

MEMORANDUM

DATE: April 14, 2022
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 5874 notification and guidance

This memorandum is for professionals who make student residency determinations for tuition and state financial aid purposes at Washington's higher education institutions. It describes and outlines guidance for implementing Senate Bill 5874, which is a new Washington state student residency law passed in 2022 that goes into effect on June 9, 2022.

Overview

The Washington legislature passed [Senate Bill 5874](#) during the 2022 legislative session. Effective June 9, 2022, this bill makes two primary changes to Washington student residency law:

1. It amends Washington's tuition equity law, RCW 28B.15.012(2)(e), by requiring the student to live in Washington for one year primarily for purposes other than postsecondary education prior to their first term at the college determining residency.
2. It goes above and beyond federal law by making any student who is eligible for VA educational assistance or rehabilitation benefits a Washington resident student. It also adds new ways to be a Washington resident student for certain active-duty military, veterans, and dependents.

Residency changes

New requirement for WA's tuition equity law (residency affidavit)

Washington's tuition equity law, RCW 28B.15.012(2)(e), may be met by any student, regardless of citizenship or legal immigration status. It was amended in 2021 to make it easier for all Washingtonians, including and especially undocumented students, to get resident tuition and state financial aid. Students who qualify:

- Pay resident tuition and fees at all public colleges and universities and
- Meet residency requirements for all state financial aid programs, including Washington College Grant. Students must also meet program requirements.

In 2022, the law was further amended as underlined below. The amendment only affects people who move to Washington primarily for postsecondary education purposes. *It does not affect people who have already been living in Washington as non-college students or who recently graduated high school in Washington.*

Beginning June 9, 2022, 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

- NEW REQUIREMENT: The Washington residence must be primarily for purposes other than postsecondary education. This means that students who take more than six college credits (not including dual credit¹) in any one term after moving to Washington cannot count those terms as part of their 12 consecutive months of maintaining a primary residence. That is, unless they prove that postsecondary education was not their main reason for establishing a primary residence in Washington.
- 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.

Guidance for implementing WA's tuition equity law

This memorandum expands upon the guidance found in WSAC's [July 14, 2021 memorandum about 2021's SB 5194](#). The guidance in that memorandum is still relevant. In addition to 2021's guidance, institutions must understand what it means to "maintain a primary residence in Washington primarily for purposes other than postsecondary education."

Washington's residency law defines what it means to be in Washington primarily for postsecondary education as follows:

. . . a nonresident student enrolled for more than six hours per semester or quarter shall be considered as attending for primarily educational purposes, and . . . only such period of enrollment shall not be counted toward the establishment of a bona fide domicile of one year in this state unless such student proves that the student has in fact established a bona fide domicile in this state primarily for purposes other than educational.²

Although the law refers to "domicile" instead of "primary residence," and does not specifically describe educational purposes as postsecondary, this same law applies to students who apply for residency through the new residency affidavit. Residency professionals know this concept as "overcoming presumption," and until SB 5874 passed, this part of the law had only been used for people applying for residency as financially independent students (RCW 28B.15.012(2)(a)) or as people on certain work visas and their families (RCW 28B.15.012(2)(f)).

In summary, here is what the 2022 amendment means for your institution:

People who maintained a primary Washington residence for 12 consecutive months immediately prior to entering your institution do not qualify for the residency affidavit if they were taking college level courses (not including dual credit courses) at another postsecondary institution during those 12 months UNLESS they meet one of the following:

¹ Dual credit courses are those in which high school students concurrently earn high school and college credit. They include Running Start, College in the High School, and Tech Prep.

² RCW 28B.15.012(2)(q) as amended by SB 5874 (2022)

1. They took six or fewer college credits (not including dual credit courses) each term during the previous 12 months prior to entering your institution.
2. They can prove that they had “in fact” established and maintained a primary residence in Washington primarily for purposes other than postsecondary education at least 12 months immediately before entering your institution. The term “in fact” means that the student has a higher burden of proof than is typical to show that they established a primary residence in Washington. It is similar to the “beyond a reasonable doubt” standard from criminal law. If the staff member making residency determinations has any doubts that the student’s primary reason for being in Washington is non-educational, then the student has not met their burden. Note that postsecondary education can be one of the reasons for being in Washington, just not the primary reason. Examples of situations where the primary residence may be primarily for a purpose other than postsecondary education include, but are not limited to:
 - Students who attended high school or earned a high school diploma equivalent in Washington and continued living in Washington until entering your institution.
 - Students who moved to Washington due to employment for themselves or a spouse/partner.
 - Students who moved to Washington to take care of a family member.

Continuing students: Can their residency determination change?

Some of your institution’s continuing resident students met residency requirements through 2021’s SB 5194, which did not limit the reason for living in Washington. There is a possibility that some of those students will not meet the new requirements of SB 5874 when it goes into effect. Washington law says that a student’s residency determination does not change unless there is “evidence of a sufficient quantity and quality to satisfy the institution to the contrary.”³ This means that if your institution has evidence that suggests that a continuing student does not meet the new requirements of SB 5874, you may require the student to provide evidence that they established a Washington primary residence primarily for purposes other than educational. If the student does not provide sufficient evidence or does not respond, then they may be reclassified as a nonresident from that point forward.

New students: Using the affidavit to make residency determinations

This guidance is similar to 2021’s guidance, but it bears repeating. 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 primarily for purposes other than postsecondary education. 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.** Also, institutions also should not check that students have applied for a green card.

Examples of when it is appropriate to ask for further documentation:

- The student stated that they do not have a high school diploma or equivalent on their admissions application.
- The student’s admission application states that they started living in Washington 12 months prior to the term for which they are applying and their transcripts show that they attended another Washington college for more than six credits per term during that time.

³ [WAC 250-18-025\(1\)](#)

New requirements for military-affiliated students

SB 5874 amends residency law for military-affiliated students. It also ensures that Washington's residency laws align with federal law. Effective June 9, 2022, the following list of students replaces prior lists of residency-eligible military-affiliated students. These students:

- Pay resident tuition and fees at all public colleges and universities.
- Meet residency requirements for Passport to Careers, State Work Study, the American Indian Endowed Scholarship, and the National Guard Postsecondary Education Grant. Students must also meet program requirements.

All military-affiliated students

The most significant change to residency law as it relates to military-affiliated students is that it makes any student who is eligible for VA educational assistance or rehabilitation benefits a Washington resident student.

- This applies to military members (including national guard and reservists), veterans, and dependents (spouses, former spouses, and children).
- There is no time limit for when the student must enroll.
- The student does not need to live in Washington.
- The student does not need to be actively using the benefits.
- The military member or veteran does not need to serve for a certain amount of time or have a certain type of service.
- The student maintains resident student status as long as they stay continuously enrolled.
- The benefits are those defined in Title 38 U.S.C. and Title 10 U.S.C. Chapter 1606. They include:
 - Post-9/11 GI Bill®
 - Montgomery GI Bill® – Active Duty
 - Montgomery GI Bill® – Selected Reserve (for National Guard and Reserve members)
 - Chapter 31 Vocational Rehabilitation and Employment
 - Chapter 35 or Survivors' and Dependents' Educational Assistance (DEA)
 - Marine Gunnery Sergeant John Fry Scholarship
 - Edith Nourse Rogers STEM Scholarship

Current military members

In addition to qualifying for residency by being eligible for VA educational or rehabilitation benefits, these current military members are also Washington resident students:

- Active duty members stationed in Washington.
- **NEW:** Active duty members who are stationed out-of-state after being stationed in Washington maintain resident student status as long as they are either:
 - Enrolled in a Washington institution prior to the reassignment and stay continuously enrolled after the reassignment or
 - Enroll in a Washington institution within three years of the date of reassignment.
- Washington National Guard members (do not have to be on active duty).
- Active duty members or Washington national guard members stationed out-of-state who entered service as a Washington resident and maintained their Washington domicile.
- Active duty members who live in Washington and are stationed in an Oregon county that borders Washington.

Military veterans

In addition to qualifying for residency by being eligible for VA educational or rehabilitation benefits, these veterans are also Washington resident students:

- **NEW:** Veterans who had at least 10 years of honorable service and at least 90 days of active duty service (separation does not have to be from active duty).
 - This is for students who are not eligible for VA educational or rehabilitation benefits.
 - They must enter school within three years of separation/retirement from the military.
 - They do not need to live in Washington.
 - They maintain resident student status as long as they stay continuously enrolled.
 - Does not apply to veterans who have a dishonorable discharge from the uniformed services.
- Veterans who were discharged from the uniformed services due to sexual orientation or gender identity/expression.
 - They do not need to live in Washington.
 - They do not need to enter school within a certain amount of time after separating from the military.
 - They maintain resident student status as long as they stay continuously enrolled.
 - Does not apply to veterans who have a dishonorable discharge from the uniformed services.

Military dependents

In addition to qualifying for residency by being eligible for VA educational or rehabilitation benefits, these military dependents are Washington resident students:

- Spouses, state registered domestic partners, or dependents (as defined in [Title 10 U.S.C. Sec. 1072\(2\)](#)) of active duty members stationed in Washington or of Washington national guard members (national guard members do not have to be on active duty).
 - The student does not need to live in Washington.
 - If the active duty member or national guard member is stationed out-of-state, the student maintains resident student status as long as they are either:
 - Enrolled in a Washington institution prior to the reassignment and stay continuously enrolled after the reassignment or
 - **NEW:** Enroll in a Washington institution within three years of the date of reassignment.
- Spouses, state registered domestic partners, or dependents (as defined in [Title 10 U.S.C. Sec. 1072\(2\)](#)) of active duty members or Washington national guard members stationed out-of-state who entered service as a Washington resident and maintained their Washington domicile. The student does not need to live in Washington.
- Spouses, state registered domestic partners and children under 26 of a veteran who separated or retired from the uniformed services with at least ten years of honorable service and at least 90 days of active duty service (separation/retirement does not have to be from active duty).⁴
 - This is for students who are not eligible for VA educational or rehabilitation benefits.
 - The student must enter school within three years of the veteran's separation/retirement.
 - Neither the dependent nor the veteran need to live in Washington.
 - The student maintains resident student status as long as they stay continuously enrolled.

⁴ The term "children" includes, but is not limited to, legitimate children, adopted children, stepchildren, foster children, and legal dependents.

- Does not apply if the veteran had a dishonorable discharge from the uniformed services.
- People who live in Washington and are spouses or dependents of active duty members who live in Washington and are stationed in an Oregon county that borders Washington. If the active duty member moves out of Washington or is stationed outside of an Oregon county that borders Washington, the student maintains resident student status as long as they are either:
 - Enrolled in a Washington institution prior to the reassignment/move and stay continuously enrolled after the reassignment/move or
 - Admitted to an institution before the reassignment/move and enrolled in the institution for the term the student was admitted.

Effective date

The law goes into effect June 9, 2022, meaning that it only applies to residency determinations made on or after June 9. For some institutions, this date is during the summer 2022 term. If this is the case for your institution, then there are two considerations, depending on the student type:

Students who meet one of the new ways to be a resident based on their connection to the military:

If they apply for residency by the 30th calendar day of your institution's summer term, these students may be considered resident students for Summer 2022 as long as your institution determines their residency eligibility on or after June 9.

First-time students who apply for residency through the residency affidavit:

Students who meet current eligibility requirements (those in place due to 2021's SB 5194), but clearly have a primary residence in Washington primarily for postsecondary purposes, may be considered resident students for Summer 2022 as long as your institution determines their residency eligibility before June 9. These students must also apply for residency by the 30th calendar day of your institution's summer term.

For all terms starting on or after June 9, 2022, the law will be fully in effect.

As always, please contact me if you have questions about the contents of this memorandum or any other questions about student residency in Washington.

Gail Wootan
Associate Director of Consumer Protection
Washington Student Achievement Council