

Residency and In-State Tuition

Texas Higher Education Coordinating Board

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Persons classified as residents for higher education purposes under Texas law may pay in-state tuition. Although the State of Texas does not have any programs specifically for undocumented students, some undocumented persons are among those who are eligible for in-state tuition under current residency statutes. The residency statutes for higher education purposes have evolved somewhat over the past 6 years.

House Bill 1403 – TEC 54.052(j), passed by the 77th Legislature in 2001

From fall 2001 through summer 2006, higher education institutions made residency decisions that were in part based on Texas Education Code 54.052(j), which read:

(j) Notwithstanding any other provision of this subchapter, an individual shall be classified as a Texas resident until the individual establishes a residence outside this state if the individual resided with the individual's parent, guardian, or conservator while attending a public or private high school in this state and:

- (1) graduated from a public or private high school or received the equivalent of a high school diploma in this state;
- (2) resided in this state for at least three years as of the date the person graduated from high school or received the equivalent of a high school diploma;
- (3) registers as an entering student in an institution of higher education not earlier than the 2001 fall semester; and
- (4) provides to the institution an affidavit stating that the individual will file an application to become a permanent resident at the earliest opportunity the individual is eligible to do so.

This section allowed international individuals who were not permanent residents or citizens of the United States to be classified as residents for higher education purposes if they met the requirements outlined above and provided their institutions an affidavit indicating they would apply for permanent residence as soon as they were eligible to do so.

Numerous visas issued by the federal government allow *documented* individuals to reside in the United States. If these individuals met the requirements outlined above, they were residents of Texas by state law. Undocumented students also could be classified as residents if they met those requirements.

During the years when TEC 54.052(j) was in effect, there were claims made that it was unconstitutional and could be the basis of a lawsuit since it allowed certain individuals to be treated differently than others. This situation changed with the passage of SB 1528 and the repeal (effective as of the end of FY2006) of the old residency statutes, including TEC 54.052(j).

Senate Bill 1528 – New TEC Chapter 54, Subchapter B, passed by the 79th Legislature in 2005

The provisions of Senate Bill 1528, passed by the 79th Legislature, Regular Session, began to govern residency decisions beginning with fall 2006. It has *similar but not identical* provisions as those held in TEC 54.052(j).

Sec. 54.052. DETERMINATION OF RESIDENT STATUS.

(a) Subject to the other applicable provisions of this subchapter governing the determination of resident status, the following persons are considered residents of this state for purposes of this title:

- (3) a person who:
 - (A) graduated from a public or private high school in this state or received the equivalent of a high school diploma in this state; and
 - (B) maintained a residence continuously in this state for
 - (i) the three years preceding the date of graduation or receipt of the diploma equivalent, as applicable; and
 - (ii) the year preceding the census date of the academic term in which the person is enrolled in an institution of higher education.

Sec. 54.053. INFORMATION REQUIRED TO ESTABLISH RESIDENT STATUS. A person shall submit the following information to an institution of higher education to establish resident status under this subchapter:

- (3) if the person applies for resident status under Section 54.052(a)(3):
 - (A) a statement of the dates and length of time the person has resided in this state, as relevant to establish resident status under this subchapter; and
 - (B) if the person is not a citizen or permanent resident of the United States, an affidavit stating that the person will apply to become a permanent resident of the United States as soon as the person becomes eligible to apply.

The primary difference is that the new statute allows all persons whether international, US Citizens or Permanent Residents, to establish an independent claim to residency based on graduation from high school or the completion of its equivalent after residing in the state for at least 36 months. The fact that this provision applies to all high school graduates relieves the state of any threat of a law suit based on preferential treatment. More importantly, it allows high school graduates to establish their own basis of residency by having lived here for the three years leading up to graduation.

In the past, students born and raised in Texas but whose parents moved out of state before they had enrolled in college were statutorily classified as nonresidents, whether they had ever lived outside the state or not. Students raised by grandparents or other family members who had never gone to court to acquire legal custody were considered residents of the state in which their biological parents lived, whether or not those parents were in any way involved in their upbringing.

The new provisions of TEC 54.052(a)(3) enable these students, and all other students who graduate from high school in Texas under the prescribed conditions, to be classified as residents and allow them to enroll while paying the resident tuition rate. It is important to note these students are not nonresidents who are getting to pay the resident rate due to a waiver of nonresident tuition. They are classified as *bone fide* residents under current statutes.

The number of students qualifying under these provisions is relatively small. The full population of students reported as residents under the residency provisions of TEC 54.052(a)(3) totaled 7,300 students in fall 2006. The state's public institution total enrollment that term was 1,082,955. Therefore, the TEC 54.052(a)(3) students represented less than seven tenths of one percent of the public institution enrollment.

For More Information:

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