

TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 7 TUITION AND FINANCIAL AID
PART 18 RESIDENCY FOR TUITION PURPOSES

5.7.18.1 ISSUING AGENCY: State of New Mexico Higher Education Department
[5.7.18.1 NMAC - Rp, 5.7.18.1 NMAC, 8/30/2007]

5.7.18.2 SCOPE: Provisions of 5.7.18 NMAC apply to all state public postsecondary institutions in the state of New Mexico.
[5.7.18.2 NMAC - Rp, 5.7.18.2 NMAC, 8/30/2007]

5.7.18.3 STATUTORY AUTHORITY: Section 21-1-4.5 NMSA 1978 and 21-1-3 NMSA 1978.
[5.7.18.3 NMAC - Rp, 5.7.18.3 NMAC, 8/30/2007; A, 10/15/2015]

5.7.18.4 DURATION: Permanent.
[5.7.18.4 NMAC - Rp, 5.7.18.4 NMAC, 8/30/2007]

5.7.18.5 EFFECTIVE DATE: August 30, 2007, unless a later date is cited at the end of a section.
[5.7.18.5 NMAC - Rp, 5.7.8.5 NMAC, 8/30/2007]

5.7.18.6 OBJECTIVE: The objective of 5.7.18 NMAC is to establish a policy for the purpose of determining resident and nonresident tuition classifications for students enrolling at public postsecondary institutions in New Mexico.
[5.7.18.6 NMAC - Rp, 5.7.8.6 NMAC, 8/30/2007]

5.7.18.7 DEFINITIONS:

A. "Armed forces" means the United States army, navy, air force, marine corps or coast guard.
B. "Department" means state of New Mexico higher education department.
C. "Dependent minor" means a person determined to be financially dependent upon a parent or guardian and who has not reached the age of majority (eighteen years of age) or is not an emancipated minor. The legal residence of a dependent minor is that of their parent(s) or custodial parents; or, if both parents are dead, of their legally appointed guardian(s) or of the adult person with whom he or she lives with for more than one-half of the preceding consecutive twelve months. In the event a non-custodial parent is a legal resident of New Mexico as determined in 5.7.18.9 NMAC the dependent minor shall be accorded resident status.

D. "Emancipated minor" means any person sixteen years of age or older shall be regarded as an adult for the purposes of determining residency status for tuition charges, provided they:

(1) have entered into a valid marriage, whether or not such marriage was terminated by dissolution; or
(2) are on active duty with any of the armed forces of the United States of America; or
(3) are willingly living separate and apart from their parents, guardian or custodian, are managing their own financial affairs and the court finds it in the minors best interest to grant a declaration of emancipation pursuant to Section 32A-21-7 NMSA 1978. Mere absence from parental residence does not prove emancipation.

E. "Enrollment" means the first day of the term or semester for the student.

F. "Financially dependent" means that dependency will be determined according to Section 152 of the 1954 Internal Revenue Code. This includes any person for whom the parent, guardian, or spouse provides at least one-half of their support.

G. "General fees" means a fixed sum charged to students for items not covered by tuition and required of such a proportion of all students that the student who does not pay the charge is an exception. General fees include fees for matriculation, library services, student activities, student union services, student health services, debt service and athletics. An institution may charge fees in addition to general fees that are course-specific or that pertain to a smaller proportion of students.

H. "New Mexico resident for tuition purposes" means a person who is a United States citizen or has established permanent residence in the United States and has satisfied the requirement(s) and regulations of 5.7.18.9 NMAC.

I. "Nonresident" means a student who enters and remains in this state principally to enroll in

postsecondary education, is presumed to continue to reside outside this state, and such presumption continues in effect until rebutted by clear and convincing evidence of bona fide residence.

J. "Tuition" means the amount of money charged to students for instructional services, which may be charged per term, per course or per credit.

K. "Tuition reciprocity participants" mean any nonresident, undergraduate student participating in a tuition reciprocity agreement. Pursuant to Section 21-1-6 NMSA 1978, these participants are ineligible for residency. Furthermore, students may not begin to establish residency (i.e., twelve 12-month durational requirement) until discontinuing from such a program. Refer to department negotiated reciprocity agreements for additional detail.

L. "Veteran" means any person meeting the definition of veteran as used in the Veterans' Service Department Act and provided in 9-22-3 NMSA.

[5.7.18.7 NMAC - Rp, 5.7.18.7 NMAC, 8/30/2007; A, 5/30/2008; A, 10/15/2015]

5.7.18.8 DETERMINATION OF RESIDENCY STATUS:

A. At time of first admission. A person's residency classification for tuition purposes shall be determined at time of admission and must be completed by the census date of that first enrollment in a given public postsecondary educational institution. A person not meeting the residency requirements shall be classified as a nonresident for purposes of tuition charges. The student's classification at time of admission remains in effect unless the individual is re-admitted to the institution or until the individual petitions to become a New Mexico resident.

B. Petition for resident tuition classification. Once determined a nonresident at the time of census date, a student can petition to be classified as a New Mexico resident by completing the "petition for resident tuition classification" form (see Paragraph (3) of Section B of 5.7.18.12 NMAC, procedure to petition for resident tuition classification).

[5.7.18.8 NMAC - Rp, 5.7.18.10 NMAC, 8/30/2007]

5.7.18.9 REQUIREMENTS TO ESTABLISH NEW MEXICO RESIDENCY: To become a legal resident of New Mexico for tuition purposes each of the following requirements must be satisfied.

A. Twelve (12) month durational requirement. A person must physically reside in New Mexico for the twelve (12) consecutive months immediately preceding the term for which the resident classification is requested. Exceptions may be granted for student's participating in an internship or student exchange program (excluding those described in 5.7.18.11 NMAC) and not exceeding one (1) semester in duration.

B. Financial independence requirement. Only persons who are financially independent may establish residency apart from parents or guardians. A student cannot be approved for residency who is financially dependent upon his or her parents or legal guardians who are nonresidents of New Mexico. Dependency will be determined according to the 1954 Internal Revenue Service Code, Section 152 and is always based on the previous tax year for residency purposes. If under the age of 23 at the time the student applies for residency, a copy of his/her parents' or guardians' 1040 or 1040A U.S. income tax form for the previous tax year is required. If the student is shown to be a dependent on this tax form, he/she will not be considered financially independent or eligible for residency during the current year.

C. Written declaration of intent requirement. The student or person must sign a written declaration of intent to relinquish residency in any other state and to establish it in New Mexico.

D. Overt acts requirement.

(1) Overt acts are required to evidence support of the written declaration of intent to establish permanent residency in New Mexico. Any act considered inconsistent with being a New Mexico resident will cause the request for resident classification to be denied. The required overt acts are evidence of any two (2) of the following:

- (a) if the applicant is financially dependent, a copy of the parent or guardians' previous year income tax showing the applicant as a dependent and the parent address as New Mexico; or
- (b) a New Mexico high school transcript issued in the past year confirming attendance at a New Mexico public or private high school within the past twelve (12) months; or
- (c) a transcript from an online high school showing a New Mexico address confirming attendance within the past twelve (12) months; or
- (d) a New Mexico driver's license or ID card with an original date of issue or a renewal date issued prior to the first day of the term or semester; or
- (e) proof of payment of New Mexico state income tax for the previous year; or
- (f) evidence of employment within the state of New Mexico; or

- (g) New Mexico vehicle registration; or
- (h) voter registration in New Mexico; or
- (i) proof of residential property ownership in New Mexico; or
- (j) a rental agreement within New Mexico; or
- (k) utility bills showing the applicant name and a New Mexico address; or
- (l) other evidence which would reasonably support the individual's intent to

establish and maintain New Mexico residency.

(2) The department recognizes that there may be circumstances in which a student would not be able to fulfill the requirements of an overt act as listed in this section, such as: 1) individual is physically disabled and does not have a driver's license, or 2) individual is a convicted felon and therefore cannot vote, etc. In instances such as these, the institution will afford the student an opportunity to provide other documentary evidence or reasonable explanation which demonstrates that permanent residency in New Mexico has been established by the student.

E. Exceptions to the twelve (12) month requirement. If a student has met the requirements of one (1) of the following exceptions, and is granted residency status, the student shall continue to be classified and reported as a resident for subsequent, continuing enrollment.

(1) An individual married to a legal resident of New Mexico and providing appropriate evidence shall not be required to complete the twelve 12-month durational requirement but must satisfy all other requirements listed in Subsections B, C, and D of 5.7.18.9 NMAC.

(2) Any person, their spouse and dependents who move to New Mexico or who now live in New Mexico and who provide appropriate evidence that they work in a permanent full-time position or practice a profession or conduct a business full-time in New Mexico, shall not be required to complete the twelve 12-month durational requirement but must satisfy all other requirements listed in Subsections B, C, and D of 5.7.18.9 NMAC.

(3) Any person entering the active service of the United States while a resident of New Mexico and who enters a state institution of postsecondary education in New Mexico after separation from such service may be classified as having been a legal resident in New Mexico during the time spent in the service provided they:

- (a) have not while in the service done anything (such as voting in another state) to show abandonment of their New Mexico residency;
- (b) have not established residence in some other state subsequent to being separated from service;
- (c) return to New Mexico within three (3) years after separation from service with the intention of maintaining this state as their legal residence;
- (d) are not a dependent minor with parent(s) or guardian(s) whose place of residence classifies him or her as a nonresident of New Mexico.

(4) Any person, their spouse and dependents, who move to New Mexico for retirement purposes, and who provide appropriate evidence of retirement shall not be required to complete the twelve 12-month durational requirement. They must, however, satisfy the other requirements listed in Subsections B, C, and D of 5.7.18.9 NMAC.

F. Inconsistent acts. A person that demonstrates an inconsistent act, such as residing primarily out of state or maintaining a valid out of state driver's license, may be denied residency irrespective of other overt acts that would establish their residency. An officer of the public postsecondary institution shall exercise professional judgement to determine if an inconsistent act should cause the residency petition to be denied.

[5.7.18.9 NMAC - Rp, 5.7.18.11 & 12 NMAC, 8/30/2007; A, 5/30/2008; A, 10/15/2015; A, 11/15/2016]

5.7.18.10 WAIVERS: If a student has met the requirement of one of the following waivers, the student shall continue to be considered a non-resident for reporting purposes but will receive the benefit of the in-state tuition rates. In receiving such a waiver, the student does not become eligible for state funded student financial aid, unless the regulations for a particular aid program allow for such eligibility.

A. American Indian nations, tribes and pueblos. All out of state members of an American Indian nation, tribe and pueblo, located wholly or partially in New Mexico, regardless of the residence of the member prior to acceptance at a post-secondary educational institution shall be eligible to pay the in-state tuition rate. These include members of the following tribes or pueblos: Navajo Nation, Jicarilla Apache, Mescalero Apache, Taos pueblo, Picuris pueblo, Ohkay Owingeh, Santa Clara pueblo, Nambe pueblo, San Ildefonso pueblo, Pojoaque pueblo, Tesuque pueblo, Cochiti pueblo, Jemez pueblo, Santo Domingo pueblo, San Felipe pueblo, Zia pueblo, Santa Ana pueblo, Sandia pueblo, Isleta pueblo, Laguna pueblo, Acoma pueblo, Zuni pueblo, and the Ute Mountain

tribe.

B. Armed forces. Any person, their spouse or dependent child, not otherwise entitled to claim residence, who is a member of the armed forces of the United States or armed forces of a foreign country assigned to active duty in the state of New Mexico, will be assessed in-state tuition rates.

(1) Assignment to active duty within New Mexico must be certified by the military person's commanding officer upon the student's initial enrollment. Such students may continue paying resident rates for as long as they attend consecutive semesters at the same institution.

(2) A spouse or child of a veteran of the armed forces is entitled to pay tuition and fees at the rate provided for New Mexico residents; provided that spouse or child is eligible for benefits pursuant to the federal Post-9/11 Veterans Educational Assistance Act of 2008 or any other federal law authorizing educational benefits for a veteran and the dependents of a veteran.

C. National guard. Pursuant to Section 20-4-14, NMSA 1978, an active member of the national guard and the member's spouse and children shall be deemed in-state residents for purposes of determining tuition and fees at all state institutions of higher learning.

D. Part-time students. During regular academic year semesters, nonresident tuition may be waived, according to the institution's tuition policy, for students (U.S. citizens and foreign nationals) enrolling for no more than six (6) semester hours during a regular term.

E. Summer session. During summer sessions, nonresident tuition may be waived according to the institution's tuition policy.

F. Certain Texas residents. Pursuant to Section 21-1-3D, NMSA 1978, for the purposes of tuition payment and budget and revenue calculations, the board of regents of any post-secondary, state educational institution, as defined in Article 12, Section 11 of the constitution of New Mexico (specifically, NMHU, ENMU, NMSU, or WNMU), may determine that any Texas resident who resides within a one hundred thirty-five (135) mile radius of that institution may qualify for in-state tuition rates.

G. Colorado and Arizona reciprocity. Tuition reciprocity participants from Colorado and Arizona shall be selected by eligible institutions to pay in-state tuition rates based on criteria set forth by each eligible institution. The department will notify each eligible institution of the maximum waivers allocated on an annual basis.

H. Athletic scholarship recipients. Pursuant to Section 21-1-3E, NMSA 1978, for the purposes of tuition payment and budget and revenue calculations, any student (U.S. citizens and foreign nationals) receiving an athletic scholarship from a post-secondary educational institution set forth in Article 12, Section 11 of the Constitution of New Mexico (specifically, UNM, NMSU, NMHU, ENMU, WNMU, or NNMC) may qualify for in-state tuition rates.

I. Competitive scholarship recipients. Any student participating in this program shall be recognized as a competitive scholar and reported as such, unless the student petitions for and is granted residency status.

J. Graduate assistants, including research and teaching assistants, employed at least one-fourth time (ten (10) hours weekly), will be assessed in-state tuition rates. To be eligible, students (U.S. citizens and foreign nationals) must be enrolled full-time, as defined in the graduate catalogue of the public postsecondary institution, during regular terms.

K. Nondiscrimination principle. Notwithstanding the provisions of Subsection H of 5.7.18.7 NMAC, any tuition or state-funded financial aid that is granted to residents of New Mexico shall also be granted on the same terms to all persons, regardless of immigration status, who have attended a secondary educational institution in New Mexico for at least one (1) year and who have either graduated from a New Mexico high school or received a high school equivalency credential (such as a general educational development GED) in New Mexico. State-funded financial aid programs with an employment component may require U.S citizenship or eligible non-citizen status.

[5.7.18.10 NMAC - Rp, 5.7.18.12 NMAC, 8/30/2007; A, 5/30/2008; A, 10/15/2015]

5.7.18.11 STUDENT EXCHANGE PROGRAMS: programs established under the auspices of the western interstate commission on higher education (WICHE). Participating students may not begin to establish residency (i.e., 12-month durational requirement) until discontinuing from such a program.

A. Western undergraduate exchange (WUE). Institutions must apply to the WICHE to participate in the WUE program where students in western states may enroll in many two-year and four-year college programs at a reduced tuition level, which is 150 percent of the institution's regular resident tuition

B. Western regional graduate program (WRGP). Residents of Alaska, Arizona, Colorado,

Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming are eligible to enroll in available graduate programs outside of their home state at resident tuition rates. Students need not meet financial aid criteria. To be included in WRGP, programs must meet the criteria of distinctiveness and quality. Programs are nominated by their institutions, peer reviewed by other graduate institutions in the west, and approved biannually by the student exchange program advisory council, a policy body that represents all participating states.

[5.7.18.11 NMAC - N, 8/30/2007]

5.7.18.12 ADMINISTRATION OF POLICY:

A. The higher education department shall:

- (1) publish, disseminate, and distribute pamphlets on residency determination; the department assumes responsibility for the publishing, printing, distribution of the residency pamphlets, and other related printed matter;
- (2) develop a standard "petition for change in residency classification;" this standardization petition form for residency for tuition purposes shall be utilized by all postsecondary institutions; similarly, all applications for admission shall require standardized information for the initial residency determination;
- (3) convene an annual meeting to review residency issues; classification officers shall meet at least annually to review and discuss residency cases in order to assure uniformity and fairness in residency determination;
- (4) conduct audits to ascertain compliance with policy; at least a random audit of each postsecondary institution's residency decisions shall take place on an annual basis by members of the department staff;
- (5) annually prepare and disseminate a report of the number and type of exceptions granted, by institution; the report shall include exceptions granted to both U.S. citizens and foreign nationals.

B. Institution of postsecondary education shall:

- (1) designate a classification officer. An officer designated by each state postsecondary educational institution shall be responsible for determining the residence status of students for tuition purposes under the terms of this policy.
 - (a) Such administrators or residency classification officers shall strive for uniformity in applying this policy. A common brochure, "establishing New Mexico residency for in-state tuition classification," shall be utilized by all postsecondary educational institutions.
 - (b) Nothing contained herein precludes a student from contesting the postsecondary institution's decision in the courts.
 - (c) Classification officers may require copies of appropriate legal, personal, business, or family documents in order to make an informed decision on residency. Such documents are considered confidential and are to be utilized for the residency determination alone.
- (2) develop procedures for determining residency; the burden of proving a change of status from nonresident to resident shall be on the applicant in every case by submitting satisfactory evidence thereof to the designated official of the postsecondary educational institution; such evidence shall include:
 - (a) information demonstrating that the applicant, or their parent or guardian if the applicant is a minor, has been physically present in this state for a period of at least twelve consecutive months immediately preceding the enrollment date on which the change of status is to take effect;
 - (b) for purposes of determining financial dependency, a signed copy of page 1 of the 1040 or 1040A United States internal revenue service income tax form for the previous year for the applicant's parent(s) or guardian(s) is required (if under age of 23). Such dependency will be determined according to Section 152 of the 1954 Internal Revenue Code;
- (3) develop procedure to petition for resident tuition classification; a nonresident student must obtain a "petition for resident tuition classification" from the appropriate postsecondary institutional residency classification officer and file the petition with this officer; all petitions must be filed before the third Friday after the beginning of classes for that term or the institution's census date if different;
- (4) develop procedure for appeal; each postsecondary institution shall organize an appeals board for students who feel the residency classification officer has made a wrongful determination; the appeals board shall be the student's last recourse prior to the courts.

[5.7.18.12 NMAC - Rp, 5.7.18.13 NMAC, 8/30/2007]

HISTORY OF 5.7.18 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

BEF Rule 910, Residency for Tuition Purposes, filed 2/27/85;

CHE Rule 910, Residency for Tuition Purposes, filed 3/8/90;

CHE Rule 910, Residency for Tuition Purposes, filed 6/29/92;

CHE Rule 910, Residency for Tuition Purposes, filed 12/21/94.

History of Repealed Material:

5.7.18 NMAC, Residency for Tuition Purposes, filed 8/1/2000, Repealed 8/30/2007.