

BP 3-9: Residency Status

BOARD POLICY BP 3-9

APPROVED: April 22, 2019

EFFECTIVE: April 22, 2019

REVIEWED: April 8, 2019

REFERENCES: Section 702 of the Veterans Access, Choice and Accountability Act of 2014 (38 U.S.C. § 3679(c)); Montana Board of Regents Policy 940.1 – Residency Policy

All applicants for admission and students at Dawson Community College shall be classified as *in-district*, *in-state*, or *out-of-state* for fee purposes, admission to the college, and admission to programs of limited enrollment. A student who is not classified as in-district or in-state is considered to be out-of-state. The following criteria shall be applied to determine residency status.

- A. A person may be classified as in-district if:
- (a) He/she owns and pays taxes on real property located within the Dawson Community College District or he/she is a dependent whose parents or legal guardians own and pay taxes on real property located within the Dawson Community College District; or
 - (b) He/she has had an active lease for a domicile located within the Dawson Community College District as his/her primary residence for one continuous 12-month period, or he/she is a dependent whose parents or legal guardians have had an active lease for a domicile located in the Dawson Community College District as their primary residence for one continuous 12-month period; or
 - (c) He/she has lived for less than one continuous 12-month period in the Dawson Community College District with a documented and dated intent to become a resident of the Dawson Community College District including demonstrating such intent through actions that students do not routinely take (see sections D through G).

Notwithstanding the terms of this section, a former Dawson Community College District resident may be re-classified as in-district without serving a 12-month period of physical domicile in the district if he/she is unable to be present in Montana for the required 12-months due to his or her service in an active duty military assignment. For purposes of this policy, membership in ROTC, in the Reserves, or in the National Guard, does not qualify as active duty. One cannot achieve active duty military status by attending school.

- B. Except as provided in subsections H, a person may be classified as in-state following a 12-month continuous period of domicile in Montana with a documented and dated intent to become a resident of Montana as provided in subsections C through F.
- C. 1. The 12-month period referred to in subsection B does not begin to run until an act indicative of intent to become a Montana resident is taken. The following acts will serve as such indicators, although one act is not definitive of all acts that may be necessary to be classified as in-state under this policy:
- (a) A motor vehicle owned or operated by the person seeking in-state status is registered in Montana,

- (b) A Montana driver's license is acquired,
 - (c) A Montana voter registration is acquired,
 - (d) A principal residence is purchased in Montana.
2. In addition to the above indicators, the person seeking in-state status must:
- (a) File any required resident Montana tax return for all taxable income earned during the period in which residency is claimed,
 - (b) Submit documentation to support that the person has been financially independent from any nonresident entity or person, including a parent, guardian, or spouse, for a minimum period of 12 continuous months. Financially independent means the person seeking residency derives less than 50% of all income and financial support from any other nonresident entity or person.
3. Only in the event that none of the above indicators are appropriate, the person seeking in-state status may file an affidavit of intent to establish residency with the College. Other actions may be considered as indicators provided that the action is clearly indicative of an intent to establish residency and is not an action that students routinely take.
- D. 1. During the 12-month period and thereafter for as long as in-state status is desired, the person seeking or granted in-state status must act in a manner consistent with Montana residency, including all legal obligations and responsibilities based upon such residency. Enjoyment of a status, receipt of benefits, or exercise of a right or privilege inconsistent with or in contradiction of Montana residency is a basis for classification as out-of-state.
2. The 12-month period does not run for any period during which the person enjoys a status, receives a benefit, or exercises a right or privilege based upon residency outside of Montana, or which negates the intent to become a Montana resident. For example, the 12-month period does not run for any period in which the person maintains legal ties to another state or country such as a driver's license, vehicle registration, voter registration, or tax liability, regardless of the person's reasons for establishing or maintaining such ties.
- E. 1. (a) It is presumed that the domicile of a minor or un-emancipated person is that of the person's parents or legal guardian.
- (b) If the parents are divorced, separated or deceased, the minor or un-emancipated person will be presumed a resident if either:
- (i) The parent or legal guardian with whom the student normally resides is a resident of Montana, or
 - (ii) The parent or legal guardian who takes the student as an exemption for federal income tax purposes or supplies a majority of the support for the student is a resident of Montana.
2. It is presumed that a person absent from Montana in excess of 30 days during the 12-month period upon which in-state status is claimed lacks the necessary intent to acquire Montana residency as required by subsection B.
3. (a) It is presumed, in the case of an individual who would have formerly been eligible for in-state status based on meeting the residency requirements but who has been absent from Montana for a period of 12 months or more, that such individual has abandoned in-state status. This presumption does not apply to individuals who can demonstrate satisfaction of the 12-month residency requirement subsequent to the absence. This presumption does not apply to absences from the state for purposes

of post-secondary education or service in the armed forces of the United States provided the individual has not taken any actions in contradiction of the claim of Montana residency.

- (b) Notwithstanding the terms of this section, former Montana residents may be re-classified as in-state without serving a 12-month period of physical domicile in Montana if the student is unable to be present in Montana for the required 12-months due to his or her service in an active duty military assignment. The student must demonstrate re-establishment of Montana residency in all other ways required of the policy for a period 12 months prior to the application for residency. For purposes of this policy, membership in ROTC, in the reserves or in the National Guard, does not, in itself, qualify as active duty. Active duty military status cannot be achieved by attending school.
- 4. (a) It is presumed that any person, not eligible for in-state status under this policy, who is registered for in excess of one-half of a normal full-time credit load, including online credits from any institution of higher education, is present in the state primarily for educational purposes, and such periods may not be applied to the 12-month period referred to in subsection B.
 - (b) For purposes of this subsection "in excess of one-half of a normal full-time credit load" means any period of time for which a student is registered for more than 7 semester credits (or more than 8 semester credits if the student is enrolled in a block scheduling program).
 - 5. In order to overcome any of the above presumptions, the person desiring in-state status must do so by clear and convincing evidence, which is evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.
- F. If a person, who did not qualify for in-state status or who had not taken acts indicative of an intent to establish Montana residency prior to imprisonment, is incarcerated in a Montana state or local penal institution, the time spent in the institution may not apply towards satisfaction of the 12-month residency requirement.
 - G. Students applying for certification as Montana residents for purposes of application to professional student exchange programs must meet the residency standards as set forth in subsections C-F for a minimum 24-month continuous period of domicile prior to the program certification deadline in order to be considered for in-state status. Students who can demonstrate previous Montana residency under this policy but who later abandoned residency may regain residency under this subsection following completion of a 12-month continuous period of domicile as provided in subsections C-F. Students obtaining in-state status under subsection I below are not eligible for these professional student exchange programs.
 - H. 1. Notwithstanding the residency requirement, the following classes of persons are eligible for in-state status:
 - (a) Members of the armed forces of the United States assigned to active duty in Montana, their spouses, and their dependent children during the member's tour of duty in Montana;
 - (b) An individual domiciled in Montana and employed full-time in a permanent job in Montana and the spouse and dependent children of such an individual provided the primary purpose of the person seeking in-state status for coming to Montana was not the education of the children, the spouse, or the employed individual;

- (c) Any graduate of a Montana high school accredited by the board of public education who is a citizen of the United States or a resident alien who registers at DCC no later than the fourth fall term following the student's high school graduation shall be eligible under this section for in-state status for either (1) six years from the date of initial registration or until the achievement of an associate degree, whichever occurs first, or (2) as long as the individual remains continuously enrolled at DCC (excluding summers); provided either of the following conditions existed at the time the student graduated from high school:
 - (i) The student attended the Montana high school for the student's entire senior year; or
 - (ii) The student had a parent who was employed and resided in Yellowstone National Park;
 - (d) An individual domiciled in a state other than Montana who derives more than 50% of family income, as reported or required to be reported under the United States tax laws, from fulltime employment in a permanent job in Montana and who pays all required Montana taxes on Montana derived income and the spouse and dependent children of such individual; provided the state of domicile provides reciprocal treatment for Montana residents.
 - (e) An individual, living in Montana, who is a "covered individual" under Section 702 of the Veterans Access, Choice and Accountability Act of 2014 (38 U.S.C. § 3679(c)).
2. If a person receives in-state status under the provisions of this subsection, such status continues only so long as the person remains a member of one of the described classes. If the person no longer is eligible for membership in one of the classes, the person will be reclassified as out-of-state unless the person qualifies for in-state status under the residency provisions. It is the responsibility of an individual to notify the College if the individual is no longer eligible for an exception.

I. Procedures:

- A. An applicant for admission to a campus or to a particular program, to be classified as an in-state student, must meet the requirements for in-state status as of the date the application is received by the campus or program. If a closing date has been established for applications to a particular program, the status for purposes of admission to the program shall be determined as of the closing date.
- B.
 - 1. Any applicant or student classified as out-of-state may petition the campus for a change of classification. The burden of proof, including production, is upon the individual seeking the change in classification. In order to be reclassified an individual must meet the requirements found in this policy. Unless Board policy provides otherwise, to be eligible to receive in-state status for a particular term of enrollment, the individual must be eligible for in-state status on or before the 15th instructional day of the term and the reclassification petition must be submitted no later than seven working days prior to the first day of registration. An applicant or student initially classified as out-of-state may only receive an in-state classification pursuant to the procedures in this subsection.
 - 2. The registrar or a designee of the president may initiate proceedings to reclassify an individual with in-state status to out-of-state status if it is determined that the individual enjoys a status; receives a benefit; exercises a right or privilege inconsistent with or in contradiction of Montana residency; or fails to meet a legal obligation of Montana residency. The registrar shall inform the individual of the proposed action and permit the

individual to present written or oral material if the individual wishes. The registrar shall make a written decision as to reclassification and inform the individual.

3. A change in classification under subsection II (B)(1) above is effective on the first official day of enrollment for the first term following the date the petition is received by the registrar's office unless the late filing of a Montana individual income tax form is required, in which case the effective date is the date of filing the tax form. A change in classification under subsection II (B)(2) above is effective upon the first day of enrollment for the first term following the date of the registrar's decision letter and may not be applied retroactively to any previous terms.
- C. An individual may appeal in writing to the President the initial classification decision or a reclassification decision. The President's decision is final.
- D. An individual classified or reclassified as in-state based upon false, incomplete, or incorrect replies to residency questions or evidence submitted to the College is subject to retroactive reclassification by the College as out-of-state. In such case the individual is liable for the additional fees that would have been collected had the individual been classified as out-of-state.

SCOPE This policy applies to Dawson Community College.

PROCEDURES The College President shall promulgate such procedures as may be needed to implement this policy.

History: 08/06/2015;