



NORTH CAROLINA COMMUNITY COLLEGE SYSTEM

Thomas A. Stith III

President

NUMBERED MEMO CC21-025

TO: Community College Residency Liaisons
Community College VP/Deans of Instruction
Community College VP/Deans of Student Development
Community College Admissions Officers
Community College Registrars

FROM: Tawanda Foster Artis, *General Counsel*

SUBJECT: Residency Determinations Under G.S. 115D-39(b)

DATE: May 17, 2021

This numbered memo is issued to provide additional guidance on the residency determinations under G.S. 115D-39(b).

G.S. 115D-39(b) states:

“(b) In addition, any person lawfully admitted to the United States who satisfied the qualifications for assignment to a public school set out under G.S. 115C-366 and graduated from the public school to which the student was assigned shall also be eligible for the State resident community college tuition rate. This subsection does not make a person a resident of North Carolina for any other purpose.”

There are two requirements in this statute to receive in-state tuition under this exception: 1) the person must be “lawfully admitted to the United States”, and 2) must have satisfied the qualifications for assignment to a public school and have graduated from that assigned public school. The second requirement is easy to prove with documentation and is not the focus of this numbered memo. The first requirement requires a closer examination of the phrase “lawfully admitted to the United States.”

Federal law at 8 USC 1101(a)(13)(A) defines the term “admission” with respect to “lawful admission.” The law states “[t]he terms “admission” and “admitted” mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” Thus “lawfully admitted to the United States” is determined by whether the person was authorized to enter the United States after inspection by an immigration officer. If a person can show they were lawfully admitted to the United States by

an immigration officer and they graduated from an assigned North Carolina high school, then they qualify for in-state tuition in accordance with the exception in G.S. 115D-39(b).

Please note the terms “lawfully admitted to the United States” are different and distinct from the terms or categories of persons who are “lawfully present in the United States.” For example, persons who are “dreamers” or part of the Deferred Action for Childhood Arrivals (DACA) policy are lawfully present in the United States by virtue of the established immigration policy as upheld in the Courts. However, these persons were not initially lawfully admitted to the United States and therefore would not qualify for in-state tuition.

This is significant because the State Board Code focuses on lawful presence and not lawful admission for admission purposes.

Section 1D SBCCC 400.2 Admission to Colleges reads:

“(b) For the purposes of this Section, “undocumented immigrant” means any immigrant who is not lawfully present in the United States. Community colleges shall admit undocumented immigrants under the following conditions:

- (1) Community colleges shall admit an undocumented immigrant only if he or she attended and graduated from a United States public high school, private high school, or home school that operates in compliance with State or local law;
- (2) When determining who is an undocumented immigrant, community colleges shall use federal immigration classifications;
- (3) Undocumented immigrants admitted under Subparagraph (b)(1) of this Rule shall comply with all federal and state laws concerning financial aid;
- (4) An undocumented immigrant admitted under Subparagraph (b)(1) of this Rule shall not be considered a North Carolina resident for tuition purposes. Colleges shall charge all undocumented immigrants admitted under Subparagraph (b)(1) of this Rule out-of-state tuition whether or not the undocumented immigrant resides in North Carolina;
- (5) When considering whether to admit an undocumented immigrant into a specific program of study, community colleges shall take into account that federal law prohibits states from granting professional licenses to undocumented immigrants; and
- (6) Students lawfully present in the United States shall have priority over any undocumented immigrant in any class or program of study when capacity limitations exist.”

In making residency determinations involving the exception in G.S. 115D-39(b), please remember that federal and state law controls this issue and rules cannot override the federal or state laws.