

UNIVERSITY OF HAWAII

Amendments and Compilation of Chapter 20-4  
Hawaii Administrative Rules

( \_\_\_\_\_ )

Summary

1. Chapter 20-4, 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

BOARD OF REGENTS

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 07/15/06; comp ] (Auth: HRS §304A-402) (Imp: HRS §304A-402)

§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.

"Chancellor" refers to the chief executive officer of the respective campus, and shall include their authorized designee.

"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.

"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 where, 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(e),]~~ 304A-402, HRS, as amended from time to time, and as more particularly described in this chapter.

"Residency determination date" means the first day of officially scheduled instruction for any semester or term in which the student is enrolling at the particular college or campus ~~[involved.]~~ as established by the approved university academic calendar.

"Residency officer" means the registrar, director of admissions or other staff member designated ~~[by]~~ for each campus to determine the residency status of students. Only the residency officer's determination represents the university's 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 University of Hawaii. Any of the provisions in this chapter which affect the standing of a person at any one campus also affect the standing or potential standing at all other campuses. [Eff

6/22/81; am 3/12/84; am 4/04/88; am and comp 07/15/06;  
am and comp ] (Auth: HRS §304A-402)  
(Imp: HRS §304A-402)

§20-4-3 **Delegation of authority.** The board hereby delegates its authority to administer and manage the [~~out-of-state~~] tuition program at the university to the president. [Eff 6/22/81; comp 07/15/06; am and comp ] (Auth: HRS §304A-402)

§20-4-4 **REPEALED.** [Eff 6/22/81; R 3/12/84]

§20-4-5 **Board exemptions.** 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. [Eff 6/22/81; am 3/12/84; am 4/04/88; am and comp 07/15/06; am and comp ]  
(Auth: HRS §304A-402) (Imp. HRS §304A-402)

§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 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);]~~

the criteria established by §304A-402, HRS, must be met. [Eff 6/22/81; am 3/12/84 am 6/08/89; am and comp 07/15/06; am and comp ] (Auth: HRS §304A-402) (Imp: HRS §304A-402)

§20-4-7 **Evidence of residence.** The determination of residence for tuition purposes requires ~~[a finding of subjective fact (intent to establish domicile in Hawaii while relinquishing any prior domicile) as well as of objective fact (physical presence)].~~ The following evidences of a person's intent to establish domicile in Hawaii shall be considered. No single evidence shall be decisive. ~~The residency officer will look primarily at the following evidences:~~

- ~~(1) Voting, or voter registration, or both, in Hawaii.~~  
~~(2) Filing of Hawaii resident personal income tax return.~~

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

- ~~(1) Ownership of residential property or continuous rental of a dwelling on a lease basis in Hawaii.~~
- ~~(2) Carrying on of a business or the holding of an employment position in Hawaii.~~
- ~~(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.]~~

that the adult student or in the case of a minor student, the student's parent or guardian, has been a bona fide resident of this state for at least twelve consecutive months immediately prior to the residency determination date. The following may be accepted as evidence of bona fide residence:

- (1) Filing of the Hawaii resident personal income tax return by the:
  - (A) Adult student who is not claimed as a dependent for tax purposes; or
  - (B) Minor student who is declared an emancipated minor; or
  - (C) Parent or guardian of the student if the student is declared as a dependent;
- (2) A Hawaii State driver's license or Hawaii State identification card issued at least twelve months preceding the residency determination date;
- (3) Voting, or voter registration, in Hawaii at least twelve months preceding the residency determination date;
- (4) Ownership or continuous rental in Hawaii of the principal residence beginning at least twelve months immediately preceding the residency determination date;
- (5) Carrying on of a business or the holding of an employment position in Hawaii for at least twelve consecutive months immediately preceding the residency determination date;  
or
- (6) Any other clear and compelling evidence of bona fide residence for at least twelve consecutive months immediately preceding the

residency determination date, as determined by the residency officer. [Eff 6/22/81; am 3/12/84; am and comp 07/15/06; am and comp ] (Auth: HRS §304A-402)  
(Imp: HRS §304A-402)

§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 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~~] residency 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.~~] residence in Hawaii for twelve consecutive months immediately preceding the residency determination date. A student may rebut this presumption of [~~nonresidence~~] nonresident status 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~~] may be considered in determining bona fide [~~domicile~~] residence 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~~] Evidence of ability to be self-supporting (e.g., proof of full-time employment), and location and duration of any [~~checking accounts, saving~~] locally based financial 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~~] residence in a state other than Hawaii. This includes trust funds, college savings funds, or other accounts available to the student.
  - (D) Continuous presence in Hawaii during periods when not enrolled in school.
- (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.
- (5) Time spent incarcerated in city, state, or federal jails or prisons shall not be counted [~~toward the physical presence requirement for~~] in determining Hawaii residency for tuition purposes. [Eff 6/22/81; am 3/12/84; am and comp 07/15/06; am and comp \_\_\_\_\_] (Auth: HRS §304A-402) (Imp: HRS §304A-402)

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 §304A-402) (Imp: HRS §304A-402)

§20-4-9 [~~Particular categories.~~] Special Circumstances. (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~~] residency determination date; provided if the parents' change of residence 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 evidence of emancipation, no one of which shall be controlling:

- (1) [~~Financially independent or self supporting.~~] Self-supporting.
- (2) Subsistence not provided by parents or legal guardian.
- (3) Prior military service.
- (4) Other evidence of residence enumerated under section 20-4-7.
- (5) Any other conduct inconsistent with parental control and custody.

(f) 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) An alien may establish residence [~~unless prohibited by~~] to the extent permitted by the Immigration & Nationality Act [~~from establishing domicile in the U.S.~~]. 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~~] servicemember whose last duty station is in Hawaii and who does all other things necessary to establish bona fide [~~domicile~~] residence in Hawaii, may be classified as a resident. In addition, a person who establishes [~~domicile~~] residence 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. [Eff 6/22/81; am 3/12/84; am and comp 07/15/06; am and comp ] (Auth: HRS §304A-402) (Imp: HRS §304A-402)

SUBCHAPTER 2

PROCEDURE

§20-4-10 **Determination of residence.** (a) The residency officer ~~[at]~~ for 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.]~~ Evidence shall be collected to elicit facts upon which to make the residency determination. Evidence may be provided by the student responding to a questionnaire used to determine residency and attesting to the truth of the information provided to the university. 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, 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]~~ a residency conversion form 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 07/15/06; am and comp

] (Auth: HRS §304A-402) (Imp: HRS §304A-402)

§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~~] residency determination date following the change of residence. [Eff 6/22/81; am 3/12/84; comp 07/15/06; am and comp ] (Auth: HRS §304A-402) (Imp: HRS §304A-402)

§20-4-12 **REPEALED.** [R 07/15/06]

§20-4-12.1 **Residency appeals board.** (a) The residency appeals board shall be composed of the residency [~~officer from~~] officers for 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 07/15/06; am and comp ] (Auth: HRS §304A-402) (Imp: HRS §304A-402)

Historical Note: Section 20-4-12.1 is based substantially on section 20-4-12 [Eff 06/22/81; R 07/15/06] (Auth: HRS §304A-402) (Imp: HRS §304A-402)

§20-4-13 **REPEALED.** [R 07/15/06]

§20-4-14 **Appeals.** (a) Classification as a nonresident by a residency officer may be appealed by the student to the residency appeals board.

(b) Notification of appeal shall be made in writing upon the form available at the admissions office on each campus. Notification of appeal shall be received by the 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~~] residency 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 or term.

(c) Appeals shall be heard only after payment of the nonresident tuition. Appeal hearings shall be held within three weeks of the request for an appeal unless continued by the residency appeals board. If the student fails to appear at the scheduled hearing, except for good cause shown, the appeal shall be dismissed.

(d) The residency appeals board shall promptly notify the 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 residency appeals board, but the 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 student requests a public hearing in the notice of appeal.

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

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

(h) The 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 student, to the president, and to the chancellor of the campus concerned. The decision of the 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 07/15/06; am and comp ] (Auth: HRS §304A-402) (Imp: HRS §304A-402)

§20-4-15 **REPEALED.** [R 07/15/06]

§20-4-16 **REPEALED.** [R 3/12/84]

§20-4-17 **Providing incorrect information.** A student or prospective student who provides incorrect information upon any form or document intended for use in the determination of residency status for tuition or admission purposes, or relative 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 or term 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 or term 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]~~ chapter [20-10-2,] 20-10, Hawaii Administrative Rules.

- (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 07/15/06; am and comp ]  
(Auth: HRS §304A-402) (Imp: HRS §304A-402)

2. These amendments to and compilation of chapter 20-4 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 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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RANDOLPH G. MOORE  
Chairperson, Board of Regents  
University of Hawaii

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