Chapter 9

Comparable Services & Benefits

9.1 Authority: 34 CFR 361.53

9.2 Policy

Before USOR provides **any** paid VR service to an eligible individual or to members of that individual's family, USOR **must** determine whether comparable services and benefits are available under any other program and whether they are available to the individual. If comparable services or benefits exist under any other program and are available to the eligible individual at the time needed to achieve the rehabilitation objectives in the individual's IPE, USOR shall use those comparable services or benefits to meet in whole or in part, the cost of vocational rehabilitation services. If comparable services or benefits exist under any other program, but are not available to the individual at the time needed to satisfy the rehabilitation objectives in the individual's IPE, the State unit shall provide vocational rehabilitation services until those comparable services and benefits become available.

9.3 Exceptions

A. Services: The requirements of 9.2 do not apply to the following services:

1. Assessment for determining eligibility and vocational rehabilitation needs in an applicant status. Typically those services purchased during the preliminary assessment used to establish the presence of a physical or mental disability.
2. VR counseling, guidance, and referral.
3. Job Placement.
4. Rehabilitation Technology Services. While the Act states that a determination of available comparable services and benefits is **not required** prior to the provision of Rehabilitation Technology services, it **doesn't prohibit** the utilization of those benefits that are available.

   NOTE: Rehabilitation Technology including assistive devices and services are still subject to the financial needs test. (See Chapter 8 for financial need exempt services) Utilizing available comparable services and benefits **must not** delay provision of services and the services cannot be made contingent on seeking or using those services and benefits.
5. Post Employment Services: consisting of the services listed in 9.3(1) through 9.3(2) above.

B. Extreme Medical Risk: The requirement of 9.2 above does **not** apply if the determination of the availability of comparable services and benefits under any other program would delay the provision of VR services to any individual with a disability who is at **extreme medical risk**. A determination of extreme medical risk shall be based upon medical evidence provided by an appropriate licensed medical professional. [34 CFR 361.53(a)(3)] Extreme medical risk means a risk of substantially increasing functional impairment or risk of death if medical services are not provided expeditiously.

NOTE: Although these medical services are exempt from determining comparable services and benefits, they are still subject to other pertinent VR policies as follows:

1. Must be on the IPE. Exceptions for enabling the client to engage in a meaningful Comprehensive Assessment of Rehabilitation Needs can be found in **CSM 2012-01**.
2. Must not be retroactive.
3. Must follow levels of authority (See Chapter 12).

C. Loss of Immediate Job Placement: The requirement in 9.2 also does not apply if an immediate job placement would be lost due to a delay in the provision of such comparable benefits. [34 CFR 361.53(a)(2)]

D. Interruption or Delay of Progress: The Amendments to the Rehabilitation Act include a third condition where the search for comparable services and benefits is not required. If the determination of the availability of comparable services and benefits would interrupt or delay the progress of an individual toward achieving the employment outcome identified in the IPE, then the search is not required.

Therefore, to the greatest extent feasible, the VR Counselor and client should determine the availability of comparable services and benefits during plan development thus reducing the probability of possible interruption or delays later in the rehabilitation process.

9.4 Assurance

Comparable services and benefits **must** be utilized to provide in whole or part, vocational rehabilitation services, subject to the exceptions listed in 9.3, A, B, C and D above.

9.5 Financial Need & Comparable Services & Benefits

A "Comparable Benefit" is **not** the same as the "determination of financial need". In determination of financial need, the objective of a state policy is to set the conditions for equitably determining the degree, if any, an individual is expected to participate in the cost of his/her rehabilitation. In the area of comparable benefits, the objective is for the state VR agency to give **full** consideration to alternative funding sources prior to spending VR funds to purchase specific client services. (RSA-PI-80-21) Comparable benefits may be identified by VR for clients who do not meet the financial need criteria for VR services.

9.6 PELL Grant

No training or training services in institutions of higher education (universities, colleges, community/junior colleges, vocational schools, technical institutes, or other grant eligible institutions) may be paid for unless **maximum** efforts have been made to secure grant assistance in whole or in part from other sources.

A. Individuals Subject to Policy:

All eligible clients requesting financial assistance from the Utah State Office of Rehabilitation (USOR) to attend any institution of higher education where the PELL is available. **These clients must apply for the PELL Grant prior to authorization of services by USOR.**

EXCEPTION: In instances where the individual has procured grant assistance other than the PELL e.g. WIA, TANF, non-merit scholarships, etc. or self-pay, where the costs of attending are met in whole or in part, and the costs to USOR have been substantially reduced by these comparable services and benefits, applying for the PELL grant would not be mandatory.

1. In all instances where USOR will be funding, in whole or in part, the cost of attendance, there must be third party verification of the individual applying for the PELL grant or other comparable services or benefit. Verification must be in the form of one of the following:

    a. Computer verification obtained through website of Financial Aid Office or other written confirmation from Financial Aid Office.

    b. Verification of PELL application, including client's index eligibility number obtained by mail or from website of federal financial aid agency.

    c. Copy of award letter to client.

2. If the client was refused a PELL Grant because of an earlier default on a student loan, the Agency **may** be prohibited from paying that individual's college costs. (RSA-PAC-88-05) In such cases, the VR Counselor must establish that the client has made a "responsible repayment effort" (RSA-PAC-88-05, see Appendix 9-A) in order to establish that the client has made maximum effort to obtain comparable benefits before proceeding with VR assistance.

3. If a client **has applied** for aid, but because of time constraints (6-8 weeks processing time), will not have the PELL available to him/her, one quarter/semester may be authorized. This exception should be granted only once during the life of the case, and the client should be educated about planning and timelines for future applications. If the processing time exceeds the initial quarter/semester, an additional quarter/semester may be approved by the District Director.

4. Once a client has been verified as **not** eligible for the PELL, subsequent annual applications for the grant will not be required unless there are changes in the client's circumstances that would indicate the need to re-apply. The documentation required for not re-applying would be an entry with the Annual Review verifying the circumstances causing the initial denial have not changed.

B. Use of PELL Monies (Reference - USC Title 20, Section 1087II)

1. The PELL grant program has defined allowable expenditure of grant monies to be those expenses which off-set the **cost of attendance.** Cost of attendance, for those attending on at least a half-time basis, has been defined as:

    a. the tuition and uniform compulsory fees normally assessed a student carrying the same academic workload, including the rental or purchase of equipment, materials, or supplies required of all students in the same course of study;

    b. an allowance for books, supplies, transportation, and miscellaneous expenses, including documented rental or purchase of a personal computer;

    c. an allowance for room and board costs, determined by the institution, which varies according to a student's personal circumstances (living at home, in student housing or other),

    d. an allowance for child care, based on the estimated actual cost for such care, which shall not exceed the reasonable cost in the community where the student resides

e. an allowance for those expenses related to the student's disability, including special services, personal assistance, equipment, and supplies that are not provided by other assisting agencies

2. For those attending on a less than half time basis, cost of attendance means an allowance for only books, supplies, and transportation (as determined by the institution) and dependent care expenses.

3. Each institution sets an amount each year that it considers reasonable to cover the costs of attendance described above. These total costs are generally assumed to be higher than the maximum PELL award amount. Regardless of actual cost, for the purposes of client record documentation, the VR Counselor only documents those costs of attendance for which the PELL award will be used up to the actual amount of the PELL award.

4. Statement of Purpose

Before receiving any funds under any Title IV, HEA program, a student shall file a Statement of Educational Purpose for each award year with the institution. In this statement the student shall -

"*Certify that he or she will use any funds received under these programs solely for educational expenses connected with attendance at the institution at which the student is enrolled or accepted for enrollment*." [34 CFR 668.32(h)]

a. This means that PELL Grant regulations stipulate the client can only spend PELL Grant monies on those expenses listed in 9.6.B1 at a level not to exceed yearly amounts for each category as determined to be appropriate by each institution. If a VR Counselor questions unusually high expenses or has concerns about the use of a student's PELL, these estimated, approved amounts can be obtained from an institution by asking for the current "Student Budget". Regardless of the maximum amount listed in the "Student Budget" however the VR Counselor should always document the client's **actual** expenses.

b. Although VR Counselors technically have no authority over the expenditure of PELL monies, they do control what VR will and will not pay for. Some clients may be receiving a comparable benefit such as Social Security income or other public assistance or benefit as a source of support. Clients who have been using such benefits to pay for living expenses prior to attending school would generally be expected to continue using those benefits for living expenses while in school rather than automatically using PELL monies. In cases where attendance at school results in additional expenses for the client, PELL monies can be used for those expenses. For example, attending training might require that they relocate to be closer to the institution, or might create an increase in transportation or child care costs. If a client's public benefits (such as Social Security) are terminated while the client is in school, and the client does not have other means of support for living expenses, VR Counselors should then evaluate whether it would be appropriate for the client to begin using PELL monies for living expenses.

c. The VR Counselor needs to carefully evaluate the client's total financial situation as well as the PELL Grant regulations (noted above in 9.5C1), when determining the appropriate utilization of both PELL and VR funding for training programs. If in the

VR Counselor's professional judgment, additional VR funds (beyond the amount awarded in the PELL) are necessary to support the VR program due to severe financial hardship of the client, documentation should be in the form of an R-11 entry. In making this decision, the VR Counselor needs to determine whether to support the client through short-term maintenance (for only additional costs incurred because of participating in VR) or to authorize for school related expenses (books, supplies, tuition, fees, etc.) and allow the client to utilize some of the PELL funding towards other training related expenses as per Section 9.6.B1. Justification for this decision should also be included in the R-11 entry. VR Counselors need to make sure that those expenses which the client says will be covered by the PELL are not also listed as a deduction for the client when determining financial need (unless PELL is listed as income when determining need), and that such expenses are not eligible to be paid by any other agency. VR Counselors need to document the client's actual expenses and expected use of the PELL, and then follow up to determine that funds were expended as expected.

4. All PELL Grant monies shall be encumbered to offset the client's cost of attendance before any vocational rehabilitation funding will be authorized for that purpose.

9.7 Comparable Benefits Procedures for Restoration Services for Clients not under Extreme Medical Risk

VR Counselors shall address comparable services and benefits which may be available to the client to off-set the costs of restorative services. Examples of these comparable benefits include, but are not limited to:

A. Individual or Group Health Insurance.

B. Health Maintenance Organizations.

C. Medicaid.

D. Medicare.

E. Workers Compensation Insurance.

F. Community Mental Health.

G. Liability or Accident Insurance, automobile or other.

H. Veteran's Administration.

I. Other State Health Programs.

9.8 Other Comparable Services and Benefits

The availability of other comparable services and benefits will depend upon the circumstances surrounding each client. Examples of other comparable services and benefits include but are not necessarily limited to:

A. Training Services.

1. Veteran's benefits.

2. Scholarships, not based on merit.

3. Manpower programs such as WIA and JOBS.

4. Private rehabilitation programs funded through employee benefits or insurance.
5. Insurance/lawsuit settlements.

B. Subsistence and Disability Benefits.

1. General Assistance (GA).
2. Temporary Aid to Needy Families (TANF).
3. Worker's Compensation
4. Survivor's Insurance (OASDI).
5. Social Security Disability Insurance (SSDI).
6. Supplemental Security Income (SSI).
7. Insurance/lawsuit settlements.

9.9 Authorization Procedure

When comparable services do not meet in full the fee accepted by USOR they may be supplemented up to the acceptable fee limit by USOR authorization. The USOR authorization will show the amount being paid through insurance or other comparable services as well as the amount to be paid by USOR. The total of the comparable benefits and the USOR amount should not exceed the amount that USOR would have paid if no comparable service were available. This avoids the problem for example of a therapist claiming their fee is $100.00 per session, when our fee schedule allows $85.00 and insurance will only pay $50.00. We cannot authorize $50.00 so the therapist gets their $100.00, we can only authorize an additional $35.00 so our fee schedule is met. This procedure will also be utilized with authorizations to all institutions of Higher education that are PELL Grant eligible.

9.10 Documentation

The VR Counselor must document the extent comparable services and benefits were used in each section of the Individualized Plan for Employment (IPE) in IRIS. If additional space is needed, refer to an R-ll entry.

9.11 Reconsideration of Available Comparable Services and Benefits

A. Available comparable services and benefits will be re-evaluated at least annually; PLUS

B. Whenever circumstance regarding comparable benefits change significantly; AND

C. Whenever significant change occurs and an amendment to the IPE is necessary because a different or additional paid service is involved.

APPENDIX 9A

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND
REHABILITATION SERVICES
REHABILITATION SERVICES ADMINISTRATION
WASHINGTON, D.C. 20202

PROGRAM ASSISTANCE CIRCULAR
RSA-PAC-88 -05

T0: STATE REHABILITATION AGENCIES (GENERAL)
STATE REHABILITATION AGENCIES (BLIND)
RSA REGIONAL COMMISSIONERS
RSA SENIOR STAFF
CLIENT ASSISTANCE PROGRAM STAFF

SUBJECT: Provision of Financial Assistance for Post-Secondary Education by State Vocational Rehabilitation Agencies-Amended RSA-PAC-88-01

STATUTORY AND REGULATORY CITATIONS:

(1) Section 101(a)(8) under Title I of the Rehabilitation Act of 1973, as amended.

(2) Section 103(a)(3) under Title I of the Rehabilitation Act of 1973, as amended.

(3) 20 U.S.C. Section 1091(a)(3), Title IV of the Higher Education Act, as amended.

(4) 34 CFR 674.2 of the Education Department General Administrative Regulations (EDGAR).

(5) 34 CFR 682.201(e) of the Education Department General Administrative Regulations (EDGAR).

BACKGROUND

This provides guidance to the State VR agencies for the provision of financial assistance for post-secondary education by VR agencies to clients who have been refused Pell Grants because these individuals defaulted on student loans.

SUPPORTIVE GUIDELINES:

Section 103(a)(3) of the Rehabilitation Act of 1913, as amended, authorizes the use of VR funds to pay for

> "vocational and other training services … Provided, that no training services in institutions of higher education shall be paid for with funds under this tit1e unless maximum efforts have been made to secure grant assistance, in whole or in part, from other sources to pay for such training."

In addition, Section 101(a)(8) provides that each State plan shall:

> "provide, at a minimum, for the provision of the vocational rehabilitation services specified in clauses (1) through (3) and clause (12) of section 103(a), and for the provision of such other services as are specified under such section after a determination that comparable services and benefits are not available under any other program, except that such determination shall not be required where it would delay the provision of such services to any individual at an extreme medical risk."

This language, contained in the Rehabilitation Act Amendments of 1986 (Public Law 99-506), amends the "similar benefits" provision formerly contained in Section 101(a)(8) of the Act. It is clear from these provisions that Congress intended that VR clients avail themselves of the numerous grants and student assistance programs which are available to pay for higher education before VR program funds are used to pay these costs. The language "maximum efforts," although not defined in the Act, indicates that a VR client should make every attempt to secure assistance for post-secondary education from these other sources, and that the use of limited VR funds to pay these costs should be a last resort.

Under Title IV of the Higher Education Act, in order to receive a grant, loan, or work assistance, a student must not owe a refund on grants previously received or be in default on any student loan (20 U.S.C. Section 1091(a)(3)). Therefore, a client who has defaulted on a student loan should proceed to clear his default status.

For the Perkins Loan program, a client is no longer in default if:

(1) all past-due amounts have been repaid, cancelled, or deferred;

(2) the client's loan has been discharged in bankruptcy; or

(3) the client has entered into a new repayment agreement for the loan (34 CFR 674.2)

For the Guaranteed Student Loan program, a client may no longer be in default status if:

(1) the holder of the loan certifies for the purpose of reinstating Title IV eligibility that the borrower has made satisfactory arrangements to repay the defaulted loan; or

(2) the loan is discharged in bankruptcy. (34 CFR 682.201(e))

In view of the flexibility in loan repayments, the fact that these VR clients have remained in default status may indicate that they have not attempted to make arrangements to repay their student loans, which would make them eligible for additional student financial aid under Title IV of the Higher Education Act. Consequently, it would appear that these individuals may not have made the maximum efforts required by Section 103(a)(3) of the Act to secure grant assistance from non-VR sources to pay for their training.

Under Section 101(a)(8), the determination of the availability of comparable services and benefits may take into consideration whether such financial assistance was "unavailable" due to actions within the individual's control. For example, if an individual simply decided not to repay the loan although financially able to do so. it would be appropriate within the purpose of Section 101(a)(8), to treat the grant assistance for which the individual is now ineligible a "available" within the meaning of that section due to the earlier choice made by the individual. Thus, it could be concluded that maximum efforts had not been made to secure grant assistance, and the VR program would be prohibited from paying the individual's college costs under Section 103(a)(3).

We recognize that true hardship cases may arise where an individual has limited or no financial resources available and cannot work out a satisfactory repayment agreement with the lender. Under such circumstances, where a responsible repayment effort in light of all available resources bas been made, it can be concluded that maximum efforts have been made to secure grant assistance and that comparable benefits and services are not available. In such an instance, VR assistance may be appropriate. However, such a determination could only be made by a VR counselor on an individual basis after carefully examining all of the circumstances involving an individual's default status and financial situation and must be consistent with the intent that VR resources be used as a last resort to pay for training in institutions of higher education.

(original signed)
Commissioner of Rehabilitation Services

SUMMER SCHOOL POLICY

Authority: 34 CFR 361.50 and 34 CFR 668.2(a)

Federal regulations require USOR to establish and maintain written policy for each vocational rehabilitation service available through the agency. This policy must contain the conditions, criteria and procedures under which each service is provided. Regulations also state:

> "that no training or training services in institutions of higher education (universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this part unless maximum efforts have been made by the State unit to secure grant assistance in whole or in part from other sources;"

The PELL grant procedures calculate awards according to an academic year. PELL grant regulations define an academic year as:

1. A period of time in which a full-time student is expected to complete the equivalent of at least two semesters, two trimesters or three quarter at an institution which measures academic progress in credit hours and uses a semester, trimester or quarter system;
2. A period of time in which a full-time student is expected to complete at least 24 semester hours or 36 quarter hours at an institution which measures academic progress in credit hours but does not use a semester, trimester or quarter system; or
3. At least 900 clock hours at an institution which measures academic progress in clock hours.

It is therefore reasonable to expect USOR to adopt a policy for training services in institutions of higher education similar to those governing the grants VR is mandated to seek and utilize. Statistics show that although most of these institutions of higher education operate year round, the vast majority of students attend during the fall, winter, and spring quarters or fall and spring semesters. This fact, coupled with USOR's annual budgeting cycle, would make it reasonable to limit most training in institutions of higher education to those same time periods.

General Policy Statement:

USOR sponsorship of clients in college or university programs shall be limited to fall, winter, and spring quarters or fall and spring semesters.

Exceptions:

1. Sequential programs such as nursing, which require summer-quarter or year-round attendance.
2. Open entry, open exit programs within a college or university that do not operate on quarters, terms, or semesters.
3. Other special circumstances; examples may include but are not limited to:
    a. Required class is only taught during summer quarter/semester
    b. Client would graduate after summer quarter/semester
    c. Summer school is agreed to, budgeted for, and written into the IPE
    d. As a substitute or accommodation for another quarter/semester during the school year

Appendix 9-C

Determination of Resident Status

There have been prior questions related to DRS VR clients who are attending institutions of higher education programs in Utah, who have recently moved into the state. USOR DRS has no residency requirement to apply and receive services, other than a Utah address and they are available to receive services. On the other hand most higher education training institutions require a period of time before a student can be given Utah student residency status. Higher Education's determination of residency status, (see below), clarifies the definition of who can be considered a resident of the state and receive those student residency considerations by the schools.. This information should help those eligible clients who have an agreed upon IPE, who have recently moved into the state establish their residency status.

R512, Determination of Resident Status

R512-1. Purpose

To define "resident" student for purposes of tuition in the Utah System of Higher Education.

R512-2. References

2.1. Utah Code Ann. §53B-8-102 (Definition of Resident Student)
2.2. Utah Code Ann. §23-13-2 (Definition of Domicile) **2.3.** Utah Code Ann. §31A-29-103 (Definition of Domicile)
2.4. Utah Code Ann. §41-1a-202 (Definition of Domicile)
2.5. Policy and Procedure R510, Tuition and Fee Policy

R512-3. Definitions

3.1. Domicile - For purposes of this policy, the term "domicile" shall be defined consistent with general Utah law defining domicile, and shall mean the place:
3.1.1. where an individual has a fixed permanent home and principal establishment;
3.1.2. to which the individual if absent, intends to return; and
3.1.3. in which the individual, and the individual's family, voluntarily reside, not for a special or temporary purpose, but with the intention of making a permanent home.
3.2. Resident Student - An individual who:
3.2.1. can prove by substantial evidence that he or she has established, and maintained for the requisite period of time set forth in this policy, domicile in Utah; and/or
3.2.2. meets the criteria defining "resident student" set forth in this policy.

R512-4. Criteria for Resident Student Status

In order to qualify for resident student status for tuition purposes a person must meet one or more of the following criteria:

4.1. Establishing Utah Domicile and Maintaining Continuous Utah Residency for

Three (3) Years - A person who has come to Utah and established residency for the purpose of attending an institution of higher education may establish resident student status by, prior to registration as a resident student: (A) demonstrating by objective evidence, including, but not limited to, Utah voter registration, Utah driver's license, employment in Utah, payment of Utah resident income taxes, and Utah banking connections, the establishment of a domicile in Utah and that the student does not maintain a residence elsewhere; and (B) maintaining continuous Utah residency for three (3) years, regardless of the number of credit hours earned.

4.1.1. Creating Utah domicile - To establish a Utah domicile, the person must (A) abandon the old domicile; and (B) be able to prove by substantial evidence that a new domicile has been established in Utah.

4.1.2. "Continuous" residency - For purposes of this policy, proof of maintenance of Utah domicile is sufficient to prove "continuous residency." Having established domicile in Utah, an individual will not jeopardize his or her status as a "continuous" resident solely by absence from the state. For example: (a) A student who was a resident of Utah for tuition purposes may be absent from the state for purposes such as temporary employment, education, or religious, charitable, or military service and continue to be considered a resident for tuition purposes provided he or she has not taken action to establish domicile elsewhere during his or her absence from Utah. (b) A student with long term ties to Utah, who has graduated from a Utah high school, if the absence from the state is for a period of less than 48 months, may be considered a resident for tuition purposes if evidence can be presented showing that the student has reestablished a Utah domicile, and has not taken action to establish domicile elsewhere during his or her absence from the state of Utah for the purpose of attending an education institution as a resident of any other state. (c) An unmarried person 23 years of age or younger who moves to Utah, has a Utah resident parent, and demonstrates objective evidence of domiciliary intent, is immediately eligible to register as a resident student.

4.1.3. Activated Members of Utah National Guard - A member of the Utah National Guard who performs active duty service shall be considered to maintain continuous Utah residency under this section.

4.2. Completion of Sixty (60) Credit Hours - A person who has come to Utah and established residency for the purpose of attending an institution of higher education, may obtain resident student status by, prior to registration as a resident student, establishing domicile in Utah, and maintaining continuous Utah residency (domicile) while completing sixty (60) semester credit hours at a regionally accredited Utah higher education institution or an equivalent number of applicable contact hours at the Utah College of Applied Technology.

4.2.1. Credit hours for matriculated students formally admitted to graduate programs in courses numbered 5000 and above shall be multiplied by 1.5 in calculating the 60 semester credit hours.

4.2.2. Credit hours earned while the student has tuition waived or reduced pursuant to

53B-8-101 and 53B-8-104 are included in the 60 semester credit hours.

4.3. Active Duty United States Armed Forces Personnel Stationed in Utah - Personnel of the United States Armed Forces assigned to active duty in Utah, and the immediate members of their families residing with them in Utah, are entitled to resident student status for tuition purposes during the time they are on active duty. Upon the termination of active duty status, the military personnel and their family members are governed by the standards applicable to nonmilitary persons. The time spent domiciled in Utah, as well as any credit hours earned by the student at a Utah institution during the active duty in Utah, count towards the 3-year time period, or the 60 hours, required for Utah residency for tuition purposes upon termination of active duty status in Utah.

4.4. Job Corps Students - A Job Corps student is entitled to resident student status if the student: (A) is admitted as a full-time, part-time, or summer school student in a program of study leading to a degree or certificate; and (B) submits verification that the student is a current Job Corps student. Upon the termination of Job Corps enrollment/participation, the individual is governed by the standards applicable to non-Job Corps persons. Any time spent domiciled in Utah, as well as any credit hours earned by the student at a Utah institution during Job Corps enrollment, count towards the 3-year time period, or the 60 hours, required for Utah residency for tuition purposes upon termination of Job Corp status.

4.5. Participation in Olympic Training Program - An athlete who is in residence in Utah to participate in a United States Olympic athlete training program, at a facility in Utah, approved by the governing body for the athlete's Olympic sport, shall be entitled to resident status for tuition purposes. Upon the termination of the athlete's participation in such training program, the athlete shall be subject to the same residency standards applicable to other persons under this policy. Any time spent domiciled in Utah, as well as any credit hours earned by the student at a Utah institution during the Olympic athlete training program in Utah, count towards the 3-year time period, or the 60 hours required, for Utah residency for tuition purposes upon termination of the athlete's participation in a Utah Olympic athlete training program.

4.6. Receipt of State Social Services Benefits - A person who has been determined by a Utah governmental social or rehabilitation services agency to be a Utah resident for purposes of receiving state aid to attend a System institution and demonstrates objective evidence of domiciliary intent as provided in 4.1 is immediately eligible to register as a resident student. Upon the termination of such government agency support, the person is governed by the standards applicable to other persons. Any time spent domiciled in Utah, as well as any credit hours earned by the individual at a Utah institution during the time the individual received government aid, shall count towards the 3-year time period, or the 60 hours required, for Utah residency for tuition purposes upon termination of the government aid.

4.7. Membership in American Indian Tribe - An American Indian, not otherwise

qualified as a resident, shall be entitled to resident student status if: (A) he/she is enrolled on the tribal rolls of a tribe whose reservation or trust lands lie partly or wholly within Utah or whose border is at any point contiguous with the border of Utah, or (B) he/she is a member of a federally recognized or known Utah tribe and has graduated from a high school in Utah.

4.8. Immigrant Placed in Utah as Political Refugee - An immigrant, not otherwise qualified as a resident, is immediately eligible, upon establishment of Utah domicile, to register as a resident student, if he or she is placed involuntarily in Utah as part of a United States or Utah government relocation program for foreign refugees fleeing civil war, religious or racial persecution, political oppression, or other legitimate reason. This section does not apply to refugees who are originally placed in another state and subsequently move to Utah voluntarily.

4.9. Marriage to Utah Resident - A person who marries a Utah resident eligible to be a resident student under this policy and establishes his or her domicile in Utah as demonstrated by objective evidence as provided in 4.1, 4.1.1, and 4.1.2 is immediately eligible to register as a resident student.

R512-5. Non-Resident Status

5.1. Presumption of Non-Resident Status - A person who enrolls as a postsecondary student at a Utah institution prior to living in Utah for more than 24 continuous months prior to meeting the criteria for resident student status set forth in subsections 4.1 and 4.2 of this policy is presumed to have moved to Utah for the purpose of attending an institution of higher education and will ordinarily be deemed a non-resident student for tuition purposes. It is presumed that a non-resident student continues to reside in Utah primarily for the purpose of pursuing higher education and continues to be a non-resident student so long as he or she is enrolled as a student at a Utah institution of higher education. However, the student may rebut this presumption be presenting evidence demonstrating that, under section 5.2 or 5.5 of this policy, the student moved to Utah for noneducational reasons, i.e., for a purpose unrelated to attending a Utah institution of higher education.

5.2. Rebuttal of Non-Resident Presumption for Full Time, Permanent Employment in Utah - A person who has established domicile in Utah for full-time permanent employment may rebut the presumption of a non-resident classification as provided in subsection 5.1 of this policy only by providing substantial evidence that the reason for the individual's move to Utah was, in good faith, based on an employer requested transfer to Utah, recruitment by a Utah employer, or a comparable work-related move for full-time permanent employment in Utah. All relevant evidence concerning the motivation for the move should be considered, including, but not limited to, such factors as: (a) the person's employment and educational history; (b) the dates when Utah employment was first considered, offered, and accepted; (c) when the person moved to Utah; (d) the dates when

the person applied for admission, was admitted, and was enrolled as a postsecondary student; (e) whether the person applied for admission to a USHE institution sooner than four months from the date of moving to Utah; (f) evidence that the person is an independent person (at least 24 years of age, or not listed as a dependent on someone else's tax forms); and (g) any other factors related to abandonment of a former domicile and establishment of a new domicile in Utah for purposes other than to attend an institution of higher education. As with all such applications, the burden of proof is on the applicant to rebut the presumption of non-resident status. Furthermore, if an applicant applies for admission to a USHE institution prior to the application for employment, prior to the offer of employment, prior to the commencement of employment, or within four months of moving to Utah, absent extraordinary evidence to the contrary, it shall be strongly presumed that the person came to Utah for the purpose of attending an institution of higher education, and shall be subject to the requirements of 4.1 or 4.2.

5.3. Rebuttal of Non-Resident Presumption for Spouse's or Parent's Full Time Work - A spouse or dependent child of an individual who moves to Utah for full-time permanent employment, and establishes Utah domicile on that basis, is eligible to apply for resident student status. In determining the residency status of the enrolling spouse or dependent child, the institution shall consider all relevant evidence related to the individual's intent and domicile, including but not limited to, those factors set forth in subsections 4.1 and 5.2 of this policy.

5.4. Documentation of Status - The institution, through its registrar, or designated person, is authorized to require written documents, affidavits, verifications, or other evidence deemed necessary to determine why a student is in Utah. The burden of establishing that a student is in Utah for other than educational purposes is upon the student. A student may be required to file any or all of the following:

5.4.1. A statement from the student describing employment and expected sources of support;

5.4.2. A statement from the student's employer;

5.4.3. Supporting statements from persons who might be familiar with the family situation;

5.4.4. Utah state income tax return.

5.5. Penalties for Giving Incorrect or Misleading Information - A student who gives incorrect or misleading information to evade payment of non-resident fees shall be subject to serious disciplinary action and must also pay the applicable non-resident fees for each term previously attended.

5.6. Foreign Students

5.6.1. Aliens who are present in the United States on visitor, student, or other visas which authorize only temporary presence in this country, do not have the capacity to

intend to reside in Utah for an indefinite period and therefore must be classified as nonresident.

5.6.2. Aliens who have been granted immigrant or permanent resident status in the United States shall be classified for purposes of resident status according to the same criteria applicable to citizens.

R512-6. General Provisions

6.1. Reclassification by the Institution - If a student is classified as a resident, or granted residency by a USHE institution, the USHE institution may initiate a reclassification inquiry and in fact reclassify the student, based on any facts, error, or changes in facts or status which would justify such an inquiry, even if the error was on the part of the USHE institution.

6.2. Acceptance of Another Institution's Determination - A determination to grant residency to a student at a Utah System of Higher Education (USHE) institution shall be honored at other USHE institutions, unless the student obtained residency under false pretenses, or the facts existing at the time of the granting of residency have significantly changed.

6.3. No Residency Determination for Short Term Non-Credit Training - An institution need not make a residency determination and classification for a student in a short term non-credit training class when the student is not pursuing a certificate or degree program.

R512-7. Procedures for Determining Resident Status

7.1. Application Deadline - Each institution will accept applications for resident student status, and supporting documentation, only until the end of the third (3rd) week of the semester. Any application for resident student status, or supporting documentation, received after the third (3rd) week will only be considered for the following semester.

7.2. Initial Classification - Each institution shall classify all applicants as either resident or nonresident. If there is doubt concerning resident status, the applicant shall be classified as a nonresident.

7.3. Application for Reclassification - Every student classified as a nonresident shall retain that status until he/she is officially reclassified to resident status.

7.4. Informal Discussion with Responsible Officer - If a written application for a change from nonresident to resident classification is denied, the applicant shall have the right to meet with the responsible officer for the purpose of submitting additional information and discussing the merits of his/her application.

7.5. Appeals - An applicant for resident status may appeal an adverse ruling in accordance with procedures approved by the institutional Board of Trustees. The appeal tribunal shall make an independent determination of the issues presented upon the basis

of such oral and written proofs as may be presented, and shall finally determine the status of the applicant consistent with the law and these policies.

7.6. Due Process - In order to provide due process to students who may want to appeal decisions made concerning nonresident status, each institution shall be responsible for providing a means for appeals to be made. Each institution shall adopt procedures that fit the local campus situation, but the following guidelines shall be followed:

7.6.1. Procedures for appeal shall be set out in writing by the institution, subject to approval by the Office of the Commissioner.

7.6.2. The institution shall provide a hearing officer or hearing committee with appropriate clerical and other services as necessary to the effective function of the hearing process.

7.6.3. The student appealing the decision shall have the responsibility of providing evidence that proves that he/she has met the residency requirements. Students shall be given copies of the Regents' policies pertaining to determination of residency. The student shall also be given an explanation of the rationale of the decision-maker who previously ruled that the student was classified as a nonresident.

7.6.4. Both the student and the administration's representative are entitled to representation by counsel.

7.6.5. Oral and written evidence may be presented. It is not required that a formal, written, verbatim record of the proceedings be kept, but a written summary of the significant assertions and findings of the hearing shall be prepared.

7.6.6. It is not required that formal rules of evidence be followed; administrative hearing rules may be used.

7.6.7. Decisions of the appeals tribunal must be in writing and must give reasons for the decision.

7.7. Refund - A ruling favorable to the applicant shall be retroactive to the beginning of the academic period for which application for resident status was made, and shall require a refund of the nonresident portion of any tuition charges paid for that and subsequent academic periods.