

## BOARD OF REGENTS BRIEFING PAPER

*Handbook* Revision, Regulations Determining Residency and Tuition Charges (AB226 and AB150)

June 30, 2023

### BACKGROUND & POLICY CONTEXT OF ISSUE:

Existing statute (*Nevada Revised Statutes*, NRS 396.940) and Board Policy (*Title 4, Chapter 15*) establish guidelines for determining whether students shall be classified as resident students or nonresident students for the purpose of assessing tuition charges. The 2023 Session of the Nevada Legislature passed two bills that revise these requirements: [Assembly Bill 226](#) and [Assembly Bill 150](#). The summary below provides the provisions related to residency in each bill, as well as an explanation of whether or not each of the residency-related provisions are necessary in this policy revision.

#### AB 226

The following provision from AB 226 is **included** in this proposed revision to Board policy governing residency for tuition purposes.

- A prohibition against the Board charging nonresident tuition to a student who successfully completes a high school equivalency assessment selected by the State Board of Education, provided the assessment is administered in Nevada.

Explanation: because current Board policy recognizes only a Nevada high school diploma, this provision has been added (*Title 4, Chapter 15, Section 3, Nonresident Tuition*).

The following provisions of AB 226 are **addressed in a footnote** in this proposed revision to Board policy governing residency for tuition purposes.

- A prohibition, under specific circumstances, against the Board of Regents from denying an exemption of tuition charges against a student on the basis that the student is not lawfully present in the United States if the student has been granted deferred action from the United States Department of Homeland Security.

Explanation: for the provisions in Sections 1(a) and 1(b), AB 226 prohibits the Board of Regents from charging nonresident tuition to a student solely on the basis that the student is not lawfully present in the United States **IF** the student has been granted deferred action by the United States Citizenship and Immigration Services of the United States Department of Homeland Security, AND one of the following future conditions are met: (1) if the provisions of 8 U.S.C. § 1623 are repealed, held to be invalid or otherwise cease to have effect; or (2) the attorney general of this state issues a finding that such a student would be considered lawfully present in the United States for purposes of 8 U.S.C. § 1623. Because no revision to Board policy is currently required unless one of the two stated conditions is met, a corresponding footnote clarifying the status of State law and process for compliance is included.

The following provisions of AB 226 are **not included** in this proposed revision to Board policy governing residency for tuition purposes.

- A prohibition against the Board charging nonresident tuition to a student solely on the basis that the student is not lawfully present in the United States if the student has been granted temporary protected status by the United States Citizenship and Immigration Services of the United States Department of Homeland Security.

Explanation: existing Board policy (*Title 4, Chapter 14, Section 6*) provides resident status for noncitizens already granted temporary protected status who establish bona fide residence in Nevada, either through initial classification or reclassification. This *Handbook* provision meets the requirement of Assembly Bill 226.

- A prohibition, under specific circumstances, against the Board of Regents from denying an exemption of tuition charges against a student on the basis that the student is not lawfully present in the United

States if the student has been granted deferred action from the United States Department of Homeland Security.

Explanation: for the provisions in Sections 1(c) through 1(n) of AB 126, existing Board policy (*Title 4, Chapter 15, Section 1*) is compliant as a student is assessed first for a tuition exemption, regardless of citizenship status or amount of time in Nevada. Therefore, no revision to Board policy is required to address this specific provision in AB 226.

### AB 150

The following provision from AB 150 is included in this proposed revision to Board policy governing residency for tuition purposes:

- A prohibition against the Board charging nonresident tuition to a student who is granted a Native American fee waiver pursuant to NRS 396.5449.

Explanation: because current Board policy does not provide a tuition exemption for all categories of students receiving the fee waiver, a provision has been added (*Title 4, Chapter 15, Section 3, Nonresident Tuition*).

Note: the provisions of AB 150 related to the actual fee waiver (not residency) are addressed in a separate policy proposal revising *Title 4, Chapter 17, Section 15*.

### Additional Revisions

Additionally, but separately from the requirements of AB 226 and AB 150, this policy proposal removes the term “alien” within the Board *Handbook* and replaces it with the term “noncitizen.” After receiving feedback regarding the use of the term “alien”, the Chancellor’s office worked with NSHE Legal Affairs in determining an appropriate and more widely used term that eliminates the use of the dehumanizing language from the *Handbook*. As such, the change in terminology from “alien” to “noncitizen” can be found in *Title 4, Chapter 15, Sections 1, 2, 5 and 6 and Title 4, Chapter 11, Section 3*.

### **SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:**

Amend *Title 4, Chapter 15, Section 3* to align with AB 226 and AB 150, passed during the 2023 Session of the Nevada State Legislature which revises State law regulating determining residency and tuition charges.

Amend *Title 14, Chapter 15, Sections 1, 2, 5 and 6 and Title 4, Chapter 11, Section 3*, replacing the term “alien” with “noncitizen.”

### **IMPETUS (WHY NOW?):**

This proposal is brought forward to revise Board policy (*Title 4, Chapter 15, Section 3*) regarding regulations determining residency and tuition charges in response to AB 226 and AB 150, Section 1, passed by the 2023 Session of the Nevada State Legislature and are effective July 1, 2023. Additionally, the recent concerns brought forward regarding the dehumanizing term of “alien” in the *Handbook* can be addressed at this same time as the majority of the language appears in *Title 4, Chapter 15*, with one mention in *Title 4, Chapter 11, Section 3*.

### **CHECK THE NSHE STRATEGIC PLAN GOAL THAT IS SUPPORTED BY THIS REQUEST:**

- Access (Increase access to higher education)
- Success (Improve student success)
- Close Institutional Performance Gaps
- Workforce (Meet workforce needs in Nevada)
- Research (Increase solutions-focused research)
- Coordination, Accountability, and Transparency (Ensure system coordination, accountability, and transparency)
- Not Applicable to NSHE Strategic Plan Goals

### **INDICATE HOW THE PROPOSAL SUPPORTS THE SPECIFIC STRATEGIC PLAN GOAL**

This policy revision supports the Board’s goals of access and success by expanding the inclusion of certain students who may be classified as residents for the purpose of assessing tuition. Additionally, removing the term “alien” from the *Handbook* and replacing it with the term “noncitizen” assists in eliminating the dehumanization of certain populations of students.

**BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:**

The revisions to Board policy align with AB 226 and AB 150, Section 1, passed during the 2023 Session of the Nevada State Legislature.

**POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:**

None have been presented.

**ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:**

None have been presented.

**RECOMMENDATION FROM THE CHANCELLOR’S OFFICE:**

The Chancellor’s Office supports the proposed policy revision.

**COMPLIANCE WITH BOARD POLICY:**

- Consistent With Current Board Policy: Title #\_\_\_\_\_ Chapter #\_\_\_\_\_ Section #\_\_\_\_\_
- X Amends Current Board Policy: *Title 4, Chapter 15, Section 1,2,3,5 and 6*  
*Title 4, Chapter 11, Section 3*
- Amends Current Procedures & Guidelines Manual: Chapter #\_\_\_\_\_ Section #\_\_\_\_\_
- Other: \_\_\_\_\_
- X Fiscal Impact: Yes\_\_\_ No\_\_X\_\_\_  
Explain:

**POLICY PROPOSAL**  
**TITLE 4, CHAPTER 15, SECTION 1, 2, 3, 5 and 6**

Regulations Determining Residency and Tuition Charges

Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed]

Section 1. Purpose and Uniform Application of Residency Decisions

These regulations have been enacted to provide uniform rules throughout the Nevada System of Higher Education (the "System") and all member institutions thereof, for the purpose of determining whether students shall be classified as resident students or nonresident students for tuition charges.

1. A student must provide documentation to support residency classification or reclassification at the request of an NSHE institution.
2. After a student is admitted to an NSHE institution, a determination shall be made as to whether the student must be charged tuition in accordance with this chapter, including the provisions set forth under Section 11 (Administration of the Regulations). Each institution must first determine whether the student is exempt from the payment of tuition in accordance with Section 3 (Nonresident Tuition) of this chapter. Students who are not exempt under Section 3 of this chapter must establish residency in accordance with Section 5 (Resident Students) or Section 6 (Residency for *Noncitizen* [~~Alien~~] Students) of this chapter.
3. The decision of an NSHE institution to grant resident student or nonresident student status to a person shall be honored at other NSHE institutions, unless a person obtained resident student status under false pretenses, the institution made an error in the decision to grant resident student or nonresident student status, or the facts affecting residency determination have significantly changed since the time resident student status was granted. Students granted nonresident status who subsequently meet the qualifications of Section 10 (Reclassification of Nonresident Status) may apply for reclassification.
4. If an institution determines that it or another NSHE institution incorrectly classified a student due to institutional error, the error shall be corrected beginning with the semester the error is identified. When an incorrect classification or error is made, the student has no vested interest or right to rely on the erroneous institutional classification.

Section 2. Definitions

For the purposes of these regulations, the terms stated below shall have the following meanings:

[~~1. "Alien" means a person who is not a citizen of the United States of America.~~]

- I. [~~2.~~] "Armed Forces of the United States" means the Army, the Navy, the Air Force, the Marine Corps and the Coast Guard, on active duty and does not include the National Guard or other reserve force, with the exception of active members of the Nevada National Guard.

2. ~~[3.]~~“Bona fide residence” means an established lawful residence in the state of Nevada for at least twelve (12) months immediately preceding the date of matriculation with the intent of making Nevada the person’s true, fixed and permanent home and place of habitation, having clearly abandoned any former residence and having no intent to make any other location outside of Nevada the person’s home and habitation. Required documentation to prove a bona fide residence shall be consistent with Section 5 of this Chapter.
3. ~~[4.]~~“Clear and convincing evidence” means evidence that is clear in the sense that it is not ambiguous, equivocal or contradictory and convincing in the sense that it is of such a credible, reliable, authentic and relevant nature as to evoke confidence in the truth of it.
4. ~~[5.]~~“Continuously enrolled” means enrollment within a normal academic year for which continuous enrollment is claimed. A person need not attend summer sessions or other between-semester sessions in order to be continuously enrolled.
5. ~~[6.]~~“Date of matriculation” means the first day of instruction in the semester or term in which enrollment of a student first occurs, except that at the University of Nevada, Reno School of Medicine and the University of Nevada, Las Vegas School of Medicine it means the date that a notice of admittance is sent to a student, and at the community colleges it excludes correspondence courses and community service courses that are not state funded. A person who enrolled in an institution of the NSHE but withdrew enrollment during the 100% refund period may, for the purposes of these regulations, be deemed not to have matriculated and any determination concerning residency status shall be voided until such time as the person again enrolls at a System institution.
6. ~~[7.]~~“Dependent” means a person who is not financially independent and is claimed as an exemption for federal income tax purposes under Section 152 of the Internal Revenue Code (26 U.S.C. § 152) by another person for the most recent tax year.
7. ~~[8.]~~“Family” means the natural or legally adoptive parent or parents of a dependent person, or if one parent has legal custody of a dependent person, that parent.
8. ~~[9.]~~“Financially independent” means a person who has not been and will not be claimed as an exemption for federal income tax purposes under Section 152 of the Internal Revenue Code (26 U.S.C. § 152) by another person, except his or her spouse, for the most recent tax year.
9. ~~[10.]~~“Graduate Fellow” means a graduate student receiving a stipend that is treated as a scholarship with no specific duties required for the award.
10. ~~[11.]~~“Most recent tax year” means the income tax return submitted for the prior income year.
11. ~~[12.]~~“Legal guardian” means a court-appointed guardian of a dependent person, who was appointed guardian at least twelve (12) months immediately prior to the dependent person's date of matriculation and for purposes other than establishing the dependent person's residence.
12. ***“Noncitizen” is equivalent to the statutory term “alien” (8 U.S.C. § 1101 (a)(3)).***
13. “Nonresident” means a person who is not a resident.

14. "Objective evidence" means evidence that is verifiable by means other than a person's own statements.
15. "Relocated," means evidence of permanent, full-time employment in Nevada or establishment of a business in and living in Nevada prior to the date of matriculation.
16. "Residence" a term which for the purposes of these regulations is synonymous with the legal term "domicile," and means that location in which a person is considered to have the most settled and permanent connection, intends to remain and intends to return after any temporary absences. Residence results from the union of a person's physical presence in the location with objective evidence of an intent to remain at that location for other than a temporary purpose.
17. "Resident" means a person who has established a bona fide residence in the State of Nevada.
18. "Returning student" means a student who re-enrolls after a break in enrollment of one of more semesters.
19. "Spouse" means a person's partner in legal marriage or a person's domestic partner if the domestic partnership is registered with the Office of the Nevada Secretary of State.
20. "Student" means a person who is enrolled at an institution of the NSHE.
21. "Tuition" means a monetary charge assessed against nonresident students, which is in addition to registration fees, or other fees assessed against all students.

### Section 3. Nonresident Tuition

Nonresident tuition shall be charged to all nonresident students except that tuition shall not be charged to:

1. A current enrollee or graduate of a Nevada high school ***or a student who successfully completed the high school equivalency assessment selected by the State Board of Education, if the assessment was administered in this state.*** This Subsection does not apply to an enrollee or graduate of an online Nevada high school if the student is not physically present and residing in the State of Nevada while enrolled or prior to graduation.
2. A returning student who has established an exemption from tuition charges at any NSHE institution in their prior enrollment period.
3. A community college student in community service courses that are not state funded.
4. A professional employee, classified employee, postdoctoral fellow, resident physician, or resident dentist of the NSHE currently employed at least half time, or the spouse or dependent child of such an employee.
5. A graduate student enrolled in the NSHE and employed by the System in support of its instructional or research programs, only during the period of time of such employment.

6. A graduate fellow.
7. A member of the Armed Forces of the United States, on active duty, stationed in Nevada as a result of a permanent change of duty station pursuant to military orders, or a person whose spouse, parent or legal guardian is a member of the Armed Forces of the United States stationed in Nevada as a result of a permanent change of duty station pursuant to military orders, including a Marine currently stationed at the Marine Corps Mountain Warfare Training Center at Pickel Meadows, California. If the member ceases to be stationed in Nevada, reside in Nevada, be stationed in Pickel Meadows, California, or be domiciled in Nevada, the spouse, child or legal guardian of the member shall not be charged tuition if the spouse, child or legal guardian of the member was admitted prior to the reassignment if such student enrolls and remains continuously enrolled at an NSHE institution.
8. A member of the Armed Forces of the United States who has previously established a bona fide residence in the State of Nevada, but who has been transferred to a military posting outside of Nevada while continuing to maintain a bona fide residence in Nevada. When residence for a particular period is required under these regulations, this shall mean that the person claiming residence for the period must be physically present and residing in Nevada during all of the period required, excluding temporary, short-term absences for business or pleasure.
9. A former member of the Armed Forces of the United States who was relocated from Nevada as a result of a permanent change of duty station pursuant to military orders will be considered a Nevada resident for tuition purposes under the condition that the member was a resident of Nevada prior to leaving the state as a member of the Armed Forces; maintained their Nevada residency while a member of the Armed Forces; and returns to the State of Nevada within one year of leaving the Armed Forces.
10. A veteran of the Armed Forces of the United States who was honorably discharged and who on the date of discharge was on active duty stationed in Nevada, including a marine stationed at the Marine Corps Mountain Warfare Training Center at Pickel Meadows, California, pursuant to military orders.
11. A veteran of the Armed Forces of the United States who was honorably discharged.
12. A veteran of the Armed Forces of the United States who has been awarded the Purple Heart.
13. A student who:
  - a. Is a veteran using Post-9/11 Educational Assistance pursuant to 38 U.S.C. § § 3301 to 3327, inclusive and became eligible for benefits after January 1, 2013; or
  - b. Is a spouse or dependent using Post-9/11 Educational Assistance pursuant to 38 U.S.C. § § 3301 to 3327, inclusive.
14. A student using Survivors' and Dependents' Educational Assistance pursuant to 38 U.S.C. § § 3500 to 3566, inclusive.
15. A student using benefits under the Marine Gunnery Sergeant John David Fry Scholarship pursuant to 38 U.S.C. § § 3311(b)(8).
16. A student enrolled in the University Studies Abroad Consortium or in the National Student

Exchange Program, only during the period of time of such enrollment. Time spent in Nevada while a student is in the National Student Exchange Program shall not be counted towards satisfying the residence requirement of Section 5 of this Chapter, nor shall enrollment through the Consortium or the Exchange Program be included in the "date of matriculation" for evaluation of Nevada residency.

17. A member of a federally recognized Native American tribe *or nation* ~~], who does not otherwise qualify as a Nevada resident, and]~~ who currently resides on tribal lands located wholly or partially within the boundaries of the State of Nevada.

**18. *A student who is a member or a descendant of an enrolled member of a federally recognized Native American tribe or nation and who has been granted a Native American Fee Waiver pursuant to Title 4, Chapter 17.***

19.~~18.~~ A financially independent person who has relocated to Nevada for the primary purpose of permanent full-time employment in Nevada or to establish a business in and living in Nevada.

20.~~19.~~ A financially dependent person whose spouse, family, or legal guardian has relocated to Nevada for the primary purpose of permanent full-time employment in Nevada or to establish a business in and living in Nevada.

21.~~20.~~ A licensed educational full-time employee of a public school district in the State of Nevada or the spouse or dependent child of such an employee.

22.~~21.~~ A teacher who is currently employed full-time by a private elementary, secondary or postsecondary educational institution whose curricula meet the requirements of Nevada Revised Statutes 394.130, or the spouse or dependent child of such an employee.

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## Section 5. Resident Students

Except as otherwise provided in Section 3 (Nonresident Tuition) and Section 6 (Residency for *Noncitizen* ~~[Alien]~~ Students) of this Chapter, as supported by clear and convincing evidence, any person who meets any one of the following categories shall be deemed a resident student for tuition purposes:

1. Except as provided otherwise in this Section, a dependent person whose spouse, family or legal guardian is a bona fide resident of the State of Nevada. Some or all of the following pieces of objective evidence of Nevada residency may be required with the student's application for enrollment and must be issued at least 12 months prior to the date of matriculation:
  - a. Evidence of bona fide residence in Nevada for the spouse's, parents' or legal guardian's permanent, primary residence at the date of matriculation. Examples of evidence include home ownership, a lease agreement, rent receipts, and utility bills.
  - b. The student's birth certificate or proof of legal guardianship.
  - c. The spouse's, parents' or legal guardian's tax return for the most recent tax year, which indicates the student was claimed as a dependent.
  - d. A Nevada driver's license or Nevada identification card for the spouse, parent or legal guardian.
  - e. A Nevada vehicle registration for the spouse, parent or legal guardian.
  - f. Nevada voter registration for the spouse, parent or legal guardian.

2. Except as provided otherwise in this Section, a financially independent person whose family resides outside the State of Nevada, if the person himself or herself is a bona fide resident of the State of Nevada. Some or all of the following pieces of objective evidence of Nevada residency may be required with the student’s application for enrollment and must be issued at least 12 months prior to the date of matriculation:
  - a. Evidence of bona fide residence in Nevada at the date of matriculation. Examples of evidence include home ownership, a lease agreement, rent receipts, and utility bills.
  - b. The student’s tax return for the most recent tax year, indicating a Nevada address. If no federal tax return has been filed by the student because of minimal or no taxable income, documented information concerning the receipt of such nontaxable income. If the student is under the age of 24, a copy of the parent’s or legal guardian’s tax return for the most recent tax year that indicates the student was not claimed as a dependent.
  - c. The student’s Nevada driver’s license or Nevada identification card.
  - d. The student’s Nevada vehicle registration.
  - e. The student’s Nevada voter registration.

Section 6. Residency for *Noncitizen* [~~Alien~~] Students<sup>1</sup>

1. A[~~n~~] *noncitizen* [~~alien~~] who establishes bona fide residence in Nevada shall be deemed a resident for tuition purposes through initial residency classification or reclassification if the student 1) holds a permanent immigrant visa, 2) has been granted official asylum or refugee status, 3) has been granted temporary protected status, 4) has been issued a temporary resident *noncitizen* [~~alien~~] card, 5) holds an approved immigration petition as a result of marriage to a U.S. citizen, or 6) is a nonimmigrant *noncitizen* [~~alien~~] admitted to the U.S. with a visa classification under which the holder is eligible to establish domicile in the U.S.
2. A[~~n~~] *noncitizen* [~~alien~~] holding another type of visa (or no visa) shall not be classified as a resident student pursuant to this Subsection, except as may be required by federal law or court decisions and upon due consideration of evidence of Nevada residence.
3. The Vice Chancellor for Academic and Student Affairs shall establish procedures governing visa classifications for the purpose of determining eligibility for classification as a resident student.

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<sup>1</sup> *Effective July 1, 2023, NRS 396.540(6) states “The Board of Regents shall not deny an exemption from tuition charges provided pursuant to: (a) Paragraphs (a) and (b) of subsection 2 to a student on the basis that the student is not lawfully present in the United States if the student has received a grant of deferred action from the United States Department of Homeland Security and: (1) The provisions of 8 U.S.C. § 1623 are repealed, held to be invalid or otherwise cease to have effect; or (2) The Attorney General of this State issues a finding that such a student would be considered lawfully present in the United States for the purposes of 8 U.S.C. § 1623.” In the event that condition (1) or (2) occur, the Chancellor will issue notice to the Board of Regents and each institution president informing them that one of the conditions effectuating NRS 396.540(6) have occurred and providing direction regarding the process for NSHE wide compliance with State and federal law.*

**POLICY PROPOSAL - *HANDBOOK***  
**TITLE 4, CHAPTER 11, SECTION 3**  
Desert Research Institute (DRI) Business Management

Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed]

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Section 3.                    Employment of *Noncitizens* [~~Aliens~~]

Subject to the concurrence by the Board of Regents in each case, the Desert Research Institute may pay the salaries of resident *noncitizen*<sup>1</sup> [~~alien~~] employees from State appropriated funds.

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<sup>1</sup>*“Noncitizen” is equivalent to the statutory term “alien” (8 U.S.C. § 1101 (a)(3)).*