

BOARD OF REGENTS

BRIEFING PAPER

Handbook Revision: Domestic Partners in Residency Determinations

BACKGROUND & POLICY CONTEXT OF ISSUE:

Senate Bill 283 (Chapter 39 Statutes of Nevada 2009) enacted during the 2009 Session of the Nevada State Legislature, establishes a domestic partnership as a new type of civil contract recognized in the State of Nevada. Under the provisions of Senate Bill 283, with certain exceptions, domestic partners have the same rights, protections, benefits, responsibilities, obligations and duties as do parties to any other civil contract created pursuant to state law. Pursuant to the bill, to be recognized as such, domestic partners must register with the Office of the Nevada Secretary of State. The provisions of the bill are effective as of October 1, 2009.

Current Board policy governs the circumstances under which a student may be classified as a resident or non-resident for tuition purposes. Those provisions address a variety of situations that may be a result of the status of the student's spouse. For example, if a student's spouse has relocated to Nevada for the primary purposes of permanent full-time employment the student shall be considered a resident.

Staff recommends aligning the provisions governing residency determinations with the provisions governing domestic partners as enacted under Senate Bill 283. Therefore, registered domestic partners will be treated in the same manner as spouses in residency determinations.

SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

Amend Title 4, Chapter 15, Section 2 to define spouse to include individuals recognized by the

COMPLIANCE WITH BOARD POLICY:

Consistent With Current Board Policy: Title # _____ Chapter # _____ Section # _____

Amends Current Board Policy: Title 4, Chapter 15, Section 2

Amends Current Procedures & Guidelines Manual: Chapter # _____ Section # _____

Other: _____

Fiscal Impact: Yes No

Explain Recognizing registered domestic partnerships for the purposes of residency classifications may result in the classification of resident students that would have otherwise been deemed non-residents for tuition purposes; and therefore, resulting in the assessment of fewer resident tuition dollars the number of which cannot be estimated at this time.

POLICY PROPOSAL
TITLE 4, CHAPTER 15, SECTIONS 2
Residency and Tuition Charges

Additions appear in boldface italic, deletions are ~~stricken~~ and bracketed]

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.
2. "Armed Forces of the United States" means the Army, the Navy, the Air Force, 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.
3. "Clear and convincing evidence" means evidence that is clear in ~~the fact~~ 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. "Continuously enrolled" means enrollment within a normal academic year for which continuous enrollment is claimed. A person need not attend summer sessions or other ~~semester~~ sessions in order to be continuously enrolled.
5. "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 School of Medicine it means the date that a notice of admittance is sent to a ~~student~~ ~~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 Nevada System of Higher Education 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. "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 ~~(26 U.S.C. § 152)~~ by another person for the most recent tax year.
7. "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. "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 ~~(26 U.S.C. § 152)~~ by another person, except his or her spouse, for the ~~most~~ ~~tax~~ year.
9. "Most recent tax year" means the income tax return submitted for the prior income year.
10. "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.
11. "Nonresident" means a person who is not a resident.

12. "Objective evidence" means evidence that is verifiable by means other than a person's statements.
13. "Relocated," means evidence of permanent, full-time employment or establishment of a business in Nevada prior to the date of matriculation.
14. "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 at the location with objective evidence of an intent to remain at that location for other than a temporary purpose.
15. "Resident" means a person who has established a bona fide residence in the State of Nevada 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

Senate Bill No. 283—Senators Parks; and Coffin

CHAPTER.....

AN ACT relating to domestic relations; providing for the registration and dissolution of domestic partnerships in the State of Nevada; setting forth the rights and responsibilities attendant to such partnerships; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill establishes a domestic partnership as a new type of civil contract recognized in the State of Nevada. Under the provisions of this bill, with certain exceptions, domestic partners have the same rights, protections, benefits, responsibilities, obligations and duties as parties to any other civil contract created pursuant to title 11 of NRS. This bill also clarifies that a domestic partnership is not a marriage for the purposes of Section 21 of Article 1 of the Nevada Constitution.

Section 8 of this bill sets forth that no public or private employer in this State is

(a) File with the Office of the Secretary of State, on a form prescribed by the Secretary of State, a signed and notarized statement declaring that both persons:

(1) Have chosen to share one another's lives in an intimate and committed relationship of mutual caring; and

(2) Desire of their own free will to enter into a domestic partnership; and

(b) Pay to the Office of the Secretary of State a reasonable filing fee established by the Secretary of State, which filing fee must not exceed the total of an amount set by the Secretary of State to estimate:

(1) The cost incurred by the Secretary of State to issue the Certificate described in subsection 3; and

(2) Any other associated administrative costs incurred by the Secretary of State.

The Office of the Secretary of State shall account for the fees received pursuant to paragraph (b) separately, and use those fees, and any interest and income earned on those fees, solely to pay for expenses related to administering the registration of domestic partnerships pursuant to this chapter, including, without limitation, the cost of materials and technology necessary to process and record the filing.

2. To be eligible to register pursuant to subsection 1, two persons desiring to enter into a domestic partnership must furnish proof satisfactory to the Office of the Secretary of State that:

(a) Both persons have a common residence;

(b) Except as otherwise provided in section 10 of this act, neither person is married or a member of another domestic partnership;

(c) The two persons are not related by blood in a way that would prevent them from being married to each other in this State;

(d) Both persons are at least 18 years of age; and

(e) Both persons are competent to consent to the domestic partnership.

3. The Office of the Secretary of State shall issue a Certificate of Registered Domestic Partnership to persons who satisfy the requirements of this section.

4. As used in this section:

(a) "Common residence" means a residence shared by both

(1) Ownership of the residence or the right to occupy the residence is in the name of only one of the domestic partners; and

(2) One or both of the domestic partners owns or occupies an additional residence.

(b) "Residence" means any house, room, apartment, tenement or other building, vehicle, vehicle trailer, semitrailer, house trailer or boat designed or intended for occupancy as a residence.

Sec. 7. 1. Except as otherwise provided in section 8 of this act:

(a) Domestic partners have the same rights, protections and benefits, and are subject to the same responsibilities, obligations and duties under law, whether derived from statutes, administrative regulations, court rules, government policies, common law or any other provisions or sources of law, as are granted to and imposed upon spouses.

(b) Former domestic partners have the same rights, protections and benefits, and are subject to the same responsibilities, obligations and duties under law, whether derived from statutes, administrative regulations, court rules, government policies, common law or any other provisions or sources of law, as are granted to and imposed upon former spouses.

(c) A surviving domestic partner, following the death of the other partner, has the same rights, protections and benefits, and is subject to the same responsibilities, obligations and duties under law, whether derived from statutes, administrative regulations, court rules, government policies, common law or any other provisions or sources of law, as are granted to and imposed upon a widow or a widower.

(d) The rights and obligations of domestic partners with respect to a child of either of them are the same as those of spouses. The rights and obligations of former or surviving domestic partners with respect to a child of either of them are the same as those of former or surviving spouses.

(e) To the extent that provisions of Nevada law adopt, refer to or rely upon provisions of federal law in a way that otherwise would cause domestic partners to be treated differently from spouses, domestic partners must be treated by Nevada law as if federal law recognized a domestic partnership in the same manner as Nevada law.

(f) Domestic partners have the same right to nondiscriminatory treatment as that provided to spouses.

(g) A public agency in this State shall not discriminate against any person or couple on the basis or ground that the person is a

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domestic partner rather than a spouse or that the couple are domestic partners rather than spouses.

(h) The provisions of this chapter do not preclude a public agency from exercising its regulatory authority to carry out laws providing rights to, or imposing responsibilities upon, domestic partners.

(i) Where necessary to protect the rights of domestic partners pursuant to this chapter, gender-specific terms referring to spouses must be construed to include domestic partners.

(j) For the purposes of the statutes, administrative regulations, court rules, government policies, common law and any other provision or source of law governing the rights, protections and benefits, and the responsibilities, obligations and duties of domestic partners in this State, as effectuated by the provisions of this chapter, with respect to:

(1) Community property;

(2) Mutual responsibility for debts to third parties;

(3) The right in particular circumstances of either partner to seek financial support from the other following the dissolution of the partnership; and

(a) Filing with the Office of the Secretary of State, on a form prescribed by the Secretary of State, a signed and notarized statement declaring that both persons have chosen of their own

