

In-State Tuition for Military Dependents

This document serves as general guidance to the institutions until the Domicile Guidelines are revised and promulgated. This reflects SCHEV's current interpretation of the statute and may be amended as unusual circumstances are addressed and the guidance is implemented.

During the 2007 session of the General Assembly, two new laws amending the military family provision were passed. Below is the merging of those new laws into the Code of Virginia with language in italics reflecting the new provisions effective as of July 1, 2007.

§ 23-7.4 E.

[quote]

E. Notwithstanding any other provision of law, all dependents, *as defined by 37 U.S.C. 401*, of active duty military personnel, *or activated or temporarily mobilized reservists or guard members*, assigned to a permanent duty station *or workplace geographically located in Virginia, or in a state contiguous to Virginia or the District of Columbia*, who reside in Virginia shall be deemed to be domiciled in Virginia for purposes of eligibility for in-state tuition and shall be eligible to receive in-state tuition in Virginia in accordance with this section. All such dependents shall be afforded the same educational benefits as any other individual receiving in-state tuition pursuant to this section so long as they are continuously enrolled in *an undergraduate or graduate degree program* of an institution of higher education in Virginia or are transferring between Virginia institutions of higher education *or from an undergraduate degree program to a graduate degree program*.

For the purpose of this subsection:

"Date of alleged entitlement" means the date of admission or acceptance for dependents currently residing in Virginia or the final add/drop date for dependents of members newly transferred to Virginia.

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

[end quote]

Guidance:

1. **Effective Date** – The benefits of this legislation are not retroactive to terms beginning prior to their effective date. The language passed by the 2006 General Assembly affects all terms whose first day begins on or after July 1, 2006. Provisions in italics, passed by the 2007 General Assembly, are effective for terms beginning on or after July 1, 2007. While the legislation is not retroactive to terms beginning prior to July 1 of their respective years, all provisions in the legislation – including new definition of “date of alleged entitlement” – are in full force for the affected term.
2. **Beneficiary** - Does not affect the review process for the active-duty military member; applies only to the dependents of an active-duty military member *or activated or temporarily mobilized reservist or guard member*. For purposes of this legislation, the definition of “dependent” shall mean a “military dependent” under *37 U.S.C. 401*.
http://www.law.cornell.edu/uscode/37/uscode/37_0000401----000-.html (see full current text below)
3. **Military Assignment** - Affects only those families whose active duty military member *or activated or temporarily mobilized reservist or guard member* is assigned to a permanent duty station within Virginia *or a state contiguous to Virginia or Washington D.C.* Temporary assignments do not qualify nor do assignments to a base located outside of the above listed areas.
4. **Residence** - The military member and dependent must have a physical residence within Virginia. In addition to personal permanent housing, such residence may include base, rental, or other temporary housing. Temporary deployment (i.e. to overseas station) does not disqualify the family members as long as a residence is maintained in Virginia. Military assigned and voluntary housing located outside of Virginia do not qualify.

5. **Benefits** - The law says "...shall be afforded the same educational benefits as any other individual..." This includes state financial aid and treatment as in-state for admissions and all other reporting purposes.
6. **Students Affected** - The law is applicable to all who meet the eligibility requirements, meaning that it is not restricted to new enrollments. Continuing students for the fall 2007 term may be reviewed for eligibility. The Code does not require that the eligibility conditions pre-exist for any set amount of time, only that the conditions exist as of the "*date of alleged entitlement*". The reclassification process is available to a student initially classified as out-of-state but who otherwise meets the eligibility requirements in a subsequent term.
7. **Institutions Affected** – The provision is an alternate path to receive benefits reserved for Virginia domiciles; therefore, any educational benefit reserved for Virginia domiciles under §23-7.4 of the Code of Virginia is available to students eligible under this military family provision including in-state tuition at Virginia public institutions and financial assistance at Virginia public and participating private non-profit institutions.
8. **Date of Alleged Entitlement** - Means "*the date of admission or acceptance for dependents currently residing in Virginia or the final add/drop date for dependents of members newly transferred to Virginia.*" It is the intention of this language 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. In short, if the student meets the eligibility criteria during any one day of this defined period of time, the student is eligible for the benefit. While the law is not retroactive to a term beginning prior to July 1, 2007, it is fully applicable to the fall 2007 with the full force of the new definition of date of alleged entitlement which may include a period of time extending prior to July 1.
9. **Continued Eligibility** - After initial eligibility, continued eligibility is based solely upon continuous enrollment of the student, not on the status or reassignment of the military sponsor. Continuous enrollment shall be recognized as at least one course for credit in consecutive fall – spring – fall (etc.) terms. Lack of summer enrollment does not disqualify the student. *Continuous enrollment also includes moving from undergraduate to graduate degree program in consecutive (fall-to-spring or spring-to-fall) terms.*
10. **Effect on Transfer Students** - Eligibility is not lost if student transfers within Virginia institutions of higher education which would include all public and private institutions which are accredited, degree-granting institutions of higher education that are formed, chartered, or established within Virginia, in consecutive fall-to-spring or spring-to-fall terms.
11. **Regaining Eligibility** - If the student breaks enrollment by missing a fall or spring term but meets the initial eligibility requirements upon re-enrollment, the student remains eligible for the benefit.
12. **Suggested Documentation** – A copy of the military orders verifying active duty military status or activation of reservist/guard member and permanent duty station within Virginia, a contiguous state or Washington DC; documentation verifying Virginia residence; and copy of military dependent card issued by the military.

United States Code – Definition of “Military Dependent”

http://www.law.cornell.edu/uscode/37/uscode/37_00000401----000-.html

TITLE 37 > CHAPTER 7 > § 401

§ 401. Definitions

(a) Dependent Defined.— In this chapter, the term “dependent”, with respect to a member of a uniformed service, means the following persons:

- (1) The spouse of the member.
- (2) An unmarried child of the member who—
 - (A) is under 21 years of age;
 - (B) is incapable of self-support because of mental or physical incapacity and is in fact dependent on the member for more than one-half of the child’s support; or
 - (C) is under 23 years of age, is enrolled in a full-time course of study in an institution of higher education approved by the Secretary concerned for purposes of this subparagraph, and is in fact dependent on the member for more than one-half of the child’s support.
- (3) A parent of the member if—
 - (A) the parent is in fact dependent on the member for more than one-half of the parent’s support;
 - (B) the parent has been so dependent for a period prescribed by the Secretary concerned or became so dependent due to a change of circumstances arising after the member entered on active duty; and
 - (C) the dependency of the parent on the member is determined on the basis of an affidavit submitted by the parent and any other evidence required under regulations prescribed by the Secretary concerned.
- (4) An unmarried person who—
 - (A) is placed in the legal custody of the member as a result of an order of a court of competent jurisdiction in the United States (or Puerto Rico or a possession of the United States) for a period of at least 12 consecutive months;
 - (B) either—
 - (i) has not attained the age of 21;
 - (ii) has not attained the age of 23 years and is enrolled in a full time course of study at an institution of higher learning approved by the Secretary concerned; or
 - (iii) is incapable of self support because of a mental or physical incapacity that occurred while the person was considered a dependent of the member or former member under this paragraph pursuant to clause (i) or (ii);
 - (C) is dependent on the member for over one-half of the person’s support;
 - (D) resides with the member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation or under such other circumstances as the Secretary concerned may by regulation prescribe; and
 - (E) is not a dependent of a member under any other paragraph.

(b) Other Definitions.— For purposes of subsection (a):

- (1) The term “child” includes—
 - (A) a stepchild of the member (except that such term does not include a stepchild after the divorce of the member from the stepchild’s parent by blood);
 - (B) an adopted child of the member, including a child placed in the home of the member by a placement agency (recognized by the Secretary of Defense) in anticipation of the legal adoption of the child by the member; and
 - (C) an illegitimate child of the member if the member’s parentage of the child is established in accordance with criteria prescribed in regulations by the Secretary concerned.
- (2) The term “parent” means—
 - (A) a natural parent of the member;
 - (B) a stepparent of the member;
 - (C) a parent of the member by adoption;
 - (D) a parent, stepparent, or adopted parent of the spouse of the member; and
 - (E) any other person, including a former stepparent, who has stood in loco parentis to the member at any time for a continuous period of at least five years before the member became 21 years of age.