

## POLICIES AND PROCEDURES OF THE STATE RESIDENCE COMMITTEE

I. AUTHORITY. Section 900.2 of the UNC Policy Manual provides that the State Residence Committee, established by the Board of Governors and the North Carolina Community College system, is responsible for reviewing appeals beyond the constituent institutions with respect to denial of petitions for resident status for tuition purposes. Procedures of the committee are embodied in this document entitled, "Policies and Procedures of the State Residence Committee," which shall be maintained at UNC General Administration.

II. PURPOSE. The functions of the State Residence Committee are:

A. To decide cases appropriately appealed to it from a state institution of higher education;

B. To evaluate the administrative practices and substantive rules associated with implementation of state law relating to residential classification for tuition purposes and to make recommendations, to the Board of Governors of the University of North Carolina, concerning any perceived need for changes in applicable law or administrative policies and procedures associated with the responsibility of classifying students by residence for tuition purposes;

C. To evaluate and maintain the document entitled, *A Manual to Assist the Public Higher Education Institutions of North Carolina in the Matter of Student Residence Classification for Tuition Purposes* (the "Manual"); and

D. To serve as a source of general advice to and sharing of information with and among affected institutions of higher education concerning residence questions.

III. POLICIES. The following policies and procedures are adopted by the State Residence Committee to effectuate the discharge of those responsibilities prescribed by the *Manual*.

A. Membership. The membership of the State Residence Committee shall consist of four individuals appointed by the president of the University of North Carolina from the staff of UNC General Administration. The terms of the members shall be of such duration as may be established by the president of the University.

B. Officers. The State Residence Committee shall be chaired by one individual, designated from the membership by the president of the University. In addition, the membership shall select a person to serve as secretary for the State Residence Committee.

C. Meetings and Bylaws

1. Meetings.

a. *Regular meetings*. Regular meetings of the State Residence Committee shall be convened at UNC General Administration in Chapel Hill on a day chosen by the members during the

months of September, November, January, March, and, May, and either additional or fewer months, depending upon the volume of appeals and schedules of the SRC members.

b. *Special meetings.* Special meetings shall be held at the call of a chair at such times and at such places as the chair shall designate; provided, that notice of special meetings shall be provided to the membership at least ten days in advance of such meetings, unless extenuating circumstances are present. In the unusual case of an extraordinary need to suspend a provision of these *Policies and Procedures*, the chair may call for a vote regarding such suspension.

2. Conduct of business.

a. *Quorum.* A quorum for the conduct of business by the Committee shall consist of a majority of the authorized membership.

b. *Votes.* All matters put to a vote of the Committee shall be resolved by simple majority. All members of the Committee shall be eligible to vote, except as otherwise specified herein. The chair shall not vote at a meeting unless such vote is necessary in the event of a tie. No vote concerning any matter under consideration by the Committee may be cast *in absentia* or by proxy.

c. *Rules of order.* Except as modified by regulations adopted by the Committee, *Robert's Rules of Order* (latest edition) shall constitute the rules of procedure applicable to all meetings of the Committee.

d. *Minutes.* Minutes of each meeting of the Committee shall be taken by the secretary, and if not available, by the chair's designee, and, following approval at the next succeeding meeting, shall be maintained on file by the Committee through its secretary.

e. *Referral to subcommittees.* Any matter of business coming before the Committee may be referred to such subcommittee or subcommittees as may be established by the Committee.

D. Functions

1. Jurisdiction. The jurisdiction of the State Residence Committee to hear and resolve residence classification cases appealed from institutional determinations is based on Section 900.2 of the UNC Policy Manual, and pursuant to provisions in the *Manual*.

2. Appellate proceedings. The decision of the official or office of the institution responsible for residence reclassification decisions may be appealed by the affected individual as follows:

a. To the chief executive officer of the institution, or the officer's delegate (who may be either an individual official or a committee designated by the chief executive officer), pursuant to such rules and procedures as may be prescribed by the chief executive officer; if not satisfied with the disposition of the complaint, the individual may then appeal:

b. To the State Residence Committee pursuant to rules and procedures herein prescribed. The sole grounds for appeal to the State Residence Committee from the institutional decision on appeal shall be:

(1) That the institutional decision was made in disregard of or mistake with reference to the requirements of law or *Manual* policy;

(2) That *Manual* provisions as currently stated do not address the present issue presented by the institutional decision which is alleged to constitute a violation of state and/or federal law;

(3) That *Manual* provisions as currently stated are at variance with subsequently developed case law pertinent to the institutional decision; and/or

(4) That the institutional decision is not supported by an evidentiary record providing a reasonable basis for the conclusion reached.

Final disposition of an appeal by the State Residence Committee shall be deemed to exhaust the administrative remedies of the appellant with respect to the institutional classification or reclassification. This limitation upon institutional appeals shall not prohibit institutional inquiry to the State Residence Committee for purposes of general advice or other assistance.

For purposes of acquiring jurisdiction of appeals by the State Residence Committee the term "reclassification" shall mean an institutional decision that the individual either has or has not satisfied the statutorily prescribed qualifying standards for entitlement to the in-state tuition rate with reference to a specified term of enrollment. Thus, prospective advisory opinions on residence status by an institution will not support an appeal. The Committee will, furthermore, decline jurisdiction to hear an appeal on a residence status application that is premature on its face. The date of the initial classification decision shall be taken as the date of classification inquiry for assessment of the domiciliary information given by the pertinent institution pursuant to the requirements below.

3. Treatment by the State Residence Committee of differing classifications of a student among the institutions. The fact that a student has received among the institutions of higher education differing classifications of residence for tuition purposes will not, itself, be treated by the State Residence Committee as a ground for reversal of a nonresident determination. However, the State Residence Committee will consider information underlying such differing outcomes, along with all other domiciliary information, in making its disposition of an appeal. To be so considered, though, the contrary classification(s) and the domiciliary information upon which the classification(s) had been rendered must have been provided to the institution from whose nonresident determination appeal is made to the State Residence Committee so as to have permitted the institution to consider that information upon which a prior in-state classification had been made.

4. Legal effect of disposition by the State Residence Committee. As prescribed by the *Manual*, disposition of an appeal by the State Residence Committee shall be deemed to exhaust the administrative appellate procedures available within the University. No further appeal is available. An individual denied relief may, of course, seek judicial relief from the disposition rendered by the State Residence Committee. Final disposition by the Committee shall be understood to mean either a ruling in which the Committee affirms, modifies, or reverses an institutional decision or a ruling in which the Committee declines to entertain an appeal because of insufficient showing of proper bases for appellate review by the Committee. Any ruling or disposition by the Committee which causes a case to be

remanded to the institutional level for further inquiry shall not constitute final disposition of that case, and such case may be appealed if such further inquiry gives rise to a basis of appeal as described above.

#### IV. PROCEDURES

##### A. Filing Appeals with the State Residence Committee.

1. Following final disposition of a case at the institutional level, notice of the decision shall be given to the petitioner in writing. A petitioner who believes the institutional decision to have been in error may file notice of appeal to the State Residence Committee. Such notice must be in writing, must be delivered to the chief executive officer of the institution or his or her delegate within ten (10) days of receipt of notice of final disposition of the case at the institutional level, must contain a simple declaration of intention to process an appeal before the State Residence Committee, and must be signed personally by the petitioner.

2. Following receipt of notice of appeal, the chief executive officer of the institution or his or her delegate shall compile the institutional record and transmit to the petitioner a copy of the institutional record with a letter acknowledging receipt of the petitioner's notice of appeal. The institutional record so transmitted shall contain all written materials which constituted the basis of the institutional inquiry, including the common informational form (questionnaire), together with any additional data or documentation deemed essential to a reliable determination by the responsible institutional official or office, any materials submitted with respect to the inquiry by the petitioner to the institution, and any materials generated by the institution in connection with the inquiry.

3. If, following receipt of a copy of the institutional record, the petitioner believes that the record is incomplete or defective (in that it either omits written materials which were a part of the institutional inquiry or that it includes written materials which were not a part of the institutional inquiry), the petitioner may within ten (10) days of receipt of a copy of the institutional record request modification of the institutional record by submitting such request to the institutional official from whom the institutional record was received. If the petitioner fails to request modification of the institutional record within the time frame specified, the institution shall consider the record to be properly assembled.

a. If the institution agrees with the petitioner's contention, the institution will modify the institutional record accordingly and ensure that the petitioner is notified in writing of and possesses the modified institutional record.

b. If the institution does not agree with the petitioner's contention, it shall so note in a letter to the petitioner; the institutional record and the petitioner's letter with attached documents will be transmitted to the SRC at the time that the institution sends the petitioner's appeal.

4. Within twenty (20) days of institutional notification regarding the record, the petitioner shall prepare and submit to the institution a written statement of appeal. This statement should set forth clearly and concisely the reason(s) for requesting appellate review beyond the institutional level per III.D.2.b, and may also present contentions of the petitioner with reference to the contents of the

institutional record, as noted above. The statement of appeal shall be limited in scope to the evidence and issues developed in the proceedings from which the appeal is taken and any arguments made in the institutional appeal. It shall not include any factual allegations or assertions which were not made by the petitioner in the proceedings at the institutional level.

5. Within ten (10) days of receipt by the institution of the petitioner's statement of appeal, the chief executive officer of the institution or delegate shall compile the record on appeal and transmit it to: (a) the petitioner, and (b) UNC General Administration (UNC-GA). Because the institution will already have transmitted to the petitioner the institutional record on appeal designated above as the "institutional record," the institution may choose not to send to the petitioner another copy of the record.

With the record on appeal but not as part of it, the institution shall transmit to the petitioner and to the appropriate office handling appeals for the State Residence Committee that information or materials that at the time of transmission continue to be the subject of a contention by the petitioner concerning proper constitution of the record on appeal. If the disputed information or materials are identified in the statement of appeal or in a separate writing, such statement or separate writing shall be transmitted in its original form, also, separate from the record on appeal. A statement of appeal or separate writing that identifies the disputed information or materials may appear in the record on appeal only with the disputed elements identified. The institution shall see that the record is composed accordingly and it shall transmit materials to the SRC in a timely manner. Late transmissions shall delay appeals.

6. The record on appeal shall consist of:

a. The statement of appeal. The chief executive officer of the institution or delegate shall, before forwarding the record on appeal, ensure that the record on appeal contains a separate statement of appeal. The record on appeal shall not be deemed definitive and official, and as a consequence will not be entertained, if it does not include the petitioner's statement of appeal.

b. The institutional record as described above with social security numbers redacted.

c. A letter from the institution transmitting the record on appeal and certifying the exact date upon which the petitioner's domiciliary information had been viewed by the institution as current and susceptible to consideration toward satisfaction of the statutory durational requirement of 12 months.

d. At the option of the institution, a written statement by the responsible institutional official setting forth the basis for the previous institutional disposition of the case, which shall be limited in scope to the evidence and issues developed in the proceedings from which the appeal is taken and any arguments addressed thereto. If, however, the petitioner has contested the composition of the record on appeal and the contention continues to be asserted at the time that the record on appeal is transmitted pursuant to the provisions above, the written statement of the institution may also address the petitioner's contention concerning composition of the record on appeal and its treatment by the institution.

7. The institution shall transmit a record on appeal that is legible and capable of being duplicated in legible copies. If it is transmitted in hard copy, the individual sheets of the record shall contain information on one side only, shall attempt to consolidate information on as few sheets as possible and shall not be folded. The individual sheets in the record shall be standard letter size (8½ by 11 inches), and, the institution shall have reduced oversized sheets to standard dimensions. Additionally, the appeal should: contain no originals; be unstapled; and be in reverse chronological order, with the most recent document first. If it is transmitted in a pdf or other electronic file, it shall be pursuant to a secure method previously approved in writing by the SRC.

B. Initial Staff Processing of Records on Appeal. With respect to each record on appeal transmitted to UNC General Administration, it shall be the responsibility of the chair:

1. To confirm that the record on appeal is definitive and official, including the determination that the record on appeal is in a form consistent with the requirements above; and
2. To transmit to the membership of the State Residence Committee the complete records on appeal for all cases.

C. Action upon Discovery of Omission or Other Deficiency in the Record.

1. The required determination of the chairs (personally or through delegated authority of their staff), as to whether a record on appeal is definitive and official, may include inquiry to appropriate institutional officials or other parties. Based upon that determination, the chair or delegated staff may delete or add materials to the record on appeal so as to reflect accurately the record of the institutional decision. This process of deletion or addition may even require physical return of the record on appeal to the institution, but such transmittal shall be only for conforming modification to the record on appeal and not be considered a remand of the case. The petitioner shall be informed promptly of any deletion or addition to the record on appeal that is accomplished by the chair or delegated staff.

2. Where the record reflects a substantive omission in the underlying domiciliary petition itself, such as lack of the petitioner's signature on the domiciliary application, the chair shall have discretion, giving attention to all relevant equities in the case, whether to seek correction of the omission or to calendar the appeal for assessment in its condition of original submission to the State Residence Committee.

3. When, however, the perceived deficiency in the record on appeal puts into question the adequacy of the institutional inquiry itself, the Committee must first be presented the case on appeal and any remand or transmittal of the record to the institution shall require formal vote of the Committee.

4. Where a perceived deficiency to the record is based upon an applicant's willful failure to supply all information requested by the institution or knowing falsification of the information supplied, the applicant may be subject to institutional disciplinary action, but the record itself shall be treated as in other appeals in which the scope of the institutional determination is reviewed.

D. Consideration of Appeals by the State Residence Committee.

1. No appellate case will be considered by the State Residence Committee at a scheduled meeting unless the record on appeal was received by UNC General Administration at least thirty (30) days prior to the scheduled meeting date and, in turn, was received by the membership of the Committee at least fifteen (15) days prior to the scheduled meeting date; provided, that by majority vote such time restrictions may be waived.

2. All appeals shall be considered and resolved on the basis of the written record on appeal and no appearances shall be permitted by the petitioner, either personally or through a representative, or by the affected institution. No member of the State Residence Committee who is appointed from an institution which is a party to an appeal being considered by the Committee shall participate in the consideration or disposition of such case.

3. An appeal may be resolved on its merits by action of the Committee either entertaining the appeal on any of the grounds set forth above, and then determining the appropriate disposition in light of those grounds, or resolving not to entertain the appeal for its failure to present a substantial question (with respect to those grounds). Disposition of an appeal through either action shall be initiated through appropriate motion by a Committee member and resolved by majority vote.

4. Decisions of the State Residence Committee shall be forwarded in writing to the petitioner and the affected institution within ten (10) days of the date of decision. Because the SRC was established by Section Policy 900.2 of the UNC Policy Manual, N.C.G.S. 150B-1(f) grants to the University of North Carolina and its constituent or affiliated boards or agencies and institutions an express exemption from the North Carolina Administrative Procedure Act (except for judicial review), and hence such entities are not required to give reasons for their decisions.<sup>1</sup> Accordingly, the SRC shall not state reasons for its decisions.

E. Change of Circumstance in a Case Pending on Appeal. When a change of circumstances in a case while the case is still pending on appeal before the Committee is brought to the attention of the chair, the chair or delegated staff may inquire of the institution or other parties about such change and assess its materiality. If the change in circumstances appears capable of materially altering the outcome of the case, the chair or delegate may return the case for institutional reconsideration in light of the changed circumstances. Return in such a situation shall always be a discretionary action, however, and the chair may instead present the case to the Committee for its judgment in the matter. If the case is so brought forward, the Committee shall review the materiality of the change in circumstances before otherwise considering the petition. If the Committee finds the change in circumstances to be material, it may remand the case, without further deliberation, for reconsideration at the institutional level.

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<sup>1</sup> *Accord, Wilson v. SRC*, 92 N.C. App. 355 (1988); *Norman v. Cameron*, 127 N.C. App. 44 (1997).

## V. OTHER FUNCTIONS

A. **Advisory Opinions.** The State Residence Committee will rule on and decide only actual appellate cases which are properly docketed with it and with respect to which it chooses to exercise jurisdiction consistent with the prescribed bases of appeals. The Committee will not offer advisory opinions with respect to particular cases being considered at the institutional level and which could eventuate in an appeal from the institutional disposition to the State Residence Committee. However, in response to institutional requests, the Committee will, at its option, offer interpretive rulings with respect to the meaning of various *Manual* provisions and the requirements of various pertinent legal principles when such questions are framed in general terms designed to explicate general problem areas being encountered by an interested institution or institutions in connection with administration of applicable statutory and *Manual* requirements.

B. **Informational Function.** A summary of interpretive rulings, decisions, and aspects of appellate activities having general value for the higher education community may be distributed by the Committee from time to time as the Committee deems appropriate to any interested party or institution. The purpose shall be to ensure common understanding by all interested parties of evolving principles and practices in the interest of appropriately uniform institutional disposition of questions encountered in residency determination.

### C. **General Review of Policies and Procedures.**

1. The State Residence Committee shall maintain continuing oversight with respect to the administrative practices employed by the institutions in the discharge of their statutory and *Manual* responsibilities and shall assess the adequacy of existing statutory *Manual* provisions. Any changes in policy or practice that would require action by the Board of Governors shall be the subject of recommendations from the State Residence Committee.

2. In order to assist the State Residence Committee in performing continuing oversight of administrative practices of the residence classification process, each institution shall maintain on file, and make available upon request, a copy of current procedures used to classify students by residence for tuition purposes and to hear appeals from initial classifications at the campus level.

3. The State Residence Committee, by majority vote, may update the *Manual* as needed in order to comply with new and applicable state and federal laws, regulations, and case law.