

### 3.18 IN-STATE/OUT-OF-STATE STATUS OF ENROLLED STUDENTS

#### 3.18.1 Purpose

Oklahoma statute 70 O.S., Supp. 2003, §3218.2 authorizes the State Regents to establish tuition and fees charged at public institutions to in-state/out-of-state postsecondary students. This policy statement establishes definitions, principles, criteria, and guidelines to assist institutional officials in the classification of postsecondary students as in-state/out-of-state students. Also, the policy statement should be helpful to prospective students in the determination of their in-state/out-of-state status prior to enrollment or for those out-of-state students seeking to be reclassified as in-state. Determination of in-state status for purposes of attendance at an institution in the state is based primarily on domicile as defined below.

Since 1890, it has been public policy in Oklahoma to provide comprehensive, public higher education opportunities for citizens to improve themselves, to upgrade the knowledge and skills of the Oklahoma work force, and to enhance the quality of life in Oklahoma generally. Therefore, residents of Oklahoma are afforded subsidies covering a portion of their educational costs at state colleges and universities. Out-of-state students are also provided educational subsidies, although at lower levels than those provided for permanent in-state students.

Out-of-state tuition waivers provide Oklahoma institutions the ability to attract and graduate out-of-state students with academic abilities and talents who contribute to the economic development, vitality and diversity of the state's campuses. Additionally, Oklahoma institutions located near the state's borders are especially sensitive to serving demographic areas where population, tax dollars, property ownership, etc., cross state borders frequently. Out-of-state tuition waivers allow institutions to serve the community and surrounding area to the benefit of the institution and its students without detriment to Oklahoma residents.

#### 3.18.2 Definitions

The following words and terms, when used in the Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

“Dependent Person” is one who is under the care, custody, and support of a parent or legal guardian.

“Domicile” is a person's true, fixed, permanent home or habitation. It is the place where he or she intends to remain and to which he or she expects to return. A person can have more than one residence, but only one domicile. Domicile has two components -- residence and the intent to remain. When these two occur, there is domicile.

“Documented foreign national” is a person who was born outside the jurisdiction of the United States (U.S.), is a citizen of a foreign country,

and has not become a naturalized U.S. citizen under U.S. law, but has entered the U.S. by way of legal documentation such as a visa.

“Full-Time Professional Practitioner or Worker” is a U.S. Citizen or Lawful Permanent Resident who has come to Oklahoma to practice a profession on a full-time basis, conduct a business full-time, or work on a full-time basis.

“Full-Time Student” is an undergraduate student enrolled in a minimum of 12 credit hours per semester in an academic year or a minimum of six credit hours in a summer session. A full-time graduate student is one enrolled in a minimum of nine credit hours per semester or as required by the institution.

“Home of Record” is the location where the reservist enlisted, reenlisted, or was commissioned into the military.

“Independent person” is one who is responsible for his or her own care, custody, and support.

“In-state” status is a classification for a postsecondary student who has lived continuously in Oklahoma for at least 12 months not primarily as a postsecondary student and has established domicile in Oklahoma or meets requirements associated with in-state status including sections 3.18.4, 3.18.7 and 3.18.9. Students classified upon admission as in-state are eligible to apply for state scholarship and financial aid programs.

“Lawful permanent resident” is a naturalized alien who has been granted official immigration status as a lawful permanent resident of the U.S. This is evidenced by a lawful permanent resident card (also called a “green card”).

“Out-of-state” status means an individual does not meet in-state requirements defined in this policy unless otherwise allowed by exceptions or provisions in policy.

“Out-of-state tuition waiver” is the portion of tuition that is waived in excess of that paid by students classified as in-state. This is referred to as “Nonresident Tuition Waiver” in State Regents’ *Fiscal* policy.

“Undocumented student” is a person who was born outside the jurisdiction of the U.S., is a citizen of a foreign country, and has not become a naturalized U.S. Citizen under U.S. Law and has entered the U.S. without documentation. Refer to 3.18.6.

“Uniformed services” means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service.

“U.S. Citizen” is a person born in the United States, a U.S. Territory or former U.S. Territory or who has been granted citizenship by the U.S. Government.

### 3.18.3 Principles

As part of the admissions process, institutions are responsible for determining students’ in-state/out-of-state status consistent with this policy. Administrators interview students, review documentation and are in the best position to determine whether the student may be classified as in-state. Each institution must designate an appropriate administrative official (most often the Admissions Officer) as responsible for administration of this policy. Clarification and additional information including documentation examples and frequently asked questions are in the *Academic Affairs Procedures Handbook*.

The burden of proof to establish in-state status shall be upon the student. Since residence or domicile is a matter of intent, each case will be judged on its own merit by the appropriate administrative official(s) consistent with this policy. Mere assertion by a student such as checking “In-State” on the application for admission is insufficient. The appropriate administrative official must review relevant documents, consider the policy principles and procedures, circumstances, and documentation to determine in-state status. While no set criteria, documentation, or set of circumstances can be used for this purpose, the principles outlined below guide the process.

- A. Attendance at a postsecondary educational institution, albeit a continuous and long-term experience, does not establish in-state status. Therefore, a student neither gains nor loses in-state status solely by such attendance.
- B. Students attending an Oklahoma college or university may perform many objective acts, some of which are required by law (i.e. payment of taxes), and all of which are customarily done by some out-of-state students who do not intend to remain in Oklahoma after graduation, but are situational and necessary and/or voluntary (i.e. registering to vote, obtaining a driver’s license). Such acts and/or declarations alone are insufficient evidence of intent to remain in Oklahoma beyond the college experience.
- C. An out-of-state student attending an Oklahoma college or university on more than a half-time basis is presumed to be in the state primarily for educational purposes.
- D. An individual is not deemed to have acquired in-state status until he or she has been in the state for at least a year primarily as a permanent resident and not primarily as a student and has established domicile. Likewise, an individual classified as in-state shall not be reclassified as out-of-state until 12 months after leaving Oklahoma to live in another state.

- E. Unless residency has been established in another state, an individual who resided in Oklahoma at the time of graduation from an Oklahoma high school and has resided in the state with a parent or legal guardian for two years prior to graduation from high school will be eligible for in-state status and as allowed in 3.18.7 and 3.18.8.
- F. Each spouse in a family shall establish his or her own status on a separate basis. Exceptions include the following: when an out-of-state status individual marries a person with in-state status, the out-of-state individual may be considered in-state after documentation of the marriage and proof of domicile are satisfied without the 12 month domiciliary waiting period, and as provided in sections 3.18.7 or 3.18.8.
- G. Initial classification as out-of-state shall not prejudice the right of a person to be reclassified thereafter for following semesters or terms of enrollment as in-state provided that he or she establish domicile as defined in this policy. Institutions must establish procedures for students to appeal out-of-state status classification.
- H. Institutions may, but are not required, to waive out-of-state tuition (also known as Nonresident Tuition Waiver) in accordance with current State Regents' *Tuition and Fees* policy 4.18.5.B that allows any institution in the State System to waive a portion of the out-of-state tuition which amount shall not exceed the difference between out-of-state tuition and the amount paid by in-state students.
- I. When a student transfers from one institution to another, the institution to which the student transfers is not bound by the in-state/out-of-state classification previously determined and may request documentation to determine the student's in-state/out-of-state status.

#### 3.18.4 Dependent and Independent Persons

- A. The legal residence of a dependent person is the postsecondary student's parents or the residence of the parent who has legal custody or the parent with whom the student habitually resides. If the student is under the care of those other than the parents, the legal residence is that of the student's legal guardian.
- B. In-state/out-of-state classifications of postsecondary students with extenuating circumstances (e.g., divorced parents with joint custody when one parent or legal guardian lives out-of-state and/or claimed as a dependent on a tax return, etc.) may be considered on a case-by-case basis. Guidance for administrative officers charged with classifying students will be provided in the procedures manual.
- C. A dependent person may establish independent person status through circumstances including, marriage, formal court action, abandonment by parents, etc. To qualify, a dependent person must have completely separated from the parental or guardian

domicile and prove that such separation is complete and permanent. Additionally, the individual must provide evidence that they are responsible for their housing and living expenses. Mere absence from the parental or guardian domicile is not proof of its complete abandonment. If an applicant can provide adequate and satisfactory evidence of independent status and domicile, they may be granted in-state status.

- D. If an independent person can provide evidence of coming to Oklahoma to establish domicile, the applicant may be granted in-state status at the next enrollment occurring after expiration of 12 months following establishment of domicile in Oklahoma.

### 3.18.5 Documented Foreign Nationals

Documented foreign nationals may attend as postsecondary students if they have appropriate educational visas. These individuals are eligible for in-state classification if they become lawful permanent residents, have resided in Oklahoma for at least 12 consecutive months, and meet domicile requirements as set forth in this policy.

Documented foreign nationals who are present in the U.S. with visas that allow full-time employment for extraordinary ability in sciences, arts, education, business, athletics, as an executive, manager, or specialist of a treaty nation company operating in the U.S. are eligible for out-of-state tuition waivers as long as they remain in full-time working status. Dependents of these documented foreign nationals who are lawfully present in Oklahoma based on the documented foreign national's visa are also eligible for out-of-state tuition waivers.

### 3.18.6 Undocumented Students

Pursuant to Title 70, O.S., Section 3242 (2007) (also known as HB1804 of the First Regular Session of the 51st Legislature), an individual who cannot present to the institution valid documentation of United States nationality or an immigration status permitting study at a postsecondary institution but who:

- A. Graduated from a public or private Oklahoma high school;
- B. Resided in this state with a parent or legal guardian while attending classes at an Oklahoma public or private high school in this state for at least two (2) years prior to graduation; and
- C. Satisfies admission standards for the institution.

Individuals who meet the above requirements are eligible for enrollment and/or out-of-state tuition waivers if that individual:

- 1. Provides the institution with a copy of a true and correct application or petition filed with the United States Citizenship and Immigration Service (USCIS) to legalize the student's immigration status, or

2. Files an affidavit with the institution stating that the student will file an application to legalize his or her immigration status at the earliest opportunity the student is eligible to do so, but in no case later than:
  - a. One (1) year after the date on which the student enrolls for study at the institution, or
  - b. If there is no formal process to permit children of parents without lawful immigration status to apply for lawful status without risk of deportation, one (1) year after the date the USCIS provides such a formal process, and
3. If the student files an affidavit pursuant to subsection B. above, presents to the institution a copy of a true and correct application or petition filed with the USCIS no later than:
  - a. One (1) year after the date on which the student enrolls for study at the institution, or
  - b. If there is no formal process to permit children of parents without lawful immigration status to apply for lawful status without risk of deportation, one (1) year after the date the USCIS provides such a formal process, which copy shall be maintained in the institution's records for that student.
4. Any student who completes and provides the institution with a copy of a true and correct application or petition filed with USCIS to legalize the student's immigration status shall not be disqualified on the basis of the student's immigration status from any scholarships or financial aid provided by this state as long as the student meets the following:
  - a. Graduated from a public or private Oklahoma high school;
  - b. Resided in this state with a parent or legal guardian while attending classes at an Oklahoma public or private high school in this state for at least two (2) years prior to graduation; and
  - c. Satisfies admission standards for the institution.
5. This policy shall not impose any additional conditions to maintain eligibility for an out-of-state tuition waiver at a postsecondary educational institution within The Oklahoma State System of Higher Education on a student who was enrolled in a degree program and first received an out-of-state tuition waiver and/or access to state scholarships at that institution during the 2006-2007 school year or any prior year.

### 3.18.7 Uniformed Services and Other Military Service/Training

The following section is compliant with 38 U.S.C, Section 3679(c) and 70, O.S., Section 3247.

#### A. Active Uniformed Services

The following shall be eligible for in-state status:

1. Members of the uniformed services, along with their dependent children and spouse, who provide evidence that they are full-time active duty status of more than thirty (30) days in the uniformed services stationed in Oklahoma or temporarily present through military orders. Further, when members of the armed services are transferred out-of-state, the member, their spouse and dependent children shall continue to be classified as in-state as long as they remain continuously enrolled.
2. Regardless of the residency of the student, dependent children or spouse of a person who is currently serving as a member of the active uniformed services of the United States on full-time active duty status of more than thirty (30) days for whom Oklahoma is the home of record.
3. A person who files with the institution within the State system at which he/she intends to register a letter of intent to establish residence in the state and who
  - a. is entitled to educational or training assistance under Section 3319 of Title 38 of the United States Code by virtue of a relationship to a person who is currently serving on active duty; and
  - b. resides in the state while enrolled in the institution, regardless of the student's formal state of residence state or the active service member's home of record.
4. Former full-time active uniformed services personnel who remain in Oklahoma after their service may retain their in-state status without the 12 month requirement if they establish domicile as defined in this policy.

#### B. Discharged or Released from Active Uniformed Service (Regardless of the Home of Record)

A student who files with the institution within the State System at which the student intends to register a letter of intent to establish residence in the state and who resides in the state while enrolled in the institution shall be eligible for in-state status (i.e., in-state tuition), regardless of the residency of the student or home of record, if the student:

1. Is a person who:
  - a. was discharged or released from a period of not fewer than ninety (90) days of active duty

uniformed service, less than five (5) years before the date of enrollment in the course(s) concerned, and

- b. is pursuing a course of education with educational assistance under Chapters 30, 31, or 33 of Title 38 of the United States Code while living in Oklahoma;

2. Is a person who:

- a. is entitled to assistance under Section 3319 of Title 38 of the United States Code by virtue of a relationship to a person who was discharged or released from a period of not fewer than ninety (90) days of active duty uniformed services, and
- b. enrolls in the course(s) concerned within five (5) years of the date the related person was discharged or released from a period of not fewer than ninety (90) days of active duty uniformed services; or

3. Is a person who:

- a. is entitled to assistance under Section 3311(b)(9) of Title 38 of the United States Code by virtue of a relationship to a person who died in the line of duty while serving in the active duty uniformed services.

C. Discharged or Released from Active Uniformed Service (Oklahoma Home of Record)

Person, or dependent children or spouse of a person, who was discharged or released from a period of not fewer than ninety (90) days of active uniformed service, less than five (5) years before the date of enrollment in the course(s) concerned and for whom Oklahoma is the home of record.

D. Military Reserve Member on Full-Time Active Duty

Regardless of the residency of the student, dependent children or a spouse of a person who is currently serving as a member of the military reserve on full-time active duty of more than thirty (30) days and for whom Oklahoma is the home of record shall be eligible for in-state status.

E. Reserve Officer Training Corps (ROTC)

A person who is participating in or has received a partial or full scholarship from the Air Force, Army, or the Navy/Marines ROTC shall be eligible for in-state status.

F. To be eligible for in-state status as provided in 3.18.7.A, 3.18.7.B, 3.18.7.C, 3.18.7.D, and 3.18.7.E and to maintain eligibility, the student shall:



1. Have secured admission to and enrolls full-time or part-time in a program of study; and
  2. Satisfy admission and retention standards.
- G. A student who meets the eligibility requirements for in-state status shall maintain in-state status if the student remains continuously enrolled at an institution within the State System after the student:
1. As described in 3.18.7.A or 3.18.7.D, is discharged or released from active duty service;
  2. As described in 3.18.7.B.1, 3.18.7.B.2 or 3.18.7.C, exceeds the five-year period after being discharged or released from active duty uniformed service;
  3. As described in 3.18.7.B.1 has exhausted education assistance provided under Chapter 30, 31, or 33 of Title 38 of the United States Code; or
  4. As described in 3.18.7.A.3 or 3.18.7.B.2 has exhausted education assistance provided under Section 3319 of Title 38 of the United States Code.
  5. As described in 3.18.7.B.3 has exhausted education assistance provided under Section 3311(b)(9) of Title 38 of the United State Code.

### 3.18.8 Full-Time Professional Practitioner or Worker

A U.S. citizen or Lawful Permanent Resident who provides evidence of having come to Oklahoma to practice a profession on a full-time basis, conduct a business full time, or work on a full-time basis shall be immediately classified as in-state status along with the individual's spouse and dependents without the 12 month domiciliary requirement so long as they continue in such full-time employment capacity or until such time that they independently establish in-state status as described in section 3.18.3 of this policy.

A full-time professional practitioner or worker who is temporarily assigned to another location but maintains domicile in Oklahoma shall be considered to have in-state status along with the practitioner's spouse and dependent children.

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*Approved: July 1958. Revised March 28, 1967; December 16, 1974; June 29, 1977; July 25, 1984; December 5, 1988; October 23, 1989; March 24, 1993; June 28, 1996; June 30, 2003; April 1, 2004; October 25, 2007 (effective November 1, 2007); April 22, 2010 (Approved revised policy effective Fall 2011-earlier implementation is possible through an exception requested by the President and approved by the Chancellor; revised June 24, 2010 (approved slight change to the Military Personnel section of the policy (implementation Fall 2011 unless approved by exception by the Chancellor); May 25, 2012 (Approved slight change to the Definitions section of the policy). December 6, 2012 (Approved slight change to the Military Personnel section). September 4, 2014; May 29, 2015; April 20, 2017; January 24, 2019.*