

DOMICILE GUIDELINES
CHAPTER 120
GUIDELINES FOR DETERMINING DOMICILE AND ELIGIBILITY FOR
IN-STATE TUITION RATES

Part I - 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 operating under Title 32 of the United States Code.

"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 intent to remain indefinitely.

"Emancipated minor" means a student under the age of 18 on the date of the alleged entitlement whose parents or 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.)

"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.

"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.

"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.

Part II - Article 1 - Domicile Requirement

8 VAC 40-120-20. 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.

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.

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 18 or over may seek to show 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.

8 VAC 40-120-30. 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.

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, 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, 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.

8 VAC 40-120-40. 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.

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 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.

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. 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 tax return in Virginia is evidence that one is not a Virginia domicile. 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 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, 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. 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, 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.

(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.

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 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.

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 the Leave and Earnings Statement as evidence of Virginia domicile.

10. Employment in Virginia post-graduation.

a. Accepting a formal offer of permanent 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.

8 VAC 40-120-50. 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 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 determining if the student came to 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.

Article 2 - Special Rules for Determining Domiciliary Residence

8 VAC 40-120-55. Extended Eligibility for in-state tuition rates.

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:

- A. The parent, legal guardian, or spouse must have been domiciled in Virginia for at least one full year prior to abandoning his Virginia domicile.
- B. The student must have been eligible for in-state tuition rates vis-à-vis the above mentioned person at the time of abandonment.

8 VAC 40-120-60. Unemancipated minors.

- A. An unemancipated minor automatically takes the domicile of his parents or legal 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;
 - 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.

8 VAC 40-120-70. 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 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 may be either:

1. The domicile of the parent with whom he resides;
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 substantial financial support; or
3. The presumption is that the student has the domicile of the parent described in either 8 VAC 40-120-60 C 2 or 3.

For example, if a minor lives with his 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 is rebuttably presumed to have Virginia domicile through his father.

C. Presumption of dependency for students under 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, 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.

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 legal or 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 misrepresented 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 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 8 VAC 40-110-40 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 of this section).

b. The institution should consider the requirements of the military exception (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.

8 VAC 40-120-80. Independent students.

A. An independent student is 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.

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 8 VAC 40-120-70 C 1.

C. Unless the student rebuts the presumption of dependency through one of the seven factors mentioned in 8 VAC 40-120-70 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.

8 VAC 40-120-90. 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 if needed to substantiate the claimed emancipation.

8 VAC 40-120-100. 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 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.

8 VAC 40-120-110. 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).²
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.³ 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 8 VAC 40-120-130), 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.

(1)(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.

(2)(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 where 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.⁴ 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.

Article 3 - Reclassification and Falsification of Information

8 VAC 40-120-120. 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 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 has a grace period that lasts until the end of that semester.

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.

8 VAC 40-120-130. 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 re-examine an application suspected as being fraudulent and redetermine domicile status. If warranted, the institution may 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 term or terms intervening between the fraudulent application and its discovery.
- C. The student may also be subject to dismissal from the institution or such other action as the institution deems proper. Due process procedures, as provided in 8 VAC 40-120-270 and 8 VAC 40-120-280, must be followed to dismiss the student and, if the student chooses, to appeal such action.

8 VAC 40-120-140. Student responsibility to register under proper classification; responsibility for supplying information.

- A. It is the student's responsibility to register under proper domicile classification.
- B. If the student questions the right to classification as a Virginia domiciliary it is the student's obligation, prior to or at the time of registration, to raise the question with the 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. Failure to comply with such requests may result in one of the following consequences:

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 enrollment.

Part III - In-State Tuition Rates for Spouses and Dependent children of Active Duty Military

8 VAC 40-120-150. General.

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 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 eligibility for in-state tuition rates in the same manner as nonmilitary personnel, except that the one year durational 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.

8 VAC 40-120-160. Children of military members.

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:

- i. Resided in Virginia;
- ii. Been employed full-time;
- iii. Paid personal income tax to Virginia; and
- iv. 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.

8 VAC 40-120-170. Spouses of military members.

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.

8 VAC 40-120-180. Application of military provision.

A. Sections 8 VAC 40-120-160 and 8 VAC 40-120-170 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.

8 VAC 40-120-190. Grace period tuition.

(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.

8 VAC 40-120-200. Military members and domiciliary status.

A. Eligibility for in-state tuition rates can be preserved by the military member's adoption 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.

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.

Part IV - In-State Tuition Rates for Non-Virginia Residents Employed in Virginia.

8 VAC 40-120-210. 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 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 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.

8 VAC 40-120-220. Application of provision.

This part does not apply to individuals who reside in a state with which Virginia has income tax reciprocity.⁵ 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.

Part V - Reduced or In-State Tuition Rates Under Special Arrangement Contracts

8 VAC 40-120-230. 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 Council of Higher Education for FTE purposes.

8 VAC 40-120-240. 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 Council of Higher Education.
4. Specify for any Special Arrangement Contracts with federal authorities for 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 of Virginia, or
2. Is ordered to a station, military base, or office located in the state 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 Non-Residents

8 VAC 40-120-250. In-state tuition eligibility.

A. The Code of Virginia provides in § [23-7.4:2\(D\)](#) 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 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) of the Code of Virginia, the governing board of the Virginia Community College System may charge reduced 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.

C. Pursuant to § [23-7.4:2](#)(F) 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, if Kentucky has similar provisions for persons domiciled in Virginia.

8 VAC 40-120-260. 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) of the Code of Virginia), certain National Guard members (§23-7.4:2 C 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.

Part VII - Appeals Process

8 VAC 40-120-270. Institutional appeals process.

A. Public institutions of higher education in Virginia are required to establish an appeals process for applicants denied in-state tuition. Each institution is required to have in place such an appeals process which includes the following:

1. An intermediate review of the initial determination; and

2. A final administrative review including a decision in writing, clearly stated with explanation, and reached in accordance with the statute and this chapter. 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.

B. A student seeking reclassification based on activities that have taken place since the last domicile determination must begin at the initial level with the right to a subsequent intermediate and final review.

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

D. 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.

E. In order to provide for the orderly and timely resolution of all disputes, the appellate procedure of the institution must be in writing and must state time limitations in which decisions will be made.

8 VAC 40-120-280. Appeal to circuit court.

A. An applicant 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 actual receipt by certified mailing (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 chapter, 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.

FOOTNOTES

¹ Referencing 8 VAC 40-120-10, nothing herein is intended, nor shall be construed, to repeal or modify any provision of law.

² Referencing 8 VAC 40-120-110 B.2., 8 USC 1101 (a) 15; 8 CFR 214 et seq.; 22 CFR 40-42.

³ Referencing 8 VAC 40-120-110 E., the 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."

⁴ Referencing 8 VAC 40-120-110 J.4.u.(8), NATO 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.

⁵ Referencing 8 VAC-120-220, as of June 2001, the states having income tax reciprocity with Virginia are: Kentucky, Maryland, Pennsylvania, the District of Columbia, and West Virginia.