

MEMORANDUM

DATE: July 14, 2021
TO: Residency officers at Washington’s public colleges and universities and financial aid directors at Washington’s state aid participating institutions
FROM: Gail Wootan, Associate Director of Consumer Protection
SUBJECT: Senate Bill 5194 Residency Section Implementation Guidance

In consultation with the Attorney General of Washington’s Education Division, this memorandum provides implementation guidance for professionals who make residency determinations for tuition and state financial aid purposes at Washington’s higher education institutions. The following guidance supersedes all previous guidance and information from the Washington Student Achievement Council (WSAC).

Overview

Effective July 25, 2021, [Senate Bill 5194](#) significantly changes Washington’s tuition equity law. Section nine of the bill amends RCW 28B.15.012(2)(e), making it easier for all Washingtonians, including and especially undocumented students, to meet residency requirements for tuition and state financial aid. Since 2003, this part of residency law has been known informally as “HB 1079” for the bill that created it. **This law may be met by any student, regardless of citizenship or legal immigration status.** It is one of the many ways that students can meet residency requirements. The other ways to meet residency requirements still exist.

Requirements

To be a resident student under this law, students must:

- Earn a high school diploma, GED, or diploma equivalent before their first term at the college determining residency,
- Maintain a primary residence in Washington for at least 12 consecutive months immediately before their first term at the college determining residency, and
- Sign an affidavit saying they meet the above requirements and that one of the following is true:
 - They will file an application to become a permanent resident of the United States as soon as they are eligible to apply. And, that they are willing to engage in activities designed to prepare them for citizenship, including citizenship or civics review courses or
 - They are a U.S. citizen, U.S. national, or U.S. permanent resident.

The first two requirements do not need to be met in a specific order. They can be at the same time or at different times, as long as the student completes them before starting at your institution.

Primary changes

This law broadens Washington’s current tuition equity law in two ways:

1. It removes the requirement that a person must earn a high school diploma or equivalent in Washington. It now requires a high school diploma or equivalent without specifying a location.
2. It removes the requirement that a person must live in Washington for three years prior to earning a high school diploma or equivalent. The law now requires that a person must live in Washington for one year, or 12 consecutive months, prior to college admission.

Effective date

The statute goes into effect July 25, 2021. For many institutions, this date is during the summer 2021 term. Washington residency law requires that students apply for a change in residency status within the first 30 calendar days of a term. This means that **students who qualify for SB 5194 and submit the affidavit within the 30th calendar day of your institution's summer 2021 term may be considered resident students for summer 2021 as long as your institution determines student eligibility on or after July 25, 2021.** For institutions with summer quarters starting after June 24th, the effective date will overlap with the 30-day timeframe. For all terms starting on or after July 25, 2021, the law will be fully in effect.

Interpreting the law

The following information is to help guide public residency officers and private financial aid directors in making residency determinations.

High school diploma or equivalent

The law removes the requirement that a high school diploma or equivalent must be earned in Washington. This means that **any high school diploma, GED, or diploma equivalent meets the requirements, regardless of where it was earned or whether it was earned before the student lived in Washington.**

High school diplomas earned outside of the U.S.

Institutions should use current institutional guidelines used by admissions and financial aid departments, as well as federal law and guidelines, to determine if high school diplomas earned outside of the U.S. are considered high school diploma equivalents. The [U.S. Department of Education](#) says that a high school diploma from another country can be recognized as a valid high school diploma if the institution determines that the non-U.S. credentials are equivalent to a U.S. secondary education. Its [website](#) has more guidance about how to determine if a foreign secondary school credential is equivalent to a U.S. high school diploma. It also includes how to handle situations where a person cannot obtain high school completion documentation due to their status as a refugee, asylee, or victim of human trafficking.

People without a high school diploma or GED

There are several ways that people without a high school diploma or GED can show that they have an equivalent of a high school diploma. Again, the institution should use their own institutional guidelines to make these decisions, along with federal guidance and law. The [US Department of Education](#) specifically lists these three situations as being equivalent to a high school diploma:

- Successful completion of an associate degree;
- Successful completion of at least 60 semester credits or 72 quarter credits that does not result in the awarding of an associate degree, but that is acceptable for full credit toward a bachelor's degree at any institution; or
- Enrollment in a bachelor's degree program where at least 60 semester credits or 72 quarter credits have been successfully completed, including credit hours transferred into the bachelor's degree program.

Furthermore, the federal definition of a high school diploma equivalent is defined by 34 CFR § 600.2. It includes two additional equivalencies:

- A State certificate received by a student after the student has passed a State-authorized examination that the State recognizes as a high school diploma equivalent or
- For a person who has not completed high school, but is enrolled in a program that leads to at least an associate degree or equivalent, documentation that the student excelled academically in high school and has met the formalized, written policies of the institution for admitting such students.

One-year period

This bill also removes the requirement that a person must live in Washington for three years (36 months) prior to earning a high school diploma or equivalent. It replaces this language with living in Washington for one year (12 months) prior to admission. The one-year period has two parts that are explained below.

Maintain a primary residence for at least 12 consecutive months . . .

Unlike domicile, which is used for RCW 28B.15.012(2)(a) and (b), this statute specifically uses the term “continuously live.” A domicile is a person’s true, fixed, and permanent home. A person can only have one domicile. Domicile is indicated by a combination of physical presence and steps taken to show that the person plans to permanently remain in that place. It is determined by factors such as a driver’s license, car registration, and owned property, among other items, as these show “intent to remain.” It is possible for a person to live or reside in Washington but have a domicile elsewhere (and vice versa).

This law requires that the student continuously maintain a primary residence instead of a domicile. A primary residence is one in which a person predominantly physically resides. If a person maintains a primary Washington address for at least 12 consecutive months prior to their first term at your institution, then temporary periods of time the student spends outside of Washington do not interrupt the continuous residence period. **The main determinative factor for “continuously living” in Washington is whether the student maintained their primary residence (i.e., maintained a living space and a mailing address that was their predominant residence) during the one-year period in Washington State.** Institutions should use compassionate professional judgment and consider a student’s overall situation and circumstances when determining if the student meets the one-year requirement. For example, institutions should be aware that students who experience homelessness may have challenges maintaining a living space and a mailing address, which may require different forms of documentation.

. . . Immediately before their first term at the college determining residency

The statute says that a student must live in Washington “for at least a year before being admitted to an institution of higher education.” WSAC has interpreted the language “admitted to an institution” to mean the official first day of classes of the student’s first academic term at the institution determining residency. **The first academic term is one in which the student’s resident status affects their tuition rate and/or their ability to be considered for state financial aid.** A student who stays continuously enrolled in the program for which they were admitted generally would not be able to be reconsidered for resident student status under this law (although they may under other parts of residency law, as is current practice). First academic terms may include, but are not limited to:

- A transfer student’s first term at a new institution, even if they were considered a nonresident student at a prior institution.
- A graduate or professional student’s first term, even if they were an undergraduate student at the same institution prior to graduate or professional school.

- A former Running Start student's first term as a college-level student, even if they attended Running Start at the same institution.
- A student's first term as a college-level student, even if they were enrolled in adult basic education courses at the same institution.
- A student's first term in a bachelor of applied science program, even if they attended the same community or technical college for their associate degree or lower division credits.

Institutions are encouraged to develop and communicate clear guidelines for students to follow who may fall into one of these categories. This list is not exhaustive, so institutions should also determine what unique situations may occur for students at their campus that could affect SB 5194 eligibility. When determining eligible situations, keep in mind that this law was passed to increase residency equity for Washingtonians.

Continuing students

Continuing nonresident students at your institution may qualify if they lived in Washington for one year prior to their first term. Current nonresident students who meet the law's requirements can be resident students starting in summer term 2021, as long as they apply for resident status within the first 30 calendar days of your summer term, as explained above. They cannot receive retroactive resident tuition or state aid for the terms they attended as a nonresident. The law does not apply to continuing nonresident students who did not live in Washington for a year prior to their first term at your institution, even if they have lived in Washington for a year prior to the term they are requesting residency. However, depending on the student's situation, they may be eligible for residency through another part of the residency law.

Affidavit

The affidavit is a promise or sworn statement made by the student to the institution determining residency. The affidavit is only for students who are trying to meet residency requirements for tuition and state aid through SB 5194. If the student was already determined to be a resident through another part of the residency law, then they do not need to file the affidavit. If a student has concerns about how signing the affidavit may affect their immigration status, they should consult an immigration attorney.

Submission instructions

There are two ways to submit the affidavit. Students only need to submit one for each school they attend.¹ The affidavit that the student submits is based upon the financial aid form that they use to apply for aid as follows:

WASFA filers:

The affidavit is part of the WASFA. A "residency report" is generated daily that shows who met the affidavit requirements. Residency officers should ask for access to this report from their financial aid director.

FAFSA filers or students not applying for aid:

WSAC has created a standard [PDF affidavit](#) for people who are getting residency through SB 5194 but are not filing the WASFA. Emailed affidavits can be accepted with a typed name in lieu of a signature if it is consistent with institutional policy. Institutions may create their own affidavit (PDF or online form) as

¹ The exception is for those using the WASFA. They will submit an affidavit every year they file the WASFA.

long as it includes the same language as WSAC's PDF affidavit. The student's signature on an institution's form must comply with the institution's e-signature policies on. Institutions are encouraged to make submission as easy as possible for students.

"1079" affidavits

Student who submitted a WASFA or PDF affidavit under current law do not have to resubmit a new affidavit since those who meet current requirements also meet the new requirements.

Using the affidavit to make residency determinations

When a student submits the signed affidavit, they are promising that the information on it is true. This means they are promising that they have a high school diploma or equivalent and that they have lived in Washington for at least a year. They are also promising that they will apply for a green card or that they are a U.S. citizen, national, or permanent resident. **Institutions do not need to ask for any further documentation unless they see conflicting information in the student's files.** For example, if the student stated that they do not have a high school diploma or equivalent on their admissions application, then the institution can ask the student for further documentation. Institutions also should not check that students have applied for a green card.

Other considerations

Notify students who may be eligible

It is an equity imperative that institutions notify students who did not qualify for residency in recent years but now qualify because of the new law. The residency office, financial aid office, admissions office, and multicultural/undocumented student support staff are encouraged to collaborate on how to notify the following students of the change in law:

- Current nonresident students who lived in WA for a year prior to their first term but did not qualify for residency under the current "1079" law.
- Students who applied for (or inquired about) admission, aid, or residency at your institution in the last few years but never enrolled because they did not qualify for residency under current law (but might under the new requirements). There are no limits on how far back in time you can go, because this law supports both recent high school graduates and returning adults.

Add the affidavit to your admissions application

Most institutions would know if a student meets the two basic requirements of this law by looking at their admissions application. People who meet the high school diploma/equivalent requirement and the one-year requirement just need to submit an affidavit to be a resident student. Institutions are encouraged to notify students of their eligibility as part of the admissions application process so that the students who most benefit from this law are aware of it.

Parents and legal guardians

SB 5194 does not include any language about parents or legal guardians. As such, it does not matter where a person's parents or legal guardians live. However, parent and legal guardian information may be needed for other parts of residency law.

Questions

With such a drastic change to residency law, there are bound to be questions. You are always invited to contact me if you have questions about the contents of this memorandum or any other questions about student residency in Washington.

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Washington Student Achievement Council