

**Project 2022 - none**

**STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA**

**Amendment of the Domicile Guidelines**

Part I

Definitions

**8VAC40-120-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:1

"Active-duty military" means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the secretary of the military department concerned. Such term includes the Air Force, Army, Coast Guard, Marines, Navy, and National Guard members operating under Title 10 of the United States Code but does not include full-time National Guard ~~Duty~~ duty operating under Title 32 of the United States Code.

"Alien" means any person not a citizen or national of the United States.

"Credit hour threshold" means the minimum credit hours required to complete a student's declared degree program or combination of degree programs multiplied by 125 percent. For example, if a degree program requires a minimum of 120 credit hours, the credit hour threshold is 120 multiplied by 125 percent for a total of 150 credit hours. If a double major requires a minimum of 140 credit hours, the credit hour threshold would be 175 total credit hours.

"Date of alleged entitlement" means the first official day of class within the semester or term of the program for the institution in which the student is enrolled. For special classes, short courses, intensive courses, or courses not otherwise following the normal calendar schedule, the date of alleged entitlement refers to the starting date of the nontraditional course in which the student is enrolled.

"Dependent student" means one who is listed as a dependent on the federal or state income tax return of his parents or legal guardian or who receives substantial financial support from his spouse, parents or legal guardian. It shall be presumed that a student under the age of 24 on the date of the alleged entitlement receives substantial financial support from his parents or legal guardian, and therefore is dependent on his parents or legal guardian, unless the student (i) is a veteran or an active duty member of the U.S. armed forces; (ii) is a graduate or professional student; (iii) is married; (iv) is a ward of the court or was a ward of the court until age 18; (v) has no adoptive or legal guardian when both parents are deceased; (vi) has legal dependents other than a spouse; or (vii) is able to present clear and convincing evidence that he is financially self-sufficient.

"Domicile" means the present, fixed home of an individual to which he returns following temporary absences and at which he intends to stay indefinitely. No individual may have more than one domicile at a time. Domicile, once established, shall not be affected by mere transient or temporary physical presence in another jurisdiction.

"Domiciliary intent" means present lawful intent to remain indefinitely.

"Eligible alien" means an alien in a valid current immigrant or non-immigrant visa status that permits the development of immigrant intent.

"Emancipated minor" means a student under the age of 18 on the date of the alleged entitlement whose parents or legal guardians have surrendered the right to his care, custody and earnings, and who no longer claim him as a dependent for tax purposes.

"FTE" means a full-time equivalent student. FTE is a statistic derived from the student-credit hour productivity of an institution.

"Full-time employment" means employment resulting in at least an annual earned income reported for tax purposes equivalent to 50 work weeks of 40 hours at the federal minimum wage (50 X 40 X current minimum wage). The person may have earned this money in less than 50 weeks, but the time period in which the money is earned (up to one year) is irrelevant. The individual must also report these wages for income tax purposes.

"Independent student" means one whose parents have surrendered the right to his care, custody and earnings, do not claim him as a dependent on federal or state income tax returns, and have ceased to provide him substantial financial support. (See also, "Dependent student," above.)

"Ineligible alien" means an alien not in a valid current immigrant or non-immigrant visa status that permits the lawful development of immigrant intent.

"Legal guardian" means a legal status created by court order which vests in a custodian the right to have physical custody of the child, to determine and redetermine where and with whom he shall live, the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to any residual parental rights and responsibilities.

"National of the United States" means (i) a citizen of the United States or (ii) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

"Parent" applies to the biological parents of the student except in cases of adoption, where it applies to the adoptive parent or parents.

"Presumption" means that a student is presumed, or assumed, to have a certain status, unless the student can show the contrary by clear and convincing evidence. The student should be given the chance to rebut the presumed fact by clear and convincing evidence.

"Special arrangement contract" means a written contract between a Virginia employer or the authorities controlling a federal installation or agency located in Virginia and a public institution of higher education for reduced tuition charges.

"Substantial financial support" means the amount of support which equals or exceeds the amount necessary to qualify the individual to be listed as a dependent on federal and state income tax returns. The person claiming the student as a dependent must provide more than half of the student's total support. Total support includes amounts spent to provide food, lodging, clothing, education expenses, medical and dental care, recreation, and transportation. It also includes welfare, food stamps, and housing provided by the state in addition to all taxable and nontaxable income. Expenses, such as the cost of food for a household, must be divided among all members of the household and the lodging expense is the fair rental value of the lodging.

"Surcharge" means an amount calculated to equal 100 percent of the average cost of education at the relevant institution less tuition and mandatory educational and

general fee charges assessed to a student meeting Virginia domiciliary status who has not exceeded the 125 percent credit hour threshold. The State Council of Higher Education for Virginia calculates the average cost through the base adequacy guidelines adopted, and periodically amended, by the Joint Subcommittee Studying Higher Education Funding Policies. The average cost is published in the State Council of Higher Education for Virginia's full cost report annually.

"Unemancipated minor" means a student under the age of 18 on the date of the alleged entitlement who is under the legal control of and is financially supported by either of his parents, legal guardian, or other person having legal custody.

"Virginia employer" means entities, including corporations, partnerships, or sole proprietorships, organized under the laws of Virginia, or having income from Virginia sources. Also included are public or nonprofit organizations authorized to operate in Virginia.

1Nothing herein is intended, nor shall be construed, to repeal or modify any provision of law.

## Part II

### In-State Tuition Rates for Domiciliary Residents of Virginia

#### Article 1

##### Domicile Requirement

#### **8VAC40-120-20. Determining eligibility for in-state tuition.**

~~A. The institution shall first determine from the information furnished by the applicant whether the applicant is a dependent or independent student, emancipated or unemancipated minor.~~

~~B. The institution shall then determine, on the basis of the information furnished by the applicant, whether the student has clearly and convincingly established Virginia domicile for the requisite one-year period. If the date of the alleged entitlement is, for example, September 1, 2001, then the student must have established Virginia domicile no later than September 1, 2000, and continued it for the entire year.~~

A. The student bears the burden of establishing, by clear and convincing evidence, that the student (i) is a national or an eligible alien and (ii) has, for at least a one-year period prior to the claimed entitlement, established and maintained his domicile in the Commonwealth of Virginia.

The institution shall first determine from the information furnished by the applicant whether the applicant is a national or an alien. If the applicant is a national, the institution shall continue the domicile analysis. If the applicant is an alien, the institution will determine whether the applicant is an eligible alien or an ineligible alien. If the applicant is an eligible alien, then the institution shall continue the domicile analysis. Notwithstanding anything contained in these guidelines to the contrary, if the applicant is neither a national nor an eligible alien, the applicant is not eligible for further domicile consideration under these guidelines.

1. The State Council of Higher Education for Virginia maintains guidance documents that provide information on forms, definitions, and nonimmigrant categories, including classification as eligible or ineligible alien.

2. It is the applicant's responsibility to provide clear and convincing evidence of their current legal status. Failure to provide such evidence results in classification as an out-of-state student.

B. If the applicant has the legal ability to establish domicile, then the institution determines whether the applicant is a dependent or independent student, emancipated or unemancipated minor.

C. The institution shall then determine, on the basis of the information furnished by the applicant, whether domicile has been clearly and convincingly established in Virginia for the requisite one-year period. If the date of the alleged entitlement is, for example, September 1, 2008, then domicile must have been established in Virginia no later than September 1, 2007, and continued for the entire year.

1. An independent student or emancipated minor must establish by clear and convincing evidence that for a period of at least one year immediately prior to the date of alleged entitlement, the student was domiciled in Virginia and had abandoned any previous domicile.

2. A dependent student or unemancipated minor must establish by clear and convincing evidence that for a period of least one year immediately prior to the date of alleged entitlement, the parent or legal guardian through whom the student claims eligibility was domiciled in Virginia and had abandoned any previous domicile.

3. A dependent student is presumed to have the domicile of the parent or legal guardian listing the student as an exemption for tax purposes or providing substantial financial support. A dependent student aged 18 or over may seek to ~~show~~ demonstrate a domicile independent of such parent or legal guardian regardless of financial dependency; however, the student is presumed to have the same domicile as his parents or legal guardian unless he can show to the contrary by clear and convincing evidence.

4. The one-year of domicile period applies to all classifications of students except for: (i) active-duty military personnel residing in the Commonwealth who voluntarily elect to establish Virginia as their permanent residence for domiciliary purposes, and ~~(ii) dependent spouses or children claiming eligibility through an active-duty military member residing in Virginia who voluntarily elects to establish Virginia as his permanent residence for domiciliary purposes~~ (ii) retired military personnel residing in the Commonwealth at the time of their retirement, and (iii) the dependent spouses or children of persons described under (i) or (ii) of this subsection.

**8VAC40-120-30. Domicile: residence requirement.**

A. Domicile is defined in the law as "the present fixed home of an individual to which he returns following temporary absences and at which he intends to stay indefinitely." No person may have more than one domicile.

1. Domicile cannot be initially established in Virginia unless one actually resides, in the sense of being physically present, in Virginia with domiciliary intent.

2. Domiciliary intent means present intent to remain indefinitely, that is, the individual has no plans or expectation to move from Virginia. Residence in Virginia for a temporary purpose or stay, even if that stay is lengthy, with present intent to return to a former state or country upon completion of such purpose does not constitute domicile.

3. The physical presence requirement means that a person who has never resided in Virginia, or who was not residing here at the time he formed the intent to make Virginia his home, cannot be domiciled here until actually moving to



Virginia and taking the appropriate steps to establish domicile. Additionally, the physical presence cannot be temporary in nature, such as a visit or vacation.

B. Once a person has established domicile in Virginia, actual residence here is no longer necessarily required.

1. Temporary absence from the state does not negate a claim of Virginia domicile unless the person does something incompatible with ~~domiciliary intent, such as, but not limited to, registering to vote in the new state,~~ having Virginia domiciliary intent or otherwise indicating an intent to establish domicile in another state.

2. A person who has established Virginia domicile but resides in another state may be required by laws of the host state to fulfill certain obligations of the host state. Performing acts in the host state required by law of all residents, irrespective of domicile, does not automatically constitute an abandonment of Virginia domicile. ~~However, domicile; however,~~ such acts will need to be examined to determine if they were voluntary.

3. The question is whether an individual's acts, especially voluntary acts, show the establishment of a new domicile in the host state and abandonment of Virginia domicile.

~~C. The physical presence requirement means that a person who has never resided in Virginia, or who was not residing here at the time he formed the intent to make Virginia his home, cannot be domiciled here until actually moving to Virginia and taking the appropriate steps to establish domicile. Additionally, the physical presence cannot be temporary in nature, such as a visit or vacation.~~

**8VAC40-120-40. Domicile: intent requirement.**

A. Where a person resides is relatively easy to determine. It can be difficult to ascertain whether a person has resided in Virginia with domiciliary intent. A person may have more than one residence but only one domicile.

1. Domiciliary intent is normally determined from the affirmative declaration and objective conduct of the person. Intent is necessarily a subjective element; however, a person demonstrates his intent through objective conduct. When evidence is conflicting, the opposing facts must be balanced against each other.

2. The burden is upon the applicant to demonstrate by clear and convincing evidence that his domicile is Virginia and that he has abandoned any prior domicile.

3. The law also requires that a person claiming eligibility for in-state tuition through Virginia domicile (or the person through whom eligibility is being claimed) shall have demonstrated Virginia domicile for at least one year immediately prior to the date of the alleged entitlement.

4. Mere residence due to incarceration in Virginia does not necessarily mean that Virginia domicile has been established. Domicile, by definition, is based upon voluntary actions. For purposes of determining the status of incarcerated minors, the Commonwealth of Virginia is not considered to be their legal guardian.

B. Prior determination of a student's domiciliary status by one institution is not conclusive or binding when subsequently considered by another institution; however, assuming no change of facts, the prior judgment should be considered.

C. Each case presents a unique combination of factors, and the institution must determine from among them those core factors which clearly and convincingly demonstrate the person's domiciliary intent.

1. Having isolated the core factors in a given case, the institution must look at the date on which the last of these essential acts was performed. It is at that point that domiciliary intent is established, and the clock starts running for purposes of the one-year domicile requirement.

2. In complex cases, it might be helpful to chart on a timeline the steps taken to establish domicile. After establishing domicile, an individual must continue to meet the factors demonstrating domiciliary intent throughout the one-year period prior to the date of alleged entitlement.

D. It is important to reiterate the reference to clear and convincing evidence. A student who claims Virginia ~~residency~~ domicile must support that claim by clear and convincing evidence. Clear and convincing evidence is not as stringent a standard as proof beyond a reasonable doubt, as required in the criminal context, but is a degree of proof higher than a mere preponderance of the evidence. Clear and convincing evidence is that degree of proof that will produce a firm conviction or a firm belief as to the facts sought to be established. The evidence must justify the claim both clearly and convincingly. Failure to provide "clear and convincing" evidence fails the required standard and will result in the student being classified as out-of-state.

E. Section 23-7.4 of the Code of Virginia includes a list of objective conduct that must be considered, if applicable, in evaluating a claim of domiciliary intent. Necessarily, each of the objective criteria will not carry the same weight or importance in an individual case. No one factor is necessarily determinative but should be considered as part of the totality of evidence presented. In addition to considering the statutorily mandated factors,

institutions may consider other relevant factors, such as voting in state and local elections, to determine whether the student has established Virginia domicile by clear and convincing evidence. The objective criteria that may be relevant include the following:

1. Continuous residence for at least one year immediately prior to the date of alleged entitlement. Continuous residence may be evidence supporting that the person intends to make Virginia his home indefinitely. As noted previously, once a person has affirmatively established Virginia domicile, actual residence in Virginia is not required in order to retain it. However, residence in another state or country is still relevant because it may be that the person has established a new domicile in the foreign jurisdiction, or never intended to remain indefinitely in Virginia.

2. State to which income taxes are filed or paid.

- a. Failure to file a Virginia tax return in ~~Virginia~~ is evidence that one is not a Virginia domicile ~~domicile~~ domiciliary. Domiciliaries, who have taxable income, are required to file returns regardless of the fact that they may reside elsewhere.

- (1) The general rule is that Virginia domiciliaries residing temporarily outside the Commonwealth must file Virginia resident income tax returns if they wish to maintain their Virginia domicile.

- (2) Persons claiming that they are exempt from this requirement, such as those who reside overseas and are employed by certain non-U.S. companies, have the burden of clearly identifying the exemption and demonstrating their entitlement to it.

b. ~~Considering payment or nonpayment of income tax as a factor assumes that the individual had taxable income. Moreover, under~~ Under Virginia tax law, a Virginia domiciliary is not required to file a Virginia return if the person's Virginia adjusted gross income was less than minimum levels. Thus, failure to file a return by someone who had no income in Virginia or who was not otherwise required to file a state income tax ~~form,~~ form is not determinative of domiciliary status.

c. A member of the armed forces who does not claim Virginia as his tax situs for military income cannot qualify as a Virginia domiciliary.

d. The filing of an income tax return in Virginia or the paying of income taxes to Virginia is supporting evidence, but not conclusive evidence, that a person is domiciled in Virginia. For example, a student with a part-time job may be required to pay income tax to Virginia on wages earned in the state, even though he is a temporary resident or residing outside of Virginia.

e. Paying income taxes to another state or country is also not automatically determinative of domiciliary status; a Virginia domiciliary may be required by another state to pay income taxes on income earned in that state irrespective of ties to the ~~state.~~ state; however, such payment may be considered, along with all of the other evidence, in evaluating a claim of Virginia domicile.

### 3. Driver's license.

a. Possession of a Virginia driver's license may be evidence of intent to establish domicile in Virginia.

b. Possession of a driver's license from another state may be evidence of intent to retain domicile in that state.

4. Motor vehicle registration.

a. Registration of a motor vehicle in Virginia may be evidence of intent to establish domicile in Virginia.

b. Registration of a motor vehicle in another state may be evidence of intent to be domiciled in that state.

c. Virginia law permits, but does not require, registration by a nonresident student. Thus, a student-owner who does register in Virginia, when not required to by law, has shown some evidence of Virginia ~~domicile. However,~~ domicile; however, vehicle registration alone is not determinative.

5. Voter registration.

a. Actual voting.

~~(1) Voting in person or by absentee ballot in another state or country during the year immediately prior to the date of the alleged entitlement is strong evidence that the individual has not established domicile in Virginia.~~

~~(2) Voting in Virginia in local or state elections is evidence of domicile, but it is not determinative.~~

~~(3) Failing to vote in state or local elections is also evidence that the person is not a domiciliary; however, it is not determinative in all cases since the individual may forget to vote, choose not to, or in the case of certain aliens, may not be entitled to vote.~~

b. Actual registration.

a. Actual registration.

(1) Registering to vote in Virginia within the past year is evidence of domiciliary intent, but it is not determinative. The institution is not bound by the voter registrar's determination; however, it should be considered.

(2) The fact that a person is still registered in another state, but has not voted there in the past year, does not conclusively mean that the person is not domiciled in Virginia; however, it should be considered.

(3) Failure to register to vote by a person who, on principle, has never registered to vote anywhere should not be taken as conclusive evidence that the person lacks domiciliary intent.

b. Actual voting.

(1) Voting in person or by absentee ballot in another state or country during the year immediately prior to the date of the alleged entitlement is evidence that the individual has not established domicile in Virginia.

(2) Voting in Virginia in local or state elections is evidence of domicile, but it is not determinative.

(3) Failing to vote in state or local elections is not determinative since the individual may forget to vote, choose not to, or in the case of certain aliens, may not be entitled to vote.

6. Employment.

a. If a person has otherwise shown residence in the state with domiciliary intent, unemployment does not preclude a finding that the person is a Virginia domiciliary.

b. Fulfillment and documentation of state licensing requirements in order to be certified to practice a profession in Virginia (e.g., attorney, clinical psychologist, nursing), is evidence of domiciliary intent; however, it is not determinative. Enrollment in but non-completion of an educational program designed specifically for employment in Virginia is not sufficient evidence that domicile has been established.

c. Summer employment.

(1) Employment in Virginia during the summer may be one indicator of domiciliary intent, but not conclusive evidence.

(2) A student returning for extended periods each summer to his parents' domicile outside Virginia may be evidence of retaining that domicile.

d. Employment that is part of an educational program, such as a cooperative education program, shall not confer domiciliary status.

7. Ownership of real property.

a. Ownership of real property (e.g., land, house, cottage, etc.) in Virginia may be evidence of domiciliary intent.

b. Payment of real property taxes to Virginia in the absence of other supportive evidence is insufficient to establish that a person is domiciled in Virginia. Owners of real property in Virginia are required to pay real estate taxes irrespective of their domicile.

c. A person who may have purchased real property in Virginia while domiciled here, but who subsequently left to take up residence in another state, cannot demonstrate continued domicile solely by presenting evidence of continued ownership of Virginia property. Even though the person still has taxable real



property in Virginia, the individual's actions may show that Virginia domicile has been abandoned.

8. Sources of financial support.

a. Acceptance of financial assistance from public agencies or private institutions located in another state likely precludes establishing Virginia domicile when such financial assistance is offered only to domiciliaries of the other state.

b. Acceptance of such assistance would not prohibit a student, at a later time, from showing a change of intent or that the student did not know that he was representing domicile of another state. Such claims are suspect and must be proven by clear and convincing evidence.

c. Institutions shall also consider financial support obtained from parents or other relatives. Substantial financial support from a parent or relative in another state could be evidence of continuing ties to that state.

9. Military records.

a. In order to establish domicile, a military member must pay Virginia taxes on all military income.

b. A student should submit copies of military documents such as the DD2058 "State of Legal Residence Certificate" that is part of the student's official military records ~~and~~ or the Leave and Earnings Statement as evidence of Virginia domicile.

10. ~~Employment in Virginia post-graduation.~~ Accepting a written offer of employment with a Virginia employer.

a. Accepting a ~~formal offer of permanent~~ written offer of employment with a Virginia employer following graduation from the institution is strong evidence of domiciliary intent. Evidence of employment in Virginia following graduation without other indications of domiciliary intent is not determinative.

b. The burden is on the student to demonstrate that such employment exists, for example, through a written commitment between the student and the prospective employer.

c. Students nearing graduation and seeking reclassification provide strong evidence of domiciliary intent with proof of likely employment in Virginia following graduation. Such students not providing for employment, or actively soliciting employment, in Virginia following graduation is evidence disfavoring reclassification.

11. Social and economic relationships.

a. The fact that a person has immediate family ties to Virginia may be offered to support a claim of domiciliary intent.

b. Other social and economic ties to Virginia that may be presented include membership in religious organizations, community organizations, social clubs, bank accounts, and business ties.

**8VAC40-120-50. Residence for educational purposes.**

A. Mere physical presence or residence primarily for educational purposes will not confer domiciliary status. For example, a student who moves to Virginia for the primary purposes of becoming a full-time student is not a Virginia domiciliary, even if the student has been in Virginia for the required one-year period.

B. A person shall not ordinarily be able to establish domicile by performing acts which are auxiliary to fulfilling educational objectives or which are required or routinely performed by temporary residents of the Commonwealth.

C. The issue is whether the individual ~~has moved to Virginia with the primary purpose of becoming a full-time student or with the primary purpose of~~ resides in Virginia primarily for educational purposes or with the primary purpose of establishing indefinitely his home in Virginia. In questionable cases, the institution should closely scrutinize acts, aside from those that are auxiliary to fulfilling the student's educational objective, performed by the individual which indicate an intent to become a Virginian.

D. Students often attempt to reclassify as a Virginia domiciliary after completing a few semesters at the institution. Institutions should examine the ~~number of credits taken by the student in past semesters in~~ student's educational enrollment records when determining if the student ~~came to~~ resides in Virginia with the primary purpose of attending school.

E. If the initial and continuing purpose of moving to Virginia was for educational purposes for one spouse, this may be evidence that neither spouse has domiciliary intent.

F. Employment as part of a cooperative education program does not confer domiciliary status. Some institutions consider students participating in cooperative education programs to be enrolled full time at the college or university during periods of cooperative education employment. Institutions should examine the student's enrollment history, and other factors, in determining if the student's primary purpose for living in Virginia is for educational purposes.

**8VAC40-120-60. Unemancipated minors.**

A. An unemancipated minor automatically takes the domicile of his parents ~~or legal guardian.~~  
guardian.

B. If the unemancipated minor is in the care of a legal guardian, the minor takes the domicile of the legal guardian unless there are circumstances indicating that the guardianship was created primarily for the purpose of conferring a Virginia domicile on the minor. With parents surviving, the guardianship must have been created by law, such as through a court order. A copy of the court decree should routinely be required as proof of legal guardianship.

C. When the domicile and residence of the student's parents differ, the domicile of the unemancipated minor may be either:

1. The domicile of the parent with whom he resides for purposes other than a vacation or visit;
2. The domicile of the parent who claims the minor as a dependent for federal and Virginia income tax purposes, currently and for the tax year prior to the date of alleged entitlement; or
3. The domicile of the parent who provides substantial financial support.

For example, if a minor lives with the mother, but the father, who is a Virginia domiciliary, claims the minor as a dependent on his federal and Virginia income tax returns, the minor may claim Virginia domicile through the father.

## **8VAC40-120-70. Dependent children.**

A. A dependent child is a student who is listed as a dependent on the federal or state income tax return of his parents or legal guardian or who receives substantial financial support from his parents or legal guardian.

1. A dependent child ~~is not required~~ does not have to live with a parent or legal guardian.
2. A dependent child does not have to be a full-time student.

B. When the domicile and residence of the student's parents differ, the domicile of the ~~unemancipated minor~~ dependent child may be either:

1. The domicile of the parent with whom he resides for purposes other than a vacation or visit;
2. The domicile of the parent who claims the ~~minor~~ child as a dependent for federal and Virginia income tax purposes currently and for the tax year prior to the date of alleged ~~substantial financial support~~ entitlement; or
3. ~~The presumption is that the student has the domicile of the parent described in either 8VAC40-120-60 C 2 or 3.~~ The domicile of the parent who provides substantial financial support.

The presumption is that the student has the domicile of the parent described in either 8VAC40-120-70 B 2 or 3. For example, if a ~~minor~~ child lives with his mother, but the father, who is a Virginia domiciliary, claims the ~~minor~~ child as a dependent on his federal and Virginia income tax returns, the ~~minor~~ child is rebuttably presumed to have Virginia domicile through his father.

C. Presumption of dependency for students under age 24.

1. A student under age 24 on the date of the alleged entitlement shall be rebuttably presumed to receive substantial financial support from his parents or legal guardian and therefore is presumed to be a dependent child, unless the student:

- a. Is a veteran or an active duty member of the U.S. Armed Forces;
- b. Is a graduate school or professional school student;
- c. Is married;
- d. Is a ward of the court or was a ward of the court until age 18;
- e. Has no adoptive or legal guardian when both parents are deceased;
- f. Has legal dependents other than a spouse; or
- g. Is able to present clear and convincing evidence of financial self-sufficiency.

2. Institutions should examine the student's application carefully to determine if the student meets one of exceptions (a) through (f). The burden is on the student to provide clear and convincing evidence of financial self-sufficiency under exception (g).

3. The presumption of dependency closely follows the federal financial aid definition of dependent student.

4. If the student is 24 or older, there is no presumption of dependency on parents nor is there a presumption of independence. The student may be classified as an independent student unless the student presents evidence of financial dependency on his ~~parents, legal guardian,~~ parents or spouse, that is, the student receives substantial financial support from ~~parents, legal guardian,~~ or

spouse or is listed on a parent's or legal guardian's federal or state income tax returns as a dependent.

D. Tax dependency and substantial financial support. A student 24 years old or older may still be a dependent student if ~~the amount of support he receives from a parent or legal guardian would qualify him to be claimed as a tax dependent and the student is listed as a dependent on the federal or state income tax returns of his parents or legal guardian~~ he meets the definition of a dependent student.

1. Normally, a student will be classified as a dependent of the parent or legal guardian who provides more than one half of the student's expenses for food, shelter, clothing, medical and dental expenses, transportation, and education.

2. Only financial support provided by the parent or legal guardian is considered. Earned income of the student paid by parent or legal guardian for bona fide employment is not counted as part of the parental or guardian support; however, gifts of money, or other things of value, from the parent or legal guardian to the student are counted toward the parental ~~lega~~ or legal guardian support to the extent that the student relies upon it for support.

E. A student who is financially dependent upon one or both parents may rebut the presumption that the student's domicile is the same as the parent claiming him as an exemption on federal or state income tax returns currently and for the tax year preceding the date of alleged entitlement or who provides him with substantial financial support.

1. When domiciles of the parents are different, and the parent claiming the student as a dependent for income tax purposes is domiciled in another state, the student may rebut this presumption by showing residence with the other parent, who is a Virginia domiciliary.

2. A dependent student 18 years of age or older may also rebut the presumption that the student has the domicile of the parent claiming the student as a dependent for income tax purposes by showing that Virginia domicile was established independent of the parents. The burden is on the student to show by clear and convincing evidence that he has established a Virginia domicile independent of the out-of-state parents despite the fact that the parents are claiming the student as a dependent for income tax purposes or providing substantial financial support.

3. Finally, a student may rebut the presumption that the student has the same domicile as an out-of-state parent by offering clear and convincing evidence that the parent misreported the student as a dependent for tax purposes.

#### F. Military dependent children.

1. When determining the domiciliary status of a student whose parent is a member of the military, the institution should always first determine if the military parent or the nonmilitary parent is a Virginia domiciliary. A military parent may reside in Virginia but choose not to claim Virginia as his domicile and has the right to choose another state as his home state for taxation of military income purposes.

a. Paying taxes to Virginia on all military income is evidence that the military parent is a Virginia domiciliary resident and should be evaluated with all of the applicable factors to determine domiciliary intent. To pay taxes to Virginia on military income, the military member must change the Leave and Earnings Statement to authorize the withholding of Virginia income tax.



b. Active-duty military members do not have to satisfy the one-year requirement for the existence of the factors showing domiciliary intent, nor do dependent children claiming Virginia domicile through them. A dependent child of a military member claiming domicile through the military member becomes eligible for in-state tuition as of the term that begins immediately after the military member has taken actions to establish domicile in Virginia.

c. If the military parent claims another state as his income tax situs while stationed in Virginia, the parent is not a Virginia domiciliary.

2. If the student's nonmilitary parent is a Virginia domiciliary and the requisite one-year period is met, the dependent child may claim domicile through the nonmilitary parent and receive in-state rates if the student is claimed as a dependent of the nonmilitary parent.

a. As with anyone else, the strength of the nonmilitary parent's ties to Virginia should withstand scrutiny.

b. In addition to the factors listed in 8VAC40-110-40 E, the institution should consider the duration of residence in Virginia and the nonmilitary parent's domiciliary history. Evidence that the nonmilitary parent has accompanied the military parent on each tour of duty outside Virginia and taken steps to establish domicile in other states may show that the nonmilitary parent has not established a Virginia domicile independent of the military parent.

3. a. If one of the parents is a Virginia domiciliary, the student may claim eligibility through that parent, provided that the student is a dependent of that parent (see ~~subsection A~~ subsections A and B of this section).

b. The institution should consider the requirements of the military ~~exception~~ provision (see Part III) only if the student is not eligible under this section as a dependent of a parent (military or nonmilitary) who is a domiciliary of Virginia.

4. If the military family member is unable to demonstrate eligibility via domicile, they may be considered under special military provisions found in Part III.

**8VAC40-120-80. Independent students.**

A. An independent student is one whose parents have surrendered the right to his care (such as providing insurance coverage and transportation), custody and earnings, do not claim him as a dependent on federal or state income tax returns, and have ceased to provide him substantial financial support.

B. Students under age 24 are presumed to be financially supported by their parents or legal guardians unless the student rebuts the presumption through one of the seven factors mentioned under 8VAC40-120-70 C 1.

C. Unless the student rebuts the presumption of dependency through one of the seven factors mentioned in 8VAC40-120-70 C 1, or is an emancipated minor then, due to the one-year requirement, the earliest an independent student could become eligible for in-state rates by virtue of having established an independent domicile in Virginia would be on the student's 19th birthday.

**8VAC40-120-90. Emancipated minors.**

A. By virtue of having been emancipated prior to reaching age 18, an emancipated minor becomes eligible to establish a domicile independent of his parents. The earliest an emancipated minor could become eligible for in-state tuition is one year after the date of emancipation. A student who establishes Virginia domicile through his parents or legal guardians prior to emancipation is eligible for in-state tuition upon emancipation.

B. Emancipation requires that the parents or legal guardian surrender the right to the child's care, custody, and earnings and no longer claim him as a dependent for income tax purposes; that is, the child is not financially supported by his parents or legal guardian or other person and is not under or subject to the control or direction of his parents, legal guardian, or other custodian.

1. A minor's declaration of emancipation is not conclusive. For example, a minor who runs away from home is not necessarily emancipated, even though the minor may not desire any further contacts with the parents or legal guardian.

2. The parents or legal guardian must no longer support the minor, and they must recognize the minor's right to retain earned wages and to live independently of them beyond their direction or control.

3. If the parents or legal guardian list the minor as a dependent on income tax returns, he is not emancipated. A student who claims emancipation from his parents or legal guardian must provide evidence of emancipation, either that the parents or legal guardian consider the student emancipated and do not claim the student as a tax dependent. The institution may require a copy of the tax returns and court order if needed to substantiate the claimed emancipation.

**8VAC40-120-100. Married persons.**

A. The domicile of a married person may be determined in the same manner as the domicile of an unmarried person. A person's domicile is not automatically altered by marriage. Institutions should never presume that an individual is financially dependent on a spouse.

B. Marriage may be a factor in determining whether or not an individual under age 18 is emancipated from the parents, but it is not conclusive. A person under age 24 who is married is presumed to be independent of his parents.

C. Dependent spouses.

1. ~~An employed~~ A spouse may choose to claim dependency on and, therefore, domicile through a spouse if the individual receives substantial financial support from the spouse.
2. Substantial financial support is at least one-half of the total financial support required for that person.
3. The dependent spouse "stands in the shoes" of the person providing the support. Therefore, the dependent spouse's actions in establishing or not establishing domicile in Virginia are irrelevant. The institution should only consider whether the person through whom the applicant is claiming dependency has met the requirements for establishing domicile.

D. Military dependent spouses.

1. ~~A dependent spouse may claim Virginia domicile through a military member after the military member has taken actions to establish domicile in Virginia, including paying Virginia state income taxes.~~
2. ~~Since the dependent spouse is standing in the shoes of the military member, there is no one-year domicile requirement.~~
3. ~~An institution should only apply the requirements of the military exception (see Part III) if the spouse has not established eligibility as a Virginia domiciliary for the required one-year period prior to the date of alleged entitlement.~~

~~4. Spouses of military members do not have to be employed to establish domicile in Virginia. All individual ties to Virginia should be considered.~~

~~E. The domicile of a dependent spouse is generally considered to be that of the supporting spouse. However, the dependent spouse retains the right to provide evidence demonstrating his own unique ties to Virginia thus establishing a separate domicile.~~

1. An institution should only apply the requirements of the military provision (see Part III) if the spouse has not established eligibility as a Virginia domiciliary for the required one-year period prior to the date of alleged entitlement.

2. Spouses of military members do not have to be employed to establish domicile in Virginia. All individual ties to Virginia should be considered.

a. As with anyone else, the strength of the nonmilitary spouse's ties to Virginia should withstand scrutiny.

b. In addition to the factors listed in 8 VAC 40-120-40 E, the institution should consider the duration of residence in Virginia and the nonmilitary spouse's domiciliary history. Evidence that the nonmilitary spouse has accompanied the military spouse on each tour of duty outside Virginia and taken steps to establish domicile in other states may show that the nonmilitary spouse has not established a Virginia domicile independent of the military spouse.

3. A dependent spouse may claim Virginia domicile through a military member after the military member has taken actions to establish domicile in Virginia, including paying Virginia state income taxes. Since the dependent spouse is standing in the shoes of the military member, there is no one-year domicile requirement.

4. If the military family member is unable to demonstrate eligibility via domicile, they may be considered under special military provisions found in Part III.

#### **8VAC40-120-110. Aliens.**

~~A. The mere fact that a person is a citizen of another country does not automatically disqualify the person from establishing domicile in Virginia. When a foreign national claims Virginia domicile, the institution must initially examine the federal immigration documents controlling the alien's purpose and length of stay in the United States. (For immigrants, this is usually Form I-551, "the Green Card"; for nonimmigrants, it is Form I-94, "the Arrival/Departure Card".)~~

~~1. The purpose of examining immigration documents is to determine whether the alien is required to maintain a foreign domicile, as well as the terms and conditions governing the alien's presence in the United States relevant to evaluating the claim of Virginia domicile for the requisite one-year period.~~

~~2. If the immigration documents indicate that a person cannot establish domicile then the student is not eligible for in-state tuition rates.~~

~~3. Federal immigration laws are complex and ever evolving. Treaties may also be controlling. The burden is upon the student claiming Virginia domicile to bring pertinent information to the attention of the institution.~~

~~B. An institution should preliminarily determine under which alien category the student falls and then proceed with the evaluation of domicile in accordance with this chapter.~~

~~1. Immigrants are admitted for permanent residence.~~

~~2. Nonimmigrants are admitted for specific time periods and for particular purposes (e.g., tourism, study, or temporary employment).<sup>1</sup>~~

~~3. The remainder may be persons who are on a paroled status or granted asylum.~~

~~C. In reviewing the domiciliary intent factors, keep in mind that there may be factors, such as voter registration, which are inapplicable to foreign nationals by law.~~

~~1. Aliens cannot register to vote.~~

~~2. Salaries paid to some non-U.S. citizens are exempt from federal and state taxation.~~

~~3. In such instances, a record of nonvoting or nonpayment of taxes is immaterial to the domicile consideration. Unless the institution is aware of the inapplicability of any evidentiary factor, the responsibility and burden is always on the student to bring such information to the attention of the institution.~~

~~D. An alien may claim eligibility for in-state tuition through the Virginia domicile of the student's parent, like any other student. An alien may claim eligibility for in-state tuition through the Virginia domicile of the student's spouse if the student demonstrates dependency on that spouse.~~

~~E. Aliens holding Form I-551 (green cards) are lawfully admitted as immigrants for permanent residence in the United States.<sup>2</sup> Such individuals are not prohibited from forming domicile in this country. Thus, immigrants may claim, and seek to show, eligibility for in-state tuition rates as Virginia domiciles as any citizen of the United States. The burden is on the student to establish, clearly and convincingly, domicile in Virginia for the requisite one-year period.~~

~~F. Conditional permanent resident aliens.~~

~~1. A person, and that person's children, may acquire permanent resident status through marriage to a United States citizen or lawful permanent resident. In order~~

~~to discourage fraudulent applications based on sham marriages, the Immigration and Naturalization Service, pursuant to the Immigration and Nationality Act, is now issuing two-year "conditional" Alien Registration Receipt Cards (Form I-551) to such persons. These differ from the regular Form I-551 only insofar as there is an expiration date on the back. During the last 90 days of the two-year period, the couple must appear before the INS and file a petition to remove the condition, swearing under oath that the marriage was and is valid, and that it was not entered into for the purpose of procuring an alien's entry as an immigrant.~~

~~2. In these cases, the institution should assume that the conditional basis will be removed and analyze the alien as a lawful permanent resident; however, the institution should verify at the appropriate time that the conditional basis of the alien's permanent resident status has in fact been removed. If permanent residence status is terminated by Immigration (which will occur if the Immigration and Naturalization Service (INS) finds that the marriage was fraudulent, among other reasons), the institution may, in accordance with the policies concerning falsification of information (see 8VAC40-120-130), reconsider the student's application for in-state status to determine whether it was fraudulent. If so, the institution may change the student's status retroactive to the term for which the fraudulent application was made.~~

#### ~~G. Legalization (amnesty) program.~~

~~1. The Immigration Reform and Control Act provides for the legalization of aliens who establish that they were in the United States illegally as of January 1, 1982, and maintained continuous residence thereafter.~~

~~2. Holders of Form I-688A or I-688 are eligible to receive in-state tuition rates upon the requisite showing of Virginia domicile for the one-year period.~~



~~3. The standards for adjustment to permanent resident status for a special group of agricultural workers (SAWs) who worked in seasonal agricultural services between May 1, 1985, and May 1, 1986, are even more liberal than for the main legalization program. Applications for in-state status from SAWs who have been issued Form I-688 should be analyzed in the same manner as legalized immigrants.~~

#### ~~H. Political refugees/asylees and parolees.~~

~~1. Political refugees/asylees are generally admitted into the United States for an indefinite period of time without domiciliary restriction. They usually carry Form I-94 endorsed to show either refugee or asylee status. Although some of the I-94s may have an expiration date, e.g., one year, they are usually renewed indefinitely until the person adjusts to permanent resident status. Like immigrants, such political refugees and asylees are eligible for in-state tuition rates upon clear and convincing evidence that for the period of at least one year prior to the date of alleged entitlement, they were domiciled in Virginia and abandoned any previous domicile.~~

~~2. A parolee is an alien, appearing to be inadmissible to the inspecting officer, allowed into the United States for urgent humanitarian reasons or when that alien's entry is determined to be for significant public benefit. Parole does not constitute a formal admission to the United States. It confers temporary status only and requires parolees to leave when the conditions supporting their parole cease to exist. Types of parolees include deferred inspection, advance parole, port-of-entry parole, humanitarian parole, public interest parole, and overseas parole. Due to the temporary nature of the admission in the United States, parolees are not eligible to establish Virginia domicile.~~

~~I. Undocumented and illegal aliens. Students unable to present valid, current INS documentation of their alien status are not eligible for in-state tuition.~~

~~J. Nonimmigrants.~~

~~1. Unlike immigrants, nonimmigrants are authorized entry into the United States temporarily for specific purposes.~~

~~2. a. The document showing their admission status is the Arrival-Departure Record (Form I-94), which is usually stapled into the passport. This form normally contains the nonimmigrant visa category under which the alien is admitted and an expiration date.~~

~~b. The nonimmigrant visa is a stamp placed on one of the pages of the alien's passport. It is useful to distinguish between the nonimmigrant visa and Form I-94. A visa does not guarantee entry, it merely allows a person to board a plane whose destination is the United States and to apply for admission at the border. Form I-94 determines whether the alien will be admitted and how long he will be permitted to stay. When the expiration dates of the visa and the I-94 are different, the I-94 controls.~~

~~c. Institutions should also examine a nonimmigrant's Employment Authorization Document for evidence of permission to work in the United States.~~

~~3. Eligibility to establish domicile.~~

~~a. Several of the categories listed below indicate that holders of these visas are eligible to establish domicile in Virginia. This does not mean that the individual should be conferred domiciliary status, but merely that the student be allowed to present evidence of domiciliary intent as would be presented by~~

~~a U.S. citizen attempting to establish domicile. A visa holder must present clear and convincing evidence of domiciliary intent and satisfy the one-year durational requirement to receive in-state tuition.~~

~~b. Aliens who enter the United States under those categories indicated as ineligible are prohibited by federal and state law to form domicile in the United States. As a condition of entry, such aliens have pledged, and are required, to retain their foreign residence while living temporarily in this country.~~

~~c. Minor children or dependent children of aliens who enter the United States under any of the ineligible visa categories are similarly ineligible to establish Virginia domicile. As with anyone else, the person through whom eligibility is claimed must have been a Virginia domiciliary for the requisite one year.~~

~~4. The present nonimmigrant visa categories are described below. The function of the institution is not to judge the appropriateness of the alien's classification but to analyze the claim of domicile, taking into account the terms and conditions of the classification and the expiration date as it appears on the I-94.~~

~~a. (1) A-1: Ambassador, public minister, career diplomat, or consular officer accredited by a foreign government and recognized by the Secretary of State, and immediate family.~~

~~(2) A-2: Other foreign government official or employee accepted by Secretary of State, and immediate family.~~

~~(3) A-3: Attendant, servant, or personal employee of A-1 or A-2, and immediate family.~~

~~(4) A-1, A-2, and A-3 visa holders are eligible to establish domicile.~~

~~b. (1) B-1: Temporary visitor for business having residence in a foreign country which he has no intention of abandoning.~~

~~(2) B-2: Temporary visitor for pleasure having residence in a foreign country which he has no intention of abandoning.~~

~~(3) B-1/B-2: Temporary visitor for pleasure and business having residence in a foreign country which he has no intention of abandoning.~~

~~(4) B-1, B-2, and B-1/B-2 visa holders are ineligible to establish domicile.~~

~~c. (1) C-1: Alien in immediate and continuous transit through the United States.~~

~~(2) C-2: Alien in transit to United Nations headquarters.~~

~~(3) C-3: Foreign government official, members of immediate family, attendant, or servant, who is in transit through the United States.~~

~~(4) C-1, C-2, and C-3 visa holders are ineligible to establish domicile.~~

~~d. D: Alien crewman serving on board a vessel or aircraft, who intends to land temporarily and solely in pursuit of his duties and to depart with the vessel on which he arrived or on another vessel. D visa holders are ineligible to establish domicile.~~

~~e. (1) E-1: Alien and immediate family permitted to enter the United States under treaty to engage in substantial trade. Allowed to remain in the United States as long as business requires.~~

~~(2) E-2: Alien and immediate family permitted to enter United States under treaty for investment purposes. Allowed to remain in the United States as long as investment purposes require.~~

~~(3) E-1 and E-2 visa holders are eligible to establish domicile.~~

~~f. (1) F-1: Bona fide student permitted entry solely for purpose of pursuing a full course of study, having a residence in a foreign country which he has no intention of abandoning.~~

~~(2) F-2: Spouse or child of F-1, having a residence in a foreign country which he has no intention of abandoning.~~

~~(3) F-1 and F-2 visa holders are ineligible to establish domicile.~~

~~g. (1) G-1: Principal resident representative of recognized foreign member government to international organization, staff, and members of immediate family.~~

~~(2) G-2: Other representative of recognized foreign member government to international organization and immediate family.~~

~~(3) G-3: Representative of nonrecognized or nonmember foreign government to international organization and members of immediate family.~~

~~(4) G-4: Officer or employee of an international organization, and members of immediate family.~~

~~(5) G-5: Attendant, servant, or personal employee of G-1, G-2, G-3, and G-4 classes and members of immediate family.~~

~~(6) G-1, G-2, G-3, G-4, and G-5 visa holders are eligible to establish domicile.~~

~~h. (1) (a) H-1A: Alien coming to the United States to perform services as a registered nurse.~~

~~(b) H-1B: Specialty occupation workers.~~

~~(2) (a) H-2A: Alien temporarily in the United States to perform agricultural labor or services and who has residence in a foreign country which he has no intention of abandoning.~~

~~(b) H-2B: Alien temporarily in United States to perform nonagricultural labor or services and who has a residence in a foreign country which he has no intention of abandoning.~~

~~(3) H-3: Trainee having a residence in a foreign country which he has no intention of abandoning.~~

~~(4) H-4: Spouse or child of alien classified as H-1, H-2, or H-3; if spouse or parent holds a H-2 or H-3, has a residence in a foreign country which he has no intention of abandoning.~~

~~(5) H-1 and H-4 accompanying H-1 visa holders are eligible to establish domicile; H-2, H-3, and H-4 accompanying H-2 or H-3 visa holders are ineligible to establish domicile.~~

~~i. I: Representative of foreign information media, spouse, and children. I visa holders are eligible to establish domicile.~~

~~j. (1) J-1: Exchange visitor under educational program designated by Secretary of State and having a residence in a foreign country which he has no intention of abandoning.~~

~~(2) J-2: Spouse or child of exchange visitor and having a residence in a foreign country which he has no intention of abandoning.~~

~~(3) J-1 and J-2 visa holders are ineligible to establish domicile.~~

~~k. (1) K-1: Fiance or fiancée of United States citizen who seeks to enter the United States solely to conclude a valid marriage in 90 days.~~

~~(2) K-2: Minor child of K-1 visa holder.~~

~~(3) K-1 and K-2 visa holders are eligible to establish domicile.~~

~~l. (1) L-1: Intra-company transferee (executive, managerial, specialized personnel) continuing employment with international firm or corporation.~~

~~(2) L-2: Spouse or minor child of alien classified as L-1.~~

~~(3) L-1 and L-2 visa holders are eligible to establish domicile.~~

~~m. (1) M-1: Vocational or other recognized nonacademic student having residence in a foreign country which he has no intention of abandoning.~~

~~(2) M-2: Spouse or minor child of M-1, having residence in a foreign country which he has no intention of abandoning.~~

~~(3) M-1 and M-2 visa holders are ineligible to establish domicile.~~

~~n. (1) N-8: The parent of an alien who has been accorded the status of special immigrant, but only if and while the alien is a child; or the child of such a parent accorded the status of special immigrant.~~

~~(2) N-9: Minor child of N-8.~~

~~(3) N-8: and N-9: Visa holders are eligible to establish domicile.~~

~~o. (1) O-1: An alien with extraordinary ability in the sciences, arts, education, business, or athletics who is in the United States to continue work in this area, and immediate family, having a foreign residence which he does not intend to abandon.~~

~~(2) O-2: An alien entering the United States solely to assist in the artistic or athletic performance by an alien who is admitted under an O-1 visa, and immediate family, having a foreign residence which he does not intend to abandon.~~

~~(3) O-3: Minor child of O-1 or O-2.~~

~~(4) O-1, O-2, and O-3 visa holders are ineligible to establish domicile.~~

~~p. (1) P-1: An alien who is an athlete or entertainer of international reputation and is in the United States temporarily and solely for the purpose of performing, or the spouse or child of such an alien, who has a foreign residence which he does not intend to abandon. P visa holders are ineligible.~~

~~(2) P-2: Artist or entertainer in reciprocal exchange program.~~

~~(3) P-3: Artist or entertainer in a culturally unique program.~~

~~(4) P-4: Spouse or child of P-1, P-2, or P-3.~~

~~(5) P visa holders are ineligible to establish domicile.~~

~~q. Q: An alien having a foreign residence that he has no intention of abandoning who is in the United States for a period not to exceed 15 months as a participant in an international cultural exchange program designated by the U.S. Attorney General. Q visa holders are ineligible to establish domicile.~~

~~r. (1) R-1: An alien, who for the two years immediately preceding the time of application for admission to the country has been a member of a religious denomination having a bona fide, nonprofit religious organization in the United States, coming into the U.S. to carry on activities of a religious worker.~~

~~(2) R-2: Spouse or child of R-1.~~



~~(3) R-1 visas have a maximum duration of five years. R-1 visa holders, and their dependents are, therefore, ineligible for in-state tuition benefits.~~

~~s. (1) S-5: An alien witness or informant who the Immigration and Naturalization Service (INS) determines is in possession of information concerning a criminal organization or enterprise and whose presence in the U.S. is essential to the success of an authorized criminal investigation.~~

~~(2) S-6: An alien witness or informant who the Secretary of State and INS jointly determine is in possession of critical reliable information concerning a terrorist organization, enterprise, or operation.~~

~~(3) S-7: Spouse, children, and parents following to join an S-5 or S-6 visa holder.~~

~~(4) S-5, S-6, and S-7 visa holders are ineligible to establish domicile.~~

~~t. (1) TN: NAFTA professional. A Canadian or Mexican citizen admitted temporarily to perform specific professional functions as outlined in the North American Free Trade Agreement.~~

~~(2) TD: Spouse or child of NAFTA professional.~~

~~(3) TN and TD visa holders are ineligible to establish domicile.~~

~~u. (1) NATO-1: Principal permanent representative of member of state to NATO, and resident staff and immediate family.~~

~~(2) NATO-2: Other representative to NATO, including dependents of member of force entering U.S. in accordance with the NATO Status of Forces Agreement.~~

~~(3) NATO-3: Official clerical staff and immediate family accompanying NATO-1 or NATO-2 holder.~~

~~(4) NATO-4: Official of NATO (other than NATO-1) and immediate family.~~

~~(5) NATO-5: Expert, other than NATO officials classifiable under NATO-4, employed on mission on behalf of NATO and dependents.~~

~~(6) NATO-6: Member of civilian component accompanying a force entering U.S. in accordance with the NATO Status of Forces Agreement; member of civilian components employed by Allied Headquarters; and dependents.~~

~~(7) NATO-7: Attendant or servant of NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, and NATO-6.~~

~~(8) Aliens admitted into the United States, pursuant to the NATO Status of Forces Agreement, who are members of the armed forces, are not eligible under terms of this agreement to establish domicile in the United States.<sup>3</sup> Since the domicile prohibition of the NATO agreement does not apply to civilians accompanying members of the armed forces, these individuals may be able to establish domicile as any other person. The alien must demonstrate the inapplicability of the treaty agreement and provide clear and convincing evidence that he is eligible to establish domicile.~~

#### ~~5. Pending status changes.~~

~~a. If a student is in a visa category that is ineligible to establish domicile and the student petitions the federal government to reclassify his restricted status to immigrant status, or some other eligible nonimmigrant status, the student will continue to be ineligible despite the petition for reclassification.~~

~~b. When such petition is acted favorably upon by the federal government, the student may seek to prove Virginia domicile as anyone else and may, in the interest of fairness, claim that such domicile existed back to the date of the filing of the petition, not necessarily from the date of reclassification by the federal government. An institution may require evidence of the date that the reclassification was approved or petition filed, or both.~~

~~For example, an alien here under a restricted visa may be permitted by the U.S. Attorney General to remain indefinitely, and not be deported, because of racial, religious, or political persecution in the home country. The student should be prepared to submit evidence of the U.S. Attorney General's decision.~~

~~c. In addition, an alien in the United States in an ineligible visa category (O or R, for example) may become the beneficiary of an approved I-140 or I-130 immigrant petition. If so, the alien may be eligible for in-state tuition benefits, even while the alien's adjustment application is pending, upon providing clear and convincing evidence of domicile.~~

~~18 USC 1101 (a) 15; 8 CFR 214 et seq.; 22 CFR 40-42.~~

~~2The front side of the card contains the photograph and fingerprints of the alien and an eight-digit number preceded by the letter "A". The reverse side of the card states that "the person identified by this card is entitled to reside permanently and work in the United States."~~

~~3NATO Statute of Forces Agreement, June 19, 1951, 4 U.S.T., 1793, T.I.A.S. 2846. Article III thereof provides that the NATO force "shall not be considered as acquiring any right to permanent residence or domicile in the territories of~~

~~the receiving State." It has also been held that a member of the Royal Air Force of the United Kingdom stationed to a U.S. Naval aircraft base in Virginia Beach, pursuant to a NATO visa, cannot be a Virginia domicile for purposes of initiating a divorce suit in Virginia's state courts. See official opinion of the Attorney General to delegate Howard E. Copeland, dated May 16, 1983.~~

A. The mere fact that a person is a citizen of another country does not automatically disqualify the person from establishing domicile in Virginia. When an alien claims Virginia domicile, the alien bears the burden of presenting clear and convincing evidence to the institution establishing that the alien is an eligible alien. If the alien is unable to present such evidence, the alien shall be presumed to be an ineligible alien.

B. If an alien applicant establishes that he is an eligible alien, the institution shall then review all relevant factors to determine if the alien applicant did in fact establish domicile for the requisite one-year period.

C. In reviewing the domiciliary intent factors, the institution should keep in mind that there may be factors which are inapplicable to aliens by operation of law. Examples include the following:

1. Aliens cannot register to vote.

2. Salaries paid to some non-U.S. citizens are exempt from federal and state taxation.

In such instances, a record of nonvoting or nonpayment of taxes is immaterial to the domicile consideration. Unless the institution is aware of the inapplicability of any evidentiary factor, the responsibility and burden is always on the student to bring such information to the attention of the institution.

D. An eligible alien may claim eligibility for in-state tuition through the Virginia domicile of the student's parent, like any other student. An eligible alien may claim eligibility for in-state tuition through the Virginia domicile of the student's spouse if the student demonstrates dependency on that spouse.

E. Documentation.

1. The document showing their admission status is the Arrival-Departure Record (Form I-94), which is usually stapled into the passport. This form normally contains the nonimmigrant visa category under which the alien is admitted and an expiration date.

2. The nonimmigrant visa is a stamp placed on one of the pages of the alien's passport. It is useful to distinguish between the nonimmigrant visa and Form I-94. A visa does not guarantee entry; it merely allows a person to board a plane whose destination is the United States and to apply for admission at the border. Form I-94 determines whether the alien will be admitted and how long he will be permitted to stay. When the expiration dates of the visa and the I-94 are different, the I-94 controls.

F. Alien students with a pending status change.

An ineligible alien may become an eligible alien if (i) a petition or application to change status to eligible alien status has been approved or (ii) an application for adjustment of status for permanent residence status has been filed. Domicile cannot be established any earlier than the date of the respective U.S. Citizenship and Immigration Services official notice used for verification of (i) or (ii).

1. If an ineligible alien has filed or has become a beneficiary of a petition to change from one nonimmigrant status to another such that the student will, if and

when approved, become an eligible alien, the student will continue to be ineligible, despite the pending petition or application. Subsequent to the petition or application being approved, the student may seek reclassification for in-state tuition by presenting clear and convincing evidence that he is, at that time, an eligible alien and has established Virginia domicile for at least one full year.

2. An ineligible alien who has filed an adjustment of status application for permanent residence may seek reclassification for in-state tuition by presenting a receipt notice for his pending adjustment of status application and demonstrating that Virginia domicile has been established for at least one full year.

### Article 3

#### Reclassification and Falsification of Information

#### **8VAC40-120-120. Reclassification.**

##### A. Changes from out-of-state to in-state classification.

1. If a student is classified initially as out-of-state, it is the responsibility of the student thereafter to petition the responsible official for reclassification to in-state status if the student believes that subsequent changes in facts justify such a reclassification. The institution will not assume responsibility for initiating such an inquiry independently.

2. It is presumed that a matriculating student who enters an institution classified as an out-of-state student remains in the Commonwealth for the purpose of attending school and not as a bona fide domiciliary. The student seeking status reclassification is required to rebut this presumption by clear and convincing evidence.

3. The change in classification, if deemed to be warranted, shall be effective for the next academic semester or term following the date of the application for reclassification. No change to in-state status may be obtained by a student for an academic term that has begun before the date of the application for reclassification.

B. Changes from in-state to out-of-state classification.

1. If a student is classified initially as in-state, either the student or the institution thereafter may initiate a reclassification inquiry. It is the duty of the student to notify the institution of any changes of address or domiciliary status.

2. The institution may initiate the reclassification inquiry independently at any time after the occurrence of events or changes in facts which give rise to a reasonable doubt about the validity of the existing domiciliary classification.

3. A student who is eligible for in-state tuition as of the date of alleged entitlement is eligible for in-state rates throughout that term. Therefore, a student whose classification changes from in-state to out-of-state during a ~~semester~~ term has a grace period that lasts until the end of that ~~semester~~ term.

C. Changes due to administrative errors.

1. Administrative errors may include letters announcing an incorrect domicile, actual misclassification, or incorrect tuition billing notices.

2. In the absence of fraud or knowingly providing false information, where a student receives an erroneous notice announcing the student to be, or treating the student as, eligible for in-state tuition, the student shall not be responsible for paying the out-of-state tuition differential for any enrolled semester or term

commencing before the classifying institution gives to the student written notice of the administrative error.

**8VAC40-120-140. Student responsibility to register under proper classification; responsibility for supplying information.**

A. It is the student's responsibility to ~~register under~~ make application under the proper domicile classification or other in-state tuition provision.

B. ~~If the student questions the right to classification as a Virginia domiciliary it~~ It is the student's obligation, prior to or at the time of registration, to raise the question with the proper administrative officials of the institution and have such classification officially verified.

C. An applicant or enrolled student subject to either a classification or reclassification inquiry is responsible for supplying all pertinent information requested by the institution in connection with the classification process by the institution's deadline. Failure to comply with such requests may result in one of the following consequences for the term in question and until eligibility is confirmed:

1. Where the initial classification inquiry affects a prospective enrollee, the student shall be classified out-of-state for tuition purposes;
2. Where the reclassification petition is initiated by the student to acquire a change from out-of-state to in-state status, the student shall continue to be classified as out-of-state for tuition purposes; or
3. Where the reclassification inquiry anticipates a change from in-state to out-of-state status for tuition purposes, the student may be subjected to retroactive reclassification.



D. Each institution should provide in their student catalogues, handbooks, etc., the standards of conduct and the procedures it follows when dismissing a student or ~~cancelling~~ canceling enrollment.

**8VAC40-120-145. Limitation on in-state tuition benefit.**

A. After August 1, 2006, for first-time freshman students who enroll at a public, baccalaureate degree-granting, institution of higher education in Virginia and who have established Virginia domicile, the entitlement to in-state tuition shall be modified to require the assessment of a surcharge for semesters exceeding 125 percent of degree requirements for a baccalaureate program.

1. For degree seeking students, all courses taken for credit are included in the calculation, whether they specifically satisfy degree requirements or not, subject to the following conditions.

a. When determining which credit hours to include in the calculation, the institution shall implement the principles used to evaluate Satisfactory Academic Progress quantitative standards in compliance with Section 668 of the Federal Compilation of Student Financial Aid Regulations;

b. Excluded credits. In calculating the 125 percent credit hour threshold, the following courses and credit hours shall be excluded:

(1) Remedial courses;

(2) Transfer credits from another Virginia public college or university that do not meet degree requirements for general education courses or the student's chosen program of study;

(3) Transfer credits from other than a Virginia public college or university;

(4) Advanced placement or international baccalaureate credits that were obtained while in high school or another secondary school program; and

(5) Dual enrollment, college-level credits obtained by the student prior to receiving a high school diploma.

2. The surcharge shall be assessed for each term that the student continues to be enrolled after such student has completed 125 percent of the credit hours needed to satisfy the degree requirements for a specified undergraduate program.

a. The surcharge is applicable for all enrolled courses beginning with the term after the credit hour threshold has been reached.

b. If the student is in a 120-hour program and has completed 145 credit hours, there remains just five hours before meeting the credit hour threshold of 150 credit hours. However, if the student enrolls in more than five credit hours, the entire term is still charged at the standard in-state tuition rate because the student had not met the threshold prior to that term.

B. Notice to students.

1. The institution shall notify students of the 125 percent restriction on in-state tuition no later than the initial enrollment into a degree program. Notification may be in the college catalog, institution website, or within the in-state tuition notification letter and shall include a general description of the restriction.

2. In addition, the institution shall provide direct notification to all students during their senior year. Notification must be made directly to the student and may include electronic mail or regular mail and must include a description of the restriction, credits that are excluded, and the appeals process.

C. Waiver of the surcharge. Waivers involving circumstances not otherwise outlined in these guidelines shall be reviewed by State Council of Higher Education for Virginia staff. The institution may waive the surcharge assessment for students who exceed the 125 percent credit hour threshold due to extenuating circumstances. The institution shall review all requests for waivers on a term-by-term basis. Waiver criteria that may be approved by the institution include:

1. Circumstances affecting student performance or completion of a term.

- a. Long-term illness or disability occurring after initial matriculation,
- b. Death or long-term disability of an immediate family member, person providing financial support, or dependent,
- c. Involuntary loss of student employment resulting in withdrawal from a term,
- d. Active or reserve service in the armed forces of the United States or other state or national military mobilization,
- e. Other state or national emergency, and
- f. Service in AmeriCorps or Peace Corps.

2. Academic program decisions requiring additional courses.

- a. Double-majors. The credit hour threshold is calculated based on the minimum hours required in order to complete a declared double-major as recognized by the institution. The double-major must have been declared by no later than the academic year prior to the term in which the student exceeds the credit hour threshold.
- b. Change of majors. Except in cases where the institution requires the change of major, this provision for a waiver is only applicable for a student's

initial change of major - multiple changes by the student are not grounds for a waiver – and the change of major must have been declared by no later than the academic year prior to the term in which the student exceeds the credit hour threshold.

c. Second degree. The credit hour threshold is calculated based on the number of credit hours required to complete the second degree program. Credit hours from the first degree program that do not apply to degree requirements or electives of the second degree are excluded from the calculation.

### Part III

~~In-State Tuition Rates for Spouses and Dependent Children of Active-Duty Military Members~~ In-State Tuition Rates for Active-Duty Military Family Members

#### **8VAC40-120-150. General Spouses and dependents of military member.**

A. ~~Section 23-7.4:2(A) of the Code of Virginia deals with spouses and dependent children of military personnel who do not otherwise qualify for in-state tuition privileges, i.e., they are unable~~ Dependents of certain military members may be deemed as domiciled for purposes of eligibility for educational benefits reserved for Virginia domiciled residents if they are otherwise unable to show by clear and convincing evidence that Virginia is their domicile.

B. Institutions should apply the provisions of this section only if a military member, spouse, or dependent child is unable to present sufficient evidence of establishing domicile. Military personnel, their spouse, and dependent children are entitled to ~~show~~ demonstrate eligibility for in-state tuition rates in the same manner as nonmilitary

personnel, except that the one-year domicile period shall be waived for active duty military personnel (and their dependent spouse or children) who voluntarily elect Virginia as their permanent residence for domiciliary purposes.

C. This provision is not a determination of domicile and as such the normal domicile documents may not apply. Normally, a copy of military orders verifying the status and assignment of the military member and a copy of military dependent card verifying dependent status, and a document verifying Virginia residence is sufficient, but the institution may obtain whatever documentation are necessary in order to verify eligibility for this provision.

D. For purposes of this section, dependents of military members shall mean any civilian qualifying as a military dependent under 37 U.S.C. 401 currently or as otherwise amended.

E. The qualifying military member shall:

1. Be active duty personnel, or activated or temporarily mobilized reservists or temporarily mobilized guard members.
2. Be assigned permanent duty station to a workplace geographically located in the Commonwealth of Virginia, or the District of Columbia, or a state contiguous to Virginia. Such assignments include temporary assignment to a location outside these locations, such as on a ship or to an area of conflict, as long as the military member remains assigned to a unit considered to have its home port/base located in Virginia, the District of Columbia, or a state contiguous to Virginia. Temporary assignments within these locations and permanent assignments otherwise outside of these locations do not qualify.

3. Reside within the territorial borders of the Commonwealth of Virginia. In addition to permanent housing, such residence may include base, rental, or other temporary housing. Military assigned and voluntary housing located outside of Virginia do not qualify. Temporary deployment of the military member does not disqualify the family members as long as a permanent residence is maintained in Virginia.

F. Application of military provision.

1. For purposes of this subsection the following definitions apply:

a. "Date of alleged entitlement" means the date of admission or acceptance for dependents currently residing in Virginia or the final add/drop date for dependents of members newly transferred to Virginia. It is the intention that students who meet the eligibility criteria as of the date of admission or acceptance by the institution remain eligible for the benefit regardless of whether their military parent is subsequently reassigned prior to the first day of the term. Further, students whose families transfer into Virginia after the first day of the term but prior to the end of drop/add are also eligible if they otherwise meet all eligibility criteria. If the student meets the eligibility criteria during any one day of this defined period of time, the student is eligible for the benefit.

b. "Temporarily mobilized" means activated service for six months or more.

2. Dependents of qualifying military members shall be deemed as domiciled for resident educational benefits, including the in-state tuition rate, financial assistance, and any other educational benefit reserved for eligible Virginia

residents enrolled in an undergraduate or graduate program, see guidance document for details on definition of “military dependent.”

3. Continued eligibility for resident educational benefits is based solely on continuous enrollment and is not affected by any change of duty station or residence of the military service member.

a. Eligibility is not lost if the student does not enroll into a summer term.

b. Transfer students do not lose eligibility as long as they remain degree-seeking in consecutive terms at an accredited Virginia public or private institution.

c. Eligibility is maintained if the student is enrolled continuously from an undergraduate degree program to a graduate or professional degree program.

d. Continuous enrollment shall be recognized as at least one course for credit in consecutive terms, including dual enrollment but excluding summer.

G. Regaining eligibility. If a student breaks continuous enrollment by missing a fall or spring term, the student must meet all initial eligibility requirements upon re-enrollment in order to regain eligibility under this provision.

**8VAC40-120-160. Children of military members. (Repealed.)**

~~Students who are the children of military members are also eligible for in-state tuition rates when all of the following conditions are met:~~

~~1. The student is not a member of the armed forces;~~

~~2. One of the student's parents is a member of the armed forces residing in Virginia pursuant to military orders; and~~

~~3. For the year immediately prior to the date of the alleged entitlement, the student's nonmilitary parent has:~~

~~a. Resided in Virginia;~~

~~b. Been employed full-time;~~

~~c. Paid personal income tax to Virginia; and~~

~~d. Claimed the student as a dependent for Virginia and federal income tax purposes. Filing a joint federal return claiming the student as a dependent is sufficient as long as the nonmilitary parent claims the student as a dependent for Virginia tax purposes.~~

**8VAC40-120-170. Spouses of military members. (Repealed.)**

~~Students who are spouses of military members are also eligible for in-state tuition rates when all of the following conditions are met:~~

~~1. The student is not a member of the armed forces;~~

~~2. The student is the spouse of a member of the armed forces residing in Virginia pursuant to military orders; and~~

~~3. For the year immediately prior to the date of alleged entitlement, the spouse of the military person has:~~

~~a. Resided in Virginia;~~

~~b. Been employed full-time; and~~

~~c. Paid personal income tax to Virginia.~~



**~~8VAC40-120-180. Application of military provision. (Repealed.)~~**

~~A. Sections 8VAC40-110-160 and 8VAC40-110-170 of this chapter apply only as long as the military member is residing in Virginia pursuant to military orders and the nonmilitary parent or the spouse continues to reside in Virginia, work full-time, and pay taxes to Virginia.~~

~~B. Eligibility for in-state tuition rates must be re-evaluated annually by the institution.~~

~~C. All students receiving in-state tuition under the military exception will be counted as out-of-state students for admissions, financial aid, enrollment, and tuition and fee revenue policy purposes.~~

**~~8VAC40-120-190. Grace period tuition. (Repealed.)~~**

~~(Note: § 23-7.4:2(A)(iii) of the Code of Virginia which grants one year of in-state tuition to the spouse and children of military personnel has been suspended since the 1994-1996 biennium by § 4-2.01(b)(4) of the appropriation act. Military members are not able to receive any benefit outlined in this section until the suspension period ends.)~~

~~A. The spouse and dependent children of active duty military personnel who reside in Virginia pursuant to military orders may be eligible for in-state tuition rates for a one-year period anytime during the period that the military parent or spouse is residing in Virginia.~~

~~1. The dependent child or spouse may take advantage of the entitlement at any time during the period that the military person is residing in Virginia.~~

~~2. Section 23-7.4:2(A)(iii) of the Code of Virginia refers to the spouse and dependent children of military personnel and not the military personnel themselves.~~

~~B. Requirements for one year of in-state tuition.~~

- ~~1. The military parent or spouse must reside in Virginia.~~
- ~~2. A student must be eligible to take advantage of this benefit on the first official day of class.~~
- ~~3. The burden is on the student to provide copies of military documents establishing his entitlement.~~

~~C. Institutions of higher education must identify and report to the Council of Higher Education the number of students who are eligible for in-state rates under this provision. A report form will be distributed with the annual reports calendar.~~

~~D. Military personnel should be advised not only of the temporary nature of the grace period, but also of the inherent limitations of § 23-7.4:2(A)(iii) of the Code of Virginia: the privileges are forfeited when the military member is assigned to a new duty station away from Virginia.~~

#### **8VAC40-120-200. Military members and domiciliary status.**

A. Eligibility for in-state tuition rates can be ~~preserved by the military member's adoption~~ obtained by establishment of Virginia domicile while residing in Virginia as explained in Part II of this chapter.

1. To begin to establish domicile, a military member should file a State of Legal Residence Certificate claiming Virginia domicile and changing the Leave and Earning Statement to authorize the withholding of Virginia income tax.
2. Other objective indicators of domicile include, but are not limited to, obtaining a driver's license, registering a motor vehicle, registering to vote, and showing that he has not established domicile in another state or country.

3. Once established, Virginia domicile is not lost when the military member leaves the Commonwealth pursuant to military orders, provided that the member retains Virginia as state of legal residence and does nothing inconsistent with the claim of Virginia domicile.

4. In determining the domiciliary intent of active-duty military personnel residing in Virginia who voluntarily elect to establish Virginia as their permanent residence for domiciliary purposes, the requirement of one year shall be waived if all other conditions for establishing domicile are satisfied.

~~B. In determining the domiciliary intent of active-duty military personnel residing in Virginia who voluntarily elect to establish Virginia as their permanent residence for domiciliary purposes, the requirement of one year shall be waived if all other conditions for establishing domicile are satisfied.~~

~~C. Dependent children and dependent spouses of military members may become eligible for in-state tuition by claiming dependency on a military member who has satisfied the conditions for establishing domicile. The requirement of one-year domicile shall be waived for children and spouses claiming domicile through a Virginia domiciled military member.~~

B. Military in-state tuition rates for certain military members not domiciled in Virginia.

1. Certain military personnel are eligible for the in-state tuition rate despite not being domiciled in Virginia. To be eligible, the personnel must be:

a. Active duty military members, or

b. Activated guard or reservist members, or

c. Guard or reservist members mobilized or on temporary active orders for six months or more, and

d. Either stationed or assigned by their military service to a work location in Virginia (including the Pentagon) Temporary deployment away from Virginia does not disqualify the student as long as the member remains attached to a unit whose home base is located in Virginia, and

e. Residing in Virginia. Such residence may include base, rental, or other temporary housing. Temporary deployment away from Virginia does not disqualify the member as long as a residence is maintained in Virginia.

2. Eligible students are eligible for the in-state tuition rate.

3. Eligibility under this provision ceases at such time as any the conditions in subsection B.1 of this subsection are no longer met.

4. Service members determined to be domiciled in Virginia are not subject to the restrictions of this provision.

#### Part IV

##### In-State Tuition Rates for Non Virginia Residents Employed in Virginia

#### **8VAC40-120-210. Eligibility for in-state rates for nonresidents employed in Virginia.**

A. A nondomiciliary student who physically lives outside Virginia but who works full time in the Commonwealth may be eligible for in-state tuition provided that the student:

1. Lives outside Virginia; meaning, the student commutes from a residence outside Virginia to a work-site in Virginia;

2. Has been employed full time in Virginia for at least one year immediately prior to the date of ~~enrollment~~ alleged entitlement for which reduced tuition is sought; and

3. Has paid Virginia income taxes on all taxable income earned in the Commonwealth of Virginia for the tax year prior to the date of alleged entitlement.

B. Students claimed as dependents for federal and Virginia income tax purposes who live outside of Virginia will be eligible under this ~~exception~~ provision if the nonresident parent claiming him as a dependent:

1. Lives outside Virginia; meaning, the parent commutes from a residence outside Virginia to a work-site in Virginia;

2. Has been employed full-time in Virginia for at least one year immediately prior to the date of alleged entitlement; and

3. Has paid Virginia income taxes on all taxable income earned in Virginia for the tax year prior to the date of the alleged entitlement.

(Note: Students may claim eligibility for in-state tuition under this section only through dependency on parents. A nonresident dependent spouse is not eligible for in-state tuition under this section through the individual's spouse.)

C. Such dependent students shall continue to be eligible for in-state tuition charges so long as they or their qualifying parent are employed full time in Virginia, paying Virginia income taxes on all taxable income earned in this Commonwealth, and claiming the student as a dependent for Virginia and federal income tax purposes. It is incumbent upon the student to provide to the institution current information concerning classification under this category.

### **8VAC40-120-220. Application of provision.**

This part does not apply to individuals who reside in a state with which Virginia has income tax reciprocity.<sup>1</sup> ~~Students who reside in reciprocity states cannot qualify under this section for in-state tuition rates; however, keep in mind that such students have the right to claim in-state rates as Virginia domiciles or under the military spouse or dependent provisions rates.~~

~~<sup>1</sup>As of June 2001, the states having income tax reciprocity with Virginia are: Kentucky, Maryland, Pennsylvania, the District of Columbia, and West Virginia~~ July 2007, the states and localities having income tax reciprocity with Virginia are: the District of Columbia, Kentucky, Maryland, Pennsylvania, and West Virginia.

#### Part V

##### Reduced or In-State Tuition Rates Under Special Arrangement Contracts

### **8VAC40-120-230. Reduced tuition under Special Arrangement Contracts.**

A. Nondomiciliaries employed by a Virginia employer, including federal agencies located in Virginia, may qualify for reduced tuition rates if the employer assumes the total liability of paying the tuition of these employees to the legal limit allowable through a Special Arrangement Contract with the institution.

B. Instruction may be provided in groups or on an individual basis on or off campus. (Group instruction is a collection of individuals enrolled for a given course.)

C. This chapter applies to all instruction which is reported to the State Council of Higher Education for Virginia for FTE purposes.

**8VAC40-120-240. Application of provision.**

A. The public institution that the nondomiciliary wishes to attend must have in force a valid Special Arrangement Contract with the employer in order for the student to qualify for reduced tuition charges.

1. The employer must be assuming the liability for the total tuition charges of its employee unless limited by federal law in which case the employee is responsible for the remaining portion.
2. The tuition charged to the employer shall be at least equal to in-state tuition fees, but the public institution of higher education may specify tuition charges in the Special Arrangement Contract that are greater than in-state tuition charges but less than out-of-state charges.
3. The reduced tuition charges are available only to the employee and not to his spouse or dependent children.

B. The public institution of higher education wishing to enter into a Special Arrangement Contract shall:

1. Negotiate with the employer or federal authority a Special Arrangement Contract which would specify the term of the contract (not to exceed two years) and the amount of tuition to be charged to the employer.
2. Forward the proposed Special Arrangement Contract to the Office of the Attorney General for approval as to legal sufficiency prior to signing.
3. Annually report all special arrangement activities to the State Council of Higher Education for Virginia.

4. Specify for any Special Arrangement Contracts with federal authorities for on-campus instruction the number of FTE students to be enrolled at the contract rate.

C. Virginia employers and federal agencies or installations located in Virginia, including all branches of the U.S. military, may enter Special Arrangement Contracts and may receive in-state tuition for their employees if the employee:

1. Has a primary work-site in Virginia; meaning, the employee works on a day-to-day basis at a location physically in the ~~state~~ Commonwealth of Virginia; or
2. Is ordered to a station, military base, or office located in the ~~state~~ Commonwealth of Virginia, even if the individual's primary work-site is located outside Virginia.

D. Independent of a Special Arrangement Contract, the employee must have his domicile determined by the public institution of higher education. Employees covered by Special Arrangement Contracts must also be included in all enrollment reports according to domicile, as is any other student. The institution shall report those students who meet the domicile requirements as in-state students and those students who do not meet the domicile requirements but are eligible for in-state tuition under this section as out-of-state students.

## Part VI

### Reduced or In-State Tuition Rates for Other Nonresidents

#### **8VAC40-120-250. In-state tuition eligibility.**

A. The Code of Virginia provides in ~~§ 23-7.4:2(D)~~ § 23-7.4:2(C) that the governing boards of any state institution may charge in-state tuition to (i) persons enrolled in programs designated by the State Council of Higher Education for Virginia who are from



states which are a party to the Southern Regional Education Compact (as administered by the Southern Regional Education Board, including the Academic Common Market) and provide reciprocity to Virginians; (ii) foreign nationals in foreign exchange programs approved by the state institution during the same period that an exchange student from the same state institution, who is entitled to in-state tuition pursuant to § 23-7.4 of the Code of Virginia, is attending the foreign institution; and (iii) high school or magnet school students under a dual enrollment agreement with a community college where early college credit may be earned. In such circumstances, governing board policy should be consulted and the provisions of the cited statute reviewed.

B. Pursuant to ~~§ 23-7.4:2(E)~~ § 23-7.4:2(D) of the Code of Virginia, the governing board of the Virginia Community College System ~~may charge reduced~~ shall charge in-state tuition to any person who lives within a 30-mile radius of a Virginia institution and is enrolled in one of the system's institutions who is domiciled in, and is entitled to in-state charges in, the institutions of higher learning in any state which is contiguous to Virginia and which has similar reciprocal provisions for persons domiciled in Virginia. Such students shall be counted as in-state students for all reporting purposes and for purposes of determining college admissions, enrollment, and tuition and fee revenue policies.

C. Pursuant to ~~§ 23-7.4:2(F)~~ § 23-7.4:2(E) of the Code of Virginia, the advisory board of the University of Virginia's College at Wise and the Board of Visitors of the University of Virginia may charge reduced tuition to any person enrolled in the University of Virginia's College at Wise who lives within a 50-mile radius of the college, is domiciled in, and is entitled to in-state tuition charges in the institutions of higher learning in Kentucky or Tennessee, if Kentucky or Tennessee has similar provisions for persons domiciled in Virginia.

**8VAC40-120-260. Reduced tuition rates, waiver of tuition and fees, and other benefits.**

The Code of Virginia authorizes institutions to provide certain benefits to several categories of students, including, but not limited to: children of persons killed or disabled due to war service or who are prisoners of war or missing in action (§ 23-7.4:1(A) of the Code of Virginia); children and spouses of certain law-enforcement officers, correctional and jail personnel, sheriffs, members of the Virginia National Guard, fire fighters, and members of rescue squads (§ 23-7.4:1(B) of the Code of Virginia); certain foreign exchange students (~~§ 23-7.4:1(D)~~ § 23-7.4:1(C) of the Code of Virginia); certain National Guard members (~~§ 23-7.4:2(C)~~ § 23-7.4:1(B) of the Code of Virginia); cooperating teachers (§ 23-8.2:1 of the Code of Virginia); students receiving unfunded scholarships (§ 23-31 of the Code of Virginia); and senior citizens under the Senior Citizen's Higher Education Act (§ 23-38.56 of the Code of Virginia).

It is the student's responsibility to timely notify the institution of his eligibility under one of these provisions and to provide supporting evidence. Institutions should refer to the relevant provisions of the Code of Virginia.

Certification Statement:

I certify that this regulation is full, true, and correctly dated.

\_\_\_\_\_ (Signature of certifying official)

Name and title of certifying official: \_\_\_\_\_

Name of agency: \_\_\_\_\_

Date: \_\_\_\_\_