination date by his parents or guardians who are not legal residents of the State; provided that this provision shall not apply in cases where the parent claiming the student as a dependent is entitled to do so under a child support order or agreement issued or entered into in conjunction with a divorce proceeding or legal separation agreement, and the other parent and the student meet the criteria set forth in paragraph (1);
[Eff 6/22/81; am 3/12/84; am 6/08/89;
am and comp **JUL 15 2006**] (Auth: HRS §304-4)
(Imp: HRS §304-4)

§20-4-7 Evidence of residence. The determination of residence for tuition purposes requires a finding of subjective fact (intent to establish domicile in Hawaii while relinquishing any prior domicile) as well as of objective fact (physical presence). The following evidences of a person's intent to establish domicile in Hawaii shall be considered. No single evidence shall be decisive. The residency officer will look primarily at the following evidences:

- (1) Voting, or voter registration, or both, in Hawaii.
- (2) Filing of Hawaii resident personal income tax return.

In addition, the residency officer may consider other evidence, such as:

- (1) Ownership of residential property or continuous rental of a dwelling on a lease basis in Hawaii.
- (2) Carrying on of a business or the holding of an employment position in Hawaii.

- (3) Presence of parent(s), spouse, children, and other close relatives in Hawaii.
- (4) Any other clear and compelling evidence, as determined by the residency officer. [Eff 6/22/81; am 3/12/84; am and comp **JUL 15 2006**]
(Auth: HRS §304-4) (Imp: HRS §304-4)

§20-4-8 Rules of construction. The following rules of construction shall be applied in all cases:

- (1) The twelve months begin on the date upon which the first overt action (see evidences in section 20-4-7) is taken to make Hawaii the permanent residence. While residence shall be lost if it is interrupted during the twelve months immediately preceding the residence determination date, resident status derived from two or more successive sources may be tacked together to compute the twelve-month period.
- (2) Residence in Hawaii and residence in another place cannot be held simultaneously.
- (3) Presence in Hawaii primarily to attend an institution of higher learning shall not create resident status. A nonresident student enrolled for six credits or more per term shall be presumed to be in Hawaii primarily for educational purposes. Such period of enrollment shall not be counted toward the establishment of a bona fide domicile of one year in Hawaii. A student may rebut this presumption of nonresidence if clear and convincing evidence is provided that the student has abandoned the student's previous residence and has established a bona fide residence in Hawaii primarily for purposes other than educational. The following evidences, in addition to the evidences of residence cited in section 20-4-7, shall be considered in determining bona fide domicile in Hawaii. No single evidence is decisive.
 - (A) Location and duration of driver's license for the previous year.
 - (B) Resident status in all postsecondary schools attended outside of Hawaii.
 - (C) Location and duration of any checking accounts, saving accounts, and safety deposit boxes for the previous year that documents financial independence. Reliance upon non-Hawaii, non-federal resources for financial support infers domicile in a state other than Hawaii. This

includes trust funds or other accounts available to the student.

- (D) Continuous presence in Hawaii during periods when not enrolled in school.
- (4) Resident status, once acquired, shall be lost by future voluntary actions of the resident inconsistent with that status. However, Hawaii residence shall not be lost solely because of the absence from the State while serving in the United States armed forces, while engaged in navigation, or while a student at any institution of learning, provided Hawaii is claimed and maintained as the student's residence.
- (5) Time spent incarcerated in city, state, or federal jails or prisons shall not be counted toward the physical presence requirement for Hawaii residency. [Eff 6/22/81; am 3/12/84; am and comp]
(Auth: HRS §304-4) (Imp: HRS §304-4) JUL 15 2006

Historical Note: Section 20-4-8(1) is based substantially on section 20-4-4. [Eff 6/22/81; R 3/12/84] (Auth: HRS §304-4) (Imp: HRS §304-4)

§20-4-9 Particular categories. (a) The resident status of every adult shall be established by the person's own acts and intentions and shall not be derived from any other person, except as specifically provided otherwise in this chapter.

(b) The residence of an unemancipated minor shall be the residence of the parent who claims the minor as a dependent for tax purposes, regardless of the minor's primary abode. If both parents are deceased, the residence of the unemancipated minor remains that of the last parent to die until changed by court order. Upon court appointment of a guardian for the minor, the residence of the minor shall become that of the guardian.

(c) A nonresident unemancipated minor attending an institution of higher learning outside of Hawaii or on active duty with the United States armed forces, whose parents become residents of Hawaii and who reaches majority before the minor would derive residency in Hawaii from the parents' new status, may be classified as a resident for tuition purposes when the parents have completed twelve consecutive months of residence; provided that the classification shall be lost if actions inconsistent with resident status are taken after leaving the institution or discharge from the military (e.g., failure to promptly make a home in Hawaii).

(d) If an unemancipated minor's parents lose their Hawaii residence, the minor shall be classified as a nonresident at the

next residence determination date; provided if the parents' change of residences is due to obedience to active-duty military orders, the minor student shall continue to pay resident tuition as long as the minor continuously attends the University full time.

(e) An emancipated minor shall be considered an adult for purposes of residence under this section. The following shall constitute evidence of emancipation, no one of which shall be controlling:

- (1) Financially independent or self supporting.
- (2) Subsistence not provided by parents or legal guardian.
- (3) Prior military service.
- (4) Other evidence of residence enumerated under section 20-4-7.
- (5) Any other conduct inconsistent with parental control and custody.

(f) A student shall be allowed to base residency on that of someone other than the parent or legal guardian, provided the relationship between the student and the person or persons other than the parent or legal guardian is that of hanai.

(g) An alien may establish residence unless prohibited by the Immigration & Nationality Act from establishing domicile in the U.S.

The date of approval of such status shall be the earliest date upon which the twelve-month residency requirement may begin to accrue.

(h) Service in the armed forces of the United States shall not of itself negate establishment of residence in Hawaii. For instance, a nonresident serviceman whose last duty station is in Hawaii and who does all other things necessary to establish bona fide domicile in Hawaii, may be classified as a resident. In addition, a person who establishes domicile in Hawaii but who enters the military service prior to the expiration of the twelve months from the date of establishment may tack the period of military service onto the former period to satisfy the twelve-month criteria. [Eff 6/22/81; am 3/12/84; am and comp JUL 15 2006] (Auth: HRS §304-4) (Imp: HRS §304-4)

SUBCHAPTER 2

PROCEDURE

§20-4-10 Determination of residence. (a) The residency officer at each campus shall determine the resident or nonresident status of every student matriculating at that campus. A questionnaire shall be prepared to elicit facts upon which to make the residency determination and the questionnaire shall be

§20-4-10

transmitted to each prospective student. The prospective student shall answer all pertinent questions and shall attest to the truth of all answers by signing the questionnaire. The residency officer may also require the production by the prospective student of certified copies of documents relevant to the determination of resident status.

(b) A nonresident student, having met the criteria for bona fide legal Hawaii residency, may request a change of status from nonresident to resident by completing the residency questionnaire and attaching certified copies of the student's, parents', or guardians' personal income tax form. The residency officer may also require the production by the student of certified copies of other documents relevant to the determination of resident status consistent with sections 20-4-6, 20-4-7, and 20-4-8. [Eff 6/22/81; am 3/12/84; am and comp JUL 15 2006]
(Auth: HRS §304-4) (Imp: HRS §304-4)

§20-4-11 Notification of change of residence. A resident student who subsequently takes up residence outside of Hawaii and who continues to attend the university shall promptly advise the residency officer of the change of residence. In such a case, the nonresident tuition differential shall be payable commencing from the residence determination date following the change of residence. [Eff 6/22/81; am 3/12/84; comp JUL 15 2006]
(Auth: HRS §304-4) (Imp: HRS §304-4)

§20-4-12 REPEALED. [R JUL 15 2006]

§20-4-12.1 Residency appeals board. (a) The residency appeals board shall be composed of the residency officer from each campus of the university.

(b) A minimum of three residency appeals board members shall decide each appeal.

(c) Residency officers shall recuse themselves from hearing appeals of students enrolled at their campuses.

(d) In general, the residency appeals board will affirm a determination of nonresident status unless the student produces new information or there has been a change in legal standards.

(e) The decision of the residency appeals board shall be the final university determination. [Eff and comp JUL 15 2006]
(Auth: HRS §304-4) (Imp: HRS §304-4)

Historical Note: Section 20-4-12.1 is based substantially on section 20-4-12. [Eff and comp **JUL 15 2006**] (Auth: HRS §304-4) (Imp: HRS §304-4)

§20-4-13 REPEALED. [R **JUL 15 2006**]

§20-4-14 Appeals. (a) Classification as a nonresident by a residency officer may be appealed by the student to the residency appeals board.

(b) Notification of appeal shall be made in writing upon the form available at the admissions office on each campus. Notification of appeal shall be received by the residency appeals board on or before the thirtieth day following the mailing (or personal delivery, as the case may be) of written notification of nonresident determination or on or before ten days after the residence determination date, whichever is later. Failure to file an appeal within the time prescribed constitutes a waiver of the right to file such an appeal for that semester.

(c) Appeals shall be heard only after payment of the nonresident tuition. Appeal hearings shall be held within three weeks of the request for an appeal unless continued by the residency appeals board. If the student fails to appear at the scheduled hearing, except for good cause shown, the appeal shall be dismissed.

(d) The residency appeals board shall promptly notify the student of the time, date, and place of the hearing upon the appeal. The hearing shall be held between seven and twenty days after notification by the residency appeals board, but the residency appeals board may extend this period a reasonable length of time if its hearing calendar so requires.

(e) The hearing shall be private unless the student requests a public hearing in the notice of appeal.

(f) The student may be represented by legal counsel if so desired.

(g) Formal rules of evidence need not be followed in an appellate hearing. The residency appeals board may require that the student provide it with certified copies of the pertinent documents. The residency appeals board may call the residency officer to explain the basis of the determination of student's nonresidence. A record of the oral testimony adduced at the hearing need not be kept.

(h) The residency appeals board shall issue its findings of fact, conclusions of law, and decision within thirty days after the hearing and a copy shall be transmitted to the student, to the president, and to the chancellor of the campus concerned. The decision of the residency appeals board shall be final.

(i) If the residency appeals board determines that the student is a resident, the campus will refund the nonresident tuition differential to the student. [Eff 6/22/81; am 3/12/84; am and comp **JUL 15 2006**] (Auth: HRS §304-4) (Imp: HRS §304-4)

§20-4-15 REPEALED. [R **JUL 15 2006**]

§20-4-16 REPEALED. [R 3/12/84]


§20-4-17 Providing incorrect information. A student or prospective student who provides incorrect information upon any form or document intended for use in the determination of residency status for tuition or admission purposes, or relative to any appeal hearing thereof, and who is admitted to the university on the basis of the incorrect information shall be subject to the following:

- (1) The student shall be required to pay the difference between the resident and nonresident tuition retroactive to the student's initial residency determination date. The student shall be notified by registered letter of any discovery of incorrect information and the requirement of any additional payment due the university. Payment of the difference in tuition shall be made within ten days of the mailing of the notice or before the last day of instruction for the semester in which the student is enrolled, whichever is sooner. Should the student not pay the difference in tuition, and upon the expiration of the period for payment, the student shall be removed from the official enrollment list of the university and be refunded the full tuition paid for the current semester less a prorata amount due the university to cover the cost of all instruction provided, as shall be prescribed by the president. The denial of further enrollment and the withdrawal of service connected with the evidences of instruction such as transcripts or diplomas shall be imposed in accordance with section 20-10-2, Administrative Rules.
- (2) Any student or prospective student who intentionally or willfully misrepresents any fact relative to the determination of residency or any appeal thereof, and who is admitted to the university on the basis of the

misrepresentation, in addition to the requirements prescribed in this section, may also be charged with a violation of the campus conduct code, penalties under which may include warning, probation, suspension, or expulsion. [Eff 6/22/81; am 3/12/84; comp **JUL 15 2006**] (Auth: HRS §304-4) (Imp: HRS §304-4)

Amendments to and compilation of chapter 4, title 20, Hawaii Administrative Rules, on the Summary Page dated March 17, 2005 were adopted on June 15, 2006 following public hearings held on May 22, 2006, May 23, 2006, May 31, 2006, and June 1, 2006 after public notice was given in the Honolulu Star-Bulletin, the Maui News, the Garden Island News and the Hawaii Tribune-Herald on April 1, 2006, April 18, 2006, April 20, 2006, and April 18, 2006 respectively.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.



KITTY LAGARETA
Chairperson
Board of Regents
University of Hawaii



LINDA LINGLE
Governor
State of Hawaii

Date: JUL - 5 2006

Filed

APPROVED AS TO FORM:



Deputy Attorney General

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LEUTENANT GOVERNOR'S
OFFICE