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May 24, 2018

President Keith Curry  
Compton College  
1111 E. Artesia Boulevard  
Compton, CA 90221

RE: Legal Opinion 2018-03: FIST Program and Residency of Formerly Incarcerated Students

Dear President Curry:

I am responding to your email of May 17, 2018, regarding the residency of two of Compton College's FIST students. In both of the examples you provided, your students were born and raised in California before their incarceration. During their terms of incarceration they were transferred out of state. One student was returned to California and released, remaining here to enroll in Compton College. The other student was released in Oregon in February 2018, but returned promptly to California to enroll in Compton College. Your concern is that the college appropriately address the question of student residency. In both instances, these students are California residents; they should not be charged nonresident tuition.

Under the circumstances presented in your email, the question is not whether the students reacquired California residency upon returning to California, but whether they ever relinquished their California residency. And it appears they never did. All adults in the United States must have a single state of residency. (Ed. Code, § 68062, subd. (a).) As a result, unless the students acquired residency in another state, they retained the California residency they have held since birth. In order to establish residency in a state, a person must be physically present in the state for more than a year, *and* have an intention to remain in the state permanently. Notwithstanding the students' physical presence in Arizona and Oregon, it appears that the students did not have an intention to remain in their respective states of incarceration, as evidenced by their presence in California immediately post-incarceration, and their prompt enrollment in Compton College.

The California Government and Education Codes provide a number of tests for determining residency. (Govt. Code, § 244; Ed. Code, § 68062.) Particularly relevant here is this: “A residence is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose.” (Ed. Code, § 68062, subd. (b).)

One final note on the standard of proof. Ordinarily, it is an individual’s responsibility to prove residency. This typically arises when a person is trying to establish a new state of residency. It is not clear at all that this approach would be appropriate under the circumstances you have described. The college should not require the students to provide documentation that they never intended to remain in Arizona. That would likely be an impossible requirement to meet. That they returned to California at their first opportunity, and have remained here should be sufficient evidence that they did not intend to stay in Arizona.

Thank you for the opportunity to review this matter.

Yours sincerely.

  
for: Marc LeForestier