1. Chapter 4 of Title 20, Hawaii Administrative Rules, entitled “Determination of Residency as Applied to Tuition Payments and Admission” is amended and compiled to read as follows:

“HAWAII ADMINISTRATIVE RULES

TITLE 20

UNIVERSITY OF HAWAII

CHAPTER 4

DETERMINATION OF RESIDENCY AS APPLIED TO
TUITION PAYMENTS AND ADMISSION

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Historical Note: This chapter is based substantially upon “Rules and Regulations Governing Determination of Residency as Applied to Tuition Payments and Admission at All Institutions under the Jurisdiction of the Board of Regents of the University of Hawaii” promulgated by the University of Hawaii board of regents. [Eff 10/19/74; am 12/16/76; R 6/22/81]

SUBCHAPTER 1
GENERAL PROVISIONS

§20-4-1 Statement of purpose. The purpose of these rules is to define the term “residence” to provide a procedure whereby the determination of residence status shall be made for all prospective students; to provide appeal mechanisms for those students who feel that their residency classification is in error; and to provide sanctions for misrepresentation. [Eff 6/22/81; comp ] (Auth: HRS §304-4) (Imp: HRS §304-4)

§20-4-2 Definitions. As used in this chapter:
“Adult” means a person who has reached majority.
“Board” means the board of regents of the University of Hawaii.
“Dependent” means those persons who are defined as dependents by law, e.g., spouse, minor child, those who are defined as dependents under Internal Revenue Service rules, and those who are defined as authorized dependents by the Armed Forces of the United States[.] provided that the dependents other than the spouse are no more than twenty-three years of age.
“Employee” means and includes the full-time faculty, staff, and line members, and also graduate teaching and research assistants (though not full-time), employed at the university.
“Guardian” means a person invested by a court of law with the power, and charged with the duty, of taking care of the person and managing the property and other rights of a minor.
“Hanai” means a child taken permanently to be reared, educated and loved by someone other than natural parents—traditionally a grandparent or other relative. The child is given outright; natural parents renounce all claims to the child. Usually the child is given at infancy.
[“Hearing Officer” means a student or faculty member who has been duly appointed by the committee on resident status, who
has no other interest in the case and who has had no part in or knowledge of the original determination of residency status.]  

"Majority" means the age specified under section 577-1 HRS. That age is presently eighteen years.  

"Minor" means a person who has not reached majority.  

"Parents" includes legal guardian and legal adoptive parent, except where the guardianship or adoption was acquired primarily to obtain resident status for the ward or adopted child. It shall also include a person who can legally claim an unmarried minor as a dependent for federal income tax purposes, but only when such person has been in loco parentis to the minor for the twelve-month period immediately preceding the residency determination date.  

"President" means the president of the University of Hawaii and shall include authorized subordinates.  

"Domicile" means the place where an individual has a true, fixed, and permanent home and to which, whenever absent, the individual has the intention of returning. No individual can claim more than one domicile at any given time.  

"Residence" as used in this chapter for tuition purposes, shall have the meaning set forth in section 304-4(c), HRS, as amended from time to time, and as more particularly described in this chapter.  

"Residency determination date" means the [student’s] first day of officially scheduled instruction for any semester or term in which the student is enrolling at the particular [college or] campus involved.  

"Residency officer" means the registrar, director of admissions or other staff member designated by each campus to determine the residency status of students. Only the residency officer’s determination represents the official university’s determination of residency.  

"Student" means every full-time and part-time graduate and undergraduate student enrolled at the university.  

"University" means the several institutions and each of them that fall under the jurisdiction of the board.  

[The use of the masculine shall include the feminine and the singular shall include the plural where appropriate.]  

§20-4-3 Delegation of authority. The board hereby delegates its authority to administer the out-of-state tuition program at the university to the president.  

(Auth: HRS §304-4) (Imp: HRS §304-4)
§20-4-5  [Statutory] Board exemptions. [The following categories and any others that may be added by the legislature are exempt from payment of the tuition differential. The exemptions may also be terminated by the legislature.]

1. United States military personnel and their during the period they are stationed in Hawaii on active duty.

2. Persons domiciled in any Pacific island or Asian district, commonwealth, territory, or insular jurisdiction, state, or nation which provides no public institution of higher learning.

3. Employees of the university and their spouses and dependents.

4. East-West Center student grantees pursuing baccalaureate or advanced degrees.

The board may exempt certain nonresidents from payment of the nonresident tuition differential. Students may consult campus residency officers for further information on these exemptions.

§20-4-6  Residence criteria. The university’s definition of “resident” for tuition purposes may be different from the definitions developed by other non-university agencies. The university does not necessarily recognize declarations of resident status made by other agencies. Thus, a person who is a Hawaii resident for tax or voting purposes, for example, is not necessarily a resident for University of Hawaii tuition and admission purposes. To qualify for the resident tuition fee, the following criteria shall be met:

1. The adult student, or in the case of a minor student, the student’s parents or guardians, has been a bona fide resident of this state for at least twelve consecutive months next preceding [his] the student’s residence determination date; and

2. The adult or minor student has not been claimed as a dependent for tax purposes for at least twelve months next preceding the residency determination date by his parents or guardians who are not legal residents of the State[.]; provided that this provision shall not apply in cases where the parent claiming the student as a dependent is entitled to do so under a child support order or agreement issued or entered into in conjunction with a divorce proceeding or legal separation agreement, and the other parent and
the student meet the criteria set forth in paragraph (1); [Eff 6/22/81; am 3/12/84; am 6/08/89; am and comp ] (Auth: HRS §304-4) (Imp: HRS §304-4)

§20-4-7 [Indicia] Evidence of residence. [Because the] The determination of residence for tuition purposes [in Hawaii] requires a finding of subjective fact (intent to [make a permanent home]) to establish domicile in Hawaii while relinquishing any prior domicile as well as of objective fact (physical presence), [the] The following [objective indicia] evidences of a person’s intent to establish domicile in Hawaii shall be considered [when considering the student’s status]. No single [index] evidence shall be decisive. The residency officer will look primarily at the following evidences:

[(1) Primary indicia
(A)] (1) Voting, or voter registration, or both, in Hawaii.
[(B)] (2) Filing of Hawaii resident personal income tax form return.

In addition, the residency officer may consider other evidence, such as:

[(2) Secondary indicia
(A)] (1) Ownership of residential property or continuous rental of a dwelling on a lease basis in Hawaii.
[(B)] (2) Carrying on of a business or the holding of an employment position in Hawaii.
[(C)] (3) Presence of parent(s), spouse, children, and other close relatives in Hawaii.
[(4) Any other clear and compelling evidence, as determined by the residency officer. [Eff 6/22/81; am 3/12/84; am and comp ] (Auth: HRS §304-4) (Imp: HRS §304-4)

§20-4-8 Rules of construction. The following rules of construction shall be applied in all cases:

(1) The twelve months begin on the date upon which the first overt action (see [indicla] evidences in section 20-4-7) is taken to make Hawaii the permanent residence. While residence shall be lost if it is interrupted during the twelve months immediately preceding the residence determination date, resident status derived from two or more successive sources
may be tacked together to compute the twelve-month period.

(2) Residence in Hawaii and residence in another place cannot be held simultaneously.

(3) Presence in Hawaii primarily to attend an institution of higher learning shall not create resident status. A nonresident student enrolled for six credits or more per term shall be presumed to be in Hawaii primarily for educational purposes. Such period of enrollment shall not be counted toward the establishment of a bona fide domicile of one year in Hawaii. A student may rebut this presumption of nonresidence if clear and convincing evidence is provided that the student has abandoned the student’s previous residence and has established a bona fide residence in Hawaii primarily for purposes other than educational. The following evidences, in addition to the evidences of residence cited in section 20-4-7, shall be considered in determining bona fide domicile in Hawaii. No single evidence is decisive.

(A) Location and duration of driver’s license for the previous year.

(B) Resident status in all postsecondary schools attended outside of Hawaii.

(C) Location and duration of any checking accounts, saving accounts, and safety deposit boxes for the previous year that documents financial independence. Reliance upon non-Hawaii, non-federal resources for financial support infers domicile in a state other than Hawaii. This includes trust funds or other accounts available to the student.

(D) Continuous presence in Hawaii during periods when not enrolled in school.

[(4) A nonresident student shall be presumed to be in Hawaii primarily to attend an institution of higher learning. Continued presence in Hawaii during vacation periods and occasional periods of interruption of the course of study does not itself overcome this presumption.

(5)](4) Resident status, once acquired, shall be lost by future voluntary actions of the resident inconsistent with that status. However, Hawaii residence shall not be lost solely because of the absence from the State while serving in the United States armed forces, while engaged in navigation, or while a student at any institution of learning, provided Hawaii is claimed and maintained as the student’s residence.
§20-4-9

Particular categories. (a) The resident status of every adult shall be established by the person’s own acts and intentions and shall not be derived from any other person, except as specifically provided otherwise in this chapter.

(b) The residence of an unemancipated minor shall be the residence of the parent who claims the minor as a dependent for tax purposes, regardless of the minor’s primary abode. If both parents are deceased, the residence of the unemancipated minor remains that of the last parent to die until changed by court order. Upon court appointment of a guardian for the minor, the residence of the minor shall become that of the guardian.

(c) A nonresident unemancipated minor attending an institution of higher learning outside of Hawaii or on active duty with the United States armed forces, whose parents become residents of Hawaii and who reaches majority before the minor would derive residency in Hawaii from the parents’ new status, may be classified as a resident for tuition purposes when the parents have completed twelve consecutive months of residence; provided that the classification shall be lost if actions inconsistent with resident status are taken after leaving the institution or discharge from the military (e.g., failure to promptly make a home in Hawaii).

(d) If an unemancipated minor’s parents lose their Hawaii residence, the minor shall be classified as a nonresident at the next residence determination date; provided if the parents’ change of residences is due to obedience to active-duty military orders, the minor student shall continue to pay resident tuition as long as the minor continuously attends the University full time.

(e) An emancipated minor shall be considered an adult for purposes of residence under this section. The following shall constitute [indicia] evidence of emancipation, no one of which shall be controlling:

(1) Financially independent or self supporting.

(2) Subsistence not provided by parents or legal guardian.

Historical Note: Section 20-4-8(1) is based substantially on section 20-4-4. [Eff 6/22/81; R 3/12/84] (Auth: HRS §304-4) (Imp: HRS §304-4)
§20-4-9

(3) Prior military service.
(4) Other [primary and secondary indicia] evidence of residence enumerated under section 20-4-7.
(5) Any other conduct inconsistent with parental control and custody.
(f) [The committee may allow a] A student shall be allowed to base residency on that of someone other than the parent or legal guardian, provided the relationship between the student and the person or persons other than the parent or legal guardian is that of hanai.
(g) [In addition to other requirements in this section, an alien shall be classified as a resident only upon admission to the United States for permanent residence (immigration visa). Residence of a minor alien shall only be derived from another person (e.g., a parent) when both that person and the minor achieve resident status.] An alien may establish residence unless prohibited by the Immigration & Nationality Act from establishing domicile in the U.S. [The requirement of permanent residence shall not be applied to persons present in the United States by special act of Congress following the violent overthrow of their country of origin, or to employees (and their immediate families) of international treaty organizations.] The date of approval of such status shall be the earliest date upon which the twelve-month residency requirement may begin to accrue.
(h) Service in the armed forces of the United States shall not of itself negate establishment of residence in Hawaii. For instance, a nonresident serviceman whose last duty station is in Hawaii and who does all other things necessary to establish bona fide domicile in Hawaii, may be classified as a resident. In addition, a person who establishes domicile in Hawaii but who enters the military service prior to the expiration of the twelve months from the date of establishment may tack the period of military service onto the former period to satisfy the twelve-month criteria.
(i) A married person may establish resident status, either on the basis of personal indicia of residence, or on the basis of the indicia of the person’s spouse; provided the married person shall state clearly an intent to make Hawaii a permanent residence.] [Eff 6/22/81; am 3/12/84; am and comp (Auth: HRS §304-4) (Imp: HRS §304-4)]

SUBCHAPTER 2

PROCEDURE

§20-4-10 Determination of residence. (a) The residency officer at each campus shall determine the resident or
nonresident status of every student matriculating at that campus. A questionnaire shall be prepared to elicit facts upon which to make the residency determination and the questionnaire shall be transmitted to each prospective student. The prospective student shall answer all pertinent questions and shall attest to the truth of all answers by signing the questionnaire. The residency officer may also require the production by the prospective student of certified copies of documents relevant to the determination of resident status.

(b) A nonresident student, [once enrolled and having resided in Hawaii for at least twelve months,] having met the criteria for bona fide legal Hawaii residency, may request a change of status from nonresident to resident by completing the residency questionnaire and attaching certified copies of the student’s, parents’, or guardians’ personal income tax form. The residency officer may also require the production by the student of certified copies of other documents relevant to the determination of resident status consistent with sections 20-4-6, 20-4-7, and 20-4-8. [Eff 6/22/81; am 3/12/84; am and comp] (Auth: HRS §304-4) (Imp: HRS §304-4)

§20-4-11 Notification of change of residence. A resident student who subsequently takes up residence outside of Hawaii and who continues to attend the university shall promptly advise the residency officer of the change of residence. In such a case, the nonresident tuition differential shall be payable commencing from the residence determination date following the change of residence. [Eff 6/22/81; am 3/12/84; comp] (Auth: HRS §304-4) (Imp: HRS §304-4)

§20-4-12 Committee on resident status. (a) The committee on resident status shall be composed of three members to be appointed by the president as follows:

(1) One undergraduate student and one graduate student for a one-year term and one faculty member for a two-year term.

(2) The appointment shall be made in May of each year and shall be effective the following July 1. If a vacancy occurs, the appointment shall be effective immediately.

The president shall appoint a member of the university administration who shall be non-voting and who shall serve as convenor of the committee. The appointee shall perform such
§20-4-12

administrative functions as may be necessary to implement the
decisions of the committee.

(b) The incoming committee shall select its own chairman
at an organizational meeting to be held prior to July 1 each year
(initial organization shall take place as soon as possible after
appointment of the first committee members). The members shall
receive no remuneration for their services but shall be
reimbursed their ordinary and necessary expenses.

(c) The attorney general shall advise the committee on
questions of law and procedure.

(d) Hearings on appeals of only those students who are
enrolled in a campus of the university system (see section 20-4-
14) shall be heard by one of the following:

(1) The committee on resident status, or

(2) In lieu of a hearing before the committee, the
committee may appoint a hearing officer who shall
hear the case in the same manner as if it were before
the committee.

(e) Appeals of only those prospective students who are
denied admission solely on the basis of their residency
classification (see section 20-4-15) shall be heard by a hearing
officer appointed by the committee on resident status.] [Eff 6/
22/81; R                   ] (Auth: HRS §304-4) (Imp: HRS §304-
4)

§20-4-12.1 Residency appeals board. (a) The residency
appeals board shall be composed of the residency officer from
each campus of the university.

(b) A minimum of three residency appeals board members
shall decide each appeal.

(c) Residency officers shall recuse themselves from
hearing appeals of students enrolled at their campuses.

(d) In general, the residency appeals board will affirm a
determination of nonresident status unless the student produces
new information or there has been a change in legal standards.

(e) The decision of the residency appeals board shall be
the final university determination. [Eff and comp
] (Auth: HRS §304-4) (Imp: HRS §304-4)

Historical Note: Section 20-4-12.1 is based substantially
on section 20-4-12. [Eff and comp ] (Auth: HRS
$304-4$) (Imp: HRS §304-4)

[§20-4-13 Appeals. There shall be two classes of residency
appeals. These shall be:
(1) Appeals of only those students who are enrolled in a campus of the university system (see section 20-4-14) and,

(2) Appeals of only those prospective students who are denied admission solely on the basis of their residency classification (see section 20-4-15).]

[Eff. 6/22/81; R                     ] (Auth: HRS §304-4)  (Imp: HRS §304-4)

§20-4-14  Appeals [of those students who are currently enrolled in a university system campus]. (a) Classification as a nonresident by a residency officer may be appealed by the [aggrieved] student to the [committee on resident status] residency appeals board.

(b) Notification of appeal shall be made in writing upon the form [supplied by the committee and] available at the admissions office on each campus. Notification of appeal shall be received by the [committee on resident status] residency appeals board on or before the thirtieth day following the mailing (or personal delivery, as the case may be) of written notification of nonresident determination or on or before ten days after the residence determination date, whichever is later. Failure to file an appeal within the time prescribed constitutes a waiver of the right to file such an appeal for that semester.

(c) Appeals shall be heard only after payment of the [resident] nonresident tuition. Appeal hearings shall be held within three weeks of the request for an appeal unless continued by the [appeals committee] residency appeals board. If the [appellant] student fails to appear at the scheduled hearing, except for good cause shown, the appeal shall be dismissed. [The student shall then be required to pay the difference between resident and nonresident tuition within ten working days of the dismissal of the appeal or face disenrollment at the end of the ten-day period.

If the appeals committee determines that the appellant is not a resident, then the appellant shall be required to pay the difference between the resident and nonresident tuition. The student shall be notified by registered letter of any determination and the requirement of any additional payment due the university. Payment of the difference in tuition shall be made within ten working days of the mailing of the notice or before the last day of instruction for the semester in which the appellant is enrolled, whichever is sooner. Should the appellant not pay the difference in tuition, and upon expiration of the period for payment, the appellant shall be removed from the official enrollment list of the university and be refunded the
full tuition paid to date, less a reasonable service charge as prescribed by the president. Further, no official academic record for the appellant shall be maintained by the office of the registrar for the semester in which the appellant is disenrolled."

(d) The [committee or hearing officer] residency appeals board shall promptly notify the [appellant] student of the time, date, and place of the hearing upon the appeal. The hearing shall be held between seven and twenty days after notification by the [committee] residency appeals board, but the [committee] residency appeals board may extend this period a reasonable length of time if its hearing calendar so requires.

(e) The hearing shall be private unless the [appellant] student requests a public hearing in the notice of appeal.

(f) The [appellant] student may be represented by legal counsel if so desired.

(g) Formal rules of evidence need not be followed in an appellate hearing. The [committee or hearing officer] residency appeals board may require that the [appellant] student provide it with certified copies of the pertinent documents. The [committee] residency appeals board may call the residency officer to explain the basis of the determination of [appellant's] student's nonresidence. A record of the oral testimony adduced at the hearing need not be kept.

(h) The [committee or hearing officer] residency appeals board shall issue its findings of fact, conclusions of law, and decision within thirty days after the hearing and a copy shall be transmitted to the [appellant] student, to the president, and to the [provost or] chancellor of the campus concerned. The decision of the [committee or the hearing officer, as the case may be,] residency appeals board shall be final.

(i) If the residency appeals board determines that the student is a resident, the campus will refund the nonresident tuition differential to the student. [Eff 6/22/81; am 3/12/84; am and comp] (Auth: HRS §304-4) (Imp: HRS §304-4)
admissions officer.

(2) The student declared the intent to make Hawaii a permanent home and would have been physically present within the state for twelve consecutive months on the residency determination date.

(3) The student has made a prima facie showing that one or more of the indicia of residence enumerated in section 20-4-7 are met.

(4) The student has made a prima facie showing that the student has not been claimed as a dependent for tax purposes for at least twelve months prior to the residency determination date by the student’s parents or guardians who are not legal residents of the State.

(5) The admissions officer concurs that the student would be otherwise admissible if the student had resident status.

(b) Notification of request for hearing shall be made in writing upon the form supplied by the committee on resident status and available at the residency office and at the office of admissions on each of the University of Hawaii campuses. The student shall complete those sections which are indicated and present the request to the residency officer. The residency officer shall then complete those sections which indicate the criteria of indicia, or both, or residence met by the student and those where a reasonable doubt exists. The residency officer will forward the form to the campus registrar or director of admissions, who shall complete the section which requires a statement that the student is admissible if found to have resident status. The form shall be forwarded to the committee on resident status in accordance with the following deadlines:

(1) The student shall file a notification of request for hearing with the residency officer at least thirty days prior to the first day of instruction.

(2) The residency officer shall forward the notification of request with the appropriate section completed to the campus registrar or director of admissions, at least twenty-six days prior to the first day of instruction. The residency officer shall attach all pertinent documents or copies of same.

(3) The campus registrar or director of admissions, after completing the appropriate section, shall forward the form to the committee on resident status at least twenty-two days prior to the first day of instruction.

(c) The committee on resident status shall promptly appoint a hearing officer and set the time and place of the hearing and so notify the appellant. The hearing shall be held
between five to ten days after receipt by the committee of the notification of request for hearing. The following procedures shall apply:

(1) The appellant shall have the right to:
   (A) Be present at the hearing;
   (B) Be represented by legal counsel if so desired; and
   (C) Question witnesses testifying or presenting evidence at the hearing.

(2) The hearing shall be private unless the appellant requests a public hearing in the notice to appeal.

(3) Formal rules of evidence need not be followed. The hearing officer may require that the appellant provide certified copies of additional pertinent documents. The hearing officer may call the residency officer or a staff member to explain the basis of the determination of appellant’s nonresident status. A verbatim record of the oral testimony need not be kept but a summary of the presented testimony shall be made a part of the findings of fact and decision.

(4) The hearing officer shall issue the findings of fact and decision within the four days after the hearing and a copy shall be transmitted to the appellant, the president, and the provost or chancellor of the campus concerned. The hearing officer’s decision shall be final.

(5) The committee on resident status shall review annually all decisions by the hearing officer for guidance in considering changes in rules and their administration.

(d) In the event the hearing officer reverses the prior determination of nonresidency for admission purposes, the University of Hawaii campus involved shall immediately admit the student and guarantee those curricula or classes which would be guaranteed to any resident admitted at that time. [Eff 6/22/81; am 3/12/84; R] (Auth: HRS §304-4) (Imp: HRS §304-4)
to any appeal hearing thereof, and who is admitted to the university on the basis of the incorrect information shall be subject to the following:

(1) The student shall be required to pay the difference between the resident and nonresident tuition retroactive to the student’s initial residency determination date. The student shall be notified by registered letter of any discovery of incorrect information and the requirement of any additional payment due the university. Payment of the difference in tuition shall be made within ten days of the mailing of the notice or before the last day of instruction for the semester in which the student is enrolled, whichever is sooner. Should the student not pay the difference in tuition, and upon the expiration of the period for payment, the student shall be removed from the official enrollment list of the university and be refunded the full tuition paid for the current semester less a prorata amount due the university to cover the cost of all instruction provided, as shall be prescribed by the president. The denial of further enrollment and the withdrawal of service connected with the evidences of instruction such as transcripts or diplomas shall be imposed in accordance with section 20-10-2.

(2) Any student or prospective student who intentionally or willfully misrepresents any fact relative to the determination of residency or any appeal thereof, and who is admitted to the university on the basis of the misrepresentation, in addition to the requirements prescribed in this section, may also be charged with a violation of the campus conduct code, penalties under which may include warning, probation, suspension, or expulsion.” [Eff 6/22/81; am 3/12/84; comp ] (Auth: HRS §304-4) (Imp: HRS §304-4)

2. Material, except source notes, to be repealed is bracketed. New material is underscored.
3. Additions to update source notes to reflect these amendments and compilation are not underscored.
4. These amendments to and compilation of chapter 20-4, Hawaii Administrative rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.
I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on and filed with the Office of the Lieutenant Governor.

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KITTY LAGARETA
Chairperson
Board of Regents
University of Hawaii

APPROVED AS TO FORM:

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Deputy Attorney General