

Are You a Virginian?

Domicile Workshop
2020

Presented by VACRAO

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STATE COUNCIL OF HIGHER
EDUCATION FOR VIRGINIA

Domicile Guidelines Update

- The review is complete and the domicile guidelines have been updated.
- <https://www.schev.edu/index/institutional/guidance-policies/financial-aid-domicile-officers>
- Updated Guidelines, Updated Addendum A, new Addendum C (moved exceptions out of the Guidelines)

Domicile Resource Page

Finance & Facilities

Financial Aid &
Domicile Officers

Private Postsecondary
Education

Teaching &
Assessment Initiatives

Virginia SARA

Information for Domicile Officers

- [Code of Virginia Relating to Domicile](#)
- [Domicile Guideline | Printable Version](#)
- [Addendum A - Descriptions and Domicile Eligibility Status for Various Categories of Aliens](#)
- [Addendum B - Common Forms and Definitions](#)
- [Addendum C - Summary of In-State or Reduced Tuition Provisions](#)
- [Establishing Virginia Domicile](#)

DACA Students:

- [Attorney General's Advice to Public Institutions Regarding DACA Students – April 29, 2014](#)
- [Domicile Determinations for Students Under Deferred Action for Childhood Arrivals](#)

Military Provisions:

- [Comparison of Federal and State Military Provisions](#)
- [Veteran's Choice Act: In-state tuition FAQs](#)
- [SCHEV Bulletin - Photocopying Military IDs](#)

Domicile Officer's Web Resources

NOTE: SCHEV provides the following websites for your information and/or additional research.

Descriptions of resident eligibility and responsibility under other state offices

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- [Registering to Vote](#) (Virginia State Board of Elections)

Resources pertaining to non-immigrant students



Responsibilities of the Domicile Officer

Do protect Virginia state law

- Ensure that only students meeting the domicile standard receive in-state benefits.

Do not base decision solely on a checklist of documents

- Domicile is the “intent to remain,” not whether a specific document was obtained. Verify “intent.”

Do not have to determine the domicile of the applicant

- Just need to determine if student has been domiciled in Virginia for at least one year (don't need to prove it is in another state).

Do not have to convince the applicant they are ineligible

- If the applicant fails to provide “clear and convincing information to the institution, he/she is ineligible.

Do need to notify them of appeal options.

Legal Presumptions



All applicants begin as Ineligible...

...until clear and convincing evidence is presented.

A student under the age of 24 is a dependent...

...unless they meet one of seven indicators. If one of the indicators is present, then evaluate for dependent v independent.

The dependent student has the domicile of the supporting parent...

...but there will be exceptions: look for long-term residence; someone born/raised/never-left Virginia.

Independent students have their own domicile...

...this includes an unemployed spouse.

The out-of-state student remains Ineligible...

...look for something clearly indicating intent has changed: a major event such as marriage, break in enrollment, change in legal status, family move to Va., etc.



Legal Presumptions



Presumptions are NOT absolute and may be rebutted.

...exceptions are anticipated but they should be “the exception” and not the rule.

There is **no presumption** that a student is ineligible if the parent’s legal status is ineligible to establish domicile.

In-State Tuition Eligibility

In order to be eligible for in-state tuition or state financial aid, **the law requires** that the student:

*...shall establish by **clear and convincing evidence** (i) **domicile** in the Commonwealth for a period of **at least one year** immediately succeeding the establishment of domiciliary intent pursuant to subsection B and immediately prior to the date of the alleged entitlement and (ii) the **abandonment of any previous domicile**, if such existed.*



***...establish by clear and convincing
evidence ...***

Basic Process: Gather Evidence

The domicile decision must be supported by the evidence.

- The standard is **evidence-based**.
- They can state their case, but does the evidence back it up?
- The law does not provide in-state tuition to “domiciled residents of Virginia.” It provides in-state tuition to those able to provide “clear and convincing evidence” of domicile.

Standard of Evidence

Preponderance of the Evidence – 50/50

- **Civil Cases:** Weigh the evidence and look for about 51%.



Clear and convincing evidence

- Evidence is much more weighty than mere preponderance, but not necessarily 100%.
- Evidence that produces a firm belief or conviction.
- Can have some conflicting evidence but on balance it must present a case that is clear and convincing.

Beyond a reasonable doubt – 100%

- **Criminal Cases:** Used for felony, capital murder, almost no room for doubt.



Domicile Indicators

*...institutions of higher education shall consider the **totality** of the circumstances.*

- All factors should be considered but no one factor is necessarily determinative. It is possible to have conflicting evidence and still be domiciled.
 - ✓ Continuous residence for at least one year
 - ✓ State to which Income taxes are filed or paid
 - ✓ Driver's license
 - ✓ Motor vehicle registration
 - ✓ **Voter registration**
 - ✓ Employment
 - ✓ Property ownership
 - ✓ Sources of financial support
 - ✓ **Military records**
 - ✓ Employment in Virginia following graduation
 - ✓ Social and economic relationships

For each of the above, there are examples where the presence of the document does not guaranty "domicile" and the absence does not guaranty "not domiciled." Some may be more "weighty" than others.

Domicile Indicators

Why are the indicators important?

- There are many uses for the word “domicile” or “residency” or “legal residency”
- Domicile for in-state tuition purposes has the highest threshold of all others.

What does the evidence affirm about the student’s intent?

- Be Strict: Relatively easy for an out-of-state student to legally obtain almost any state document.
- Be Fair: However, some students are very limited in what they can provide (homeless, non-immigrant).

*...for a period of at least one year
immediately succeeding the establishment of
domiciliary intent pursuant to subsection B and
immediately prior to the date of the alleged
entitlement*

One Year before Date of Alleged Entitlement

Factors presented in support of a domicile claim must be in place for at least one year prior to the date of alleged entitlement.

- Take the most recent date **of the evidence that was necessary** to verify domicile was established.
- Eligibility begins one year from that date.

First official day of class within the semester or term of the program in which the student is enrolled.

In cases of special classes, short courses, intensive courses, or courses not otherwise following the normal calendar, **the starting date** of the nontraditional course in which student is enrolled.

One Year before Date of Alleged Entitlement

What is a year?

- The law does not say 11 months or 51 weeks.
- A year is defined as 52 weeks or 365 days.
- If student falls short, you can look at the most recent document and determine whether that was necessary for an affirmative decision... if not, then set the “date of domicile” based on the most recent evidence that did play a critical role in the determination.



**he [or the individual through whom he claims eligibility]
was...**

**Determine upon whom the domicile decision must be based
upon**

Dependent Student

"Dependent student" means 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 spouse, parent, or legal guardian. "Dependent student" includes unemancipated minors.

Circumstances that Remove the Presumption

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 parent or legal guardian and is therefore the dependent of his parent or legal guardian unless the student

- i. is a veteran or an active duty member of the Armed Forces of the United States,*
- 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 parent or legal guardian and each of the student's parents is 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.*

Note that if one of the above is applicable, then the presumption goes away but it does not automatically mean “Independent,” see definition of “Independent Student.”

Basic Process – Who is to be Reviewed

Who is the decision based upon?

“The domicile of a dependent student shall be rebuttably presumed to be the domicile of the parent or legal guardian (i) claiming him as an exemption on federal or state income tax returns currently and for the tax year prior to the date of the alleged entitlement or (ii) providing him with substantial financial support.”

Determine dependency status

- Dependents are presumed to have domicile of supporting parent
- If parents separated or have differing domiciles, the student may claim the parent with whom they are residing.
- Note: it is ***possible*** for a “dependent” to have own domicile separate from the supporting parent but these should be the **exception.**

Independent Student

"Independent student" means a student whose parents

- have surrendered the right to his care, custody, and earnings;*
- do not claim him as a dependent on federal or state income tax returns; and*
- have ceased to provide him with substantial financial support.*

"Independent student" includes emancipated minors.

- Note that the definition has three parts that must be satisfied.
- For students aged 24 and over, there is no presumption of dependency (**or independency**). You may use the preponderance of the evidence.
- Evidence that the student under the age of 24 is still taking direction/guidance from parents could be sufficient to demonstrate that they have not yet surrendered right to care, custody, and earnings.
- Independence is "**independent of parent,**" not necessarily independent of anyone else.

Married Persons

DG: 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.

- Domicile is not automatically altered by marriage.
- If the student elects to claim domicile through spouse, student must receive substantial financial support from the spouse.
CAUTION: the “dependent spouse” clause can only help the student, should never be used against the student.
- Consider whether the spouse through whom the student is claiming eligibility has met domiciliary requirements.
 - **Did the couple move for one of the partners to attend college?** That suggests that **both are residing for temporary purposes** (neither would be in Virginia if one were not enrolled).

Caution

G. Continuously enrolled non-Virginia students shall be presumed to be in the Commonwealth for educational purposes unless they rebut such presumption with clear and convincing evidence of domicile.

Avoid getting caught up in details and missing the big picture.

- Sometimes too much time can be spent trying to determine if student is dependent or not.
- If the student moved to Virginia primarily for educational purposes (and continues to be enrolled), then they have intent issues that may negate any need to determine dependent/independent status.

Legal Guardian

“If there is no surviving parent or the whereabouts of the parents are unknown, then the domicile of an unemancipated minor shall be the domicile of the legal guardian of such unemancipated minor unless there are circumstances indicating that such guardianship was created primarily for the purpose of conferring a Virginia domicile on the unemancipated minor.”

The law has established a clear bias towards using the domicile of a parent instead of a legal guardian.

- **If there is no surviving parent or whereabouts unknown...**
- **Unless primarily for purpose of conferring Virginia domicile**
- **Legal guardianship must be court-ordered... not the same as legal custody (parents have not given up their parental rights.)**
- **Alternate route: Do the circumstances make a case that the student has a domicile separate from the parents?**

...domiciled in Virginia and had abandoned any previous domicile, if such existed.

Domiciliary Intent

"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.

- Present intent to remain indefinitely.
- Determined by affirmative declaration and objective conduct (evidence). Art meets Science.
- *A. Students shall not ordinarily establish domicile by the performance of acts that are auxiliary to fulfilling educational objectives or are required or routinely performed by temporary residents of the Commonwealth. Students shall not establish domicile by mere physical presence or residence primarily for educational purposes.*

Temporary Absence

Domicile, once established, shall not be affected by (i) mere transient or temporary physical presence in another jurisdiction...

- **Examples:**
 - Move for educational purposes
 - Move for job reassignment
 - Move to care for recovering family member
 - I am moving for a specific purpose and when I am no longer pursuing that purpose I intend to return.
- In the majority of cases the purpose should be documented.
- During their time away from the state, consider whether the actions, **especially voluntary ones**, show that they have retained Virginia domicile.
- **Caution:** If residing temporarily in another state, the person may be required to perform acts required by law of the host state for all residents.
- See Domicile Guidelines for details.

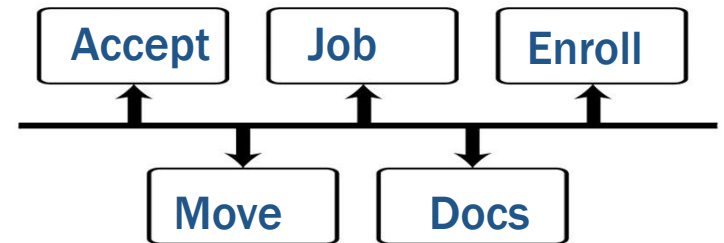
Grace Period

If the individual through whom a dependent student establishes domicile and eligibility for in-state tuition charges abandons his domicile in the Commonwealth, such student is entitled to in-state tuition charges for one year from the date of such abandonment.

- **This language provides an opportunity for the student, even a dependent, to demonstrate that they have not moved with the parents and have retained their domicile in Virginia.**
- **Look for evidence of having “moved” with parents...**
 - **Do they live with parents when not enrolled (entire summer)?**
 - **If they worked, where did they work?**
 - **Did they change any documents to the new state?**
- **See Domicile Guidelines for details.**

Basic Process: Build the Time-Line

Timelines are **VERY** helpful in determining **WHY** a person resides in Va.



Pay attention to the timing of the documents and events:

- **Did they move “before/after” “applying/acceptance” for college?**
- **Did they obtain employment before moving/acceptance?**
- **Do they have any non-educational connections in Virginia?**

Looks like a student, acts like a student = most likely a student.

If a person moved for educational purposes, most of their subsequent actions may be deemed “auxiliary” to that purpose.

“A. Students shall not ordinarily establish domicile by the performance of acts that are auxiliary to fulfilling educational objectives or are required or routinely performed by temporary residents of the Commonwealth. Students shall not establish domicile by mere physical presence or residence primarily for educational purposes.”

Not **What**, but **Why**?



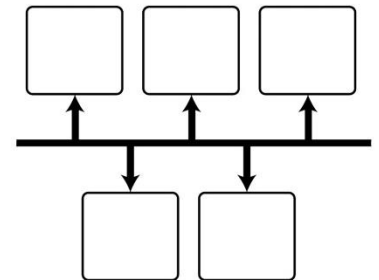
“What documents do they have?”



**“What do the documents tell us about
why they are here?”**



Develop a timeline of the evidence.



Checklist Issues



www.dmv.virginia.gov/drivers/#eligibility.asp

Out-of-State Students

If you are enrolled as a full-time student in an accredited school in Virginia and not employed, you may drive in Virginia with a valid out-of-state (or another country) driver's license and valid out-of-state license plates on your vehicle. **If you are a full-time student and employed, you are considered a resident of Virginia for the purposes of motor vehicle laws only. This does not necessarily qualify you for In-state tuition rates.**

Lesson: having a Virginia driver's license **is not** necessarily proof of domicile in Virginia



www.tax.virginia.gov/site.cfm?alias=ResidencyStatus#VIRGINIARESIDENTS

Students

Students are subject to the same rules for residency and filing requirements as all other filers. For example, if you lived in Virginia for more than **183 days** during the taxable year, you are classified as an actual resident, and must file Form 760 even if you maintained your legal residency in another state.

Lesson: Payment of Virginia state taxes **is not** necessarily proof of Virginia domicile

www.sbe.virginia.gov/collegestudents.html

Impact on Other Areas

Legal residence for voter registration purposes may or may not be the same as legal residence for census, driver's license, federal and state income tax, state vehicle tax, tuition, or financial aid purposes. The State Board of Elections and local election officials are not trained in these complex areas. You should consult appropriate advisors regarding these issues.

Lesson: Registration to vote in Virginia **is not** necessarily proof of Virginia domicile.

Conclusion: “Take-Aways”

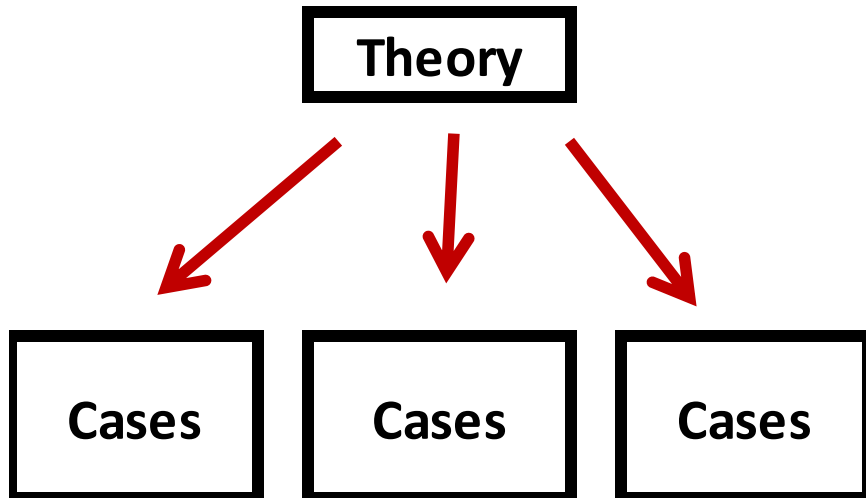


- It is possible for a dependent student to have their own domicile, but those determinations should be the exception and not the norm.
- Beware reliance on a “checklist.” It will distract you.
- Timelines are vital when evaluating intent.
- It is helpful to constantly remind yourself of the purpose of the review... go back to center (the Code description).
- **Key questions:**
 - Beware of the trap: **WHAT documents do they have?**
 - Instead determine: **WHY are they here?** and
 - Do the documents support that conclusion?

Methodology

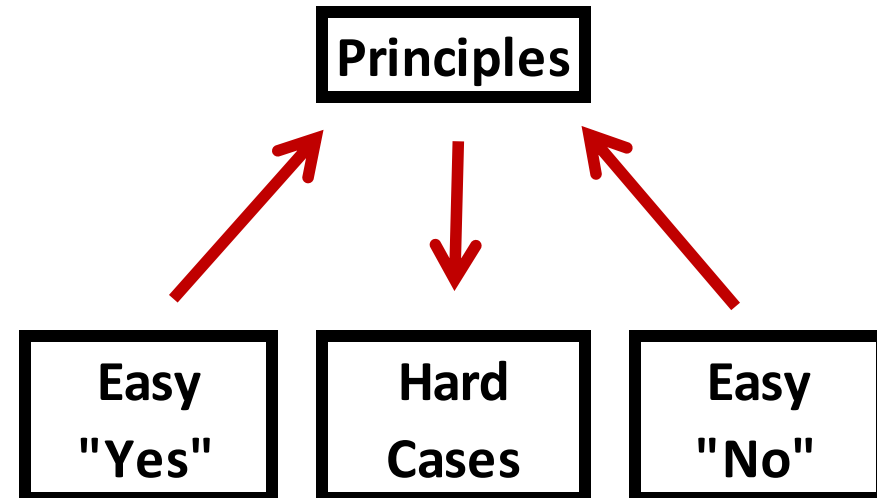
Theory

(Top-Down)



Causistry

(Bottom - Middle- Down)



Always be mindful of precedents you are setting.

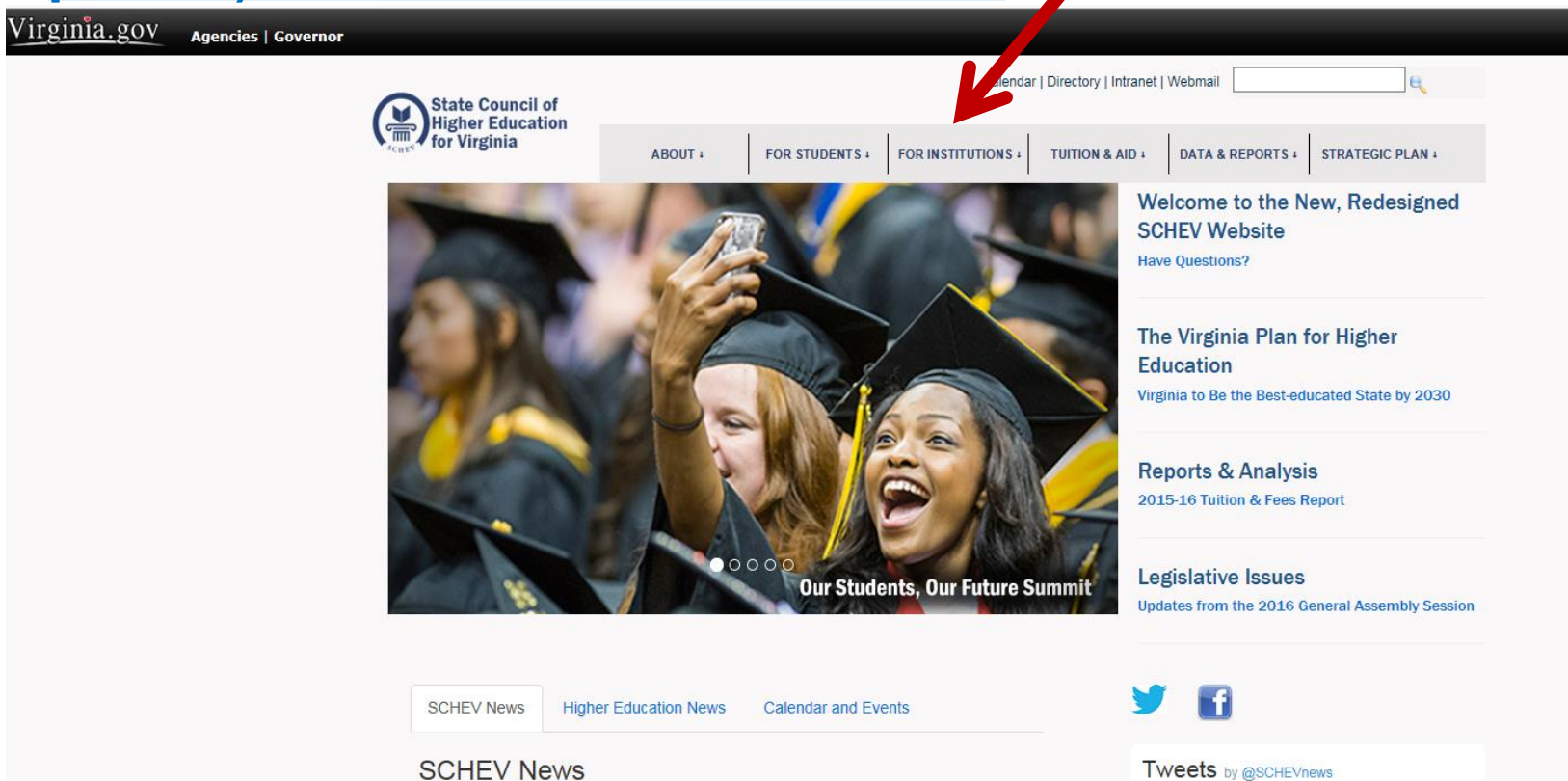
- Would you be comfortable saying “yes” to every equivalent situation?
- Are you setting the bar so low that “out-of-state” students could easily duplicate it?
- What makes this “yes” different from all the other cases where you said “no?”

Make your approvals based on verified circumstances, not just on evidence that can be duplicated.

Website

- Domicile information at: “For Institutions” then “Policies and Guidelines” then “Financial Aid and Domicile Officers”

<http://www.schev.edu/index/institutional/guidance-policies/financial-aid-domicile-officers>



The screenshot shows the SCHEV website homepage. At the top left is the Virginia.gov logo and 'Agencies | Governor'. The main header features the SCHEV logo and a navigation menu with items: ABOUT, FOR STUDENTS, FOR INSTITUTIONS, TUITION & AID, DATA & REPORTS, and STRATEGIC PLAN. A red arrow points to the 'FOR INSTITUTIONS' menu item. Below the navigation is a large banner image of graduates with the text 'Our Students, Our Future Summit'. To the right of the banner are several content blocks: 'Welcome to the New, Redesigned SCHEV Website', 'The Virginia Plan for Higher Education', 'Reports & Analysis', and 'Legislative Issues'. At the bottom, there are social media icons for Twitter and Facebook, and a 'Tweets by @SCHEVnews' section.

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Resources pertaining to non-immigrant students

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Resources pertaining to non-immigrant students

- [US Citizenship and Immigration Services](#) (includes descriptions)
- [2017-18 Federal Student Financial Aid Handbook](#) (contains examples of immigration documentation)
- [US Code Title 8 Chapter 14 Section 1623](#) (undocumented aliens not eligible for educational benefits based on domicile)
- [Office of the Attorney General's Immigration Law Compliance Update Memorandum 2002](#)
- [What the codes mean on an Employment Authorization Document](#) (EAD or "work authorization card")
- [Check status of a pending case](#) (must have a case receipt number)
- [Nonimmigrant classifications](#)
- [Special instructions for B-1/B-2 visitors who want to enroll in school](#)

Questions?

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❖ **<http://www.schev.edu/index/institutional/guidance-policies/financial-aid-coordinators>**