

# STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

## Domicile Guidelines

### Part I Definitions and Presumptions

#### Section 01. Definitions.

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

"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 operating under Title 32 of the United States Code.

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

"Clear and convincing evidence" means that the evidence presented affirms that the student's assertion is more highly probable to be true than not and the domicile officer has a firm belief or conviction in it. This standard is greater than what must be met in civil actions – preponderance of the evidence – which requires that the facts more likely than not prove the issue for which they are asserted; but less than the standard of proof in criminal cases – beyond a reasonable doubt – which leaves no room for a reasonable person to doubt.

"Commonwealth" means the Commonwealth of Virginia.

"Council" means the State Council of Higher Education for Virginia or its designated staff.

"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 standard term, semester, or quarter of the program of study 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 means the starting date of the nontraditional course in which the student is enrolled, if the student is only enrolled in the term in such courses.

"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. Dependent student includes unemancipated minor.

The presumption is 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.

If a student successfully demonstrates that one of the seven exceptions is met, the presumption of dependency is set aside and the institution then examines the available evidence to determine if the student is best categorized as a dependent student or as an independent student. Note that a student could meet the standard for any of the exceptions but still be considered a dependent student. (See definition of Independent student for further guidance.)

"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, is not affected by (i) mere transient or temporary physical presence outside the Commonwealth or (ii) the establishment and maintenance of a place of residence outside the Commonwealth for the purpose of maintaining a joint household with an active-duty military spouse.

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

"Eligible alien" means a Lawful Permanent Resident, applicant for Lawful Permanent Residence, or other alien in a valid nonimmigrant or other status that provides the capacity to intend to remain in the Commonwealth indefinitely.

"Emancipated minor" means a student under the age of 18 on the date of the alleged entitlement who has been emancipated pursuant to Article 15 (§ 16.1-331 et seq.) of Chapter 11 of Title 16.1 or the applicable laws of any other jurisdiction.

"Financial self-sufficiency" means the student is able to provide for their own needs with minimal assistance from others. Needs include basic living expenses (housing, utilities, food, transportation, clothing, etc.) as well as educational expenses (tuition, fees, books, supplies, etc.). In order to substantiate the claim of financial self-sufficiency, the resources must originate from the student's personal funds (earnings from current or past employment, an inheritance, student loans, legal settlement, etc.). Resources that do not originate from personal funds generally do not substantiate a claim of financial self-sufficiency; these resources include gifts, trust funds, personal loans from immediate or extended family members, federal parent PLUS loans borrowed by a parent, prepaid tuition savings plans, and other unearned funds provided in dollar or kind from a family member. The determination of financial self-sufficiency will not be affected by the timing of when such gifts, trusts, loans, or prepaid tuition plans were established. Student earnings through employment by family members or friends of the student and family may be scrutinized to determine whether wages were for actual services performed or set at or above market rate.

"Independent student" means a student 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 with substantial financial support. Independent student includes emancipated minors.

"Ineligible alien" means an alien who is not a Lawful Permanent Resident or an applicant for Lawful Permanent Residence and any other alien who otherwise does not hold a valid nonimmigrant or other status that provides the capacity to intend to remain in the Commonwealth indefinitely.

"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" 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 a legally established bias towards a predetermined conclusion that may be rebutted (demonstrated as false) by presentation of clear and convincing evidence to the contrary.

"Student" means the applicant for benefits under these guidelines.

"Substantial financial support" means the amount of financial support received by a student that qualifies for being listed as a dependent on federal and state income tax returns, whether or not the parents do claim the student for tax purposes. 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. Federal parent PLUS loans, trusts, nonmarket rate employment income, and any other funds originating from a parent may considered as forms of parental support.

"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 Council 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 annually published in the Council's full cost report.

"Surviving spouse" means the spouse of a military service member who, was killed in action, became missing in action, or became a prisoner of war while serving as an active duty member in the Armed Forces of the United States, Reserves of the Armed Forces of the United

States, or Virginia National Guard, during military operations against terrorism, on a peacekeeping mission, or as a result of a terrorist act, or in any armed conflict.

"Unaccompanied orders" means orders that assign active-duty military personnel or activated or temporarily mobilized reserve or guard members an unaccompanied tour listed in Appendix Q of the Joint Federal Travel Regulations or without command sponsored dependents as defined by appropriate travel regulations.

"Unemancipated minor" means a student under the age of 18 on the date of the alleged entitlement who has not been emancipated pursuant to Article 15 (§ 16.1-331 et seq.) of Chapter 11 of Title 16.1 or the applicable laws of any other jurisdiction.

"Veteran" means an individual who has served on active duty in the Armed Forces of the United States and who was discharged or released from such service under conditions other than dishonorable (see definition of "active-duty military").

## **Section 02. Presumptions.**

The domicile analysis involves several decision points where state law provides a presumption. While rebuttable by the presentation of clear and convincing evidence by the student, presumptions should not be set aside easily. Institutions maintaining a policy to not consider any exceptions for an established presumption have likely exceeded their authority under the statute. Likewise, institutions that routinely approve exceptions to the presumptions should examine whether they are assigning sufficient weight to the presumption.

1. Students shall not ordinarily establish domicile by the performance of acts that are auxiliary to fulfilling educational objectives or are required or routinely performed by temporary residents of the Commonwealth. Students shall not establish domicile by mere physical presence or residence primarily for educational purposes. The timing of actions taken post-acceptance of enrollment may indicate that those actions are auxiliary to the educational objective.
2. A married individual may establish domicile in the same manner as an unmarried individual. It should not be presumed that a married person assumes the domicile of the supporting spouse.
3. A nonmilitary student whose parent or spouse is a member of the Armed Forces of the United States may establish domicile in the same manner as any other student. A Virginia domiciled individual does not lose their domicile merely by marrying, or a parent marrying, a non-Virginia military spouse.
4. Any alien holding an immigration visa or classified as a political refugee may establish domicile in the same manner as any other student. However, absent congressional intent to the contrary, any individual holding a student visa or another temporary visa does not have the capacity to intend to remain in the Commonwealth indefinitely and is therefore ineligible to establish domicile and receive in-state tuition charges.
5. The domicile of a dependent student shall be rebuttably presumed to be the domicile of the parent or legal guardian (i) claiming him as an exemption on federal or state income tax returns currently and for the tax year prior to the date of the alleged

entitlement or (ii) providing him with substantial financial support. The spouse of an active duty military service member, if such spouse has established domicile and claimed the dependent student on federal or state income tax returns, is not subject to minimum income tests or requirements.

6. The domicile of an unemancipated minor or a dependent student 18 years old or older may be the domicile of either the parent with whom he resides, the parent who claims the student as a dependent for federal or Virginia income tax purposes for the tax year prior to the date of the alleged entitlement and is currently so claiming the student, or the parent who provides the student with substantial financial support. If there is no surviving parent or the whereabouts of the parents are unknown, then the domicile of an unemancipated minor shall be the domicile of the legal guardian of such unemancipated minor unless circumstances indicate that such guardianship was created primarily for the purpose of establishing domicile.
7. Continuously enrolled non-Virginia students shall be presumed to be in the Commonwealth for educational purposes unless they rebut such presumption with clear and convincing evidence of domicile. Such evidence should be based on more than changing personal documents while maintaining enrollment.
8. A non-Virginia student will not be considered for reclassification until application has been made and any such reclassification shall only be granted prospectively from the date such application is received.

## **Part II In-State Tuition Rates for Domiciliary Residents of Virginia**

### **Article 1 Domicile Requirement**

#### **Section 03. Determining eligibility for domicile.**

- A. The institution shall first determine whether the student is a national or alien.
  1. The student bears the burden of establishing, by clear and convincing evidence, that he is a national or an eligible alien. If the student is a national or eligible alien, then the institution shall continue the domicile analysis.
  2. If the student is neither a national nor an eligible alien, the student is not eligible for further domicile analysis.
  3. The Council provides supplemental information on forms, definitions, and nonimmigrant categories, including classification as eligible or ineligible alien, in addenda to these guidelines.
- B. The institution shall then determine, on the basis of the information furnished by the student, whether domicile has been clearly and convincingly established in the Commonwealth for one year prior to the date of alleged entitlement. If, for example, the date of the alleged entitlement is September 1, 2019, then domicile must have been established in the Commonwealth no later than September 1, 2018, 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 at 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.
  - a. A dependent student is rebuttably presumed to have the domicile of the parent or legal guardian claiming the student as an exemption for federal or state income tax purposes, currently and for the tax year prior to the date of alleged entitlement, or providing the student with substantial financial support.
  - b. A dependent student aged 18 or over may rebut the presumption and demonstrate domicile separate from a parent or legal guardian, regardless of financial dependency, by presentation of clear and convincing evidence.
  - c. When reviewing a dependent student's claim of a domicile separate from the parent or legal guardian, the institution may collect documents necessary to verify 1) physical presence of the student's household in Virginia and 2) the student's primary purpose for residing within the Commonwealth. If the dependent student successfully rebuts the presumption and provides clear and convincing evidence of a separate domicile, then the actual domicile of the parent or legal guardian is immaterial to the review.
  - d. No dependent student's domicile and eligibility for in-state tuition should be based solely on the immigration status of the student's parent or legal guardian.
  - e. The spouse of an active duty military service member, if such spouse has established domicile and claimed the dependent student on federal or state income tax returns, shall not be subject to minimum income tests or requirements.
  - f. The one-year domicile period applies to all classifications of students except for: (i) active-duty military personnel residing in the Commonwealth, retired military personnel residing in the Commonwealth at the time of their retirement, surviving spouses, or veterans, who voluntarily elect to establish Virginia as their permanent residence for domiciliary purposes and (ii) a dependent spouse or dependent child who claims domicile through an individual listed in clause (i). For these categories of students, the one-year waiting period is waived provided domicile has been established prior to the date of alleged entitlement.

#### **Section 04. Domicile: residence requirement.**

A. Domicile is defined 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. Domiciliary intent means present intent to remain indefinitely, that is, the individual has no plans or expectation to move from the Commonwealth. 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.
  2. Domicile cannot be initially established in the Commonwealth unless one physically resides in Virginia with domiciliary intent. A person who has never resided in Virginia, cannot be domiciled here until actually moving to Virginia and taking the appropriate steps to establish domicile. Actions taken prior to having physical presence may be demonstrative of future intent, but the actual date of domicile cannot precede physical presence.
- B. Once a person has established domicile in Virginia, actual residence here is no longer required.
1. Temporary absence from the state does not negate a claim of Virginia domicile. The burden of proof rests on the individual to demonstrate that Virginia domicile has been maintained during the entire period of the temporary absence.
  2. A person who has established Virginia domicile but resides in another state may be required by law 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.

The institution shall scrutinize domiciliary intent when an individual's physical presence in the Commonwealth is less than a year before subsequently moving out of the Commonwealth. The institution should examine whether an individual's actions, especially voluntary ones, demonstrate the establishment of a new domicile in the host state and abandonment of Virginia domicile.

3. Temporary absence is not defined by a specific length of time; rather it is for a specific defined purpose and upon cessation of that activity the individual intends to return to the Commonwealth.
4. If a student is making a claim that Virginia domicile is retained by virtue of being on a temporary absence, the institution should:
  - a. Verify that the student had previously established domicile in the Commonwealth and had maintained such domicile as of the date of the move out of state.
    - (1) Verify that the move is for a temporary purpose. Examples of what might be considered a "temporary absence" include, but are not limited to:
      - (a) A temporary job reassignment for a specified time: The institution may request confirmation from the employer.

- (b) Pursuing education: The institution may request academic transcripts or other confirmation from the out-of-state institution.
  - (c) A military move: The institution may request a copy of military orders.
  - (d) Completion of work for religious or social purposes, such as to serve as a missionary or assist in a national disaster or humanitarian relief effort: The institution may require verification of the purpose and duration of such work.
  - (e) Accepting a permanent job offer that necessitates the individual to move out of the Commonwealth is not considered to be a temporary absence.
- (2) Absences of less than a year that did not include permanent employment or any voluntary changes of personal documents may be considered temporary by the institution.
  - (3) If the individual remains out of the state beyond the stated purpose of the move, this may be indicative that the individual is no longer residing outside of the Commonwealth for a temporary purpose.
- b. Verify that the person retained and continues to maintain domicile in the Commonwealth for the duration of the temporary absence. All voluntary actions should be scrutinized to determine if they are consistent with a person not abandoning their Virginia domicile. These actions may include, but are not limited to, maintaining housing, legal documents, financial ties, etc., in the Commonwealth. Actions taken in compliance with state or local law are not necessarily indicative of a change of domicile.

#### **Section 05. Domicile: intent requirement.**

A. An individual's place of physical presence or residence is not necessarily the same as an individual's domicile. A person may have more than one residence but only one domicile.

- 1. Domiciliary intent is determined from the affirmative declaration and objective conduct of the person. Intent is a subjective element; however, a person demonstrates his intent through objective conduct. The question is not about "what" documents are provided; rather it is based on what the evidence supports about "why" the person resides within the Commonwealth.
- 2. Since domicile is based primarily upon voluntary actions, mere residence due to incarceration in Virginia does not mean that Virginia domicile has been established. For purposes of determining the status of incarcerated minors, the Commonwealth of Virginia is not considered to be the 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.

C. Each case presents a unique combination of factors, and the institution must determine those factors which clearly and convincingly demonstrate the person's domiciliary intent. When reviewing the events surrounding an individual's move to Virginia, the institution should examine whether the purpose for moving was primarily for a temporary purpose, such as for education, or for an indefinite presence. In cases where the timing of the move suggests educational purposes, there may be other factors indicating it was for another purpose. Events including full-time employment in the student's area of study, purchase of a home, marriage, or full-time professional employment of a spouse are not conclusive evidence of domiciliary intent but may be examined.

1. Once the institution has determined that domicile has been established, the institution must look at the date on which the last of the factors supporting domicile was performed. It is at that point that domiciliary intent is established, and the clock begins for purposes of the one-year domicile requirement.
2. In complex cases, constructing a timeline can be extremely useful as the order of events can provide evidence of the primary motivation for moving to the Commonwealth. For example, there is minimal difference in documentation between a person who moved to Virginia for employment and then decided to enroll into college and a person who moved for education and then decided to find employment, except for timing. In such cases, particular attention should be paid to the order of the following events: date of application for admission, date of acceptance, date of application for employment, date of hire, date of the physical move, and the date of any other event that the student claims as his primary purpose for moving to the Commonwealth. The earlier events generally carry greater weight in determining intent.
3. 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. Failure to provide clear and convincing evidence of one year of domicile fails the standard under law and will result in the student being classified as out-of-state.

E. Clear and convincing evidence.

1. Clear and convincing evidence is not as stringent a standard as proof "beyond a reasonable doubt," as used in the criminal law, 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.
2. The evidence must be weighed in its totality. The domicile analysis cannot be reduced to a "check list" of whether the individual has assembled a specific list of documents or actions. The question is whether the totality of the documented circumstances is clear and convincing that the individual resides with domiciliary intent.

F. Section 23.1-502 of the Code of Virginia includes a list of objective conduct that may be considered, as applicable, in evaluating a claim of domiciliary intent. Each of the objective

criteria may 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 listed factors, institutions may consider other relevant factors, such as voting in elections inside and outside of the Commonwealth, to determine whether the student has abandoned a previous domicile. 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, except in the event of the establishment and maintenance of a place of residence in another jurisdiction for the purpose of maintaining a joint household with an active duty United States military spouse. Once a person has affirmatively established Virginia domicile, actual residence in Virginia is not required in order to retain it; however, with the exception of military-related moves, residence in another state or country is relevant as 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. Virginia domiciliaries having taxable income meeting threshold requirements and residing in the Commonwealth or residing temporarily outside the Commonwealth, must file Virginia resident income tax returns.
    - (1) Failure to file a Virginia tax return may be evidence that one is not a Virginia domiciliary.
    - (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 identifying and providing documentation of the exemption and demonstrating their entitlement to it.
  - b. 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 was not otherwise required to file a state income tax form is not determinative of domiciliary status.
  - c. A member of the armed forces who does not claim Virginia as his tax situs (as evidenced by a Leave and Earnings Statement reflecting Virginia withholding) 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. Filing an income tax form with another state or country is also not automatically determinative of domiciliary status as a Virginia domiciliary may be required by another jurisdiction to file an income tax form on income earned in that jurisdiction irrespective of ties to that state or country; however, such payment may be considered 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; however, possession of the driver's license is not determinative as Virginia law requires some employed nondomiciled residents, such as students, to obtain a Virginia driver's license, regardless of domicile.
- b. Retention or registration of a driver's license from another state may be evidence of failure to abandon 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 failure to abandon domicile 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, vehicle registration alone is not determinative.

5. Voter registration and voting.

a. Registration.

- (1) Registering to vote in Virginia is evidence of domiciliary intent, but it is not determinative.
- (2) The fact that a person is still registered in another state does not conclusively mean that the person is not domiciled in Virginia.
- (3) Failure to register to vote is not determinative.

b. Voting.

- (1) Voting in person or by absentee ballot in another jurisdiction during the year immediately prior to the date of the alleged entitlement is evidence that the individual has not abandoned his previous domicile or has otherwise claimed domicile in that jurisdiction.
- (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 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 an indicator of domiciliary intent. The institution should consider whether such employment is auxiliary to the student's educational objectives.
  - (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 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 may preclude 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 demonstrating a change of intent or that the student did not know that he was representing domicile of another state. Such claims must be demonstrated 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 continued ties to that state.

9. Military records.

- a. In order to establish domicile, a military member must file an income tax form as a Virginia domiciliary resident, paying Virginia taxes on all income as required.
- b. A student may be required to submit copies of military documents such as the Leave and Earnings Statement as evidence of Virginia domicile.

10. Accepting a written offer of employment with a Virginia employer.

- a. Accepting a bonafide written offer of employment with a Virginia employer following graduation from the institution may be evidence that the student's domiciliary intent has changed. 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 offer of employment exists through an official and documented commitment between the student and the prospective employer.

11. Social and economic relationships.

- a. Evidence of immediate family members residing in 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.
- c. Prior domicile in Virginia may be evidence of domiciliary intent upon the individual's return to the Commonwealth but is not determinative.

**Section 06. Residence for educational purposes.**

A. Mere physical presence or residence primarily for educational purposes will not confer domiciliary status. However, students may provide clear and convincing evidence that, despite education being the primary reason for the initial move to the Commonwealth, continuing residence is no longer primarily for educational purposes.

- 1. A student who moves to and continues to reside in Virginia primarily for educational purposes is not a Virginia domiciliary, regardless of the longevity of the physical presence within the state.
- 2. If the initial and continuing purpose of moving to Virginia was primarily for educational purposes for a spouse or other family member, this may be evidence that no member of the family has domiciliary intent.

B. A person shall not ordinarily be able to establish domicile by performing acts which are auxiliary to fulfilling educational objectives or which are legally required or routinely performed by temporary residents of the Commonwealth, such as, but not limited to, acquiring a Virginia driver's license or motor vehicle registration, securing employment post-admission, and paying or filing Virginia state income taxes. 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.

C. 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.

D. 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.

E. Maintaining residency within Virginia during at least a year of broken enrollment may be evidence that the individual no longer resides in the Commonwealth primarily for educational purposes. The institution should examine the individual's actions to determine if education continues to be the primary purpose of residency. Evidence that a break in enrollment is primarily for the purpose of obtaining in-state tuition may be evidence that domicile has not been established.

## **Article 2**

### **Special Rule for Determining Domiciliary Residence**

#### **Section 07. Extended eligibility for in-state tuition.**

A. If the person through whom the dependent student or unemancipated minor established such domicile and eligibility for in-state tuition abandons his Virginia domicile, the dependent student or unemancipated minor shall be entitled to such in-state tuition for one year from the date of such abandonment. To qualify:

1. The parent or legal guardian must have been domiciled in Virginia for at least one full year prior to abandoning Virginia domicile.
2. The student must have been eligible for in-state tuition through the above mentioned person at the time of abandonment.
3. The provision is available to students currently enrolled as well as those applying for admission or reenrollment; however, the one year grace period extends only from the date of parental abandonment of their Virginia domicile.

B. The purpose of the one year grace period is to provide an opportunity for the dependent student to rebut the presumption that he has the domicile of the parent or legal guardian and to demonstrate that he has maintained his own domicile in the Commonwealth for

at least one full year since the parent's move out of state. In such instances, upon student request for evaluation, the institution should:

1. Examine the student's actions to determine if he has retained his domicile in Virginia. These actions may include but are not limited to:
  - a. Personal documents: Securing and retaining personal documentation in the Commonwealth; including, as applicable, driver's license, voter registration, or other legal documents. Securing personal documents in another jurisdiction is evidence of having abandoned Virginia domicile.
  - b. Location of housing. Securing year-round housing within the Commonwealth may be evidence of retaining Virginia domicile. Residing with parents – except for short visits or vacation – during periods of nonenrollment, may be evidence that Virginia domicile has not been retained.
  - c. Employment. The student is not required to work within the Commonwealth in order to retain domicile; however, employment outside the Commonwealth should be scrutinized. Employment in the vicinity of the parent's new domicile may be evidence of having abandoned Virginia domicile. Summer employment, such as an internship, outside the Commonwealth, is not necessarily indicative of having abandoned Virginia domicile.
2. Regardless of dependent or independent status, a student may claim Virginia domicile by taking actions demonstrating an intent to maintain Virginia domicile despite the parent's abandonment of their own domicile.
3. Following the one year grace period, the student will be considered out-of-state unless the student initiates a review process and provides evidence that one year of Virginia domicile has been established.

### **Section 08. Unemancipated minors.**

A. An unemancipated minor is presumed to have the domicile of his biological or adoptive parents.

#### **B. Legal Guardianship and Legal Custody**

1. If the unemancipated minor is in the care of a legal guardian, the minor may have the domicile of the legal guardian unless:
  - a. The whereabouts of the parents are known, or
  - b. There are circumstances indicating that the guardianship was created primarily for the purpose of conferring a Virginia domicile on the minor.
  - c. If either a or b of the above conditions is verified, then the student cannot claim the domicile of the legal guardian.
2. A copy of the circuit court order should routinely be required as proof of legal guardianship.

3. Legal guardianship terminates no later than the child's eighteenth birthday, at which time the student can be treated as an Independent student. A student who establishes Virginia domicile through his legal guardians remains eligible for in-state tuition upon aging out of the guardian relationship provided that there is no evidence that the student has subsequently changed domicile.
4. Legal custody, ordered by Juvenile and Domestic Relations court, does not permit a minor to assume the domicile of a nonparent as custody arrangements are normally temporary in nature.
5. When evaluating the status of a student who is living away from parents for any reason, the institution should consider the longevity of the arrangement, circumstances that may inhibit or prohibit the child from residing with parents, and the time proximity to enrolling into higher education. The applicant is not considered to be domiciled in Virginia if the circumstances are indicative that the arrangement is for a temporary purpose or primarily for educational purposes.

C. When the domiciles 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.

### **Section 09. Dependent children.**

A. A dependent child:

1. Does not have to live with a parent or legal guardian. The child may still be regarded a parent's dependent even while residing elsewhere.
2. Does not have to be a full-time student.

B. A dependent student is rebuttably presumed to have the domicile of the parent providing substantial financial support; however, when the domiciles of the student's parents differ, the dependent child may claim the domicile of the Virginia parent under any one of the following conditions:

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 child as a dependent for federal or 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.

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 (g). The burden is on the student to provide clear and convincing evidence.

3. If the student is age 24 or older or meets one of the exceptions (a) through (g), there is no presumption of dependency on the 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 by receiving substantial financial support from parents or is listed on a parent'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 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 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.

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. 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 personnel 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 tuition pursuant to the conditions set forth under this section.
  - a. As with anyone else, the strength of the nonmilitary parent's domiciliary ties to Virginia should withstand scrutiny.
  - b. In addition to the factors listed in Section 05 F, 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 indicate that the nonmilitary parent has not established a Virginia domicile independent of the military parent.

3. A military parent may reside in Virginia but not claim Virginia as his domicile and has the right to choose another state as their home state for taxation of military income purposes. If the military parent is unable to demonstrate eligibility via domicile, the dependent student may be considered under special military provisions found in Part III of these guidelines.

#### **Section 10. 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 specified Section 09 C 1.

C. Unless the student rebuts the presumption of dependency through one of the seven factors specified within Section 09 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 tuition by virtue of having established an independent domicile in Virginia would be on the student's 19th birthday.

#### **Section 11. 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 remains eligible for in-state tuition upon emancipation providing that there is no evidence that the emancipated minor has subsequently changed domicile.

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. If the parents or legal guardian list the minor as a dependent on income tax returns, the minor is not emancipated. A student who claims emancipation from the parents or legal guardian must provide evidence of emancipation and that the parents or legal guardian 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.

## **Section 12. Married persons.**

A. The domicile of a married person is determined in the same manner as the domicile of an unmarried person. A person's domicile is not automatically altered by marriage.

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 spouse provision.**

1. Institutions should never presume that an individual is financially dependent on a spouse. A spouse may choose to claim dependency on and, therefore, domicile through a supporting spouse if the individual receives substantial financial support from the supporting spouse. Dependency can only help the spouse, and cannot be used as the basis to deny in-state tuition if the individual has otherwise established domicile on their own.
2. If the an individual claims dependency on their spouse, 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 to the domicile review. The institution should only consider whether the person through whom the student is claiming dependency has met the requirements for establishing domicile.

### **D. Military dependent spouses.**

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 their own domicile in Virginia. All individual ties to Virginia should be considered.
  - a. As with anyone else, the strength of the nonmilitary spouse's domiciliary ties to Virginia should withstand scrutiny.
  - b. In addition to the factors listed in Section 05 F, 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 indicate 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.

## Section 13. Aliens.

A. Citizenship of another country does not automatically disqualify the person from establishing domicile in Virginia because there are numerous conditions under which an eligible alien may legally have the capacity to intend to remain in the United States indefinitely. When an alien claims Virginia domicile, the alien bears the burden of presenting clear and convincing evidence to the institution establishing that the individual is an eligible alien.

1. If the alien is unable to present such evidence, the alien shall be presumed to be an ineligible alien and is ineligible to qualify for in-state tuition through their own domicile or the domicile of any other person.
2. If a student demonstrates that he is an eligible alien, the institution shall then review all relevant factors to determine if the alien student has established domicile for the requisite one-year period.

B. In reviewing domicile, the institution should keep in mind that there may be factors that are inapplicable to aliens by operation of law. Unless the institution is aware of the inapplicability of any evidentiary factor, the burden is always upon the student to bring such information to the attention of the institution. Examples include the following:

1. Aliens cannot register to vote; therefore, nonvoting is immaterial to the domicile review.
2. Salaries paid to some non-U.S. citizens are exempt from federal and state taxation. In such cases nonfiling and nonpayment of taxes is immaterial to the domicile review; however, the burden of proof is on the student to provide documentation of the tax exemption.

C. Once a student has been verified as an eligible alien, they may establish domicile in the same manner as any other student.

1. If student is a dependent, the student is presumed to have the domicile of a parent or legal guardian as described in Section 08 and Section 09.
  - a. The person upon whom domicile is based must be a national or eligible alien and have provided clear and convincing evidence of domicile for at least one full year.
  - b. Neither the actual domicile nor length of domicile of the dependent eligible alien is material to this review.
2. If the student is a dependent, as with any other dependent, the student has the right to rebut the presumption with clear and convincing evidence of having the domicile of the supporting parent.
  - a. No student should be denied in-state tuition solely due to the immigration status of a parent or legal guardian.
  - b. If a dependent student has successfully rebutted the presumption of having the domicile of a parent or legal guardian, the institution shall review the

domicile of the dependent student. This review may include collection of the student's household documents if needed to verify family physical presence and the student's primary purpose for residing within the Commonwealth but the actual domicile of the parent or legal guardian is immaterial to the review.

3. If the student is determined to be dependent upon a spouse, the student may "stand in the shoes" of a supporting spouse as described in Section 12 C. The spouse must be eligible to establish domicile. Neither the actual domicile nor length of domicile of the dependent eligible alien is material to this review; however, the alien cannot benefit from a supporting spouse's domicile until after "eligible alien" status is obtained.
4. If determined to be independent, the student may present evidence of their own domicile as described in Section 10.

D. Immigration documentation to demonstrate qualification as an eligible alien shall be provided as delineated in a guidance addendum approved by the Council.

E. Alien students with a pending status change.

1. An ineligible alien may become an eligible alien if:
  - a. A petition or application for change of status to an eligible nonimmigrant status has been approved or
  - b. An application for adjustment of status to Lawful Permanent Resident status has been filed and a receipt notice has been issued.
2. Date of domicile: For students moving from ineligible alien to eligible alien, domicile cannot be established any earlier than the date of official notice used for verification.
  - a. If the student has resided in Virginia for a number of years, the institution may use earlier dated evidence to determine if domiciliary actions had been taken prior to the date of becoming an eligible alien. If so, the date of domicile is as of the date of becoming an eligible alien.
  - b. If the student moves to Virginia as of or after becoming an eligible alien, then the date of domicile is determined by the evidence provided subsequent to arrival in Virginia.
  - c. If the student has moved to Virginia for a temporary purpose, such as for education, then domicile has not been established despite becoming an eligible alien.
  - d. If a student changes from an "ineligible alien" to an "eligible alien," the student cannot be eligible for in-state tuition, via initial determination or reclassification, any earlier than one year following the student becoming an eligible alien; exceptions are possible if utilizing the domicile of a supporting parent, legal guardian, or spouse, in which case that individual must satisfy the one year of domicile.

3. **Change of Status:** There are occasions when a student will change from an eligible alien to an ineligible alien, often due to aging out of a derivative visa or becoming out of status. In such cases, the student remains eligible for in-state tuition for terms in which he was an eligible alien as of the first day of the term but must be assigned as an out-of-state student as of the term in which he is an ineligible alien on the first day of the term.
4. **Expiring Documents:** Individuals must be evaluated for domicile based on presentation of current, valid documentation of immigration status. If the document expires after the beginning of the term, the student can be evaluated for in-state tuition eligibility for duration of the term. If the document expired prior to the beginning of a term, the student may continue to be reviewed under the expired document upon furnishing proof of a pending application or petition to extend immigration status that was filed on or before the date the prior status was set to expire.

### **Article 3 Reclassification and Falsification of Information**

#### **Section 14. 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 student who is continuously enrolled into an institution as an out-of-state student remains in the Commonwealth primarily for educational purposes and not as a bona fide domiciliary. The student seeking status reclassification is required to rebut this presumption by clear and convincing evidence.
    - a. Actions taken that are considered auxiliary to the educational purpose are not sufficient to rebut the presumption.
    - b. If there is no break in enrollment, the institution may look for significant life actions such as, but not limited to, marriage to a Virginia domicile, change of legal status, or immediate family members moving into the Commonwealth.
  3. The change in classification to in-state status 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 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 tuition throughout that term.

**C. Changes due to administrative errors.**

1. Administrative errors may include documented communication announcing an incorrect domicile, actual misclassification, or incorrect tuition billing notices.
2. In the absence of fraud or knowingly providing false information, when 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 institution gives to the student written notice of the administrative error.

**Section 15. Falsification of information.**

A. Where an institution has erroneously classified a student as a Virginia domicile for tuition purposes resulting from the student's knowingly providing erroneous information in an attempt to evade payment of out-of-state fees, the application of the student is fraudulent.

B. An institution shall reexamine an application suspected as being fraudulent and redetermine domicile status. If warranted, the institution shall change the student's status retroactively to the beginning of the term for which a fraudulent application was filed. Such a retroactive change will make the student responsible for the out-of-state tuition differential for the enrolled or terms intervening between the fraudulent application and its discovery.

C. The student also may be subject to dismissal from the institution or other action as the institution deems proper. Due process procedures, as provided in Section 20 and Section 21, must be followed to dismiss the student and, if the student chooses, to appeal such action. Each institution should provide in their student catalogues, handbooks, etc., the standards of conduct and the procedures it follows when dismissing a student or canceling enrollment.

**Section 16. Student responsibility to register under proper classification; responsibility for supplying information.**

A. It is the student's responsibility to complete the appropriate application for domicile classification or other in-state tuition provision.

B. 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 tuition 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. When the initial classification inquiry affects a prospective enrollee, the student shall be classified out-of-state for tuition purposes;
2. When 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. When 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.

### **Section 17. Limitation on in-state tuition benefit.**

A. First-time freshman students enrolled after August 1, 2006, 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 college or university that do not meet degree requirements for general education courses or the student's chosen program of study;
    - (3) Advanced placement or international baccalaureate credits that were obtained while in high school or another secondary school program; and
    - (4) 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. As an example, 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 the Council. 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. The second degree must have been declared by no later than the academic year prior to the term in which the student exceeds the credit hour threshold.

### **Part III In-State Tuition for Military-Related Students**

#### **Section 18. Spouses and dependents of military member.**

A. If a military dependent is unable to qualify for in-state tuition through a domicile review of the individual, parent, legal guardian, or spouse, he may be considered under the military dependent provision pursuant to § 23.1-505 of the Code of Virginia.

B. The Commonwealth's military dependent provision does not include a determination of domicile and as such the standard domicile analysis does not apply, including the gathering of standard documents for a domicile review. To verify eligibility for in-state tuition pursuant to this section, the student should provide documentation verifying each of the following:

1. The military member is active duty and has an assignment meeting one of the conditions under subsection C below. Such verification is typically obtained by a copy of military orders.
2. The student qualifies as a dependent of the military member under 37 USC 401, currently or as otherwise amended. Such verification can be made by a copy of the military dependent identification card. Note that the institution is not required to obtain this card though it has been deemed the best method of verification.
  - a. The military has issued cautions against copying military identification cards; however, this practice is permissible when providing an institution verification of eligibility for government benefits, such as in-state tuition.
  - b. Alternatively, an institution could obtain other evidence that the student meets the dependency requirement, such as income tax returns, marriage certificates, adoption papers, etc., as appropriate and if available.
  - c. The military member meets the residency requirements under the appropriate provision detailed under subsection C below. Such

verification can include any official document indicating the member's name, date, and address.

C. The qualifying military member shall be active duty personnel, or activated or temporarily mobilized reservists or temporarily mobilized guard members. These phrases mean essentially the same thing, an active duty member of the U.S Armed Forces; but acknowledge that a person might become activated out of the military reserve or a state national guard. Such military member must meet one of the following criteria:

1. Assigned to Virginia or contiguous jurisdiction, and reside within the geographic borders of the Commonwealth.
  - a. The member must be assigned permanent duty to a station or workplace in the Commonwealth of Virginia, the District of Columbia, or a state contiguous to Virginia (Maryland, West Virginia, Kentucky, Tennessee, and North Carolina).
    - (1) Includes permanent duty assignments to a station or workplace within the above regions even if temporarily assigned elsewhere, 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 within the authorized regions.
    - (2) Does not include temporary duty assignments to stations or workplaces within these regions.
    - (3) Does not include permanent duty assignments to stations or workplaces outside of these regions.
  - b. Residence may include permanent housing such as home ownership or temporary housing such as base or rental. 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.
2. Assigned to a duty station on unaccompanied orders.
  - a. Immediately prior to receiving such unaccompanied orders, the military member must have been assigned to a permanent duty station or workplace geographically located in the Commonwealth of Virginia, the District of Columbia, or a contiguous state (Maryland, West Virginia, Kentucky, Tennessee, and North Carolina) subject to the conditions in subsection 1 a above.
  - b. Resided within the geographic borders of the Commonwealth, subject to the residency conditions in subsection 1 b above.
3. Assigned unaccompanied orders with the Commonwealth listed as the designated place move.

- a. The military member must have received military orders for unaccompanied orders.
- b. The orders must stipulate Virginia as the designated place for family members to reside. The family's residence may include permanent housing such as home ownership or temporary housing such as base or rental. A place move located outside the geographic borders of the Commonwealth, including a contiguous jurisdiction, does not qualify.

D. Application of military provision.

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

- a. "Date of alleged entitlement" means the date of admission or acceptance for dependents currently residing in the Commonwealth or the final add/drop date for dependents of members newly transferred to the Commonwealth. 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 180 days or more.

2. Dependents of qualifying military members shall be deemed as domiciled for resident educational benefits, including in-state tuition, financial assistance, and any other educational benefit reserved for eligible Virginia residents enrolled in an undergraduate or graduate program.

3. Continued eligibility for resident educational benefits is based solely on continuous enrollment (at least one credit in consecutive fall/spring terms) 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.

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

F. Students eligible for in-state tuition by demonstration of domicile under Part II retain eligibility for the unique benefits listed in subsection D above, if they otherwise meet the eligibility criteria found in this section.

### **Section 19. Active-duty military members.**

Eligibility for in-state tuition can be obtained by establishment of Virginia domicile while residing in Virginia as explained in Part II of this document.

1. To begin to establish domicile, an active-duty military member must reflect Virginia as the state of taxation on their Leave and Earning Statement.
2. Other objective indicators of domicile may include, but are not limited to, obtaining a driver's license, registering a motor vehicle, registering to vote, and showing that domicile has not been established 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. As specified in Section 3 B, active-duty military members 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.

## **Part VII Administrative Process**

### **Section 20. Institutional process.**

A. A new student submitting their in-state tuition application after the start of the term would normally be classified as an out-of-state student. At its discretion and subject to its written policy, an institution may process an application for a new student received after the start of the term and, should the student be determined eligible for in-state tuition prior to the start of such term, shall classify the student as a resident for the term.

B. Public institutions of higher education in Virginia are required to establish the process for determining eligibility for in-state tuition. Each institution is required to have in place:

1. Written process and procedures readily available to students
  - a. Describing the application procedures and
  - b. Deadlines for submitting an application and, if necessary, subsequent appeals.

2. An appeals process which includes the following:
  - a. An intermediate review of the initial determination; and
  - b. A final administrative review including a decision in writing, clearly stated with explanation, and reached in accordance with the statute and this document. The letter should also clearly explain that the decision is final unless the student appeals it to the circuit court within 30 days after receiving the decision. The institution shall provide a copy of the decision to the student and obtain a legal signature confirming receipt of the decision.

C. A student seeking reclassification must begin at the initial level with the right to a subsequent intermediate and final review in accordance with subsection B above.

D. Either the intermediate review or the final administrative review shall be conducted by an appeals committee consisting of an odd number of members.

E. No person who serves on a committee at one level of the appeals process shall be eligible to serve on a committee at any other level of this review.

### **Section 21. Appeal to circuit court.**

A. A student who is denied in-state tuition privileges by a final administrative decision may have the decision reviewed by the circuit court for the jurisdiction where the public institution is located. The student must file the petition for review of the final administrative decision within 30 days of receipt of the final decision. Each institution should record the date of the student's receipt of the determination by certified mail (return receipt).

B. Upon the filing of a petition for review with the court, and being noticed thereof, the institution shall:

1. Immediately advise legal counsel for the institution that a petition for review has been filed with the circuit court; and
2. Coordinate with legal counsel to file with the court a copy of this document, the application forms, all other documentary information considered by, or made available to, the institution, and the written decisions of the institution.

C. As provided by law, the court's function shall be only to determine whether the decision reached by the institution could reasonably be said, on the basis of the record, not to be arbitrary, capricious or otherwise contrary to law.

## **Part VIII Authority of the Guidelines**

### **Section 22. Authorized by the Code of Virginia**

A. These guidelines are authorized by the Code of Virginia, § 23.1-510, to ensure the application of uniform criteria in administering domicile determinations and determining eligibility for in-state tuition. Absent clear agency or legal counsel guidance to the contrary, institutions should administer such process consistent with this document.

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

**Part IX**  
**Other Provisions for In-State or Reduced Tuition Rates**

These guidelines address in-state tuition based on Virginia domiciliary residence or the military dependent deemed as Virginia domiciled provision. For a summary of the other provisions for reduced or in-state tuition that have not been assigned Council oversight, see the appropriate addendum to these guidelines; for guidance on interpreting or implementing these provisions, the institution should contact their legal counsel.