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**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.

The title of this chapter is Residency. This chapter has the following scope: the four-year institutions under the supervision 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)

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. (1-1-94)

004. PUBLIC RECORDS ACT COMPLIANCE.

All rules required to be adopted by this chapter are public records. (1-1-94)

005. 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)

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. (5-8-09)

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)

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)

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)

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

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

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)

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)

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)

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)

- i. Coeur d'Alene tribe; (5-8-09)
- ii. Shoshone-Paiute tribes; (5-8-09)
- iii. Nez Perce tribe; (5-8-09)
- iv. Shoshone-Bannock tribes; (5-8-09)
- v. Kootenai tribe. (5-8-09)

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

a. A student who does not qualify as a resident student as defined in Subsection 005.01. (1-1-94)

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)

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. (5-8-09)

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)

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)

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

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)

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)

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)

09. 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)

006. -- 099. (RESERVED).

100. RESIDENT CLASSIFICATION BY ALL INSTITUTIONS.

Any student classified as a resident for purposes of higher education by one institution must 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)

101. RESIDENCY CLASSIFICATION PROCESS.

Each institution is to develop its own procedures to determine 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 be notified in writing of the residency classification decision made by the institutional personnel responsible for determining residency status. (7-1-93)

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 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)

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 purposes other than educational: (5-8-09)

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. (5-8-09)

b. Permanent full-time employment or the hourly equivalent thereof in the state of Idaho. (5-8-09)

c. Ownership by the student of the student's living quarters. (5-8-09)

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)

03. Additional Factors to Determine Domiciliary Intent. A student who establishes at least 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)

a. Registration and payment of Idaho taxes or fees. 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)

b. Registration to vote for state elected officials in Idaho at a general election. (1-1-94)

c. Holding of an Idaho driver's license. An Idaho state-issued ID card may be used in lieu of an Idaho driver's license. (5-8-09)

d. Evidence of the abandonment of a previous domicile. (1-1-94)

e. The presence of household goods in Idaho. (1-1-94)

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

g. And Other Similar Factors Indicating Intent to Be Domiciled in Idaho and the Maintenance of Such Domicile. Factors may include, but are not limited to, enrollment of dependent children in Idaho primary 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. (5-8-09)

103. APPEALS PROCEDURE.

Any student who contests the residency classification decision made pursuant to IDAPA 08.01.04.101 may appeal the decision. The student must be informed of his right to appeal, must request the appeal in writing and agree to the release of information to the review body, and must comply with deadlines established by the institution for requesting such appeal. (1-1-94)

01. Internal Appeal. The chief executive officer of each institution or his designee must appoint or cause to be appointed a committee of three (3) to 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 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 the initial residency classification decision pursuant to IDAPA 08.01.04.101 may be present to submit such information as he may desire for each case being appealed. 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 to the Board. (7-1-93)

02. Board Appeal. Any student who contests the decision of the review committee may appeal to the Board. 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 review by the Board or the Board's designated representatives. The decision of the Board is final and binding on all parties concerned. (7-1-93)

104. INTERPRETATIONS RELATING TO RESIDENCY CLASSIFICATION.

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)

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)

105. RESIDENCY REQUIREMENTS FOR SPECIAL GRADUATE OR PROFESSIONAL PROGRAMS. 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. 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. 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. (5-8-09)

01. Delegation of Certification Administration. The following office or institutions are delegated the responsibility for the evaluation of applicants and determination of residency for the special graduate and professional programs for purposes of certification. (7-1-93)

- a.** The University of Idaho -- WAMI Regional Medical Program, WOI Regional Veterinary Program. (7-1-93)
- b.** Idaho State University -- Idaho Dental Education Program and the University of Utah Medical Program. (6-30-95)
- c.** Office of the State Board of Education -- WICHE Professional Student Exchange Program. (6-30-95)

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)

106. -- 999. (RESERVED).

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