

IDAPA 08 – STATE BOARD OF EDUCATION

08.01.04 - RULES GOVERNING RESIDENCY CLASSIFICATION

DOCKET NO. 08-0104-1601

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 11, 2016

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 33-3717B, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Legislative changes to Section 33-3717B, Idaho Code, streamlined the residency requirements for tuition purposes, making many of the existing provisions in administrative rule unnecessary. Amendments are being proposed to IDAPA 08.01.04 to bring it into compliance with the provisions of Section 33-3717B, Idaho Code. The proposed rule includes the following amendments:

- Deletes unnecessary definitions for terms that are either no longer used or are defined with the statute itself
- Adds a definition of accredited secondary school and armed forces. These terms were previously undefined.
- Sets out timelines for submitting requests for reclassification of residency determinations.
- Simplifies the factors for determining domicile and specifies which items can be used as factor and which items must be used in conjunction with other factors.
- Simplifies the appeals procedure
- Deletes section that are no longer applicable and makes additional technical changes.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

During the 2016 legislative session changes were made to Section 33-3717B, Idaho Code, residency requirements for tuition purposes. The temporary rule amendments are necessary to come into compliance with the changes made to Section 33-3717B, Idaho Code.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, V16-7, pg. 49.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Tracie Bent, Chief Planning and Policy Officer, at (208)332-1582 or tracie.bent@osbe.idaho.gov. Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26th, 2016.

DATED this 26th day of August, 2016

Tracie Bent, Chief Planning and Policy Officer 650 W State St. PO Box 83720
Office of the State Board of Education Boise, ID 83720-0037 (208)332-1582, fax: (208)334-2632

**IDAPA 08
TITLE 01
CHAPTER 04**

**08.01.04 - RULES GOVERNING RESIDENCY CLASSIFICATION
THE STATE BOARD OF EDUCATION**

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 33-3717B, Idaho Code. (5-8-09)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is Residency. T(8-11-16)

02. Scope. This chapter ~~has the following scope: governs the residency classification for tuition purposes for the four-year institutions and Eastern Idaho Technical College under the supervision-governance of the State Board of Education and the Regents of the University of Idaho, the University of Idaho, Boise State University, Idaho State University, and Lewis Clark State College are required to make residency determinations pursuant to Section 33-3717B, Idaho Code, and these rules.~~ ~~(5-8-09)~~ T(8-11-16)

002. WRITTEN INTERPRETATIONS -- AGENCY GUIDELINES.

Written interpretations to these rules in the form of explanatory comments are available from the Office of the State Board of Education, 650 West State Street, Room 307, Boise, Idaho 83720. (1-1-94)

003. ADMINISTRATIVE APPEALS.

~~Provisions for appeal of a residency determination are set forth in Section 103 of this chapter. Unless otherwise provided for in the rules of the State Board of Education or in the State Board of Education Governing Policies and Procedures, all administrative appeals allowed by law shall be conducted as provided herein.~~ ~~(1-1-94)~~ T(8-11-16)

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into these rules. T(8-11-16)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The principal place of business of the State Board of Education is in Boise, Idaho. T(8-11-16)

01. Mailing Address. The mailing address is PO Box 83720, Boise, Idaho 83720-0037. T(8-11-16)

02. Street Address. The State Board of Education's street address is 650 West State Street, Room 307, Boise, Idaho 83702. T(8-11-16)

03. Office Hours. The office hours are from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. T(8-11-16)

0046. PUBLIC RECORDS ACT COMPLIANCE.

~~All rules required to be adopted by this chapter are public records. This rules has been promulgated in accordance with the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and is a public record. (1-1-94) T(8-11-16)~~

~~007. -- 009. (RESERVED). T(8-11-16)~~

00510. DEFINITIONS.

~~01. **Resident Student.** For any public institution of higher education in Idaho, resident student is defined in Section 33-3717B, Idaho Code, and specifically includes: (3-29-10) T(8-11-16)~~

~~a. Any student who has one (1) or more parent or parents or court appointed guardians who are domiciled in the state of Idaho for at least twelve (12) months prior to the opening day of the term for which the student matriculates, and the parent or parents or guardians provide at least fifty percent (50%) of the student's support. (5-8-9) T(8-11-16)~~

~~b. Any student who receives less than fifty percent (50%) of his support from a parent, parents, or legal guardians and who has continuously resided and maintained a bona fide domicile in the state for twelve (12) months immediately preceding the opening day of the term during which the student proposes to attend primarily for purposes other than educational. (5-8-09) T(8-11-16)~~

~~c. Unless disqualified as a nonresident student as defined in Subsection 005.02, any student who is a graduate of an accredited secondary school in the state of Idaho and who matriculates during the term immediately following such graduation. (1-1-94) T(8-11-16)~~

~~d. The spouse of a person who is classified or is eligible for classification as a resident of the state for purposes of attending a college or university, provided that the institution shall require the filing of proof of marriage by the applicant. (1-1-94) T(8-11-16)~~

~~e. A member of the armed forces of the United States stationed in the state on military orders. (1-1-94) T(8-11-16)~~

~~f. An officer or an enlisted member of the Idaho national guard. (5-8-09) T(8-11-16)~~

~~g. A student whose parent or guardian is a member of the armed forces and stationed in the state on military orders and who receives fifty percent (50%) or more of his support from a parent or guardian, provided that the student, while in continuous attendance, shall not lose residency status when the student's parent or guardian is transferred on military orders. (1-1-94) T(8-11-16)~~

~~h. A person separated, under honorable conditions, from the United States armed forces after at least two (2) years of service, who at the time of separation designates the state of Idaho as his intended domicile or who has Idaho as the home of record in service and enters a college or university in the state within one (1) year of the date of separation. (1-1-94) T(8-11-16)~~

~~i. Any person who has been domiciled in the state, has qualified and would otherwise be qualified under Section 33-3717B, Idaho Code, and who is away from the state for a period of less than thirty (30) months and has not established legal residence elsewhere, provided a twelve-month (12) period of continuous residence has been established immediately prior to departure. However, time spent away from the state while enrolled in a postsecondary education program shall not be included in the thirty (30) months. Such time spent away from the state while enrolled shall include normal academic year breaks, such as summer breaks or breaks between semesters or quarters, that occur prior to the receipt of the postsecondary degree. (3-29-10) T(8-11-16)~~

~~j. A student who is a member of any of the following Idaho Native American Indian tribes, regardless of current domicile, shall be considered an Idaho state resident for purposes of fees or tuition at institutions of higher education: members of the following Idaho Native American Indian tribes, whose traditional and customary tribal~~

~~boundaries included portions of the state of Idaho, or whose Indian tribe was granted reserved lands within the state of Idaho: (5-8-09) T(8-11-16)~~

~~i. Coeur d'Alene tribe; (5-8-09) T(8-11-16)~~

~~ii. Shoshone Paiute tribes; (5-8-09) T(8-11-16)~~

~~iii. Nez Perce tribe; (5-8-09) T(8-11-16)~~

~~iv. Shoshone Bannock tribes; (5-8-09) T(8-11-16)~~

~~v. Kootenai tribe. (5-8-09) T(8-11-16)~~

~~02. Nonresident Student. Nonresident student is defined in Section 33-3717B, Idaho Code, and includes: (5-8-09) T(8-11-16)~~

~~a. A student who does not qualify as a resident student as defined in Subsection 005.01. (1-1-94) T(8-11-16)~~

~~b. A student attending an institution in this state with financial assistance provided by another state or governmental entity thereof, such nonresidency continuing for one (1) year after the completion of the semester for which such assistance is last provided. (1-1-94) T(8-11-16)~~

~~c. A person who is not a citizen of the United States of America, who does not have permanent or temporary resident status or who does not hold "refugee parolee" or "conditional entrant" status with the United States Immigration and Naturalization Service, or is not otherwise permanently residing in the United States under color of law, and who does not also comply with and meet all applicable sections of Section 33-3717B, Idaho Code, and this chapter. **Accredited Secondary School.** "Accredited secondary school" means an Idaho secondary school accredited by a body recognized by the State Board of Education. (8-11-16)~~

~~02. Armed forces. "Armed forces" means the United States Army, Navy, Air Force, Marine Corps, Coast Guard and their reserve forces. It does not include the National Guard or any other reserve force. (5-8-09) T(8-11-16)~~

~~03. Continuously Resided. The term "Continuously resided" as used in this chapter means physical presence in the state for twelve (12) consecutive months. Absence from the state for normal vacations, family travel, work assignments, short-term military training, and similar occasions totaling not more than thirty (30) days during the twelve (12) month qualifying period, in and of itself, will not be regarded as negating the continuous residence of the individual. (1-1-94) T(8-11-16)~~

~~04. Continuous Attendance. For purposes of Subsection 005.01.g., "continuous attendance" means attendance at a college or university for continuing and succeeding semesters or terms excluding summer semesters or terms. (5-8-09) T(8-11-16)~~

~~05. Accredited Secondary School. "Accredited secondary school" means an Idaho secondary school accredited by the State Board of Education. (1-1-94) T(8-11-16)~~

~~06. Term Immediately Following Graduation. For purposes of Subsection 005.01.c., "the term immediately following graduation" does not include the summer semester or term of a college or university. (1-1-94) T(8-11-16)~~

~~07. Armed Forces. "Armed forces" means the United States Army, Navy, Air Force, Marine Corps, and United States Coast Guard. It does not include the National Guard or other reserve force. (3-30-01) T(8-11-16)~~

~~08. Domicile. "Domicile" means an individual's true, fixed, and permanent home and place of~~

~~habitation; the place where the individual intends to remain and to which the individual expects to return when he leaves without intending to establish a new domicile elsewhere. The establishment of domicile in Idaho occurs when a person is physically present in Idaho primarily for purposes other than educational and can show satisfactory proof that such person is without a present intention to return to another state or acquire a domicile at some other place outside the state and the person has met any other applicable requirements of this chapter. (1-1-94) T(8-11-16)~~

04. Full-time Employment. “Full-time employment” means employment consisting on average of at least 30 hours of service per week, or 120 hours of service per month. T(8-11-16)

05. Full-time Student. “Full-time student” means a student taking the number of credits set by the State Board of Education to constitute a full course load. T(8-11-16)

096. Support. “Support” means financial support given to the student during the twelve (12) months preceding the opening date of the term for which resident status is requested, but shall not include educational scholarships or grants provided to the student to attend a postsecondary educational institution. Any student who receives less than fifty percent (50%) support may demonstrate this by showing that he is not claimed as a dependent by a parent or guardian for income tax purposes or that a parent or guardian provides less than fifty percent (50%) of the cost of attending an institution according to the financial aid office of that institution or that other similar evidence exists of parental support such as dental bills, medical bills, etc. (5-8-09) T(8-11-16)

0067. -- 099. (RESERVED) T(8-11-16)

100. RESIDENT CLASSIFICATION BY ALL INSTITUTIONS.

Any student classified as a resident ~~student~~ for purposes of ~~tuition higher education~~ by one ~~institution of the institutions or Eastern Idaho Technical College~~ must shall be considered a resident by all other institutions. ~~“Institutions” means the University of Idaho, Idaho State University, Boise State University, Lewis Clark State College, and Eastern Idaho Technical College.~~ (5-8-09) T(8-11-16)

101. RESIDENCY CLASSIFICATION PROCESS.

All requests for residency reclassification must be submitted by the student to the institution by the 10th day of the term in which reclassification is sought. Each institution ~~shall is to~~ develop its own procedures to determine the residency status of applicants, disseminate information about the classification process, and determine the documentation required of each applicant to the institution. The institution may require whatever records, documents, or affidavits it deems necessary to classify each applicant correctly. It is the responsibility of the institution to notify the student in a timely manner of the documentation required for the classification process, and it is the responsibility of the student to provide the documentation by the deadline established by the institution. Each student ~~must shall~~ be notified in writing of the residency classification decision ~~made by the institutional personnel responsible for determining residency status within fifteen (15) days of such determination being made.~~ (7-1-93) T(8-11-16)

102. FACTORS FOR DETERMINING DOMICILE.

~~Pursuant to Section 33-3717B, Idaho Code, the overriding factor for determining whether a student is a “resident student” is domicile. For these purposes, the establishment of~~ The following, if supported by documentation, support a claim of domicile in Idaho: ~~occurs when a person is physically present in Idaho primarily for purposes other than educational and can show satisfactory proof that such person is without a present intention to return to another state or acquire a domicile at some other place outside the state and the person has met any other applicable requirements of this chapter. In determining whether a student is domiciled in Idaho primarily for purposes other than educational, the institutions shall consider the following: (5-8-09) T(8-11-16)~~

~~01. Domicile Established.~~ Any of the following, if done for at least twelve (12) months before the term in which the student proposes to enroll as a resident student, proves the establishment and maintenance of domicile in Idaho ~~for~~ for ~~purposes~~ for ~~other~~ other ~~than~~ than educational: (5-8-09) T(8-11-16)

01. Single-Tax Returns and Employment Factors. Both of the following, if done for at least twelve (12) months before the term in which the student proposes to enroll as a resident student, proves the establishment and maintenance of domicile in Idaho for purposes other than educational: T(8-11-16)

a. Filing of Idaho state income tax returns covering a period of at least twelve (12) months before the term in which the student proposes to enroll as a resident student, and. (5-8-09) T(8-11-16)

~~b.~~ Permanent ~~F~~Full-time employment or the hourly equivalent ~~thereof~~ in ~~the state of~~ Idaho. (5-8-09) T(8-11-16)

~~c. Ownership by the student of the students living quarters. (5-8-09) T(8-11-16)~~

~~02. **Rebuttable Presumption.** A student who is enrolled for more than eight (8) hours in any semester or quarter during a twelve (12) month period shall be presumed to be in Idaho for primarily educational purposes. Such period of enrollment shall not be counted toward the establishment of a bona fide domicile in the state unless the student proves, in fact, establishment of a bona fide domicile in the state primarily for purposes other than educational. A student who establishes at least five (5) of the seven (7) factors listed in Subsection 102.03 of these rules, if done for a least twelve (12) months before the term in which the student proposes to enroll as a resident student, proves the establishment and maintenance of domicile in Idaho for purposes other than educational. (5-8-09) T(8-11-16)~~

~~0302. **Additional Factors to Determine Domiciliary Intent** Multiple Factors. A student who establishes at least ~~f~~Five (5) of the ~~seven (7)~~ following factors, if done for at least twelve (12) months before the term in which the student proposes to enroll ~~as a resident student~~, proves the establishment and maintenance of domicile in Idaho for purposes other than educational: (5-8-09) T(8-11-16)~~

~~a. Ownership or leasing of a residence in Idaho. T(8-11-16)~~

~~b. Registration and payment of Idaho taxes or fees, other than sales or income tax, or Registration including registration and payment of Idaho taxes or fees on a motor vehicle, mobile home, travel trailer, or other item of personal property for which state registration and the payment of state tax or fee is required. (5-8-09) T(8-11-16)~~

~~cb. Registration to vote for state elected officials in Idaho at a general election. (4-1-94) T(8-11-16)~~

~~de. Holding of an Idaho driver's license. An Idaho or state-issued ID identification card may be used in lieu of an Idaho driver's license. (5-8-09) T(8-11-16)~~

~~ed. Evidence of the abandonment of a previous domicile. (4-1-94) T(8-11-16)~~

~~e. The presence of household goods in Idaho. (4-1-94) T(8-11-16)~~

~~f. The establishment of accounts with ~~Idaho~~ financial institutions in Idaho. (5-8-09) T(8-11-16)~~

~~g. And Other Ssimilar Ffactors Iindicating Iintent to Bbe Ddomiciled in Idaho and the Mmaintenance of Ssuch Ddomicile. Factors may include, but are not limited to, enrollment of dependent children in Idaho primary elementary or secondary schools, establishment of acceptance of an offer of permanent employment for self in Idaho, or documented need to care for a relative in Idaho, utility statements, or employment documentation. T(8-11-16)~~

~~04. Idaho Elementary and Secondary Students. If a student meets the requirements set forth under Idaho Code, Section 33-3717B(1)(c), that student shall not be required to meet the twelve (12) month requirement for establishing domicile. (5-8-09) T(8-11-16)~~

103. APPEALS PROCEDURE.

Any student who contests the residency classification decision made ~~pursuant to IDAPA-08.01.04.101~~ by the institution may appeal the decision. The student ~~must shall~~ be informed of his right to appeal by the institution at the time the student is notified of the residency classification decision, The student must request the appeal in writing and agree to the release of information provided to determine residency to the review body, and ~~must~~ comply with

deadlines established by the institution for requesting such appeal.

~~(1-1-94)~~ T(8-11-16)

01. Internal-Institution Appeal. The chief executive officer of each institution or his designee ~~must~~ shall appoint or cause to be appointed a committee of no less than three (3) ~~to nor more than~~ five (5) members who represent faculty and administration and who will constitute a residency review committee. ~~The individual responsible for the initial determination of residency of any student is ineligible for membership on the review committee. The committee will elect a chairman, secretary, or other position as may be deemed necessary to carry out the work of the committee.~~ Within thirty (30) days following receipt of the student's written request to appeal the residency classification decision ~~made pursuant to IDAPA 08.01.04.101~~, the committee must meet and review the ruling. The student appealing is responsible for presenting such evidence as the committee may request and such other evidence as the student may deem pertinent to his residency status. The individual ~~who made responsible for~~ the initial residency classification decision ~~pursuant to IDAPA 08.01.04.101~~ may be present, if requested by the committee, ~~to submit such information as he may desire for each case being appealed to answer questions from the committee.~~ The student must be notified in writing of the ~~review~~ committee's decision. The decision of the committee is final unless the student elects to appeal ~~further the decision~~ to the State Board of Education. ~~(7-1-93)~~ T(8-11-16)

02. Board Appeal. Any student who contests the decision of the residency review committee may appeal to the State Board of Education. In such case, the student must advise the chief executive officer of the institution, in writing, of his request to submit an appeal. The chief executive officer ~~must arrange for a will submit the request to the Office of the State Board of Education for~~ review by the Board or the Board's designated representatives. The decision of the State Board of Education ~~is is the final determination and is~~ binding on all parties concerned, subject to the student's statutory right to appeal the final determination to district court. ~~(7-1-93)~~ T(8-11-16)

~~104. INTERPRETATIONS RELATING TO RESIDENCY CLASSIFICATION.~~

~~T(8-11-16)~~

~~01. Common Law Marriage.~~ Any student who wants to establish residency on the basis of a common law marriage must complete an Affidavit of Common Law Marriage as approved by the Board. ~~(7-1-93)~~ T(8-11-16)

~~02. Nonresident Aliens -- Marital Privilege.~~ Nonresident aliens who marry Idaho residents become eligible for residency classification for purposes of higher education, as provided in Section 33-3717B, Idaho Code, upon filing proof of marriage in the admissions office. However, the institutions remain responsible for complying with requirements set forth in regulations of the U.S. Immigration and Naturalization Service relating to non-immigrant alien students until such time as the alien is granted lawful resident alien status by the U.S. Immigration and Naturalization Service. ~~(5-8-09)~~ T(8-11-16)

~~105. RESIDENCY REQUIREMENTS FOR SPECIAL GRADUATE OR PROFESSIONAL PROGRAMS.~~

~~T(8-11-16)~~

~~01. Residency Requirement.~~ As provided in Section 33-3717B, Idaho Code, a residency requirement of ~~at least one (1) calendar year is in effect for certain special graduate and professional programs.~~ ~~(3-29-12)~~ T(8-11-16)

~~a.~~ Those programs include, but are not limited to, the WAMI Regional Medical Program, the WICHE Professional Student Exchange Program, the Idaho Dental Education Program, the Creighton Dental Education Program, the WOI Regional Veterinary Program, and the University of Utah Medical Program. ~~(3-29-12)~~ T(8-11-16)

~~b.~~ For purposes of this section, the requirement of "at least one (1) calendar year" means a period of twelve (12) consecutive months of continuous residency consistent with the requirements of Section 33-3717B, Idaho Code, immediately prior to the date of application. ~~(3-29-12)~~ T(8-11-16)

~~02. Appeal to the State Board of Education.~~ Applicants for the special graduate and professional programs, upon institutional denial of residency status, may petition the Board for a hearing on the denial. The decision to grant such a hearing is discretionary with the Board and will be granted for errors in determination of residency pursuant to Section 33-3717B, Idaho Code. ~~(5-8-09)~~ T(8-11-16)

| 1064. -- 999. (RESERVED)

T(8-11-16)