

SOUTH DAKOTA BOARD OF REGENTS

Academic and Student Affairs

AGENDA ITEM: 6 – F

DATE: April 2-3, 2025

SUBJECT

Revised BOR Policy 3.1.1 (First Reading)

CONTROLLING STATUTE, RULE, OR POLICY

[BOR Policy 3.1.1 – Resident and Nonresident Classification of Students](#)

BACKGROUND / DISCUSSION

BOR Policy 3.1.1 Resident and Nonresident Classification of Students has been a policy that impacts multiple offices across the campuses including: Admissions, Financial Aid, Academic Records, Accounts Receivable, International Student Affairs, Student Affairs Council, Academic Affairs Council, and Business Affairs Council. To conclude, this past year a group of stakeholders have been addressing the definition surrounding residency.

The question first was prompted due to the addition of resident tuition for the surrounding states through the South Dakota Advantage program. In addition to the South Dakota Advantage state program, students may reside in a surrounding state and attend a South Dakota high school. It was noted that there may be confusion for both internal and external stakeholders (to include parents, high school officials, and students) regarding the residency requirement for the SD Opportunity Scholarship (SDOS) and eligibility.

Project Charge:

The charge from the Executive Director and BOR Legal Counsel to this group:

1. Define all eligible categories for residency based on Board Policy, South Dakota Codified Law and Administrative Rules of South Dakota.
2. Ensure that when awarding SDOS that it meets the intent of the Administrative Rules of South Dakota.
3. Ensure that military and veteran affair laws are adhered to in BOR policy.

(Continued)

DRAFT MOTION 20250402_6-F:

I move to approve the first reading of the proposed revisions to BOR Policy 3.1.1 – Resident and Nonresident Classification of Students, as presented.

Stakeholder Committee:

The team included the following participants.

Admissions

DSU: Amber Schmidt

NSU: Matt Perreault

SDSU: Michelle Kuebler

USD: Stacey O'Connor

Enrollment Management

BHSU: Joe Rainboth

SDM: Molly Moore

SDSU: Shawn Helmbolt

Accounts Receivable/Finance

USD: Shelley Brunick

BOR: Heather Forney

Financial Aid/Scholarships

SDSU: Beth Vollan

BOR: Kerri Richards

Veteran's Services

DSU: Austin Slaughter

USD: Katie McPherson

Technology

DSU: Scott Allbee

BOR: Carla Behr

Academic/Student

BOR: Trudy Zalud

BOR: Janice Minder

Note: BOR legal counsel was engaged by responding to questions and working through the draft policy, procedures and student information documentation.

IMPACT AND RECOMMENDATION

This is a complicated area for all aspects of the functional teams that assisted. In some cases, a larger group was initiated to take a deeper review of their functional domains. To ensure that all had the opportunity to weigh-in, meetings initially focused solely on the South Dakota Codified Law and Administrative Rules of South Dakota. A secondary review then ensued with respect to federal and state rules regarding military and veteran affairs.

The Academic Affairs Council (AAC) and Student Affairs Council (SAC) received a first and second revision to this policy. The Business Affairs Council (BAC) held a discussion regarding fees and rate codes for the student information system. This first draft attempted to obtain feedback from all parties. This project team only reviewed the eligibility of residency and defining non-residency.

As this is the first draft, a second and final draft will be presented in July 2025 allowing for additional campus communication.

ATTACHMENTS

Attachment I – Revised BOR Policy 3.1.1 – Resident and Nonresident Classification of Students

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Resident and Nonresident Classification of Students

NUMBER: 3.1.1

A. PURPOSE

This policy governs the classification of students for the purpose of tuition eligibility. Each person who applies for admission to an institution shall be classified in one of four classifications.

B. DEFINITIONS

1. **Administrative Rules of South Dakota (ARSD):** Regulations that have the force of law and are created by agencies to implement, interpret, or prescribe actions related to law or policy.
2. **Domestic Nonresident:** A prospective student or matriculated student that resides in the United States as a citizen and is not a resident of South Dakota.
3. **Family Educational Rights and Privacy Act (FERPA):** A federal law that protects the privacy of students' educational records.
4. **International Nonresident:** A prospective student or matriculated student who is not a citizen or national of the United States and who is in this country on a visa or temporary basis and does not have the right to remain indefinitely.
5. **Institution:** Defined as one of the six (6) public universities: Black Hills State University, Dakota State University, Northern State University, South Dakota School of Mines and Technology, South Dakota State University, and the University of South Dakota.
6. **Nonresident Exempt:** This is a student that has been deemed a non-resident of South Dakota due to physical location or other requirements, however, eligible for South Dakota tuition rates only.
7. **South Dakota Codified Law (SDCL):** Laws enacted by the South Dakota Legislature.
8. **South Dakota Resident:** This is a student that has been deemed a resident of South Dakota based on codified law and or administrative rules. This student receives all benefits as a South Dakotan including scholarship opportunities (those that require residency) and tuition.

C. RESIDENCY CLASSIFICATION

A student's classification for the purpose of the student's responsibility for payment of tuition shall be made based on information provided by the student before initial enrollment, upon re-enrollment, or as may otherwise be required. Each residency classification shall be made by authorized institutional employees based on this policy and the implementing SAC Guidelines adopted and approved.

The four classifications include: SD Resident, SD Tuition Eligible Nonresident, Domestic Nonresident, and International Nonresident.

Categories of Residency Classification

<u>South Dakota Resident</u>	<u>Nonresident Exempt</u>	<u>Domestic Nonresident</u>	<u>International Nonresident</u>
<u>Meets the SDCL and ARSD for Residency</u>	<u>Meets BOR Policy, SDCL or ARSD for Tuition Eligibility</u>	<u>Resident of the US not eligible for Resident or Nonresident Exempt Status</u>	<u>US Nonresidents</u>
<u>Resident</u>	<u>Nonresident</u>	<u>Nonresident</u>	<u>Nonresident</u>

D. BURDEN OF ESTABLISHING RESIDENCY

1. The burden is on each student to demonstrate eligibility for classification of residency.
2. The institution is authorized to require such written documents, affidavits, verifications, or other evidence as are deemed necessary to establish the residence of the student, including proof of emancipation, adoption, or appointment of a guardian.
3. Students have the burden of establishing residency by clear and convincing evidence.
4. A student initially classified as a Domestic Nonresident or International Nonresident will retain that status unless and until the student is deemed eligible for the classification of SD Resident or SD Tuition Eligible Nonresident in a subsequent semester.

E. ESTABLISHING BONA FIDE RESIDENCY

For tuition purposes, residence means the place where a person has a permanent home, at which the person remains when not called elsewhere for labor, studies or other special or temporary purposes, and to which the person returns at times of repose. It is the place a person has voluntarily fixed as the person's permanent habitation with an intent to remain in such place for an indefinite period.

1. Physical Presence: Except as otherwise provided in the SAC Guidelines, continuous physical presence in South Dakota for more than one year immediately before the residence determination date. Physical presence in South Dakota solely for educational purposes does not constitute the establishment of SD residency, regardless of length of stay.
2. Intent: Physical presence in South Dakota for the predominant purpose of attending postsecondary education does not count in determining the twelve-month period of residence. However, attending a post-secondary institution on a part-time basis or taking distance education courses does not automatically exclude the student from the 12-month residency requirement.

- 2.1 The following factors are relevant in evaluating a requested change in a student's nonresident status and in evaluating whether the person's physical presence in South

Dakota is for the predominant purpose of attending an institution of higher education controlled by the Board:

- The residence of an unemancipated student's parents or guardians;
- The status of the source of the student's income;
- To whom a student pays taxes, including property taxes;
- The state in which a student's automobile is registered;
- The state issuing the student's driver's license;
- Where the student is registered to vote;
- Ownership of property in South Dakota and outside of South Dakota;
- The residence claimed by the student on loan application, federal income tax returns, and other documents;
- Admission to a licensed profession in South Dakota;
- Membership in civic, community, and other organizations in South Dakota or elsewhere; and
- The facts and documents pertaining to the person's past and existing status as a student.

2.2 The existence of one or more of these factors does not require a finding of resident student status, nor does the nonexistence of one or more require a finding of nonresident student status. All factors shall be considered in combination, and resident student status may not result from the doing of acts which are required or routinely done by sojourners in the state, or which are merely auxiliary to the fulfillment of educational purposes.

2.3 The fact that a person pays taxes and votes in the state does not in itself establish residence.

2.4 Students who do not meet the requirements of this policy may still be classified as residents if their situation presents unusual circumstances and their classification is within the general scope of this policy.

3. Unemancipated Persons:

3.1 The residence of an unemancipated person under twenty-four years of age follows that of the parents or of a legal guardian who has actual custody of the person or administers the property of the person. In the case of divorce or separation, if either parent meets the residence requirements, the person shall be considered a resident.

3.2 Unemancipated students whose parents established their residence in South Dakota for reasons not predominantly related to qualifying their children for reduced tuition, may be classified as residents, notwithstanding the fact that they have not resided in South Dakota for the requisite twelve months prior to the first scheduled day of classes.

3.3 If it appears that the parents of a person properly classified as a resident student under the provisions of this section have removed their residence from South Dakota, the person shall be reclassified to the status of nonresident unless the parents have been residents for the twelve months immediately preceding such removal. However, no such reclassification is effective until the beginning of a semester following the removal.

4 Previous South Dakota Residence: Absence from South Dakota to pursue postsecondary education does not deprive a person of resident student status.

- 5 Classification of Resident: A person once properly classified as a resident student shall be deemed to remain a resident student so long as remaining continuously enrolled in the regental system until the person's degree shall have been earned.
- 6 International Nonresident Establishing Domicile: International nonresident students whose visas permit them to establish domiciles in the United States or its territories or protectorates may qualify for resident tuition in the same manner as United States citizens.
- 7 Military: Active military status, veterans, spouses and dependents of military that have established a permanent residence in South Dakota shall be granted resident status and are not subject to the 12-month residency requirement. In addition, any person who is actively serving in the armed forces of the United States and is stationed in South Dakota will be classified in the SD Eligible Tuition Nonresident and eligible for SD Tuition. This shall also apply to the spouse of the active-duty personnel.
- 8 High School Graduates: The following high school graduates will be treated as a resident for tuition purposes:
 - 8.1 Any citizen or other person entitled under law to establish a residence in the United States that graduates from a South Dakota high school; or
 - 8.2 Any citizen or other person entitled under law to establish a residence in the United States who was a South Dakota resident at the time of high school graduation and lived with a parent or legal guardian who was also a South Dakota resident.
- 9 Married Status: The Board of Regent shall reclassify any nonresident student to the status of resident student upon timely proof of marriage to a resident of South Dakota.

F. APPEALING CLASSIFICATION

1. Students may appeal the original classification decision by written petition to a reviewing body appointed by the chief executive officer of the institution within thirty (30) days after registration for that semester. The recommendation of the reviewing body shall be submitted to the chief executive officer for a decision.
2. After twelve months of continuous presence in South Dakota, students who were initially classified as nonresidents may petition for reclassification.
3. Petitions for reclassification shall be filed with the Executive Director, who shall act upon them. The Executive Director shall report his disposition of such petitions to the Board at its regularly scheduled meetings. These reports shall be summarized in a manner consistent with the Family Educational Rights and Privacy Act.
4. If a petition for reclassification is granted, the reduced tuition rate shall become effective with the first semester or session following the date on which the petition is granted. Students who fail to request resident status prior to a particular semester or session or to pursue a timely appeal shall be deemed to have waived any claim for reduced tuition for that semester or session.

G. CONTESTED CASE REVIEW

After exhausting appeal procedures on campus, students may challenge an institutional residency decision by appeal for a de novo review as provided in chapter 1-26 of the South Dakota Codified laws.

1. Contested case proceedings will be conducted under protective orders entered pursuant to SDCL §§ 1-26-19 and 15-6-26(c), in order to implement rights guaranteed under the Family Educational Rights and Privacy Act of 1974.
2. A student who has exhausted institutional procedures, including an appeal to the institutional president, may challenge a decision by mailing a written request for a review under [SDCL](#) chapter 1-26 with the Executive Director within thirty (30) days after the institution transmits notification of its final decision by depositing with the United States Postal Office written notice addressed to the student's last known mailing address. Note: The notice will not be effective unless the student attaches all documentation provided to the students by the institution detailing the basis for its residency determination.
3. The Executive Director will have fifteen (15) working days within which to attempt, at his discretion, a resolution through informal means.
4. If no resolution has been effected within the time allowed under this section (G.3), the Executive Director will refer the matter to a hearing examiner for reconsideration pursuant to [SDCL](#) chapter 1-26 of the codified laws and formulation of recommendations for the disposition of the matter by the Board.

H. MISCLASSIFICATION

1. A student or prospective student who knowingly provides false information or refuses to provide or conceals information for the purpose of improperly achieving resident student status is subject to the full range of penalties, including expulsion, provided for by the Board of Regents.
2. Where a Resident Classification is found to have been based on inaccurate or incomplete information provided by the student, the institution may impose the following:
 - a. bill the student for periods of previous enrollment for the appropriate rate difference that was not charged per BOR Policy 5.5;
 - b. hold a student's registration until full payment of amounts due has been received;
 - c. initiate discipline under the Policy on Student Code of Conduct; and/or
 - d. pursue any civil, criminal or other remedies that may be appropriate under the circumstances.

SOURCE: BOR, Apr. 1979; RR, 11:04, 1977; BOR, Apr. 1987; BOR, Jan. 1988; RR, 11:07, 1977; RR, 11:08, 1977; RR, 11:08, 1977; BOR, Apr. 1979; RR, 11:11, 1977; BOR, Apr. 1979; RR, 11:13, 1977; BOR, May 1993; SL 1996, ch. 130 (H.B. 1348); BOR, May 1996; SL 2006, ch 87; BOR, April 2007; BOR, August 2012; BOR, April 2013; BOR, June 2014; October 2023 (Clerical); **BOR, July 2025.**