



MAR 15 2004

March 10, 2004

The Honorable Jim Doyle
Governor, State of Wisconsin
Executive Office
115 East State Capitol
Madison, WI 53702

Dear Governor Doyle:

On behalf of the University of Wisconsin-Madison, I would like to formally voice support of Assembly Bill 869 as amended (and companion Senate Bill 513) which creates 36.27 (2) (b) 4 of the statutes, relating to exemption from non-resident tuition at the University of Wisconsin System for certain veterans.

This bill would provide unambiguous residency tuition status to persons who have served on Active Duty and are eligible for Wisconsin veteran's benefits as defined in Assembly Bill 869. We support this legislation and the positive benefit that it provides to our citizen soldiers of Wisconsin.

We appreciate efforts to address an unanticipated and certainly undesirable consequence of the current residency statute which was limiting for students who had been called up and/or were in transition from Active Duty to higher education.

If you have any questions about this bill and how it helps our student soldiers, please contact Catherine Sheskey, Assistant Registrar-Customer Service, at the Office of the Registrar for assistance, 608-265-0007, cjs@das.wisc.edu.

Sincerely,

Peter D. Spear
Provost

cc: Representative Mark L. Pettis, Wisconsin State Assembly 28th District
Senator Ron Brown, U.S. Senate District 31
Catherine J. Sheskey, Assistant Registrar, UW-Madison



February 25, 2004

To the Members,
Assembly Veterans and Military Affairs Committee
Representative Terry Musser, Chair

Dear Members:

We would like to take this opportunity to thank you for addressing the current statutory impediment to providing resident tuition status to students called to active duty, and who otherwise are eligible to receive veterans' benefits through the State of Wisconsin. We support any effort to provide unambiguous residency tuition status to persons who have served on active duty, as defined in Assembly Bill 869. In fact, we would support an effort to broaden the reach of this bill to include all individuals who have served on active duty regardless of their home state of record.

We thank the members for their efforts to address an unanticipated and certainly undesirable consequence of the current statutes governing residency status, which we, too, have found limiting.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter D. Spear'.

Peter D. Spear
Provost

3 February 2004

University of Wisconsin
Bascom Hall
Madison, Wisconsin

To whom it may concern:

SUBJECT: Request for reconsideration of Residency Denial

Dear Sir or Madame:

I have been informed that my appeal for exemption from non-resident tuition has been denied. As a Wisconsin National Guard member and a veteran of the Iraqi Theater of Operations I take great offense to that finding. I came to this state in July 12, 2001 after graduating from high school and after having my transfer from the Hawaii National Guard to the Wisconsin National Guard approved. At the time of my transfer I had not yet been to basic training nor to advanced individual training, so the Wisconsin Army National Guard arranged for me to attend training beginning in November of 2001. I spent the time between my arrival in Wisconsin and leaving for military training living and working in Appleton, Wisconsin.

I attended basic training from November 15, 2001 to February 10, 2002. I then attended advanced individual training as a paralegal at Ft. Jackson, SC, from February 11, 2002 through April 27, 2002. I then returned to Appleton, WI and worked at "the Bar of Appleton" and "Outback Steak House" until November 2002. During the fall of 2002 I applied for admission for the spring semester of 2003 at UW, and was admitted. In December of 2002, I then performed two weeks of annual training with the Wisconsin Army National Guard in Germany, returned to Appleton, Wisconsin and then traveled to my parents home in Hawaii for the Christmas holiday. When I returned to Wisconsin I enrolled and obtained housing and began the semester.

It seems quit obvious to me that by this point in time I had at least met the requirements of section 36.27 (2) (a) 1 of the Wisconsin Statutes. That is to say, I had been at that point a bona fide resident of the state of Wisconsin for 12 months next proceeding the beginning of the semester for which I registered at the University. I may seem as though I am being flippant, that is not the case, I spent the time from July 12 2001 through November 2002 as a resident of Wisconsin, employed and self supported, in a substantial part through my membership and service in the Wisconsin Army National Guard. Thus, I believe I clearly am qualified for the nonresident tuition exception.

I further note that I entered the university in the spring 2003 semester, to suddenly be yanked out for further military service for this country. In February 2003, I was called to active federal service along with the rest of my unit, the 1st of the 147th Aviation Battalion, Wisconsin Army National Guard and sent to the Iraqi Theater of Operation where we remained until late September 2003 when I returned to Madison. I then registered for re-admission to the University. I remained throughout 2003, as I stated in the paragraph proceeding, an employed state tax paying resident of Wisconsin.

I therefore request that all due consideration be given to my request for exemption under section 36.27 (2) (a) 1 and ask that it be made effective immediately.

Amanda Gino
Member of the 1-147th Avn Bn
WI Army National Guard

(2) Nonresident tuition exceptions.

36.27(2)(a)



(a) Students qualifying under any of the following categories, while they continue to be residents of this state, are entitled to exemption from nonresident tuition but not from incidental or other fees:

36.27(2)(a)1.



1. Any adult student who has been a bona fide resident of the state for 12 months next preceding the beginning of any semester or session for which such student registers at an institution.

36.27(2)(a)2.



2. Any minor student, if one or both of the student's parents have been bona fide residents of this state for at least 12 months next preceding the beginning of any semester or session for which the student registers at an institution.

36.27(2)(a)3.



3. Any adult student who is a dependent of his or her parents under 26 USC 152 (a), if one or both of the student's parents have been bona fide residents of this state for at least 12 months next preceding the beginning of any semester or session for which the student registers at an institution.

36.27(2)(a)4.



4. Any minor student who has resided substantially in this state during the years of minority and at least 12 months next preceding the beginning of any semester or session for which such student registers at an institution.

36.27(2)(a)5.



5. Any minor student under guardianship in this state pursuant to ch. 48 or 880 whose legal guardian has been a bona fide resident of this state for at least 12 months next preceding the beginning of any semester or session for which such student registers at an institution.

36.27(2)(a)6.



6. Any adult student who has been employed as a migrant worker for at least 2 months each year for 3 of the 5 years next preceding the beginning of any semester or session for which the student registers at an institution, or for at least 3 months each year for 2 of the 5 years next preceding the beginning of any semester or session for which the student registers at an institution, any adult student whose parent or legal guardian has been so employed while the student was a minor and any minor student whose parent or legal guardian has been so employed. In this subdivision, "migrant worker" has the meaning specified in s. 103.90 (5).

36.27(2)(am)



(am) Any person who is a refugee, as defined under 8 USC 1101 (a) (42), who moved to this state immediately upon arrival in the United States and who has resided in this state continuously since then is entitled to the exemption under par. (a) if he or she demonstrates an intent to establish and maintain a permanent home in Wisconsin according to the criteria under par. (e).

36.27(2)(b)



(b)

36.27(2)(b)1.



1. Nonresident members of the armed forces and persons engaged in alternative service who are stationed in this state on active duty and their spouses and children are entitled to the exemption under par. (a) during the period that such persons are stationed in this state.

36.27(2)(b)2.



2. Members of the armed forces who reside in this state and are stationed at a federal military installation located within 90 miles of the borders of this state, and their spouses and children, are entitled to the exemption under par. (a).

36.27(2)(b)3.



3. Nonresident persons who served in active duty in the U.S. armed forces for at least 10 years, who were honorably discharged from such service within 4 years before registering at an institution, and who filed state income tax returns for at least 8 of the last 10 years of active duty in the U.S. armed forces, and their spouses and children are entitled to the exemption under par. (a).

36.27(2)(c)



(c) Any student who is a graduate of a Wisconsin high school and whose parents are bona fide residents of this state for 12 months next preceding the beginning of any semester or session for which the student registers at an institution or whose last surviving parent was a bona fide resident of this state for the 12 months preceding death is entitled to the exemption under par. (a).

36.27(2)(cm)



(cm) Any person continuously employed full time in this state, who was relocated to this state by his or her current employer or who moved to this state for employment purposes and accepted his or her current employment before applying for admission to an institution and before moving, and the spouse and dependents of any such person, are entitled to the exemption under par. (a) if the student demonstrates an intent to establish and maintain a permanent home in Wisconsin according to the criteria under par. (e). In this paragraph, "dependents" has the meaning given in 26 USC 152 (a).

36.27(2)(d)



(d) Any person who has not been a bona fide resident of the state for 12 months next preceding the beginning of any semester or session for which such person registers at an institution, except as provided in this subsection, is not exempt from the payment of the nonresident tuition.

36.27(2)(e)



(e) In determining bona fide residence at the time of the beginning of any semester or session and for the preceding 12 months the intent of the person to establish and maintain a permanent home in Wisconsin is determinative. In addition to representations by the student, intent may be demonstrated or disproved by factors including, but not limited to, timely filing of a Wisconsin income tax return of a type that only full-year Wisconsin residents may file, voter registration in Wisconsin, motor vehicle registration in Wisconsin, possession of a Wisconsin operator's license, place of employment, self-support, involvement in community activities in Wisconsin, physical presence in Wisconsin for at least 12 months preceding the beginning of the semester or session for which the student registers, and, if the student is not a U.S. citizen,

possession of a visa that permits indefinite residence in the United States. Notwithstanding par. (a), a student who enters and remains in this state principally to obtain an education is presumed to continue to reside outside this state and such presumption continues in effect until rebutted by clear and convincing evidence of bona fide residence.

36.27 - ANNOT.

Cross Reference: *See also ch. UWS 20, Wis. adm. code.*



36.27(2m)



(2m) Appeals. Any body designated by the board to determine nonresident tuition exemptions under sub. (2) may require a student who has been granted such an exemption to submit information from which the body may determine the student's eligibility for the exemption, the student's eligibility for a different exemption or the student's residency status.

- UWS 20.01 Minimum requirements.
 - UWS 20.02 Finality of decisions.
 - UWS 20.03 Students transferring between institutions.
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UWS 20.01



UWS 20.01 Minimum requirements. The chancellor of each institution in the university of Wisconsin system which classifies students for tuition purposes under s. 36.27 (2), Stats., shall develop and file with the secretary of the board of regents procedures for determination of classifications and provide for appeals from classifications of nonresidency which shall, at minimum, provide for the following:

UWS 20.01(1)



(1) Designation of authorized personnel to make initial determinations of residency for tuition purposes;

UWS 20.01(2)



(2) A mechanism for reconsideration of an initial determination of nonresidency when a petitioner has new or different information to present concerning resident status which was not available at the time of the initial determination or which was available but, for good reason shown, the petitioner did not know about at the time of the initial determination;

UWS 20.01(3)



(3) A mechanism for appeal from an initial determination of nonresidency to a designated person or body at the institution;

UWS 20.01(4)



(4) Appeal procedures, which shall include:

UWS 20.01(4)(a)



(a) A time limit of 14 calendar days for filing an appeal from date of notification of classification from the initial determination, or, if a reconsideration is requested, from the date of notification of that classification;

UWS 20.01(4)(b)



(b) Notice to the petitioner of the appeal hearing which shall:

UWS 20.01(4)(b)1.



1. Be served at least 10 days before the hearing date either by personal service or by mailing;

UWS 20.01(4)(b)2.

2. Specify the time and place of the hearing and the body or person hearing the appeal; and



UWS 20.01(4)(b)3.

3. State that the hearing is a class 3 proceeding under ch. 227, Stats., is for the purpose of determining petitioner's residency status for tuition purposes under the authority conferred on the board of regents of the university of Wisconsin system by s. 36.27, Stats., and is conducted under authority conferred on the institution by ch. UWS 20.



UWS 20.01(4)(c)

(c) A right of personal appearance at an appeal;



UWS 20.01(4)(d)

(d) A right of a petitioner to have assistance, including private legal counsel, in making a personal appearance at an appeal hearing;



UWS 20.01(4)(e)

(e) A time limit for issuing a written decision of 30 calendar days following the appeal hearing;



UWS 20.01(4)(f)

(f) Observing applicable statutory requirements concerning open and closed hearings;



UWS 20.01(4)(g)

(g) A stenographic, electronic or other record of the hearing. This record shall be transcribed and a copy of the written transcription provided to the petitioner at no cost in the event judicial review of the appeal decision is sought under ch. 227, Stats.; a copy of the written transcription shall otherwise be provided to the petitioner upon payment of a reasonable compensatory fee.



UWS 20.01 - ANNOT.

History: *Cr. Register, March, 1980, No. 291, eff. 4-1-80; corrections made under s. 13.93 (2m) (b) 1., Stats., Register, June, 1995, No. 474.*



UWS 20.02

UWS 20.02 Finality of decisions. Decisions by the appeal person or body of an institution in the university of Wisconsin system concerning residence classification for tuition purposes shall be final in the university of Wisconsin system. The decisions shall note that it is subject to judicial review within 30 days after service of the decision, pursuant to s. 227.53, Stats.



AB 869

2/24 - Rep Pettis stopped by
Introduce ~~to~~ Senate companion?
- get ^{amended} from Bob Nelson at LRB

hearing at noon Thursday

pending lawsuit between DMA & UW

- Terry Mc Ardle called

Served w/ 148th Aviation

Pfe. in WI as of 2001 - lived w/ aunt in Appleton

both parents from here - dad has PhD from UW

Admitted for spring semester of 2003

activated in Jan. of 2003

Re-admitted in Jan. of 2004

has until March 7 or 10 to resolve or go to court

Spoke w/ Charlie Hoslett at UW

responded that registrar won't change

Doug Bradley from UW at hearing, said he would
try to resolve

DMA will pay resident tuition amount, but she
needs to pay for extra

UW Residency Determination

2/20 - Called Russ Whitesel at Leg Council (6-0922)

+ Ch. 36 sets out basic requirements

→ 36.27 (2e), (2m)

* Key is if move for purposes of attending school

+ also school-by-school policies

→ apply statutory factors, make decision based on discretion

~~6380~~ David Lo
63830

RE: Residency determination for Amanda Gino.

525 W. Doty St #702
Real 53703

I have talked with Amanda and reviewed her situation. I cannot concur with the decision that she is not exempt from out-of-state tuition.

It seems to me that Amanda has clear and convincing evidence that she did not enter the state for the principal purpose of attending school.

1. She filed Wisconsin income taxes for 2001 and 2002 (documented). She obviously will do so again for the 2003 tax year.
2. When she moved to the state she lived with relatives (family ties).
3. She obtained a Wisconsin drivers license in July 2001 (documented).
4. She registered to vote in 2001 (documented).
5. She transferred to a Wisconsin National Guard Unit before she came (documented).
6. She was physically present in the state most of the time except for periods of military service.
7. Her military "Home of Record" is Wisconsin (documented).
8. The Wisconsin Department of Veterans Affairs has been determined her a "Wisconsin veteran" for purposes of state veterans benefits (documented).

While she has always intended to go on to college, I believe the above facts make it clear that she did not "enter and remain in the state principally to obtain an education."

Further, since she has the expert legal backing of the State Judge Advocate of the Wisconsin National Guard who is prepared to represent her, I am confident she will prevail in circuit court.

I urge you to find a way to reconsider her application for exemption from out-of-state tuition.

Sincerely

Chuck Goranson
Veterans Advisor



THE UNIVERSITY
of
WISCONSIN
MADISON

February 9, 2004

Amanda Maria Gino
525 West Doty St #702
Madison, WI 53703

Dear Ms. Gino:

On January 27, 2004, the University of Wisconsin-Madison Nonresident Tuition Appeals Committee met to consider your appeal of Wisconsin residence for tuition purposes for Spring 2004 Term.

In its deliberations and conclusions the Committee considered the following records:

Your affidavit dated January 21, 2004, your appeal from nonresident classification for University fee purposes.

Your personal testimony before the Committee and your response to questions by the Committee as recorded during the proceedings.

Your application to the University of Wisconsin-Madison.

Your academic record on file in the Office of the Registrar, including courses completed and/or in progress.

All of the above documents and tape are currently on file in the Office of the Registrar.

FINDINGS OF FACT:

1. That you stated in your personal testimony that you applied to the University of Wisconsin-Madison, and to schools in Iowa and Michigan while you were attending high school in Hawaii, and that you were accepted at all three; and while you were in high school you joined the Hawaiian National Guard anticipating transferring to a local national guard where you would be in college; and your choice to join the guard was to pay for education.
2. That you indicated you decided to make Wisconsin your permanent home on December 22, 2000; and you last moved to Wisconsin from Hawaii on July 12, 2001.
3. That you applied to the University of Wisconsin-Madison Undergraduate Admissions Office for the Fall 2002 Term in November 2001; and you changed your term of enrollment to the Spring 2003 Term. That you stated in your testimony you wanted to start classes earlier, but you couldn't afford it.

4. That your records show you matriculated as a full-time student for the Spring 2003 Term at this University on January 21, 2003, but you withdrew from the university on January 27, 2003 due to being called to active duty. You subsequently enrolled for 15 credits for the Fall 2003 Term, and you withdrew from that term on September 22, 2003 because, you stated, you arrived back to Wisconsin from active duty too late to begin classes; and that you are currently enrolled for 13 credits for the Spring 2004 Term.
5. That according to your records you are an independent adult; and you derived your support for the year prior to the Spring 2004 Term from employment during summer (50%), employment during school (40%), and your parents (10%).
6. That in your affidavit you indicated that you do not operate a motor vehicle while in Wisconsin; and that you obtained a Wisconsin driver's license on July 12, 2001
7. That in your affidavit you indicated you have been registered to vote in Wisconsin since 2001, but you have never voted in this State.
8. That you listed part-time employment in Wisconsin May 2002 to November 2002 and January 2004; that you indicated you have filed a Wisconsin State income tax return since 2001.
9. That you listed the following relatives residing permanently in Wisconsin: grandmother, grandfather, aunt, uncle, and two cousins.
10. That you stated you had wanted to go here since you were twelve years old, and intend to remain in Wisconsin to attend the university from which your father earned his PhD.

CONCLUSIONS:

Based upon the findings of fact, the Committee concluded:

1. That you entered and remained in the State of Wisconsin principally to obtain an education and therefore a presumption of nonresidence has arisen.
2. The Committee further concluded that you have not rebutted this presumption with clear and convincing evidence.

DECISION:

The Committee therefore upholds the nonresidence classification for the Spring 2004 Term.

DISCUSSION:

Section 36.27(2), Wisconsin Statutes provides that an adult who enters and remains in the State of Wisconsin principally to obtain an education is presumed to continue to reside outside of Wisconsin. This presumption of nonresidence continues until rebutted by clear and convincing evidence of bona fide residence in the State of Wisconsin. Furthermore, the Statute requires that an individual be a bona fide resident of Wisconsin for the twelve months next preceding the beginning of any term or session for which the student registers and claims resident status. In this case, bona fide residence would have to be established by clear and convincing evidence for the twelve-month period commencing on or about January 20, 2003.

The Committee considered the facts and circumstances surrounding your application to the University of Wisconsin-Madison and your subsequent arrival in Wisconsin concomitant with your full-time enrollment at this University and concluded that, despite your statements to the contrary, you entered and remained in Wisconsin principally to obtain an education. Further, as a student from another state who came to Wisconsin, and remained here, primarily for educational purposes, you are presumed to continue to reside outside the state.

Having before it the presumption that you continue to be domiciled outside the state, the Committee next considered the question of whether you rebutted this presumption with clear and convincing evidence of bona fide residence in Wisconsin for the twelve-month period commencing on or about January 20, 2003. Upon careful deliberation of all the available evidence in your case, the Committee acknowledged that you presented evidence relating to some factors suggested in section 36.27(2) Wis. Stats. but concluded that, overall, you did not present clear and convincing evidence of bona fide residence to rebut the presumption of nonresidence for the twelve months next preceding the Spring 2004 Term.

The Committee cannot render advisory opinions and cannot at this time determine your tuition status for any future semester. You should be aware, however, of your right under sec. 227.49(1), Stats., to petition the Committee for a rehearing and under sec. 227.53(1), Stats., to petition the Circuit Court for judicial review of this decision. A petition for rehearing must be in writing and must specify in detail the grounds for the relief sought and supporting authorities and must be served and filed within twenty days after personal service or mailing of this letter. A rehearing will be granted by this Committee only on the basis of some material error of law, some material error of fact, or your discovery of new evidence sufficiently strong to reverse or modify the decision and which could not have been previously discovered by due diligence on your part. The reviewing authority will notify you if your petition is granted. You should assume that the petition is denied if you do not receive notice within twenty days of filing that it has been granted. Absent a petition for rehearing, a petition for judicial review must be served and filed within thirty days after personal service or mailing of this letter.

If you petition for a rehearing, any petition for judicial review must be served and filed within thirty days of the final disposition of your case whether by denial of the petition for rehearing or by final Committee decision after the rehearing has been held. A petition of judicial review must name the Board of Regents of the University of Wisconsin System as respondent.

Sincerely,

K.L. Hanson *mcw*

K.L. Hanson
Executive Secretary of the Nonresident Tuition Appeals Committee

Talking Points – Nonresident Veterans Tuition (SB 513)

Current Law

- University of Wisconsin (UW) System student generally exempt from nonresident tuition if residency established 12 months before enrollment
 - Proof of “bona fide residence” includes:
 - State income tax returns
 - Voter registration
 - Motor vehicle registration and driver’s license
 - Employment in state
 - Student Testimony
- **But** residency not established if student entered state primarily to obtain education
- Per administrative code (UWS 20), each institution establishes process for determining residency status
 - Also establishes appeals process

SB 513

- Extends exemption to military members who meet certain requirements
 - Served on active duty in Armed Forces during war period or crisis
 - and*
 - Considered resident for purposes of receiving veterans benefits
- Non-statutory provision requires difference between nonresident and resident tuition to be refunded to student enrolled at UW System during 2003-2004 spring semester who meets requirements

Rationale

- Resolve potential lawsuit between Department of Military Affairs and UW System over case of Amanda Gino
 - Amanda charged nonresident tuition despite meeting several factors for residency consideration
 - Moved to Wisconsin in July of 2001

- Filed Wisconsin income taxes in 2001 and 2002
- Obtained Wisconsin driver's license in 2001
- Registered to vote in 2001
- Transferred to WI National Guard before arrival
- Military Home of Record is Wisconsin
- Considered veteran of state by Wisconsin Department of Veterans Affairs
- Reason for rejection: previously stated desire to attend college in Wisconsin

- Wrong to make student who serves active duty in military unit from state to be treated as nonresident
 - Amanda admitted to UW-Madison in January 2003
 - Called to active duty that same month
 - Re-admitted to UW-Madison in January 2004
 - Appeal of nonresident tuition status denied in February 2004

- UW System supports clarification of current law in regard to tuition classification