

A Manual
To Assist the Public Higher Education
Institutions of North Carolina
in the Matter of
Student Residence Classification
for Tuition Purposes

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(Please note this Manual version has been retyped to be more easily read than the 1985 version and intends to include updated legislation to Fall 2003, retyped 3/02, updated 3/04)

Table of Contents

I.	Introduction	1
	A. Historical Context	1
	B. Purpose of Manual	3
II.	Definition of Terms	4
	A. Bona Fide	4
	B. Domicile	5
	C. Enrollment; Enrolled	5
	D. Institution of Higher Education	6
	E. Legal Guardian	6
	F. Legal Resident	6
	G. Minor	6
	H. Presumption	6
	I. Prima Facie	6
	J. Residence	6
	K. Tuition	6
III.	Procedures for Classifying by Residence for Tuition Purposes	6
	A. Initial Classification	6
	B. Subsequent Classification Inquiries: Reclassification	7
	1. Changes from Non Resident to Resident Classification	8
	2. Changes from Resident to Non Resident Classification	8
	3. Erroneous classification, erroneous notices concerning classification and fraudulent applications	8
	C. Transfer Students	9
	D. Multi-Campus Applications	10
	E. Responsibility for Supplying Information	10
	F. Appeals	10
	G. State Residence Committee	12
	1. Composition	12
	2. Responsibilities	12
IV.	Classification Determinations	12

A.	Fundamental Requirements of Law	12
B.	Aspects of Interpreting and Applying the Basic Statutory Provisions	15
1.	The concept of domicile	15
2.	The beginning point of inquiry in determining domicile	16
3.	The nature of domiciliary evidence	17
4.	Weighing and balancing domiciliary evidence; the burden of proof	20
5.	Special rules under the law of domicile	21
a.	Domicile of a minor	21
b.	The emancipated@ minor	25
c.	Policy concerning members of the armed forces	25
d.	Policy concerning federal personnel	31
e.	Policy concerning aliens	31
f.	Policy concerning prisoners	33
6.	The domicile of individuals who are married	33
7.	The statutory grace period following loss of domicile	36
V.	Examples of Appropriate Residence Classifications	37
A.	Typical Cases not Requiring Extensive Analysis	37
B.	Cases Requiring Extended Analysis	39

I. Introduction

The public institutions of higher education were established and are maintained by the State of North Carolina primarily for the benefit of qualified residents of North Carolina. The consequent substantial commitment of public resources to higher education is predicated on the proposition that the State does benefit significantly from the existence of large numbers of citizens whose capacity for effective discharge of civic, professional and social responsibilities has been enhanced by the opportunity for advanced educational experiences. Accordingly, as a matter of State policy, the benefits of higher education are provided so far as practicable at minimal cost to students whose quality and duration of residence in North Carolina render them people of the State. [see North Carolina Constitution, Article IX, Section 9.]

While the practice of permitting a limited number of non residents to enroll in the North Carolina public institutions of higher education is educationally sound, considerations of equity dictate that such students pay the approximate actual cost of their education, already provided by the citizen taxpayers of North Carolina in anticipation of present and future benefit to the State. Accordingly, it is the long standing practice of the State to require students who are not residents of the State to pay a higher rate of tuition than that charged to students whose legal residence in the State reasonably assures that they have already contributed, and will continue to contribute, substantially to the State in their capacity as resident citizens. [see General Statutes 116-11(7) and 116-144.]

A. Historical Context

Until May of 1973, determination of a student's residence status for tuition purposes rested upon the easily administered statutory requirement that a legal resident must have maintained his domicile in North Carolina for at least the twelve months next preceding the date of enrollment or re-enrollment in an institution of higher education in this State with the express proviso 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. [G.S. 116-143.1, 1971; emphasis added]. The administrative consequences of this law was to make necessary, in most cases, only one inquiry concerning residence status for each student, at the outset of the higher education experience, since time spent enrolled as a student could not be counted in satisfaction of the twelve-month eligibility requirement.

The 1971 Session of the General Assembly amended the applicable law, with the consequence that a person who might already be enrolled was no longer necessarily precluded from demonstrating during the period of his or her enrollment that he or she had become a legal resident of North Carolina and been so for such a duration as to be entitled to the in-state tuition rate. The administrative consequences of this modification of the law were substantial. Two inquiries were now mandated by the statute. First, had the applicant for classification as a resident for tuition purposes become a legal resident of North Carolina? Second, had the applicant maintained that legal residence in North Carolina for at least twelve months immediately prior to the term for which in-state status was sought? Thus, a carefully detailed inquiry was not to be made in each such case concerning the residential status of the applicant, as measured by established legal principles controlling the disposition of questions about one's

place of legal residence.

In 1974, the General Assembly further amended the statute: (1) to grant a statutory grace period to certain persons who, following classification as residents for tuition purposes and during enrollment, lost North Carolina legal residence, with the effect that such persons should continue to enjoy the in-state tuition rate for a specified period of time and (2) to permit a shortening of the prescribed twelve-month qualifying period of residence for a resident whose spouse had continuously maintained residence in-state from a point in time more remote than that of the applicant.

In 1975, the General Assembly again amended G.S. 116-143.1, this time in both formalistic and substantive ways. Formally, many of the provisions of the 1973 law were retained but textually organized so as to make more obvious the elements of the statute; to this structure were added certain definitions of terms, whose meaning was already dictated or implied by the prior law. Substantively, the previously existing prima facie evidence rules, which made evidentially important the domicile of one's parents, were modified by an exception that made inconsequential or at least less significant, the non residence of parents whose applicant child had lived in this State the five years preceding the subject enrollment or re-registration. Most important, subsection (f) of the 1975 law established in the tuition status context, that the fact of marriage alone was to essentially neither favor nor disadvantage a married person of either sex. This, in effect, rendered inoperative in the present context the common law principle that a wife's domicile is presumed to be that of her husband.

In 1977, the General Assembly, responding to the desperate migration of Indochina refugees to this country, enacted a new section to G.S. Chapter 116 (G.S. 116-143.2) to confer in-state tuition status on refugees and orphans from the Republic of Vietnam, Laos and Cambodia, who, as refugees or orphans, entered the United States after March 31, 1975, lived (abided) in this State for twelve months, and continued so situated into and through academic admission and enrollment at an institution of higher education. Anticipating that the hostile international circumstances prompting this legislation would ameliorate, the General Assembly conditioned the act to expire on July 1, 1982.

In 1979, the General Assembly amended G.S. 116-143.1 to confer legal residence on a minor whose domicile under general law might be derivatively that a parent not domiciled in North Carolina but whose financial support came from a North Carolina parent claiming the child as a dependent for income tax purposes in this State [G.S. 116-143.1(j)]. A further amendment to this subsection was enacted in 1981 to preserve the legal residence thus conferred upon the minor if the person involved (1) upon becoming an adult, acts, to the extent that the person's degree of actual emancipation permits, in a manner consistent with bona fide legal residence in North Carolina and (2) begins enrollment at an institution of higher education not later than the fall academic term next following completion of education prerequisite to admission to such institution.

The 1979 Legislature also amended the statute to permit minors living with North Carolina relatives other than parents but who were functioning as guardians, to receive resident tuition status if the de facto guardian relationship had existed for five or more years immediately preceding the term for which the in-state status were sought [Section 116-143.1(k)]

The 1981 General Assembly, in addition to amending subsection (j) as indicated, enacted a new subsection (l) to facilitate the reacquisition of resident tuition status by persons who had

ceased enrollment or graduated while enjoying in-state status, had then abandoned North Carolina domicile, but within twelve months of abandonment had reacquired domicile into re-enrollment at an institution of higher education. Subsection (l) provides that such persons need not meet the twelve-month durational requirement to reacquire in-state tuition status for the re-enrolled term or any subsequent term while the reacquired domicile is continuously maintained. The benefit of this subsection, however, is available for use only once by any one person.

The 1984 General Assembly enacted a new section, G.S. 116-143.3 to make eligible for the in-state tuition rate any member of the armed services while abiding (living) in this State incident to active military duty. The privilege was made available also to any dependent relative of a member of the armed services upon the condition that the dependent relative share in North Carolina the abode of the service person and that the service person qualify for the benefit. In 1985, the General Assembly revised the tuition benefit for the service member so that the tuition actually charged would be the out-of-state tuition amount reduced to the extent that the out-of-state tuition exceeds an amount derived by a statutory formula that factors in any payments to the enrolling institution by the service member's employer by reason of the enrollment. Also in 1985 the General Assembly added the requirement that to enjoy the in-state tuition benefit, a dependent relative must meet any applicable requirements of the Selective Service System. Continuing from the 1984 act are these conditions: (1) that neither the service person nor a dependent relative is relieved of meeting pertinent admissions requirements of the enrolling institution; (2) that the benefit of the law is limited to potentially receiving a tuition rate lower than the out-of-state rate and that a person receiving the reduced tuition benefit solely because of G.S. 116-143.3 shall not qualify for or be the basis for conferring the benefits of G.S. 116-143.1 (g), (h), (I), (j), (k), or (l); and (3) that if the service person who supports a dependent relative receiving the benefit of G.S. 116.143.3 leaves his or her North Carolina abode during the academic year, the dependent relative may complete that academic year at the in-state tuition rate.

Military Personnel and their military dependents:

Eligibility to be charged less than the out-of-state tuition rate under G.S. 116-143.3 is dependent on the "maximum available tuition assistance" available to the service member through his service component.

- a. To calculate the fee and tuition charge, take the "maximum" military tuition assistance rate (now set at \$250 per credit hour), then subtract the Education and Technology fee (calculated on a per student credit hour basis). The amount left is the tuition to be charged.

One who does not qualify under this Manual as a resident for tuition purposes may be eligible to be charged tuition at the in-state rate plus mandatory fees if the service person does not receive tuition assistance from his service.

If a military member does not receive tuition assistance from his service employer, he or she would pay the in-state rate plus all applicable mandatory fees.

The full texts of G.S. 116-143.1 and 116-143.3 are set for in Appendix A.

B. Purpose of Manual

The purpose of this manual is to articulate rules and regulations and set forth collateral law essential to the effective implementation of G.S. 116-143.1 and 116-143.3 and to provide guidance to each institution and its students in meeting their respective responsibilities under the law as to classification of persons by residence for tuition purposes.

G.S. 116-143.1 and G.S. 116-143.3, in their successive revisions, necessitated the development and revisions of this manual to insure faithful and effective implementation of the statutes. The public higher education community, in discharging its responsibilities under G.S. 116-143.1, understands that the precepts of due process and equal protection of the laws dictate that a rigorous classification inquiry be undertaken to insure as fully as possible that persons who are not legal residents for tuition purposes of North Carolina will be charged the legally prescribed higher tuition rate and persons who are in fact legal residents of North Carolina for tuition purposes will be afforded the legally prescribed lower tuition rate.

II. Definition of Terms

The language of residency determination includes many legal terms as well as certain lay terms which, of necessity, have specialized meaning for present purposes. The following definitions shall be controlling in connection with the interpretation and application of G.S. 116-143.1:

- A. Bona Fide** - in good faith; in the context of domiciliary inquiries, describes the quality of certain relevant conduct and its motivation, viz., acts performed not to subvert residence law but to meet its requirements to establish a genuine legal residence.
- B. Domicile** – one’s permanent dwelling place of indefinite duration, as distinguished from a temporary place of abode; synonymous with legal residence.
 - 1. Domicile may be established:
 - a. By birth; i.e., a child upon birth has the domicile of his or her parents and retains the same until there is a legally effective change in that domicile;
 - b. By operation of law, as in the case of a minor, whose domicile, in most cases, is presumed conclusively to be that of his or her parents (actual physical presence in the new state of domicile not required in such cases); or
 - c. By choice. Assuming the existence of no disabilities such as infancy, a person may establish domicile in a jurisdiction of his or

her choice.

2. One always has a domicile. (Note. One is not guaranteed under the law, however, always to have a state in which one qualifies as a resident for tuition purposes.)
3. One retains a given domicile until it is abandoned and another is established.
4. One never has more than one domicile at a given time.
5. Establishing domicile by choice requires the overt act of establishing physical presence in a place while maintaining at that time the intent to make the place one's permanent home of indefinite duration. Thus, an adult person, having previously acquired domicile in one place, whether by birth, operation of law or choice, may change that domicile only by choice, through the concurrence of physical presence and residentiary intent in the new place.
6. The requisite domiciliary intent is tested by evaluating relevant, objectively verifiable conduct which may constitute a manifestation of the state of mind of the actor. The following types of inquiries, or combination thereof, may be significant, though no one item, nor any combination of the items, will necessarily control resolution of the question:
 - a. Living or not living in the home of one's parents.
 - b. Place where one voted or registered to vote.
 - c. Place where one has served on jury duty.
 - d. Place where one has registered and/or licensed a car.
 - e. Place where one last acquired a driver's license.
 - f. Place where one has filed state income tax returns.
 - g. Place where one maintains personal property and last listed such for taxation.
 - h. Place where one owns a home or other real property and pays taxes thereon.
 - I. Place where one spends substantial parts of available vacation time.
 - j. Place where one is or was employed or working gainfully.
 - k. Place where one maintains membership in one or more professional associations, unions and other organizations.
 - l. Place where one last attended or graduated from high school.
 - m. Place where one resided before enrolling in an institution of higher education.
 - n. Sources of one's financial support.

C. **Enrollment; Enrolled** - the status of one who is registered with respect to an academic term that has begun. G.S. 116-143.1(e) and (I) both contain statutory

benefits conditioned upon enrolled status. [Paragraph IV.B.7.b., below, further defines enrolled in the context of G.S. 116-143.1(I).]

- D. **Institution of Higher Education** - in general usage, all institutions, public and private, offering educational instruction above the level of the secondary school, specifically the senior institutions (universities, liberal arts colleges and independently organized graduate or professional schools) and the two-year institutions (community colleges, junior colleges, technical institutions and semi-professional schools); under G.S. 116-143.1, the constituent institutions of The University of North Carolina and the community colleges and technical institutes under the jurisdiction of the State Board of Community Colleges.
- E. **Legal Guardian** - a person who by court order has been appointed to act in the place of an individual 's parents. There are several types of legal guardian. The type having major significance under G.S. 116-143.1 is guardian of the person which may be appointed should the minor 's parents not be living and capable of supporting the minor. Guardianship should be distinguished from adoption, whereby one acquires new legal parents.
- F. **Legal Residence** - synonymous with domicile [see above].
- G. **Minor** - a person below the age of 18 years; a minor is presumed to be legally incapable of establishing a domicile independent of that of his or her parents.
- H. **Presumption** - a legal device to place the burden of proof or of producing evidence on one or another party to a proceeding; i.e., in the absence of satisfaction of the burden, the presumption is conclusive that an assumed state of affairs exists.
- I. **Prima Facie** - by a first or initial showing (of the minimum evidence needed to support some conclusion of fact or law). G.S. 116-143.1(e), in part, makes the domicile of a student 's parents prima facie evidence of the student 's domicile. Read along with the rest of subsection (e) and with reference to subsection (d), however, this provision is transformed by the whole statute from the minimum evidence function into simply a substantive beginning point of inquiry for the residence classification.
- J. **Residence** - according to the context, used either technically to mean legal residence (domicile) or, loosely, to mean abode irrespective of duration.
- K. **Tuition** - the basic fee for educational services that an institution charges its students each time they register.

III. Procedures for Classifying by Residence for Tuition Purposes

A. Initial Classification

A student admitted to initial enrollment in an institution (or permitted to re-enroll following an absence from the institutional program which involved a formal withdrawal from enrollment) shall be classified by the admitting institution either as a resident or as a non resident, for tuition purposes, prior to actual enrollment. Particular officials or offices shall be designated by the chief executive officer of the institution to evaluate all such initial-classification cases and to assign an appropriate classification consistent with the requirements of State law and provisions of this manual. G.S. 116-143.1 specifies certain information that must be obtained from the applicant for in-state status. However, among applicants the information needed to make a reliable determination may vary greatly, and the suggested common information form (Appendix B hereof) may elicit far more than is needed in one case and prove inadequate as formulated in another. Institutional officials, though, are cautioned that a question or inquiry that deletes substance of Appendix B may not prove adequate to substantiate to the satisfaction of the State Auditor a given classification and is likely to cause remand for further inquiry by institutional officials of a classification if appealed by a student to the State Residence Committee. On this point, it should be remembered that the emphasis of G.S. 116-143.1, especially subsection (d), is on thoroughness of inquiry, not quickness.

B. Subsequent Classification Inquiries: Reclassification

A residence status classification once assigned (and finalized pursuant to any appeal properly taken) may be changed thereafter only at intervals corresponding with the established primary divisions of the academic calendar of the institution, viz., at the beginning of a semester, quarter or otherwise denominated basic interval of the academic calendar. No change in residence status classification for tuition purposes (and thus no change in applicable billing rates) shall be effected during such a semester, quarter or term, with resulting increases or decreases in the tuition obligation prorated for a portion of such semester, quarter or term. Reclassification may be appealed by either the student or the institution, under the rules set forth in Section F, below. If the reclassification inquiry (or any appeal taken in connection therewith) is not completed prior to commencement of the next succeeding pertinent semester, quarter or term, the pre-existing classification shall prevail for purposes of tuition billing, with the understanding that a final conclusion in the classification or reclassification shall result in appropriate prompt supplemental billing for any underpayment or refund for overpayment, for the intervening term(s).

An institution is not required to investigate independently to determine whether there may have been a change in operative facts relative to an individual student's existing resident status. Under the burden of conscientious good faith discharge of its administrative responsibilities, however, an institution has the responsibility to investigate a student's resident status where it has reason to believe from relevant information that there has been a change in operative facts relative to an individual student's resident status. The need to make such an inquiry rests upon a finding by the institution that the likelihood of a change in operative facts is substantial. Where the information comes from a third party, the institution may weigh the

substantiality of the information in determining whether to investigate.

The institution shall provide to each student at the time of and in connection with the transmission to the student of each periodic bill for tuition charges a notice of the circumstances under which and the time at which a change in classification may occur. The notice shall be similar to that set forth in Appendix C.

This section B shall not be construed to prohibit either an applicant for residentiary classification nor an institution of higher education from seeking reclassification with respect to a term or semester for which a residentiary determination has already been rendered, except as limited by the provisions of paragraphs 1 and 2, below.

1. Changes from Non Resident to Resident Classification

If a student is classified initially as a non resident, it is the responsibility of the student thereafter to petition the responsible official or office for reclassification to resident status if the student believes that subsequent changes in facts justify such a reclassification. The institution will not assume responsibility for initiating such an inquiry independently. The student may file such a petition at any time after expiration of the twelve month period as a legal resident (domiciliary) acquired by any of the means provided by G.S. 116-143.1. The change in classification, if deemed to be warranted, shall be effective at the academic term next following the date of application for reclassification, provided, that a change in residence classification may be retroactive to the beginning of an academic term during which application was made if the twelve month period is found to have been satisfied as one of the beginning of that term. No changes to in-state status may be obtained by a student for an academic term that has ended before the date of the petition for reclassification unless a change in residence law or policy is the cause for the reclassification petition and that change was made retroactive in effect to a point in time preceding the expired academic term(s).

2. Changes from Resident to Non Resident Classification

If a student is classified initially as a resident, again, either the student or the institution thereafter may initiate a reclassification inquiry, based on changes in facts which would appear to justify such an inquiry. Again, it is the responsibility of the affected student who is aware of changes in facts which would serve to apprise a reasonable person that there was reasonable doubt about the validity of the existing residential classification to file a petition for reclassification. Failure of a student during a period of more than one semester, quarter or term from the date of adverse change in operative facts to file such a petition under the circumstances prescribed shall be cause for appropriate disciplinary action against the student by the institution, including, but not necessarily limited to, cancellation of registration and enrollment. The institution may initiate the reclassification inquiry independently at any time after the occurrence of the material events or changes in facts which give rise to a reasonable

doubt about the validity of the existing residential classification.

3. Erroneous classifications, erroneous notices concerning classification and fraudulent applications

The substantive propriety of a residence classification may be tested through the appeal remedies described in Section F, below. Such residence determinations if reversed on appeal may be described as having been erroneous classifications. Erroneous classifications are to be distinguished, however, from proper (or at least undisputed) classifications that are communicated erroneously to the classified student or within the classifying institution; these communications are erroneous notices concerning classification. Such erroneous notices may be letters announcing a residence status determination, tuition billing notices or institutional directives or notations for internal use of the classifying institution. Erroneous notices are by definition written communications.

- a. Where a student, having been classified (i.e., found) a nonresident for tuition purposes, receives from an institutional officer an erroneous notice announcing the student to be, or treating the student as, a resident for tuition purposes, the student shall not be responsible for paying the out-of-state tuition differential for any enrolled term commencing before the classifying institution gives to the student actual or constructive notice in writing or the erroneous nature of the prior notice.
- b. Where a student has been classified as a resident for tuition purposes following submission by a student of falsified residentiary information or after the student has knowingly withheld residentiary information, the application of the student for in-state tuition status is fraudulent. An institution may re-examine an application suspected as being fraudulent, make a residence status redetermination thereof, and change the status of the student, if warranted, retroactively to the beginning of the term with respect to which the fraudulent application had originally been made. Such a retroactive change would make the student responsible for the out-of-state tuition differential for the enrolled term(s) intervening between the fraudulent application and its discovery.

C. Transfer Students

When a student transfers from one public institution of higher education in North Carolina to another, he or she shall be treated as a new student by the institution to which the student is transferring and shall be assigned an initial residence classification for tuition purposes

consistent with the requirements of Section A, above.

The transfer into or admission to a different component of the same institution (viz., from an undergraduate to a graduate or professional program) shall not be construed as a transfer from one institution to another and, thus, shall not by itself require a reclassification inquiry unless (1) the affected student requests a reclassification inquiry or (2) the transfer or enrollment occurs following the elapse of more than one quarter, semester or term during which the student was not enrolled as a student.

D. Multi-Campus Applications

The residency classification of a student by one institution is not binding on another institution. Each classification, however, is subject to the appeal provisions set forth in Section F, below. Each institution of higher education shall assist another institution of higher education by supplying residency information and classification records concerning a student is so requested by the student or a classifying institution.

E. Responsibility for Supplying Information

An applicant or enrolled student subject to either a classification or reclassification inquiry is responsible for supplying all information request by the institution in connection with the classification process [See G.S. 116-143.1(d).] Failure to comply will all requests for information prescribed by the institution shall be attended by the following consequences:

1. In the context of an initial classification inquiry affecting a prospective enrollee, the student shall be classified a nonresident for tuition purposes;
2. In the context of a reclassification petition initiated by the student to acquire a change from non resident to resident status, the student shall continue to be classified as a non resident for tuition purposes;
3. In the context of a reclassification inquiry anticipating a change from resident to non resident status for tuition purposes, the student may be disciplinary action, including, but not limited to, cancellation of registration and enrollment or dismissal.

Knowing falsification of any response made to any institutional request for information may subject the individual to disciplinary action, including dismissal from the institution, in the discretion of the institution.

F. Appeals

The decision of the officials or office of the institution responsible initially for residence

classification or reclassification decisions may be appealed by the affected individual as follows:

1. To the chief executive officer for the institution, or the officer's delegate (who may be either an individual official or a committee designated by the chief executive director), pursuant to such rules and procedures as may be prescribed by the chief executive officer; if not satisfied with the disposition of the complaint, the individual may then appeal.
2. To the State Residence Committee pursuant to such rules and procedures as that Committee may prescribe.

The sole grounds for appeal to the State Residence Committee from the institutional decision on appeal shall be:

- a. That the institutional decision was made in disregard of or mistake with reference to the requirements of law or Manual policy;
- b. That Manual provisions as currently stated do not address a legal issue presented by the institutional decision;
- c. That Manual provisions as currently stated are at variance with subsequently developed case law pertinent to the institutional decision;
- d. That the institutional decision is not supported by an evidentiary record providing a reasonable basis for the conclusion reached or
- e. That the institutional decision on appeal was rendered after review by institutional appeal, as provided for hereinafter, and that the contrary, initial determination of resident status when viewed in light of the evidentiary record as augmented by review upon institutional appeal has a reasonable basis in the total evidentiary record.

Final disposition of an appeal by the State Residence Committee shall be deemed to exhaust the administrative remedies of the appellant with respect to the institutional classification or reclassification.

The decision of the official or office of the institution responsible initially for residence classification or reclassification decisions may be appealed by the institution to an institutional appeals agent or body designated by the institution's chief executive officer. Only the institution's chief executive officer or his or her duty appointed agent shall have the authority to enter an institutional appeal. If an initial residence classification is appealed by the institution to the institutional appeals agency and the initial residence classification is confirmed upon that appeal, the initial classification may not be further appealed by the institution to the State Residence Committee. This limitation upon institutional appeals shall not prohibit institutional

inquiry to the State Residence Committee for purposes of general advice or other assistance.

G. State Residence Committee

1. Composition

The State Residence Committee shall consist of one individual appointed by the President of The University of North Carolina from the staff of the Office of the General Administration of the University; one individual appointed by the President of the Community College System from the staff of the System; six institutional representatives appointed by the President of The University; six institutional representatives appointed by the President of the Community College System; and one member who shall be an attorney from State government and appointed by the two Presidents.

2. Responsibilities

The responsibilities of the State Residence Committee shall be:

- a. To decide cases appropriately appealed to it from a State institution of higher education;
- b. To evaluate the administrative practices and substantive rules associated with implementation of State law relating to residential classification for tuition purposes and to make recommendations, respectively, to the Board of Governors of The University of North Carolina and to the State Board of Community Colleges 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; and
- c. To serve as a source of general advice to and sharing of information with and among affected institutions of higher education concerning residence questions.

IV. Classification Determinations

A. Fundamental Requirements of Law

The subsection of G.S. 116-143.1 may be highlighted as follows:

1. Subsection (a). There is a distinction between legal residence and residence for tuition purposes. The requirements of the law are applicable to all students or applicants for attendance at every public university, community college, or technical institute of this State.
2. Subsection (b). To qualify as a resident for tuition purposes, a person must become a legal resident and remain a legal resident for at least twelve months immediately prior to classification.
3. Subsection (c). Twelve months legal residences means more than simple abode in North Carolina. In particular, it means maintaining a domicile (permanent home of indefinite duration) as opposed to maintaining a mere higher education. The burden of establishing facts which justify classification of a student as a resident entitled to in-state tuition rates is on the applicant for such classification.
4. Subsection (d). Being classified a resident for tuition purposes is contingent on the student ' s providing all information that the institution may require in making the residence determination.
5. Subsection (e). If an individual, irrespective of age, has living parent(s) or court-appointed guardian of the person, the domicile of such parent(s) or guardian is, prima facie, the domicile of the individual; but this prima facie evidence of the individual ' s domicile may or may not be sustained by other information. Further, non domiciliary status of parents is not deemed prima facie evidence of the applicant child ' s status if the applicant has lived (though not necessarily legally resided) in North Carolina for the five years preceding enrollment or re-registration.
6. Subsection (f). Marriage alone does not prevent a person from becoming or continuing to be a resident for tuition purposes, nor does marriage in any circumstances insure that a person will become or continue to be a resident for tuition purposes. Marriage and the legal residence of one ' s spouse are, however, relevant information in determining residency intent.
7. Subsection (g). If both a husband and his wife are legal residents of North Carolina and if one of them has been a legal resident longer than the other, then the longer duration may be claimed by either spouse in meeting the twelve month requirement for in-state tuition status.
8. Subsection (h). A North Carolinian who serves outside the State in the armed forces does not lose North Carolina domicile simply by reason of

such services.

9. Subsection (I). If a person (1) has been a bone fide legal resident, (2) has consequently been classified as a resident for tuition purposes, and (3) has subsequently lost North Carolina legal residence while enrolled at a public institution of higher education, that person may continue to enjoy the in-state tuition rate for a grace period of twelve months measures from the date on which North Carolina legal residence was lost. If the twelve months ends during an academic term for which the person is enrolled at a State institution of higher education, the grace period shall extend, in addition, to the end of that term. The fact of marriage to one who continues domiciled outside North Carolina shall not by itself cause loss of legal residence, marking the beginning of the grace period.
10. Subsection (j). If minor ' s parents live apart, the minor's domicile is deemed to be North Carolina for the time period(s) that either parent, as a North Carolina legal resident, may claim and does claim the minor as a tax dependent, even if other law or judicial act assigns the minor ' s domicile outside North Carolina. A minor thus deemed to be a legal resident by operation of subsection (j) will not, upon achieving majority before enrolling at an institution of higher education , lose North Carolina legal residence if that person (1) upon becoming an adult, acts, to the extent that the persons degree of actual emancipation permits, in a manner consistent with bona fide legal residence in North Carolina and (2) begins enrollment at an institution of higher education not later than the fall academic term next following completion of education prerequisite to admission at such institution.
11. Subsection (k). If a minor has lived for five or more consecutive years with relatives (other than parents) who are domiciled in North Carolina and if the relatives have functioned during this time as if they were personal guardians, the minor will be deemed a resident for tuition purposes for an enrolled term commencing immediately after at least five years in which these circumstances have existed. If under this subsection a minor is deemed to be a resident for tuition purposes immediately prior to his or her eighteenth birthday, that person on achieving majority will be deemed a legal resident of North Carolina of at least twelve months duration. This subsection acts to confer in-state tuition status even in the face of other provision of G.S. 116-143.1 to the contrary; however, a person deemed a resident for twelve months duration pursuant to subsection (k) continues to be a legal resident of the State only as long as she does not abandon North Carolina domicile.
12. Subsection (l). If a student ceases enrollment at or graduates from an

institution of higher education while classified a resident for tuition purposes and then both abandons and reacquires North Carolina domicile within a twelve month period, that person, if he or she continues to maintain the reacquired domicile into re-enrollment at an institution of higher education, may re-enroll at the in-state tuition rate without having to meet the twelve month durational requirement of subsection (b). However, any one person may receive the benefit of this subsection only once.

B. Aspects of Interpreting and Applying the Basic Statutory Provisions

1. The concept of domicile

Domicile and its duration are the basis for the classification system used to determine resident status for tuition purposes under G.S. 116-143.1. The definition of domicile set forth in Section 11.B., above, describes some of its attributes, including its reliance on subjective intent as measured by overt acts of the individual. More specifically, the concept of domicile, or legal residence, embodies two elements: residential presence in a state coupled with a particular intent referable to that presence. The general law of North Carolina on this subject is summarized in a North Carolina Supreme Court case as follows:

Precisely speaking, residence and domicile are not convertible terms. A person may have his residence in one place and his domicile in another. Residence simply indicates a person's actual place of abode, whether permanent or temporary. Domicile denotes one's permanent, established home as distinguished from a temporary, although actual place of residence. When absent there from, it is the place to which he intends to return; it is the place where he intends to remain permanently, or for an indefinite length of time, or until some unexpected even shall occur to induce him to leave. Two things must concur to constitute a domicile: First, residence; second, the intent to make the place of residence a home.

One who lives in a place for a temporary purpose with the design of leaving when that purpose has been accomplished is a mere sojourner.

Therefore, a residence for specific purpose, ...in which the animus revertendi accompanies the whole period of absence, effects no change of domicile.

A domicile, once required [sic] is presumed to continue. It is never lost until a new one is established, and the burden of proof rests upon the person who alleges a change.

To effect a change of domicile there must be (1) an actual abandonment of the first domicile, accompanied by the intention not to return to it and (2) the acquisition of a new domicile by actual residence at another place, coupled with the intention of making the last acquired residence a permanent home.

[Hall v. Board of Elections, 280 N.C. 600, at 600-608 (1972). The Hall case is a voting rights case, and since the Hall decision in 1972 there has developed a line of voting rights cases modifying the law of domicile as it relates to voting rights. Although Hall continues to reflect the general law of domicile, the quotations from Hall in this Manual have been made to reflect Hall as Hall has been amended in the voting rights context by subsequent holdings of the North Carolina Supreme Court.]

2. The beginning point of inquiry in determining domicile

While some students are minors under law (under age 18) and so by general law are presumed to have the domicile of their parents, the great majority of students, being 18 or older, have the legal capacity, exercised or not, to establish their own domicile. The Hall case makes clear, however, that this capacity must indeed be demonstrably exercised if domicile other than that of the parents is to be recognized.

The presumption is that a student who leaves his parent's home to enter college is not domiciled in the college town to which he goes. However, this presumption is rebuttable. It is an inference of fact based on probabilities and the common experience of mankind under the circumstances.

[Hall, supra, at 608.]

The beginnings of residency inquiry are further related to parental domicile by G.S. 116-143.1(e), which explicitly makes that beginning point the parental domicile by rendering the parental domicile, prima facie, the domicile of the student child (with, of course, the exception under the five year rule described in paragraph IV.A.5.). Hall then provides the guideline for the next step of the residency inquiry by noting:

An adult student may acquire a domicile at the place where his university or college is situated, if he regards the place as his home, or intends to stay there indefinitely....if he goes to a college town merely as a student...he does not acquire a domicile there. [Ibid.]

This distinction of the general law, between transitory and permanent residentiary intent (one constantly manifest in the higher education context), is reiterated in the requirements of G.S. 116-143.1{c}, whereby the applicant for resident tuition status must prove bona fide residentiary intent by demonstrating a motive for presence in the State greater than mere temporary residence or abode incident to enrollment. The student who has living parents or court-appointed guardian of the person rebuts or reinforces the statutory prima facie evidence of his or her domicile by all the other information supplied by the student; the student having no such parent or guardian or being under the coverage of the five year rule has domicile determined from all the information without a statutorily supplied domiciliary beginning point.

3. The nature of domiciliary evidence

To determine whether a student has established a domicile in North Carolina, as distinguished from a mere temporary abode, a conclusion about the intent of the student, as measured by objectively verifiable conduct, must be reached; that is, does the conduct of the student, taken in total, manifest an intention to make North Carolina his or her permanent dwelling place.

A student ' s physical presence in the college town....demonstrably fulfills the residency requirement of domicile. However, the court must rely upon both his words and his actions to determine whether the student has the requisite intent to make the town his home and to remain there indefinitely, the animus manendi.

A person ' s testimony regarding his intention with respect to acquiring a new domicile or retaining his old one is competent evidence, but it is not conclusive of the question. All of the surrounding circumstances and the conduct of the person must be taken into consideration. The rule is well stated in

25 Am. Jur. 2d. Domicile ' ' 91 and 93 (1966): The determination of domicile depends upon no one fact or combination of circumstances, but upon the whole, taken together, showing a preponderance of evidence in favor of some particular place as the domicile. A person ' s own testimony regarding his intention with respect to acquiring or retaining a domicile is not conclusive; such testimony is to be accepted with considerable reserve, even though no suspicion may be entertained of the truthfulness of the witness.. Conduct is of greater evidential value than declarations. Declarations as to an intention to acquire a domicile are of slight weight when they conflict with the facts. [Hall, *supra*, at 609.]

This verifiable conduct, or domiciliary action, is of the type described in paragraph 11.B.6 and may be characterized as information favorable and unfavorable to a domiciliary claim.

The following factors, if actually present in the case, would tend to support a finding that the student did not intend to establish a domicile in North Carolina:

- a. The student first arrived and established his or her abode in North Carolina coincident with enrollment in an institution of higher education, with no indication of any substantial motivation other than educational pursuits as explanation for his or her presence; thus, it could be inferred that he or she is present in the State for the limited purpose of pursuing an education, with the reasonably inferred expectation that he or she will leave the State upon completion of that limited objective.
- b. The student lives part of the year in the college town and returns to the home of his or her parents during holiday and/or vacation time; thus, it could be inferred that the student treats the presence in the State as temporary, incident only to accomplishment of the limited purpose of acquiring an education, rather than as being incident to the maintenance of his or her home.
- c. The student is supported financially, either totally or in substantial part, by his or her parents during the period of presence in North Carolina while attending the institution; thus, it could be inferred that the home of his or her parents remains the base of operations and actual home. Stated differently, the inference could be that the student has not yet undertaken a degree of independence which bespeaks the establishment of his or her own home.
- d. The student leaves his or her basic permanent possessions, or

personal property, at the home of the parents, while possessing in North Carolina only those items which are necessary for temporary residential needs; thus, it could be inferred that the residence in North Carolina is only a temporary character, with an intention to return ultimately to the home of his or her parents.

- e. The student does some or all of the following acts in a state other than North Carolina: registers to vote; files income, personal property, or real property tax returns; registers or licenses a motor vehicle; acquires a driver's license; owns a real property; is employed; maintains memberships in social, fraternal, religious, or other organizations; maintains bank accounts.

The following factors, if actually present in the case, would tend to support a finding that the student did intend to establish domicile in North Carolina:

- a. The student moves to North Carolina for a significant period of time prior to enrollment in an institution of higher education, during which period he or she is employed or engaged in other substantial activity unrelated to education pursuits; the possible inference is that educational pursuits were not the exclusive motivation for coming to the State or perhaps the continuing sole motivation therefor.
- b. The student comes to North Carolina with a spouse and/or children, either significantly before or immediately coincident with his enrollment; the possible inference is that the student is the head of an independent household who is establishing a family home in this State.
- c. The student purchases a residence in the State where he or she resides, with or without other family members (i.e., spouse and/or children); the possible inference is that the student has put down roots on a permanent basis and, incident thereto, is engaged in educational pursuits.
- d. The student does some or all of the following acts in North Carolina: registers to vote; files income, personal property, or real property tax returns; registers or licenses a motor vehicle; acquires a driver's license; owns real property; is employed; maintains membership in social, fraternal, religious, or other organizations; maintains banking accounts.

4. Weighing and balancing domiciliary evidence; the burden of proof

As noted in Hall, the favorable and unfavorable evidence of residency (domiciliary) intent is to be weighed in light of probabilities and the common experience of mankind under the circumstances. For a student to be classified a resident for tuition purposes, the balancing of all this evidence must produce a preponderance of the evidence supporting the assertion of in-state residence. More precisely, this evidence must reflect a cluster, focus or accumulation of favorable information such that there is a point at least twelve months prior to the residency classification where the greater part of the information points to North Carolina.

- a. Under G.S. 116-143.1(e) a showing that the student's parents are legal residents of North Carolina is prima facie evidence that the student is also a legal resident of North Carolina, but, as prima facie evidence, it is a favorable factor to be weighed with all other considerations in reaching a conclusion with respect to the student's contention that he or she is a legal resident for tuition purposes. Necessarily rebutting such prima facie evidence would be a showing that the student is an adult and has never entered North Carolina, where the student's parents now reside; the student, then, would lack the fundamental requirement (of physical presence) for acquiring domicile of choice and the first showing of domicile through the parents would be negated. If a student's parents are not residents of North Carolina, then the student starts out on the minus side in his or her effort to establish by a preponderance of all the evidence the right to in-state status. However, this negative evidence, too, might be rebutted by other residency information tying the student to North Carolina.
- b. Normal variation among cases renders the residency inquiry more a function of reasonable surmise than formula computation. For example, one person may be active in community affairs, demonstrating obviously a putting down of local roots; another person may be passive about such involvement but invest heavily in local financial opportunities. Both persons appear more than transient, though the evidence in support of their claims of residence would differ considerably. So, too, human preferences could render the same residency factor of differing significance from one applicant to the next: one student might not possess a North Carolina driver's license because he got a driver's license in New York just last year, demonstrating thereby a continued reliance on the benefits of another sovereign state in direct conflict with residency claims in this State and potentially with the North Carolina Uniform Driver's License Act.

- c. The provisions of G.S. 116-143.1{c}, in accord with the general laws of domicile, require that the successful applicant for in-state tuition status demonstrate the required preponderance of favorable evidence reflecting bona fide residentiary intent in contrast to intent to maintain a mere temporary residence or abode incident to enrollment in an institution of higher education. The statute requires scrutiny, then, not only of what residentiary actions have been performed but of why they were performed. For example, a student accomplishes a so-called favorable pattern of typical residentiary acts and that pattern has a focus in North Carolina as of a point in time at least twelve months prior to the residentiary classification. Those actions may be taken as some evidence of residentiary intent. However, if the student has shown by express statements or other actions appearing in the record that entry into the State was motivated solely by academic enrollment and that the stay in North Carolina is a temporary one governed in length by academic concerns, then the intent behind the ostensibly residentiary actions must be taken as other than bona fide residentiary intent and the application for in-state status under G.S. 116-143.1 must fail.

In sum, all factors of record come together and they are assessed as to whether or not an individual has shown by a preponderance of the evidence in the reporting of all demonstrable evidence that he or she has become a domiciliary of North Carolina and has been so far at least the twelve months immediately preceding the residentiary classification.

5. Special rules under the law of domicile

The assessment of domicile, though governed by the rules and procedures of general law and statute described in this Section B, above, is also affected by special rules derived, again, from both general and statutory law.

A. Domicile of a minor

1. A person under 18 years of age is a minor by North Carolina law and deemed under the common law dependent on his or her parents for domicile.
2. As between living parents, a minor's domicile is presumed by common law to be that of the father, subject to rebutting evidence.

3. If one parent is deceased, the minor's domicile is that of the surviving parent.
4. If the parents are divorced or legally separated, the minor's domicile is that of the parent to whom custody of the minor has been awarded by court order.
5. If no custody has been granted by virtue of court order, the domicile of the minor is that of the parent with whom he or she lives.
6. If the minor lives with neither parent, in the absence of a custody award, the domicile of the minor is presumed to remain that of the father, again, subject to rebutting evidence.
7. If the minor lives for a part of the year with each parent, in the absence of a custody award, the domicile of the minor is presumed, rebuttably to remain that of the father.
8. If a minor is an orphan and has no court-appointed guardian of the person, 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 court-appointed guardian of the person.
9. If legal adoption of a minor has occurred, the minor's domicile is that of the adoptive parents, subject to the foregoing rules concerning relationships between husband and wife vis-a-vis the domicile of a child.

The foregoing principles pertain to the domicile of a minor by reason of strong common law presumption and should be contrasted to the prima facie evidence rules of G.S. 116-143.1(e), which pertain to all persons irrespective of age but which are rebuttable. Similarly, the proviso of G.S. 116-143.1(e), which renders the prima facie rules inoperative in specified circumstances, would yield to the common law presumption if in conflict with it.

Under G.S. 116-143.1(j) and (k) two narrowly defined subclasses of minors are conferred special, favorable treatment in the residence/tuition context sometimes at variance with the nine foregoing legal principles.

Subsection (j) provides that a minor whose parents, pursuant to legal proceeding or simple act, are living apart, may claim legal residence in North Carolina for the time period that either parent is a North Carolina legal resident entitled to claim and claiming the minor as a

dependent under the North Carolina Revenue Act provisions concerning individual income tax. Under the Act, at G.S. 105-149(a) (5), a dependent is a son, daughter, stepson or stepdaughter over half of whose support, for the calendar year in which the taxable year of the [parent] taxpayer beings, was received from the [parent] taxpayer. Because it is the person's relationship to North Carolina that causes application of subsection (j), all cases should be assessed relative to an 18 year old age of majority, even if the minor is in the legal custody of a parent residing in a state having a 21 year old age of majority.

Further, because the North Carolina Revenue Act references the dependence test to support over an entire calendar year, a student may be credited under subsection (j) with an entire year of North Carolina legal residence irrespective of when in that year the support to the minor actually began unless it appears that for part of the calendar year at issue the parent was not a North Carolina legal resident. For example, if a minor received all his or her financial support in December 1980 to pay off debts for maintenance of the minor incurred throughout calendar 1980 and if the parent providing that support had been a North Carolina legal resident for all of 1980 and if that parent claimed the minor on 1980 North Carolina resident individual income tax return, the minor should be considered a North Carolina legal resident of twelve months duration irrespective of how long, if at all, the minor had been physically present in this State. On the other hand, if the parent had become a legal resident of North Carolina only in December 1980, still providing indicated support and making the same dependency claim, the minor could claim at most one month of legal residence in North Carolina as of January 1, 1981.

Most person deemed to be legal residents while minors pursuant to subsection (j) become adults (reach age eighteen) during their senior high school year or in the summer immediately following completion of high school, times when many persons, practically speaking, cannot conveniently exercise their capacity to establish new domiciles in their own right. Therefore, to preserve during the transition from high school to college the legal residence first conferred by legal fiction on the young adult as a minor, subsection (j) provides that legal residence first conferred on the person as a minor by subsection (j) can be retained by the minor who has become an adult if that person thereupon acts like a North Carolina resident as much as possible, and if the person enrolls at the institution of higher education not later than the fall term after completion of education prerequisite to admission (usually high school graduation).

Aided by G.S. 116-143.1(j), a person might accrue the twelve month period of North Carolina domicile necessary for resident tuition status in several ways, because periods of dependency on one or another resident parent, emancipated residence in North Carolina, and resident adulthood in North Carolina all may be pieced together to derive the necessary twelve months. Some of the more likely applications of G.S. 116-143.1(j) are as follows:

1. Qualifications of the minor and claiming of the minor as dependent on the individual income tax return of the minor's North Carolina resident parent filed for the last full calendar year prior to the academic term for which resident tuition status is sought plus apparent qualifications of the minor and parental intent to claim the minor as such a dependent for the calendar year commencing between the completed calendar year and the academic term for which resident tuition status is sought.

2. Qualification of the minor and claiming of the minor as a dependent of one North Carolina resident parent for the last full calendar year prior to the pertinent academic term plus apparent qualification of the minor and parental intent to claim the minor as a dependent by the other parent is such other parent is a North Carolina resident for the next calendar year, commencing between the completed calendar year and the pertinent academic term.
3. Qualification of the minor and claiming the minor as a dependent of one North Carolina resident parent for the last full calendar year prior to the pertinent academic enrollment, which is not later than the fall academic term next following high school graduation, plus achievement of majority before the pertinent academic term accompanied by demonstration of bona fide North Carolina residency intent under the terms of subsection 116-143.1(j).
4. Qualification of the minor and claiming of the minor as a dependent of one North Carolina resident parent for the last full calendar year prior to the pertinent academic term plus continued dependence of the minor on a resident parent during the calendar year commencing between the completed calendar year and the pertinent academic term, until the minor achieves and maintains in North Carolina (1) emancipation as described at section b, below and/or (2) majority, if such emancipation and/or majority were accompanied by acts of the person that would support a finding of North Carolina residency intent.

Under subsection (k) the benefit conferred is resident status for tuition purposes, not legal residence as accorded under subsection (j). The subclass of minors benefited under subsection (k) are those minors who immediately prior to the term for which in-state status is sought (1) have lived for five or more consecutive years continuing to such term in North Carolina in the home of an adult relative, other than a parent, domiciled in this State; and (2) 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 minors. In further distinction to subsection (j) it should be noted that subsection (k) rests in part upon actual care of the minor, not necessarily financial support of the minor.

The circumstances leading to the adoption of subsection (k) suggest that a proper interpretation of its provisions would allow a minor to satisfy the five-year requirement by demonstrating consecutive periods of the requisite guardianship (as with two or more relatives) each of less than five years but in total equaling or exceeding five years.

Subsection (k) also contains provisions for allowing unbroken enjoyment of in-state status by a person who as a minor had received or qualified for resident tuition status under subsection (k) but then become an adult (an 18-year-old), thus acquiring the legal capacity to establish legal residence in his or her own right. Subsection (k) accomplishes this by statutorily declaring that a person deemed a resident for tuition purposes while a minor qualifying under the

act, is on his or her eighteenth birthday deemed a legal resident of at least twelve months duration. Therefore, achieving majority either before initial enrollment or after it does not of itself remove enjoyment of in-state status under subsection (k); only by abandonment of North Carolina domicile does the adult beneficiary of subsection (k) cease to receive that benefit. [The benefit, even then, may not cease if the twelve month grace period of subsection (I) has application.]

Although the textual treatment of subsections (j) and (k) occupies the greater part of this review of the domicile of a minor, it should be remembered that most minors will have their domicile and residency status for tuition purposes determined solely under the nine legal principles generally applicable to minors under the common law concerning the emancipated minor, rather than under subsection (j) or (k).

B. The emancipated minor

Even though a person has not achieved the chronological age required by law for adulthood, under certain circumstances the person may be treated by the law as being sufficiently independent from the parents as to enjoy a species of adulthood for legal purposes. The consequence, for present purposes, of such circumstances is that the affected person is made capable of establishing a domicile independent of that of the parents. It remains for such a person to demonstrate that a separate domicile in fact has been established.

In North Carolina emancipation is effected by court order pursuant to procedures and standards set forth in G.S. Chapter 7A, Article 5. The process, in general, involves the issuance of a decree of emancipation by a District Court judge of the minor's county after petition by the minor and review of the minor's socio-economic circumstances.

In other states emancipation may be achieved by statute or, more likely, by the common law standards of (1) marriage or (2) parental disclaimer of entitlement to the minor's earnings and the minor's proclamation and actual experience of financial independence from the parents, with the actual establishment and maintenance of a separate and independent place of residence.

Whether the student claims statutory or common law emancipation, the facts supporting its realization must be presented by the claimant in the process of residency classification.

C. Policy concerning members of the armed forces

1. Qualifications as a resident for tuition purposes under G.S. 116-143.1. The domicile of a person serving in the armed forces is not necessarily affected by assignment in or reassignment out of North Carolina. Such a person may establish domicile for self and dependents by the usual requirements of residential act plus intent. All the residency evidence is collected and assessed. In the military context this may include the State of Legal Residence Certificate (DD Form 2058), residency information on the Leave and Earnings Statement, and the home of record. The weight to be given the Leave and Earnings Statement may vary greatly depending upon how recently the LES was declared. Also, some branches do not permit a change in a previously declared home of record.

2. Eligibility to be charged less than the out-of-state tuition rate under G.S. 116-143.3 is dependent on the “maximum available tuition assistance” available to the service member through his service component.

- b. To calculate the fee and tuition charge, take the “maximum” military tuition assistance rate (now set at \$250 per credit hour), then subtract the Education and Technology fee (calculated on a per student credit hour basis). The amount left is the tuition to be charged.

A. One who does not qualify under this Manual as a resident for tuition purposes may be eligible to be charged tuition at the in-state rate plus mandatory fees if the service person does not receive tuition assistance from his service.

1. If a military member does not receive tuition assistance from his service employer, he or she would pay the in-state rate plus all applicable mandatory fees.

Note : the previous military service personnel section and the following section of the Manual concerning active duty military personnel has been updated by the UNC-CH Residence Status Committee chairperson’s office to reflect the latest changes in the law for this section. This section does not necessarily represent the State Residence Committee’s (SRC) format or narrative, but we trust it is as accurate as we can make it given the SRC’s information that this section’s information is based upon.

By reference to G.S. 116-143.3 and to conditions established pursuant to G.S. 116-143.3 (amended 9/03) by the respective Boards of the institutions of higher education, the conditions for being a beneficiary are these:

- a. The beneficiary must be a member of the armed services as defined by G.S. 116-143.3(a), that is, a member of the United States Air Force, Army, Coast Guard, Marine Corps, Navy, North Carolina National Guard, or a Reserve component of the foregoing.
- b. The beneficiary must be on active duty.
- c. The beneficiary must qualify for admission to the institution at which the benefit is sought.

B. Dependent relatives of members of the armed services. If otherwise qualifying under the statute, dependent relatives of members of the armed services are eligible to be charged the in-state tuition rate. The benefit of the in-state rate is conditioned as follows:

1. The beneficiary must be the dependent relative of a service member who concurrently satisfies the conditions of (1) [a] and [b], above.
Additionally, the service member must be on active duty, stationed in North Carolina on permanent change of station status.
 2. The dependent relative must be sharing the service member's abode in North Carolina; provided, that a dependent relative after becoming eligible for the benefit may continue to be eligible for the in-state rate during the remainder of the academic year in which the supporting service member moves his or her abode from North Carolina.
 3. The dependent relative must have complied with the requirements of the Selective Service System, if applicable. Under federal law all male United States citizens born on or after January 1, 1960, who are 18 but not yet 26 years old must register with the Selective Service System. Further information concerning those required to register and those exempt from registration is set forth at Appendix E.
- C. Definitions. In determining eligibility for the benefits of G.S. 116-143.3, the following definitions shall pertain:
1. The term abode means the place where a person actually lives, whether temporarily or permanently; the term abide means to live in a given place.
 2. A service member is deemed to have moved his or her abode from North Carolina when he or she either (1) voluntarily ceases living in North Carolina other than for vacation or leave purposes or (2) involuntarily is absent from the State under military orders; provided that duty on routine maneuvers and exercises and temporary assignments shall not be deemed to cause a change in abode.
 3. The term dependent relative means any of the following who has military dependent status under a sponsoring service member:
 - a. The spouse of the service member.
 - b. A son or daughter of the service member, or a descendant of either.
 - c. A stepson or stepdaughter of the service member.
 - d. A brother, sister, stepbrother or stepsister of the service member.
 - e. The father or mother of the service member, or an ancestor of either.

- f. A stepfather or stepmother of the service member.
 - g. A son or daughter of a brother or sister of the service member.
 - h. A brother or sister of the father or mother of the service member,
or
 - I. A son-in-law, daughter-in-law, father-in-law, mother-in-law,
brother-in-law, or sister-in-law of the service member.
4. The term academic year means the period of time commencing with the first day of classes of the fall semester, term, or quarter of an institution of higher education and ending with the last day of the semester, term, or quarter immediately preceding the succeeding fall semester, term, or quarter of that institution.
 5. The term amounts payable to the institution or the service member from the service member's employer by reason of enrollment means amounts from a federal or state government in whose employ the service member is on active duty and may or may not be present in North Carolina and which amounts are available only as military education assistance to satisfy, or reimburse for, tuition charges by the enrolling institution with respect to the service member.

D. Procedural Conditions

1. Eligibility to be charged less than the out-of-state tuition rate under G.S. 116-143.3 must be established through submission to the pertinent institution of an application similar to that set forth in Appendix D.
2. The required application for a reduced tuition rate must be submitted in proper order before the first day of classes of the first enrolled term of each academic year for which the benefit of G.S. 116-143.3 is sought. This means that the benefit once awarded does not self-renew for subsequent academic years but must be reacquired prior to the first enrolled term of subsequent academic years. Failure to make proper application prior to the commencement of the first enrolled term of a given academic year means that the enrolled term next following the submission of a proper application is the earliest term to which the benefit may apply.
3. Appeals from determinations of eligibility for a reduced tuition rate under G.S. 116-143.3 may be taken as prescribed in paragraph 111.F., above, with respect to residence status classifications under G.S. 116-143.1.

4. Receipt of the benefit of a reduced tuition rate under G.S. 116-143.3 alone may not provide the basis for receiving or conferring on another the benefits of G.S. 116-143.1(g), (h), (I), (j), (k), or (l).

D. Policy concerning federal personnel.

The domicile of a person employed by the Federal Government is not necessarily affected by assignment in or reassignment out of North Carolina. Such a person may establish domicile for self and dependents by the usual requirements of residential act plus intent.

E. Policy concerning aliens.

Aliens whether classified as immigrant or non-immigrant are subject to the same considerations as citizens in the determination of residency status for tuition purposes unless either of the following pertains:

1. The alien abides in the United States under a visa conditioned at least in part upon intent not to abandon a foreign domicile. B, F, and J visas are so conditioned. (The F visa is for students; the J visa is issued to students, researchers, and professors as well as others participating in programs of the Secretary of State.)
2. The alien abides in the United States under a visa issued for a purpose so restricted as to be fundamentally incompatible with the assertion by the alien of bona fide residency intent. C, D, and M visas are deemed under this manual to be so restricted. (The C visa is issued to an alien for purposes of transit into and out of the United States; the D visa is issued to alien crewmen of vessels or aircraft for purposes incident to crew service; the M visa is issued for the period of time needed to complete a course of study.)

An alien is deemed to abide in the United States under a visa identified described in subsection (1) or (2), above, even if it has been physically surrendered to immigration authorities and is considered to be subject to that visa's restrictions until the alien is issued by immigration authorities a document described in the next paragraph. Documentation of absence of the visa restrictions identified above may include the following:

1. Possession of an A, E, G, H, I, K, or L visa or an immigrant visa;
2. Possession of Form I-151 or Form I-551 (both entitled Alien Registration Receipt Card);

3. Possession of Form I-181b (Memorandum of Creation of Record of Lawful Permanent Residence);
4. Possession of Form I-94 (Arrival-Departure Record), endorsed to show parol status or refugee status;
5. Possession of a document issued Immigration authorities announcing or conferring a status on the alien recipient that will later be evidenced by issuance to the recipient of one or more of the documents identified immediately above; or
6. Possession of a document issued by Immigration authorities conferring on the alien recipient the privilege of entering or remaining in the United State for an indefinite period pending the outcome of an outstanding application or re-application by the recipient for one or more of the documents identified immediately above. (I-512 or other)

An alien possessing a document identified in any of the immediately foregoing six classes of credentials is not by reason of that possession deemed to have any special residentiary advantage; such an alien is with respect to G.S. 116-143.1 considered only to have the opportunity to claim and seek to prove entitlement to in-state tuition status under the same residentiary criteria and burden of proof required of United States citizens. And, in making domiciliary determinations of aliens, institutional officials should consider the precise basis for any entry into the United States and its documentation as part of the residentiary information upon which to assess the alien's residentiary claim. With respect to the twelve month durational requirement of G.S. 116-143.1(b) the claims to domicile of aliens possessing documents identified in any of the six classes set forth above should be assessed relative to a time frame beginning not earlier than the effective date fo the pertinent document subject to the general provisions for retroactive change of tuition status set forth in Section 111.B.1., above.

F. Policy concerning prisoners

A person neither establishes nor loses legal residence in a state solely by reason of being imprisoned there. While a prisoner is not absolutely precluded from proving that he or she has changed legal residence, generally a person's domicile is not changed by involuntary confinement in a penitentiary or other prison, but in such case the former domicile remains. As a practical matter, it is extremely difficult for a prisoner to demonstrate a change in legal residence since a prisoner is unable to perform most of the actions which are used as indicia of residentiary intent and since any declarations of intent must be weighted against the fact that the prisoner is being confined against his or her will.

6. The domicile of individuals who are married

The provisions of G.S. 116-143.1(f) make clear that married persons of either sex are neither favored nor disadvantaged by virtue of the fact of marriage in the determination of domicile while being classified for tuition status. The statutory provision thus eliminates from tuition status classifications the common law presumption that a wife's domicile is presumed to follow that of her husband. Therefore, the domicile of married persons is identified under the same basic procedure as all other persons - on the merits of all collected relevant residency information. G.S. 116-143.1(f) also makes clear, however, that the fact of marriage is part of such residency information. In weighing the significance of marriage, though, it is apparent that the General Assembly intended that events and circumstances surrounding the marriage be examined to give the marriage itself any residency significance. [See subsections (f)(1), (f)(2), (f)(3), and (I).] This requires, then, consideration of both husband and wife's circumstances when a married individual is classified for tuition purposes. By way of special note, though, as to the consideration of loss of residence for purposes of invoking the twelve month grace period, even the derived residency significance of the marriage cannot be such that the occasion of the marriage per se marks the loss of bona fide legal residence for one of the other spouse. Rather, such time of loss, or culminations circumstance must be related to some other event or circumstance but which, of course, might well render the marriage date the time of, if not the legal cause of, change of residence. [Note. Even though the domicile of a married person is identified under the same test as that for a single person, G.S. 116-143.1(g) provides that husband and wife who have both met that test as to North Carolina may claim the residency duration of the two which is the longer.] In application, the various statutory provisions concerning spouse pairs would function in the marital context as follows:

- A. A husband and a wife are inferred to have the legal capacity for separate domiciles because the wife's domicile is not presumed to follow that of her husband. It (and the husband's domicile) must be demonstrated rather than presumed.
- B. When a man and woman marry, they acquire a new legal relationship that expands their legal capacity for a shared existence. The collective experience of mankind shows that the great majority of newlyweds do share that existence within their newly acquired status. The events subsequent to the marriage and, to some extent prior thereto, however, must be considered if the sharing of domicile of a husband and wife is to be a consequence or facet of the marriage or a continuing aspect of the marriage.

- C. Evidence that suggests a shared domicile is common abode, interrelated personal affairs (bank accounts, tax returns, property ownership, etc.), and interdependent social and professional lives. For example, husband and wife (H and W) live in a college town, H completes his education, perhaps a graduate degree, and W works so as to support what appears to be a family unit. Meanwhile, personal affairs are characterized by joint ownership of property, of at least common access thereto.
- D. Further evidence is needed to determine other specifics of the domicile, which is taken to be shared. Is the domicile, though shared, determined by the intent and events of one spouse rather than the other? Perhaps domicile is determined by W who is supporting the family unit; perhaps it is the enrolled spouse H, whose present education and future career opportunities are understood by the spouse pair to dictate location of the family unit. (If H were the determiner of domicile, the substantiality of H and W's residential presence would be called into question by G.S. 116-143.1{c}), which renders educational intent alone insufficient to demonstrate residential presence.) Or possibly, W, a college graduate herself, is simply working to make ends meet, and H just wants to finish up his degree though he knows there is no present market for his education specialty. In such a case domiciliary intent may be a product of intentions of both H and W, neither of whom has given much thought to tomorrow. In such a case, events even before marriage may take on greater significance. Perhaps a parent of H or W promised one of the spouses a job if H and W could not maintain their own circumstances apart from the parental nest.
- E. Whether one spouse or both H and W together determine the domicile and whether or not their residential intent and actions are well delineated, H and W must each have a domicile somewhere, and the conclusions to be drawn about its location may well be judgment call subject to the standard of reasonableness in assessing where the preponderance of the evidence lies.
- F. If H and W, each before marriage, acquire domicile in North Carolina and if, under the inquiry discussed herein, it is determined that H and W both continued as domiciliaries after marriage, then the spouse having the shorter length of domicile in this State would accede to benefit of the longer domicile for purposes of satisfying the twelve month durational requirement. [See G.S. 116-

143.1(b) and (g).]

- G. If either H or W is determined to be a domiciliary of this state and if the other spouse, though a non domiciliary even after the marriage then becomes a domiciliary of this State, the longer domiciliary duration could be claimed by the spouse possessing the shorter duration in meeting the requirements for resident status for tuition purposes.
- H. The capacity of either H or W to acquire a domicile independently of the other implies that either spouse could abandon a present domicile independently. This could occur where facts established that a domicile was no longer shared (or coincided) in North Carolina. The cessation of shared events and actions described in paragraph 3, above, would signal a possible abandonment. These events occur most often in the case of divorce or legal separation but they might also occur when a husband and wife, by mutual accord, determine to pursue separate professional and/or social goals. Usually, separate domiciles would be accompanied by separate abodes. (Also see the hypothetical case set forth in Section V.B., below, for circumstances in which further inquiry might permit a finding that H abandoned a common domicile in this State.) If in fact domicile were abandoned, individually or jointly, the spouse(s) to so abandon domicile in this State would each be required to test the circumstances of his or her abandonment against the requirements of G.S. 116-143.1(I) in seeking benefit of the twelve month tuition grace period.

7. The statutory grace period following loss of domicile

By provisions of G.S. 116-143.1(I), if a person has been properly classified as a resident for tuition purposes and enjoyed that status while enrolled at a State institution of higher education, a change in that person's state of residence thereafter does not affect in all cases an immediate, automatic loss of entitlement to the in-state tuition rate. The extent of this grace period (during which the in-state rate will be applicable in spite of the fact that the individual is not a legal resident of North Carolina) shall be twelve months from the date of the change in legal residence, plus any portion of a semester or academic term remaining, as of the expiration date of the twelve month period, in which the student is enrolled. In short, no change in applicable rates attributable to expiration of the basic twelve month grace period will be effected

during a semester, quarter or other academic term in which the student is enrolled. To qualify for the grace period, one must satisfy the following conditions:

- A. The individual must have been properly classified as a resident for tuition purposes, on the basis of a valid finding that such individual in fact was a legal resident of North Carolina and had been such for the requisite twelve month period prior to classification;
- B. At the time of subsequent change of legal residence to a state other than North Carolina, the individual must have been enrolled in a public institution of higher education in North Carolina. Enrolled as here used shall include both persons who are actually attending the institution during an academic term as well as those whose consecutive attendance of academic terms has been interrupted only by institutional vacation or summer recess periods. A person who effects a change in legal residence during a period while not enrolled is not entitled to the benefit of the grace period.
- C. Entitlement to the grace period, once perfected, is thereafter applicable for its duration at any public institution of higher education in the State.
- D. A married person, under the provisions of G.S. 116-143.1(g) may accede to the benefit of the spouse's residentiary duration if it is longer than his or her own. Therefore, acquisition of in-state status may be partially derivative of the marriage context, but loss of domicile is the consequence of each spouse's actions (though reliance on the other spouse's domiciliary status may contribute ultimately to that loss). In the context of determining the beginning point of the tuition grace period, though, G.S. 116-143.1(I) precludes the fact of marriage alone from precipitating loss of domicile. Further, if H and W have both been deemed to have been domiciled in North Carolina for twelve months, the benefit of the grace period may be accorded only that spouse who loses domicile while enrolled in a State institution of higher education. That is, enrolled status of one spouse is not bestowed upon the other spouse with respect to eligibility for the tuition grace period.

V. Examples of Appropriate Residence Classifications

A. Typical Cases Not Requiring Extensive Analysis

Although the statutory mandate, when coupled with other preexisting general law and statutory requirements of the State of North Carolina, will generate some cases which necessitate an extensive and detailed analysis of facts bearing on the question of domiciliary intent (as discussed here in above), a substantial number of cases can be dealt with in summary fashion, consistent with the terms of the basic statute and the provisions of other well-established legal principles. The following hypothetical examples illustrate the correct disposition of such cases:

1. Assume the case of a minor applicant for the fall term of 1981, who has resided with his family since birth (or other extensive period of time) in North Carolina and whose family still resides in the State at the time of admission: The student will be classified as a resident and accorded the in-state tuition rate because his domicile is North Carolina and has been for more than twelve months.
2. Assume the same set of facts as in example 1, except that in November of 1981, following enrollment, the student's family moves to and establishes a domicile in another state, while the student is still a minor: Upon registration for spring term of the 1981-1982 school year, the student will be classified as a non resident because, as a minor, his domicile is controlled by that of his parents. However, application of the grace period concept to these facts would preclude an immediate change in applicable tuition rate for the prescribed period of time. [Note: Should the parents of an adult student move from the State under otherwise similar circumstances, the student not only might undertake continued residence in North Carolina, but might demonstrate such a continued residence under an evidentiary burden made lighter by the fact of the student's staying behind, if such staying behind were indeed the case.]
3. Assume that a family moves to North Carolina in July 1980; a college-age son registers for the fall term of 1981 beginning in August; assume that the parents have done those things necessary to become domiciliaries of the State in July 1980: The student will be classified as a resident and accorded the in-state rate because, without regard to minority or majority status of the student, he has resided in North Carolina for more than a year and because the fact of his parents' domicile in the State is controlling prima facie evidence of his domicile, in the absence of rebutting evidence. (Rebutting evidence might be a showing that the son was an adult and had physically remained in the prior state, never entering North Carolina.)
4. Assume that a family moves to North Carolina in December of 1980 and established their domicile; a college-age son registers for the fall term of 1981 in August: The student will be classified as a non resident for tuition

purposes for the fall semester because he has not resided in the State for the required twelve months, without necessary references to the question of whether or not the time so spent in North Carolina was domiciliary in character.

5. Assume the same facts as in example 4, except that the registration is for the spring term of the 1981-1982 school year: The student will be classified as a resident because he has been present in the State for the requisite twelve months prior to registration for the term in questions; and, because the preceding year spent in the State coincided with the domicile of his parents in North Carolina, it may reasonably be found, in the absence of rebutting evidence, that such enrollment time was spent by the student as a bona fide domiciliary.
6. Assume that a family moves to North Carolina in July of 1981 and a college-age son registers for the fall term of 1981 in August: The student will be considered a non resident. He would be eligible, likely, for reclassification as a resident one year thereafter; i.e., the fall term of 1981, assuming that the parents had established domicile at least twelve months prior to fall term 1982, that they had remained domiciled in North Carolina, and that the son's residentiary activity was consistent with that of his parents.
7. Assume that a person who has not previously lived in North Carolina and whose parents are domiciled in a state other than North Carolina registers for the fall term of 1981 in August, at the age of seventeen: The student will be classified as a non resident for tuition purposes because, as a minor, his domicile is that of his parents, i.e., a state other than North Carolina.
8. Assume that a person who has not previously lived in North Carolina and whose parents are domiciled in a state other than North Carolina registers for the fall term of 1981 in September at the age of 18: The student will be classified as a non resident for tuition purposes. The student will not have resided in North Carolina for the requisite twelve months prior to registration, without necessary references to the question of domiciliary intent.
9. Assume the case of a 22 year old person, married and the father of one child, who has completed his undergraduate education in a state other than North Carolina, whose parents do not live in North Carolina, who has not previously lived in North Carolina, and who registers for the fall term of the first year of graduate school in August 1981: The student will be

classified as a non resident for tuition purposes because he has not been present in North Carolina for the year prior to registration, without necessary reference to the quality of that presence.

B. Cases Requiring Extended Analysis

In many cases, it will be necessary, under the terms of G.S. 116-143.1, to conduct a more extensive inquiry, involving analysis of the question of domiciliary intent.

1. Assume that a student is enrolled as a freshman at a State institution of higher education; his first presence in North Carolina coincided with his enrollment; prior thereto he had lived with his parents in another state, where his parents continue to maintain their domicile. Upon enrolling for the fall term of his sophomore year, following a period of twelve consecutive months of presence in North Carolina, the student petitions for reclassification as a resident for tuition purposes, alleging that he is a bona fide domiciliary of the State entitled to the in-state tuition rate. Without the benefit of additional facts, the consecutive inquiries necessary to proper analysis of the case, prior to making an investigation of domiciliary intent, are:
 - A. Is the student a minor or an adult? If he is a minor, his residence is that of his parents during his minority, and since the parents are domiciled in a state other than North Carolina, he does not qualify for classification as a resident for tuition purposes. Consequently, the matter could be disposed of in summary fashion. However, if at the time of application for reclassification the student is an adult, he is presumptively capable of establishing his own residence, independent of that of his parents, and further inquiry is necessary.
 - B. Assuming the student is an adult, presumptively capable of establishing a domicile independent of that of his parents, how long has he had adult status? If he has been an adult for less than a full year prior to the filings of his petition, he cannot satisfy the requirement that he be a bona fide domiciliary of the State for twelve months; reference to the twelve month qualifying period alone is enough to disqualify him, without reference to the question of whether the insufficient period of adulthood was in fact spent as a legal resident of North Carolina. However, if the student was an adult for the full twelve-month period of his presence in North Carolina, an inquiry into the character and quality of his presence in North Carolina during that period is required, viz., was

he a domiciliary (legal resident)? Thus the question of domiciliary intent must be addressed.

The ultimate question presented, then, is whether the student has satisfied the requirements of the statute that he be a bona fide domiciliary of the State for a period of twelve months prior to eligibility for classification as a resident for tuition purposes. The aggregate of the activities of the individual in and out of North Carolina as required to be reported to the relevant institution will be assessed by officials to determine whether or not the preponderance of all the evidence is favorable to a claim of residence for twelve months. The student starts in this assessment process *prima facie* (or initially) as a non domiciliary because of his parents' non residence. He then either overcomes or remains subject to that initial evidence in light of all other evidence. The burden of overcoming the *prima facie* evidence of non domiciliary status in effect increases the student's burden in establishing in-state status, by a preponderance of all the evidence.

2. Assume the student in example 1 fails in his attempt to achieve resident status but under non resident status completes a four-year undergraduate degree course and one year of law school at the same or another State institution of higher education. At the outset of fall term his second year of law school, the student re-petitions for in-state status. Again, all relevant residentiary information would be collected and assessed . This time, however, the student would not be considered at the outset to be a non domiciliary, because he had lived (not necessarily been domiciled) in North Carolina for the five years preceding re-registration for the second year of law school. [See G.S. 116-143.1(e).] He would carry only a burden to come forward with a preponderance of the evidence in his favor, showing domicile in this State for the preceding twelve months, unencumbered by an adverse evidentiary beginning point.
3. Assume that the student in example 2 failed again at the outset of his second year of law school to establish his claim to in-state status or even to domicile as the outset of the second year of law school. Assume further that the student then continued in law school and married a life long resident of North Carolina during fall term of that second year. Assuming also that the new wife's residentiary intent and manifestations thereof continued at and after marriage, the wife, a life long domiciliary, would continue to be eligible for the in-state tuition rate. (The fact of continued residence by the wife would itself be the subject of a residence classification inquiry upon her request for resident status at a State institution of higher education.)

4. Assume the law student in example 3 reapplied for resident status at the end of the fall term in his second year of law school and that the institution found him to be a legal resident of this State but for only two months preceding his re application. At the outset of spring term in the second year of law school, however, the student might receive benefit of the in-state rate. This is because his residence and that of his wife co-existed in North Carolina, so that her longer legal residence was conferred on him in meeting the twelve month durational requirement for resident status for tuition purposes. The conferral of this durational benefit would require, however, a residence determination concerning the wife as well. [See G.S. 116-143.1(g).]

5. Assume that the law student in example 4 completed spring term of the second year of law school but that, depressed by protracted intensive studies and unsuccessful adjustment to his new marriage, he moved out of the marital abode in North Carolina, took a law clerk's job for the summer in Virginia, and then returned for the final year at the same law school, in hopes ultimately of practicing law with the firm in Virginia. First, the facts suggest that the law student's departure in the summer to clerk in Virginia may or may not have been with residentiary intent for Virginia. If all the circumstances would suggest to reasonable persons that there was a reasonable doubt about the validity of the prior residence classification, he would be obligated under paragraph 111.B.2., above, to notify institutional officials so as to initiate a re classification inquiry. The residentiary intent and actions undertaken in Virginia would be pivotal in this re inquiry. This would either confirm the change of circumstance or at least clarify a seemingly ambiguous circumstance. If a change in residence to Virginia, i.e., abandonment of North Carolina domicile, were found by institutional officials, the law student would, nevertheless, continue by statutory grace to enjoy resident tuition status for the twelve months following the determined loss of domicile. This would appear to carry the student through his third and final law school year and might suggest that re inquiry is unnecessary. It should not be assumed, however, that the student will not falter scholastically and thereby prolong his academic career or that completion of his law degree necessarily will end his studies at the institution.

6. Assume that the student in example 5, at the outset of fall term of his third year of law school, satisfied institutional officials that he had not abandoned North Carolina domicile for that of Virginia during the immediately preceding summer, and assume that the student satisfactorily then complete fall term of the third year under in-state tuition status. Assume further that the law student, again adversely affected by scholastic

and personal pressures, withdraws from law school between fall term and spring term of the third year of law school. The student then goes immediately thereafter to Virginia, intending to establish Virginia as his domicile, and begins working as a paralegal assistant in the law firm for which he had clerked. Assume that in the months intervening between withdrawal from law school and the close of the succeeding summer, the student resolves to finish that final law school term and thereby get his law degree. Assume that the student is readmitted for the succeeding fall term at his prior law school. At what tuition rate will he attend?

Because there has been a change in material facts concerning the student's resident status, the student is obligated under paragraph 111.B.2., above, to initiate a reclassification inquiry at the institution where he has re-enrolled. (If institutional officials charged with making residence classifications also are aware of the events in Virginia, the institution also has such obligations.) Because the student had withdrawn from enrollment and then sought to re-enroll, there must be a reclassification inquiry, also, pursuant to Section 111.A., above.

- A. If the student is found upon re-enrollment not to possess North Carolina domicile, he will pay the non resident tuition rate. Even though twelve months had not elapsed between academic withdrawal at the end of the prior fall term and the commencing of the fall term for which he had re-enrolled, the student would not qualify for the grace period benefit. This is because the grace period, by statutory provision, does not apply to those losing North Carolina domicile while not enrolled.
- B. If the student is found to have re-acquired North Carolina domicile before re-enrollment, there are two ways by which he might qualify for the in-state tuition rate:
 - 1. Under the provisions of G.S. 116-143.1(l) the student would be accorded in-state status because he had ceased enrollment (after fall term for his third year of law school) while classified in-state, and then abandoned North Carolina domicile but re-acquired North Carolina domicile within twelve months of its abandonment and before re-enrollment for the succeeding fall term.
 - 2. The other opportunity to qualify for in-state status, under G.S. 116-143.1(g), would depend upon the student's marital status. If the wife had remained a domiciliary of North Carolina and if the student and his wife had not terminated their marriage under law, the wife's continued

residence, being in excess of twelve months preceding re enrollment, would confer on the student husband the durational requirement for receiving residence status for tuition purposes. A Successful resident classification under subsection (g), therefore, would require a residence determination of both the student and his wife.

END (revised 3/25/04)