

1982

George W. Frame and Lory Herbison Frame v. Residency Appeals Committee of Utah State University et al : Brief of Appellants

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

GEORGE W. FRAME and LORY)
HERBISON FRAME,)

Appellants,)

-vs-)

Case Number 18097)

RESIDENCY APPEALS COMMITTEE)
OF UTAH STATE UNIVERSITY,)
CLAUDE J. BURTENSHAW,)
Chairman, and EVAN J.)
SORENSEN, Assistant Director)
of Admissions and Records,)

Respondents.)

BRIEF OF APPELLANTS

Appeal from the District Court's denial of
Appellants' Motion for Summary Judgment.

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JAN 21 1982

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SORENSEN, Assistant Director)
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Case Number 18097

BRIEF OF APPELLANTS

STATEMENT OF THE NATURE OF THE CASE

Appellants, students at Utah State University who were denied resident student status by respondents, contend that the denials were unconstitutional as one of the rules used in the determination creates an unconstitutional irrebuttable presumption, other rules are violations of equal protection, and the decision as a whole is arbitrary and capricious.

DISPOSITION OF THE LOWER COURT

Appellants and respondents made cross Motions for Summary Judgment in the District Court. The Court denied appellants' Motion and granted respondents' Motion.

RELIEF SOUGHT ON APPEAL

a. A finding that the "30 day rule" contained in the Rules and Regulations for Determining Residence Status in the Utah System of Higher Education is an unconstitutional irrebuttable presumption.

b. A finding that respondents' decision to classify appellants as non-resident students was arbitrary and capricious.

c. A finding that appellants must be classified as resident students at Utah State University beginning in September, 1978, and a reimbursement to appellants of the difference between resident and non-resident tuition at Utah State University from September, 1978 to present.

d. A reversal of the District Court's denial of appellants' Motion for Summary Judgment and of its granting of respondents' Motion for Summary Judgment.

STATEMENT OF FACTS

Appellant, George Frame, has been attending Utah State University, off and on, since 1971; his actual attendance at the University has been interspersed with periods of his doing thesis research in Africa between 1972 and 1978.

Appellant, Lory Herbison Frame, has been attending Utah State University since 1978; between 1978 and the present she has continuously been attending the University, except for the summer months. Both appellants have been domiciled in Utah since 1971, but have spent several years doing research in Africa; they have also travelled throughout the country for several months at a time doing lectures on their studies, and

doing research in preparation for the writing of free-lance articles.

Both appellants, since 1971, have voted only in Utah, had bank accounts in Utah, as well as in Chicago, Illinois, Kenya (Africa), and Tanzania (Africa), and applied for residency status only at Utah State University. In addition, appellant, George Frame, has had two Utah driver's licenses, as well as a temporary New Jersey license for four months in 1978; Lory Frame has not been licensed to drive in any state since 1971. Both appellants have also stored their personal belongings in Utah since 1972 when they were not physically present in Utah.

Both appellants first applied for residence status at Utah State University in September of 1978; both were denied residency status by Evan J. Sorenson and the Residency Appeals Committee. They reapplied for residency status in April, 1979 and their application was again denied by Mr. Sorenson and the Residency Appeals Committee. Appellants subsequently instituted the present suit.

In making their decision as to a student's residency status, respondents follow the Rules and Regulations for Determining Residence Status in the Utah System of Higher Education.

ARGUMENT

POINT I.

THE REGULATION PROHIBITING A STUDENT SEEKING RESIDENCY STATUS FROM TRAVELLING OUTSIDE UTAH FOR MORE THAN 30 DAYS CREATES AN UNCONSTITUTIONAL IRREBUTTABLE PRESUMPTION.

Section I.(A)(2) of the Rules and Regulations for Determining Residence Status in the Utah System of Higher Education provides:

I. ADULTS - (Married students and single 18 years and over)

A. In order to qualify as a resident student,

1. an adult must establish by objective evidence an intent to establish a permanent domicile in Utah; and

2. an adult student who has come to Utah for the primary purpose of attending an institution of higher education must reside in Utah for at least one continuous year prior to the beginning of the academic period for which registration as a resident student is sought.

The meaning of the requirement in Section I.(A)(2), above, is further clarified in Section I.(D), as follows:

D. Year's Continuous Residency

A person who lives in the state for one year will not qualify as a resident unless the other requirements of paragraph A are satisfied. Short absences from the state, i.e., less than 30 days, will not break the running of the required one-year residence. Extended absences, i.e., longer than 30 days, especially if during such an absence the student works out of state or returns to the prior home of record for an extended duration, will break the running of the continuous year. (Emphasis added)

It is clear from these regulations that a student who originally comes to Utah to attend a state college or university is absolutely precluded from becoming a resident of Utah for tuition purposes if he/she travels outside the state for more than 30 days.

The appellants contend that they did not come to Utah for the primary purpose of attending an institution of higher education. However, if the Court should find that they did, appellants contend that the combination of Regulations I. (A) (2) and I. (D) has, in fact, precluded them from being classified as resident students for tuition purposes.

Appellant, George Frame, reapplied to Utah State University in March, 1978; appellant, Lory Herbison Frame, applied for the first time to Utah State University in March, 1978. In September, 1978, both appellants applied for resident student status; their applications were denied. Both appellants reapplied for residence status in April, 1979, 13 months after their March, 1978 registration at the University. Their applications were again denied.

Respondents' answers to appellants' Interrogatory 3 indicates that the Frames' second application was denied largely because their travel outside of Utah prevented them from satisfying the one year requirement in Section I. (A) (2).

The use of the one year requirement with the caveat that absences of more than 30 days from the state absolutely breaks the running of the year constitutes an unconstitutional irrebuttable presumption.

Presumptions which are irrebuttable violate the constitutional guarantee of due process. Other states' colleges

have had stricken regulations which created irrebuttable presumptions by precluding certain students from ever obtaining residency status for tuition purposes.

In Vlandis v. Kline, 412 U.S. 441, 37 L.Ed.2d 63, 93 St. Ct. 2230 (1973), the United States Supreme Court struck down the University of Connecticut's rule which provided that a student, once classified as an out-of-state student, could never change the status while a student at that University.

We hold...that a permanent irrebuttable presumption of nonresidence..is violative of the Due Process Clause because it provides no opportunity for students who applied from out of State to demonstrate that they have become bona fide Connecticut residents. Vlandis, 412 U.S. 441, at 453.

The Court in Robertson v. Regents of the University of New Mexico, 350 F. Supp. 100 (D.C.N.M. 1972), found unconstitutional the University's requirement that a student classified as an out-of-state student always be so classified until he/she enrolls for fewer than 6 hours in any semester for a period of at least one year. The Court in Covell v. Douglas, 179 Colo. 443, 501 P.2d 1047 (1972), cert. den'd 412 U.S. 952, held the same as to the University of Colorado's similar rule which required enrollment in fewer than eight hours per semester for a year in order for an out-of-state student to change his/her status to in-state student.

This in effect creates an irrebuttable presumption that a student who first enrolled as a non-resident student remains a non-resident student for tuition purposes unless he undergoes the unreasonable and arbitrary burden of abandoning the major portion of a year's education. The classification thus created is unreasonable, arbitrary, and violates the

Fourteenth Amendment to the Constitution
of the United States.... Robertson, 350
F. Supp. 100, at 101.

In Moreno v. University of Maryland, 420 F. Supp.
541 (D. Md. 1976), the Court struck down a rule which
prohibited the children of persons holding non-immigrant alien
visas from ever obtaining resident student status at the
University of Maryland. The Court found that such a rule
created an irrebuttable presumption violative of the due
process clause of the United States Constitution. It stated
at 420 F. Supp. 541, 559:

The presumption utilized by the University
of Maryland in enforcing its "In-State
Policy" is that no class of nonimmigrant
aliens can establish a Maryland domicile.
As such, it is an irrebuttable presumption
which is not universally true since G 4
aliens are not legally incapable of establish-
ing Maryland domicile....

The Moreno Court analyzed the due process challenge
to the rule in issue as follows, at 420 F. Supp. 541, 554:

In this case, then, several questions
relative to plaintiffs' due process claim
must be resolved: (1) does the University
of Maryland's "In-State Policy" create an
irrebuttable presumption concerning the
domicile of G 4 alien? (2) if so, is that
presumption appropriate because universally
true? (3) if not, can the defendants so
justify that presumption as to save it
from unconstitutionality?

Using the same method of analysis in the present case, one
clearly must conclude that the rule at issue here, like the one
in Moreno, creates an unconstitutional irrebuttable presumption.

The first question, then, is whether the "30-day
rule" creates an irrebuttable presumption; the answer to this
question is Yes. Appellants, and other students whose studies

days, are conclusively precluded by Utah State University's Regulations from ever being classified as in-state students, if they originally came to Utah primarily to attend college in Utah. The University's Regulation I.(D) clearly makes it impossible for a student who must travel for more than 30 days in any year from ever becoming a resident student, regardless of any other circumstances surrounding the question of his/her residency. This certainly creates an irrebuttable presumption.

Secondly, then, it must be decided whether this presumption is appropriate because it is universally true that a student who is absent from the State of Utah for more than 30 days at a time during a year is always a non-resident. The answer to this question is No.

Relevant to the consideration of this second inquiry is Section 20-2-14(d), Utah Code Annotated, which states as follows:

(d) A person must not be considered to have lost his residence who leaves his home to go into a foreign country or into another state or precinct within this state for temporary purposes merely with the intention of returning; provided, he has not exercised the right to elective franchise in such state or precinct.

By enacting this statutory provision, the legislature has indicated that, generally, a person is not to lose his/her residency status by being temporarily absent from the state.

There is no reasonable basis for assuming that all persons who come to the State of Utah to go to school should be denied resident student status for temporary absences from the state of more than 30 days, just as there is no such basis for causing a person to lose his resident status,

generally, for temporary absences, as stated in the above-cited statute.

Appellants themselves exemplify the lack of logic in such an assumption. Appellants have both resided in the State of Utah for approximately ten years. They have been physically absent from the state at some points during that ten year period because they have studied in Africa. Their other physical absences from the state have been during some summers when they have been travelling within the United States continuing their studies and lecturing on the subject matter of their studies.

Despite their travels, however, appellants have always, since first moving to Utah, been residents of Utah and have not, at any time in approximately ten years, established residency in any other place. Yet respondents have twice denied appellants resident student status at Utah State University.

The third question to be answered, pursuant to the Moreno, analysis is whether, since the presumption is not universally true, respondents can nonetheless, justify the presumption so as to save it from unconstitutionality.

This presumption might be considered constitutional, given its irrebuttable nature and the fact that it is not universally true, only if there is no other method of determining a student's residency status. Vlandis v. Kline, supra.; Moreno v. University of Maryland, supra. That is not the case here. The reasoning stated by the Moreno Court, as follows from 420

F. Supp. 541, at 559, applies here as well.

That the University has "reasonable alternative means of making the crucial determination" of a non-immigrant alien's domicile, Vlandis v. Kline, supra., 412 U.S. at 452, 93 S.Ct. at 2236, is demonstrated by the fact that it makes just such a determination on a case-by-case basis with regard to other students seeking to pay domiciliary tuition rates under its "In-State Policy".

Respondents may argue that Regulation I.(D) is necessary for administrative convenience and efficiency, and that it saves the expense that would be necessitated by the extra investigation required by a more flexible rule. These reasons, however, are not valid when counterbalanced against a constitutional challenge.

In Stanley v. Illinois, supra., however, the Court stated that "the Constitution recognizes higher values than speed and efficiency". 405 U.S. at 656, L.Ed.2d 551. The State's interest in administrative ease and certainty cannot, in of itself, save the conclusive presumption from invalidity under the Due Process Clause where there are other reasonable and practicable means of establishing the pertinent facts on which the State's objective is premised. In the situation before us, reasonable alternative means of determining bona fide residence are available. Vlandis, 412 U.S. 441, at 451.

Appellants, therefore, respectfully request that this Court find that Utah State University's Regulation I.(D), which irrebuttably prevents students who originally come to Utah primarily to go to college in Utah, and who thereafter travel for more than 30 days in a year outside of the state from becoming a resident student, is an unconstitutional violation of due process.

Persons such as the appellants, who have been actually present within the State of Utah for more than 12 months, although not consecutive months, should at least be allowed to tack those months together to meet the one year requirement.

POINT II.

RESPONDENTS' HEAVY RELIANCE ON AN APPLICANT'S ACCEPTANCE OF NON-TEMPORARY EMPLOYMENT IN UTAH, AND ON AN APPLICANT'S OWNERSHIP OF REAL ESTATE IN UTAH IS ARBITRARY AND UNREASONABLE AND, THUS, VIOLATES THE EQUAL PROTECTION CLAUSE.

It is clear from a review of the facts of this case that, in determining whether an applicant will be classified as a resident or non-resident student, the respondents rely very heavily on two factors - whether the applicant has accepted a non-temporary job in Utah, and whether the applicant is the owner of real estate in Utah.

This reliance by respondents is clear from several facts. First, Part I.(E) of the Rules of Regulations for Determining Residence Status in the Utah System of Higher Education sets out various factors which will be considered as evidence of an applicant's significant ties and contacts within the State of Utah. Included in the list is "the purchase of property" and "acceptance of non-temporary employment".

Secondly, question number 33 of the Application for Resident Classification at Utah State University asks for additional information an applicant feels is helpful in determining his/her status. As examples of such information, the application lists four items; three of those items are "purchase of a home", "acceptance of bona fide offer of permanent

employment upon graduation", and "title of property".

Thirdly, respondents' answers to appellants' Interrogatory 3, which asked for the reasons for the April 13, 1979 rejection by the Residency Appeals Committee of appellants' applications for resident status, indicates respondents' heavy reliance on an applicant's acceptance of non-temporary employment and on the purchase of real estate in Utah.

That answer stated, in relevant part:

It would also appear that they had not met the requirement of showing objective evidence of intent to remain as described in Section E of the Rules and Regulations such as purchasing property, acceptance of non-temporary employment, or other evidences that would be of a nature to show that they in fact intended to remain in the State after graduation.

Finally, respondents' heavy reliance on an applicant's acceptance of non-temporary employment and on the purchase of real estate in Utah is shown by the fact that appellants have established many other significant ties and contacts with Utah, but respondents have still not classified appellants as resident students. Appellants' ties and contacts with the state include Utah bank accounts, registration of a motor vehicle, George Frame's Utah drivers license, registration to vote, leasing apartments in Utah, and having a permanent Utah mailing address.

In Kelm v. Carlson, 473 F.2d 1267 (6th Cir. 1973), the Court had an opportunity to rule on an equal protection challenge to a requirement by the University of Toledo College

of Law that a non-resident student could be reclassified as a resident only if he/she satisfied the following: (1) established residence in Ohio for 12 months or more preceding the reclassification request, and (2) he/she have made definite job commitments in Ohio upon completion of his/her degree.

The Kelm Court held the school's requirement that a student have secured post-graduation employment in the state as a condition of resident student status to be a violation of the equal protection clause of the United States Constitution.

In explaining the reasons for its decision, the Kelm Court stated:

Such a condition seems to us vulnerable to appellant's challenge as arbitrary and unreasonable. Since pregraduation offers are most frequently made to the top percentages of law school graduates, the regulation would discriminate against the majority of law graduates who in good faith had moved to Ohio and had established residence for all other purposes...In addition, it discriminates against the law school students who desire on graduation to go into practice for themselves. It would also work with discriminatory harshness as between students in classes graduating when hiring opportunities were numerous as compared to those in years when little if any pregraduation hiring was available.

The classification as nonresidents of all applicants who are unable to secure pre-graduation job commitments from prospective employers represents an irrebuttable presumption which has no reasonable relation to fact...

But here the regulation has imposed a condition completely beyond the control of the applicant. As we have pointed out above, the condition can act as an impassable barrier to many students who in utter good faith intend to and, for all other purposes, have succeeded in establishing residency in Ohio.

The same reasoning is applicable in the present case. Appellants had established numerous significant contacts with the State of Utah; however, they had not secured post-graduation employment in Utah at the time they made their various applications for resident student status at Utah State University. Their applications were denied. It is clear from the facts stated above that appellants' lack of permanent post-graduation employment in Utah was a very weighty factor contributing to the denials.

As stated by the Kelm Court, the consideration by a school of whether a student has secured post-graduation employment in the state is arbitrary and unreasonable for various reasons. Those reasons apply to the present case as well, as the consideration of such a factor, as stated by the Kelm Court, "has no reasonable relation to fact".

The second factor upon which Utah State University relies heavily in deciding whether to grant a student's application for resident student status is the applicant's ownership of real estate in Utah.

Respondents' consideration of this factor, too, constitutes a violation of the U.S. Constitution's equal protection clause as it is arbitrary and unreasonable, and discriminates against those applicants who lack the financial resources to purchase real estate.

Thus, respondents have violated the equal protection clause of the U.S. Constitution by promulgating and applying

standards for determining a student's residency status for tuition purposes which are arbitrary and unreasonable, and which are discriminatory.

POINT III.

RESPONDENTS' ADMINISTRATIVE DECISION
IS ARBITRARY AND CAPRICIOUS, AND IS NOT
SUPPORTED BY SUBSTANTIAL EVIDENCE.

Appellants recognize that administrative agencies are given fairly broad powers of discretion, and that the Courts, in reviewing administrative decisions, will not overturn those decisions unless the action is found to be so unreasonable that it can be deemed arbitrary and capricious. Petty v. Utah Board of Regents, 595 P.2d 1299 (Utah 1979); Utah Power and Light Co., v. Utah State Tax Commission, 590 P.2d 332 (Utah 1979).

Even given this higher standard of review, however, appellants still urge this Court to reverse respondents' decisions on appellants' applications for resident student status. A review of the facts will show that respondents' decisions were, in fact, so unreasonable as to reach the level of being arbitrary and capricious.

According to Utah State University's own Rules and Regulations for Determining Residence Status in the Utah System of Higher Education, the following constitutes the type of evidence respondents will consider in determining a student's residency status:

E. Evidence

An applicant for resident status must furnish evidence of personal intent to remain indefinitely by establishing significant legal and other ties or contacts within the State of Utah during the year's required residence, and by

terminating reasonably terminable ties out of state. Significant ties and contacts may include, among other matters, the purchase of property; acceptance of non-temporary employment; establishment of banking relationships; qualification for Utah driver's license; registration of a motor vehicle; registration to vote; membership and participation in off-campus political, social, religious, fraternal and civic associations; marriage to a Utah resident; or the existence of compelling non-academic reasons for coming to Utah and leaving the previous domicile such as health needs, divorce, or offer of permanent employment. The following factors may be grounds for denying resident status:

1. Out-of-state voter registration
2. Out-of-state motor vehicle registration
3. Out-of-state driver's license
4. Out-of-state support to such an extent that the student would probably have to leave the State of Utah if that support were withheld.

Appellants clearly satisfy most of the factors which respondents allegedly consider in making a decision on an application for residency status.

Appellants have had a joint account with a Utah bank since 1971, except for the period of time when the account was closed by the bank because it initiated a new numbering system. As soon as appellants learned of the closing of the account they reopened it.

George Frame has had a Utah driver's license between 1971 and 1975, and between October, 1978 and the present time. Lory Herbison Frame has not had a driver's license in any state since 1971. Also, George Frame registered his motor vehicle in Utah in 1971, upon moving to Utah; his present motor vehicle is also registered in Utah.

Both appellants have been registered in Utah to vote in elections. Both have signed Utah Election Registration forms on at least the following dates: October 21, 1971, September 22, 1978, February 22, 1980, and June 19, 1980. Appellants also voted by absentee ballot in Utah elections in November, 1972 and/or November, 1976.

Another criterion which is supposedly considered by those who decide an applicant's residency status is "the existence of compelling non-academic reasons for coming to Utah and leaving the previous domicile...". Both appellants, in their affidavits which were filed in support of their Complaint, state that they moved to Utah because they believe it is the nicest state in which to live; this is their non-academic reason for coming to Utah. Lory Herbison Frame, in addition, came to Utah in 1971 and never became a student at Utah State University until March, 1978; certainly, Ms. Frame's reason for coming to Utah was non-academic.

Other evidence of appellants' ties and contacts with the state are that their personal belongings have been stored in Utah while they were not physically present in the state, and their mailing address has always been in Utah since 1971.

The second part of Section E of the Rules and Regulations for Determining Residence Status in the Utah System of Higher Education states that out-of-state voter registration, out-of-state driver's license, or car registration, and out-of-state support may be grounds for denying a student resident status.

Only one of those factors has had any application to appellants since 1971, e.g., George Frame's possession of a New Jersey driver's license, temporarily, between June, 1978 and October, 1978.

The only evidence which appellants do not have of their ties and contacts with the State of Utah, therefore, is the purchase of property, the acceptance of non-temporary employment, membership in off-campus organizations, and marriage to a Utah resident (appellants each contend they actually are married to a Utah resident, since they are married to each other).

From this review of the facts and the factors which respondents allegedly consider when deciding the residency status of a student, it is clear that the administrative decision in the present case was arbitrary and capricious.

CONCLUSION

This Court should find that appellants have been resident students for tuition purposes since September of 1978, because respondents' requirement that an applicant refrain from travelling outside the state for more than 30 days at a time creates an unconstitutional irrebuttable presumption of non-residency. Also, respondents' heavy reliance on an applicant's ownership of real estate and on his/her acceptance of post-graduation employment constitute unconstitutional denials of equal protection. Finally, respondents made an arbitrary and capricious administrative decision which was not supported

by substantial evidence, and thus, must be overturned by this Court.

DATED this 20th day of January, 1982.

Respectfully Submitted:

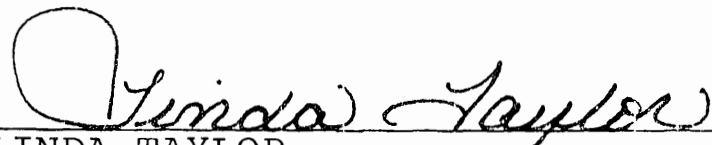
UTAH LEGAL SERVICES, INC.



LISA J. REMAL
Attorney for Appellants

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above BRIEF OF APPELLANTS to Tom C. Anderson, Assistant Attorney General, 236 State Capitol, Salt Lake City, Utah, 84114, via first class U.S. Mail, postage prepaid this 20th day of January, 1982.



LINDA TAYLOR
Secretary

RULES AND REGULATIONS
FOR DETERMINING RESIDENCE STATUS
IN THE UTAH SYSTEM OF HIGHER EDUCATION
 ADOPTED JULY 22, 1975

The following criteria shall be used for evaluating residence status of students at institutions in the Utah System of Higher Education:

I. ADULTS - (Married students and single students 18 years and over)

A. In order to qualify as a resident student,

1. an adult must establish by objective evidence an intent to establish a permanent domicile in Utah; and
2. an adult student who has come to Utah for the primary purpose of attending an institution of higher education must reside in Utah for at least one continuous year prior to the beginning of the academic period for which registration as a resident student is sought.

B. Indefinite Residence

To establish a domicile in this state, an adult must be physically present within the State of Utah and concurrently have the intent to establish a residence in Utah for an indefinite period of time -- certainly longer than the anticipated duration of the planned program of higher education.

C. Motivation

The law presumes temporary academic motivation, and thus lack of domiciliary intent, in the case of persons who within a year after entering Utah from out of state, enroll in an institution of higher education in this state. This presumption is reinforced if the student has applied to a Utah college or university from an out-of-state address or immediately after entering the state and the entry into the state shortly precedes or coincides with the commencement of a school term. It is the student's obligation to rebut this presumption in order to qualify for resident status. A student who clearly demonstrates that the move to Utah was not academically motivated, but was for permanent domiciliary reasons, is entitled to immediate resident status.

D. Year's Continuous Residency

A person who lives in the state for one year will not qualify as a resident unless the other requirements of paragraph A are satisfied. Short absences from the state, i.e., less than 30 days, will not break the running of the required one-year residence. Extended absences, i.e., longer than 30 days, especially if during such an absence the student works out of state or returns to the prior home of record for an extended duration, will break the running of the continuous year.

E. Evidence

An applicant for resident status must furnish evidence of personal intent to remain indefinitely by establishing significant legal and other ties or contacts within the State of Utah during the year's required residence, and by terminating reasonably terminable ties out of state. Significant ties and contacts may include, among other matters, the purchase of property; acceptance of non-temporary employment; establishment of banking relationships; qualification for Utah driver's license; registration of a motor vehicle; registration to vote; membership and participation in off-campus political, social, religious, fraternal and civic associations; marriage to a Utah resident; or the existence of compelling non-academic reasons for coming to Utah and leaving the previous domicile, such as health needs, divorce, or offer of permanent employment. The following factors may be grounds for denying resident status:

1. Out-of-state voter registration
2. Out-of-state motor vehicle registration
3. Out-of-state driver's license
4. Out-of-state support to such an extent that the student would probably have to leave the State of Utah if that support were withheld.

F. Capacity

1. Foreign Students

Aliens who are present in the United States on visitor, student, or other visas which indicate that they may remain in the country only temporarily do not have the capacity to intend to reside in Utah for an indefinite period and should,

therefore, be classified as non-residents. Those aliens who have immigrant or permanent resident status may qualify according to the applicable criteria for citizens.

2. Support

A student who is supported to such a degree from out-of-state sources that continuing presence in the State of Utah is contingent upon that support may be deemed to lack the capacity to establish a domicile in Utah.

II. MINORS - (Unmarried students under 18 years)

A. Generally

The residence of a minor is normally that of the minor's parents. A minor whose parents move to Utah to establish a permanent domicile here, and not for the primary purpose of allowing the minor to attend an institution of higher education as a resident, shall be immediately eligible to register as a resident student.

B. Custody by Court Order

If the custody of a minor has been granted by court order to a parent, or to a person other than a parent, the residence of the person to whom custody was assigned shall constitute the domicile of the minor, provided that custody was not granted for the purpose of obtaining Utah residence for tuition purposes.

C. Abandoned Minor

The residence in Utah of a person in loco parentis to an abandoned minor shall constitute the residence of the abandoned minor, if the abandonment was not for the purpose of enabling the minor to qualify for resident status.

D. Minors Whose Parents Move From Utah

A minor enrolled as a resident student will not lose that classification because his or her parents or guardians remove their legal residence from the state during the continuous period of the minor's higher education.

E. Emancipated Minors

An emancipated minor may qualify for residence under the rules applicable to a single adult. In order to establish

- ✓ emancipation, a minor must prove actual emancipation by his or her parents and full freedom from their support and control for at least one year. Such proof must include (1) a certified statement from the parents declaring the minor's emancipation; (2) a verified copy of a portion of the parents' most recent federal income tax return indicating that the student was not claimed as a dependent during the previous year; and (3) a verified statement by the parents or guardian to the effect that they no longer have any claim upon the services of, and retain no further parental responsibilities with regard to, the minor.
- ✓ The minor must also submit evidence that he or she has been entirely self-supporting for one year.

III. MILITARY PERSONNEL, SPOUSES AND CHILDREN

Personnel of the United States armed forces assigned to active duty in Utah, their spouses and their children shall be entitled to pay resident tuition rates. Upon the termination of their active duty military status, they are governed by the standards applicable to non-military persons.

IV. PROCEDURE FOR CHANGE OF RESIDENCE STATUS

A. Initial Classification

The institution's director of admissions shall classify all prospective students as either resident or non-resident. If the director is in doubt concerning the resident status of any applicant, the student should be classified as a non-resident.

B. Application for Reclassification

Every student classified as a non-resident shall retain that status until he or she is officially reclassified to resident status. If a written application to the admissions officer for a change to resident classification is denied, the applicant shall have the right to meet with the admissions officer for the purpose of submitting additional information and having his or her application reviewed.

C. Appeals

A student or prospective student may appeal an adverse ruling by the admissions officer to the institution's Board of Appeals for Residency Matters, the establishment, membership, and procedures of which shall be governed by institutional regulations approved by the Institutional Council. Notice of appeal must be

given in writing to the Board not later than ten (10) days following the receipt of written notification from the institution that the application for reclassification has been denied. The student must pay non-resident tuition charges until his or her status is changed to resident status by the admissions officer or Board of Appeals.

Within a reasonable time, the Board of Appeals shall grant a hearing de novo to the student applicant, and after receiving such oral and written proofs as may be presented, shall determine the status of the student applicant. A ruling favorable to the student applicant shall be retroactive to the beginning of the academic period for which (1) resident status was sought, and (2) the student applicant qualified as of the beginning of that academic period, and shall require a refund of non-resident tuition charges paid in the interim. The final decision of the Board of Appeals shall exhaust the student's administrative remedies.