

Proposed Revisions to Title 5, California Code of Regulations related to Undocumented Students and Nonresident Tuition Exemption Implementation (Second Reading)

This document contains underlined and stricken text, which may require adjustments to screen reader settings. Underlined text denotes additions to existing regulations; ~~stricken~~ text denotes deletions from existing regulations. This document also contains double underline and ~~double strikeout~~ to indicate a change to the text after first reading.

SECTION 54045 OF SUBCHAPTER 1 OF CHAPTER 5 OF DIVISION 6 OF TITLE 5 OF THE CALIFORNIA CODE OF REGULATION IS AMENDED TO READ:

§ 54045. ~~Alien~~Undocumented Students.

(a) ~~An alien~~A person who is not a citizen or national of the United States not precluded from establishing domicile in the United States by the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) shall be eligible to establish residency pursuant to the provisions of this subchapter.

(b) ~~An alien~~A person who is not a citizen or national of the United States is precluded from establishing domicile in the United States if ~~the alien~~they:

(1) entered the United States illegally without inspection at a designated port of entry and has not obtained a status under the immigration laws of the United States allowing them to establish domicile (undocumented ~~aliens~~persons);

(2) entered the United States under a visa which requires that ~~the alien~~they have a residence outside of the United States; or

(3) entered the United States under a visa which permits entry solely for some temporary purpose.

(c) ~~An alien~~A person who is not a citizen or national of the United States described in paragraph (b) **shall be known as an undocumented person** and shall not be classified as a resident unless and until ~~he or she has~~they have taken appropriate steps to obtain a change of immigration status from the ~~Immigration and Naturalization Service~~United States Citizenship and Immigration Services agency (USCIS) to a classification which does not preclude establishing domicile, and has met the requirements of Sections 54020-54024 related to physical presence and the intent to make California home for other than a temporary purpose. The Chancellor shall, after consultation with the University of California and the California State University, issue guidelines for the implementation of this section.

(d) Notwithstanding any other provision of this subchapter, ~~an alien~~a person who is not a citizen or national of the United States who was classified as a California resident by any college in a district as of September 30, 1991, or during the Fall 1991 term, shall not be subject to reclassification unless the student has not been in attendance at any college in the district for more than one semester or quarter.

NOTE: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Section 68062(h), Education Code; 8 U.S.C. 1101(a)(15); *Toll v. Moreno*, 458 U.S. 1 (1982); and *Regents of the University of California v. Bradford*, 225 Cal.App.3rd, 972, 276 Cal. Rptr. 197 (1990).

SECTION 54045.5 OF SUBCHAPTER 1 OF CHAPTER 5 OF DIVISION 6 OF TITLE 5 OF THE CALIFORNIA CODE OF REGULATION IS AMENDED TO READ:

§ 54045.5. Nonresident Tuition Exemption Implementation.

(a) ~~Any student~~ Students seeking an exemption ~~from the obligation to nonresident tuition~~ under the eligibility criteria expressed in Education Code section 68130.5, subdivision (a), shall complete a questionnaire form prescribed by the Chancellor and furnished by the district of enrollment, verifying eligibility for this nonresident tuition exemption, and may be required to provide documentation in addition to the information required by the questionnaire as necessary to verify eligibility for an exemption. ~~shall verify their eligibility by filing a California Nonresident Tuition Exemption form with the district of enrollment, or in the case of students applying for state-based financial aid, by filing a California Dream Act Application (CADAA) with the California Student Aid Commission.~~

(b) ~~Any student without lawful immigration status who is seeking an exemption under Education Code section 68130.5, shall, in the questionnaire described in (a), affirm that he or she has filed an application to legalize his or her immigration status, or will file such an application as soon as he or she is eligible to do so.~~ (b) The California Nonresident Tuition Exemption Request form shall be prescribed by the Chancellor and districts shall make the form available to students in a convenient manner, including, but not limited to, posting on district websites. The form shall request students to provide information demonstrating that they meet the eligibility criteria in Education Code section 68130.5, subdivision (a), including, **in the case of undocumented persons**, an affidavit affirming that they have filed an application to legalize their immigration status, or will file such an application as soon as they are eligible to do so.

(c) ~~A student seeking this tuition exemption has the burden of providing evidence of compliance with the requirements of this section.~~ (c) Districts receiving notice from the California Student Aid Commission that a student **meets the eligibility criteria in successfully submitted the information required by** Education Code section 68130.5, subdivision (a), shall accept the **information provided by the** California Student Aid Commission's ~~determination of the student's eligibility for the exemption, unless the district has information pertaining to the student's prior enrollment history at other educational institutions that calls the student's eligibility into question.~~

(d) ~~Nothing herein authorizes a refund of nonresident tuition that was paid for any term commencing prior to January 1, 2018.~~ (d) Where districts have a reasonable basis to question a student's eligibility for the exemption, they may request supplemental information from the student that is directly relevant to their eligibility.

(e) ~~Notwithstanding the general nonimmigrant alien exclusion of undocumented persons from the exemption noted in Education Code section 68130.5, subdivision (a),~~

~~nonimmigrant aliens~~ persons granted “T” or “U” visa status under title 8 United States Code section 1101(a)(15)(T)(i) or (ii), or section 1101(a)(15)(U)(i) or (ii), respectively, shall be exempt from paying ~~non-resident~~nonresident tuition, provided all eligibility requirements in Education Code section 68130.5, subdivision (a), are met.

(f) Documents and information obtained in implementing the exemption provided by Education Code section 68130.5 are confidential.

(g) Nothing herein authorizes a refund of nonresident tuition that was paid for any term commencing prior to January 1, 2018.

NOTE: Authority cited: Sections 66700, 68130.5, and 70901, Education Code. Reference: Section 68130.5, Education Code.

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