

Domicile Workshop New Legislation

Presented by VACRAO

Lee Andes

SCHEV

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Explanation of preliminary guidance

- The following guidance represents a best good-faith effort to enable institutions to implement new legislation.
- This guidance is actively under review and may some parts may be subject to change.
- SCHEV will endeavor to keep all institutions updated accordingly.

Private institutions

Most of the new provisions provide in-state tuition as an exception and do not convey “domicile” needed for state financial aid eligibility.

Only two of the new provisions address students that are eligible for state financial aid (including consideration for the Tuition Assistance Grant program [TAG]):

- HB 1315 – Legal status of parent when determining domicile.
- HB 447 – Dependents of certain military dependents who are “deemed as domiciled.”

These are the only two new provisions that intersect with determinations made by private institutions or otherwise meet the domicile requirements for state financial assistance.

HB 1315 – Legal status of parent

23.1-503

J. No student shall be deemed ineligible to establish domicile and receive in-state tuition charges solely on the basis of the immigration status of his parent.

HB 1315 – Legal status of parent

This bill codifies current guidance.

Previous guidance:

- Institutions should practice sensitivity when a student declines to answer the parent's citizenship question and realize it is *possible* that the parent is undocumented. Recommended follow up is by phone, when possible.
- If the parent is undocumented or otherwise has a status that is ineligible to demonstrate domicile, the institution should consider whether the dependent student is able to demonstrate his/her own domicile and gain access to in-state tuition eligibility.
 - No student should be deemed ineligible to establish domicile and, therefore, assigned out-of-state status due solely to the parent's immigration status (or lack thereof).
 - See previous guidance for DACA students, which is also applicable to US Citizen dependents and may be applicable to any other domicile-eligible status that a student might hold.

HB 1315 – Legal status of parent

- When determining the student's domicile, it may be necessary to collect household information to verify whether the student resides primarily for educational purposes (such as having recently moved from out-of-state) as most documentation may be in the parent's name.
- Such documentation is permitted to be gathered. However, only the minimum information about the parent's legal status (for purposes of confirming whether to use the student's domicile) should be collected or stored.
- Those determined to be domiciled in Virginia may be considered for state financial aid.

HB 1315 – Legal status of parent

Questions

Effective date for all new provisions

The following provisions are applicable to terms beginning on or after July 1, 2020 only.

New students whose initial enrollment at the institution begins on or after July 1, 2020 may be considered under any of these provisions.

Existing and returning students otherwise charged out-of-state tuition in 2019-20 (or before) can be considered for reclassification to in-state tuition for the 2020-21 (or after) award year. The responsibility for filing of reclassification falls on the student, though institutions are strongly encouraged to be proactive.

HB 447 – Dependents of active duty military members

§ [23.1-505](#). Determination of domicile; exception; dependents of certain active duty military personnel, etc.

- C. All such dependents shall be afforded the same educational benefits as any other individual who is eligible for in-state tuition pursuant to § [23.1-502](#). Such dependents are eligible for such benefits, including in-state tuition status, for as long as they are continuously enrolled in a public institution of higher education or private institution of higher education or have transferred between public institutions of higher education or private institutions of higher education or from an undergraduate degree program to a graduate degree program at a public institution of higher education or private institution of higher education, regardless of any change of duty station or residence of the military service member. *Such continuous enrollment requirement shall be waived if the dependent verifies that a break of no longer than one year was required in order to support a spouse or parent on orders for a change of duty assignment or location.*

HB 447 – Dependents of active duty military members

Guidance:

- This is a “deemed as domiciled” determination under the military dependent exception.
- Affects eligibility for in-state tuition and consideration for state financial aid.

The institution should verify:

- Whether the initial requirements for the provision have been met (follow current practice).
- Whether the break in enrollment:
 - Is no more than one year (student missed no more than one fall and one spring term; in any order)
 - Is tangential to or overlapping a military reassignment of the military spouse/parent (verifiable through a copy of military orders and enrollment records).
- Aside from the above documents, the institution need not conduct any further verification or determine specific reasons for the break in enrollment.

HB 447 – Dependents of active duty military members

Questions

Eligibility for financial aid

From this point forward, the new legislation provides an alternate path to in-state tuition only and does not provide access to state financial aid.

HB 1179 – Refugees and Special Immigrant Visas

23.1-506

- *Any individual who (i) was admitted to the United States as a refugee under 8 U.S.C. § 1157 within the previous two calendar years or (ii) received a Special Immigrant Visa that has been granted a status under P.L. 110-181 § 1244, P.L. 109-163 § 1059, or P.L. 111-8 § 602 within the previous two calendar years and, upon entering the United States, resided in the Commonwealth and continues to reside in the Commonwealth as a refugee or pursuant to such Special Immigrant Visa.*

HB 1179 – Refugees and Special Immigrant Visas

Guidance

The student must be able to demonstrate:

- Has current Refugee or
- Special Immigrant Visa status:
 - Section 1244 of PL 110-181 refers to special immigrant visas available to Iraqis who helped in the war.
 - Section 1059 of PL 109-163 is for translators who assisted the military
 - Section 602 of PL 111-8, as amended, authorizes the issuance of Special Immigrant Visas to certain Afghan nationals who were employed:
 - by or on behalf of the U.S. government in Afghanistan, or
 - by the International Security Assistance Force (ISAF), or a successor mission, in a capacity that required the applicant to serve as an interpreter or translator for U.S. military personnel while traveling off-base with U.S. military personnel stationed at ISAF or to perform sensitive and trusted activities for U.S. military personnel stationed at ISAF.
- Such status was received within the last two calendar years
 - If the student is applying for the fall of 2020, the status must have been granted no earlier than January 1, 2018 (the “previous two calendar years” to fall 2020 are 2019 and 2018).
- Initial and continued residence is in Virginia

HB 1179 – Refugees and Special Immigrant Visas

Administration:

- Eligibility continues as long as:
 - The student is enrolled within the two-year window,
 - Retains the required Refugee or Special Immigrant Visa status and
 - Continues to reside in Virginia.
- Once no longer eligible under this provision,
 - Or sooner if able, the individual may be reviewed under the standard domicile review process. Students should be encouraged to establish domicile in Virginia as soon as practical and not wait for the two-year window to expire.
 - If the student is a dependent student and the parents are not eligible for domicile (due to legal status or currently residing in another country), the institution may consider whether the student is independent of the parents or review the domicile of the student even as a dependent student.
 - If the student is otherwise unable to demonstrate domicile or meet the requirements of another provision, the student must be assigned the out-of-state tuition rate.
- This provision provides access to in-state tuition but not access to state financial aid.

HB 1179 – Refugees and Special Immigrant Visas

Questions

SB 462 - Military members paying Virginia tax for ten years

23.1-506

- *Any child of an active duty member or veteran who claims Virginia as his home state and filed Virginia tax returns for at least 10 years during active duty service.*

SB 462 - Military members paying Virginia tax for ten years

Guidance

- Eligible student
 - Any child
 - Biological, Adopted, Step, and/or Foster; see definition under Title 37 U.S. Code § 401
 - Does not include the spouse.
 - whose parent was either
 - An active duty member or
 - Veteran
 - And such parent, while on active duty, claimed Virginia as the home of record
 - And such parent, for at least 10 years during active duty service, filed Virginia state tax returns

SB 462 - Military members paying Virginia tax for ten years

State taxes:

- Proof of filing Virginia state income taxes for at least ten years during active duty
- No restrictions on when state taxes were filed
- No requirement that the ten years of filing were continuous or current
- State tax returns must have been filed as Virginia legal resident

Verification:

- Proof of current (military orders) or prior active duty status (DD-214)
- Proof of having Virginia as home of record during active service
- Proof of filing Virginia state income taxes for at least ten years during active duty
 - For example, tax transcript or copies of Leave and Earnings Statement.
- This provision provides access to in-state tuition but not access to state financial aid.

SB 462 - Military members paying Virginia tax for ten years

Questions

HB 1547 / SB 935 – In-state tuition for high school completers

§ 23.1-506. Eligibility for in-state tuition; exception; certain out-of-state and high school students.

A. Notwithstanding § 23.1-502 or any other provision of law to the contrary, the following students are eligible for in-state tuition charges regardless of domicile:

Any student who

- (i) attended high school for at least two years in the Commonwealth and either
 - (a) graduated on or after July 1, 2008, from a public or private high school or program of home instruction in the Commonwealth or*
 - (b) passed on or after July 1, 2008, a high school equivalency examination approved by the Secretary of Education;**
- (ii) has submitted evidence that he or, in the case of a dependent student, at least one parent, guardian, or person standing in loco parentis has filed, unless exempted by state law, Virginia income tax returns for at least two years prior to the date of registration or enrollment; and*
- (iii) registers as an entering student or is enrolled in a public institution of higher education in the Commonwealth.*

HB 1547 / SB 935 – In-state tuition for high school completers

Students who meet these criteria shall be eligible for in-state tuition regardless of their citizenship or immigration status, except that students with currently valid visas issued under 8 U.S.C. § 1101(a)(15)(F), 1101(a)(15)(H)(iii), 1101(a)(15)(J) (including only students or trainees), or 1101(a)(15)(M) are not eligible.

Information obtained in the implementation of this subdivision shall only be used or disclosed to individuals other than the student for purposes of determining in-state tuition eligibility.

Any non-Virginia student granted in-state tuition pursuant to this subsection shall be counted as a Virginia student for the purposes of determining college admissions, enrollment, and tuition and fee revenue policies.

HB 1547 / SB 935 – In-state tuition for high school completers

High school attendance and completion:

- *(i) attended high school for at least two years in the Commonwealth and either (a) graduated on or after July 1, 2008, from a public or private high school or program of home instruction in the Commonwealth or (b) passed on or after July 1, 2008, a high school equivalency examination approved by the Secretary of Education;*

HB 1547 / SB 935 – In-state tuition for high school completers

High school attendance

- **Proof of Enrollment** is verified by either copy of school transcript, letter from school showing dates of attendance, or, in the case of home school students, evidence that the letter of intent has been filed with the local school district for each period of enrollment.
- **High school** refers to the freshmen (grade 9), sophomore (grade 10), junior (grade 11) and senior (grade 12) years. School attendance during lower grade levels does not count toward the requirement.
- **Recognized schools:** The student's high school attendance for two years could be in either a Virginia public school or Virginia private school or enrollment in a home school curriculum as recognized by the Virginia public school district superintendent.

HB 1547 / SB 935 – In-state tuition for high school completers

- For minimum of two full years
 - The student must demonstrate enrollment into a Virginia high school or combination of Virginia high schools for two full years prior to the date of initial enrollment into a Virginia college. These years need not be successive and may include partial years. Examples include:
 - ✓ Student began enrollment as of first day of classes in fall 2017 and maintained enrollment through graduation in May 2019. The student completed two full years: 2017-18 and 2018-19.
 - ✓ Student began enrollment as of January 2017 and maintained enrollment in any Virginia school through December 2018. The student completed two full years: half year of January to May 2017, full year of 2017-18, and additional half year August to December 2018.
 - ✓ Student completed the full 9th grade in 2015-16 in Virginia and then moved out of state. Student returned to complete 12th grade in 2018-19. Student completed two full years of high school in Virginia.
 - ❖ Student began enrollment in October 2017 and maintained enrollment through May 2019. Student did not complete the full two years of enrollment.

HB 1547 / SB 935 – In-state tuition for high school completers

High school completion

- Demonstrate **high school completion** in Virginia
 - On or after July 1, 2008
 - Graduation from a Virginia public high school or private high school
 - Passed a general equivalency exam approved by the Virginia Department of Education or
 - Completed home school instruction (self certified).
- **Timing of completion**
 - The law does not provide a timeframe; therefore, such attendance and graduation need not have been in the immediate prior year to enrollment in higher education except that high school graduation must have occurred on or after July 1, 2008.

HB 1547 / SB 935 – In-state tuition for high school completers

High school attendance and completion questions

HB 1547 / SB 935 – In-state tuition for high school completers

Individual reviewed for filing Taxes

- *(ii) has submitted evidence that he or, in the case of a dependent student, at least one parent, guardian, or person standing in loco parentis has filed, unless exempted by state law, Virginia income tax returns for at least two years prior to the date of registration or enrollment;*

HB 1547 / SB 935 – In-state tuition for high school completers

- Individual filing state income taxes:
 - An **independent student** or emancipated minor or
 - For a **dependent student**, the parent (biological, adoptive or step) or guardian (court ordered legal guardianship or custody) residing with the dependent student or claiming the student as a dependent for tax purposes or

HB 1547 / SB 935 – In-state tuition for high school completers

In loco parentis

- In absence of one of the above, a person standing “**In loco parentis**” of a dependent student and residing with the student.
 - In loco parentis (borrowing from FMLA)
 - Persons who are *in loco parentis* include those with day-to-day responsibilities to care for or provide substantial financial support for the student. Means “in place of a parent,” or “instead of a parent,” refers to situations in which someone other than a biological parent takes on the role of parent to a dependent child without formally adopting the child.
 - The “in loco parentis” relationship should be scrutinized to verify that the individual is residing with the student and acting in place (not on behalf) of a parent.
 - Is an individual person. For purposes of this provision, cannot be an organization, agency or institution.

HB 1547 / SB 935 – In-state tuition for high school completers

Student eligibility:

- If the parents have not filed Virginia income taxes and the student has no guardian or “in loco parentis” individual, the student would not be eligible unless able to demonstrate financial self-sufficiency (i.e. independent status) and the student has filed Virginia taxes for two years.

HB 1547 / SB 935 – In-state tuition for high school completers

Who review for filing taxes questions

HB 1547 / SB 935 – In-state tuition for high school completers

Filing of state income taxes

- Any two years of income coinciding or following high school enrollment may be considered as long as such years are prior to initial enrollment into a college.
- Taxes should be reviewed upon initial enrollment only and do not have to be verified each year.
- The tax filer must claim the student as a dependent for tax purposes or be able to demonstrate substantial financial support.
- Each institution should conduct its own verification of whether the student meets the eligibility criteria.

HB 1547 / SB 935 – In-state tuition for high school completers

Exemptions for filing taxes:

- Valid state taxation exemptions are limited to income thresholds of:
 - \$11,950 for individuals single or married filing separately, or current threshold as updated
 - \$23,900 for married filing jointly, or current threshold as updated.
 - Income of individuals claiming an exemption from filing may be verified by collecting federal tax form, W2s, bank statements, pay stubs, etc.
- Individuals with taxable earnings in another state cannot claim an exemption based on the income not having been earned in the Commonwealth.
 - If the parent/guardian/in loco parentis claims to not have earned enough income to meet the Virginia filing requirement, the institution may verify Virginia residency (not domicile) or request a copy of a federal tax return.

HB 1547 / SB 935 – In-state tuition for high school completers

Exemptions continued:

- Individuals not required to pay state taxes due to a current valid **federal treaty** retain eligibility under this provision (not a “state” exemption)
 - The burden of proof falls on the individual to demonstrate eligibility for such exemption, including verification that the eligible immigration status is current and valid and that an existing treaty exempts such individuals from taxation in the United States.

HB 1547 / SB 935 – In-state tuition for high school completers

Tax exemption questions

HB 1547 / SB 935 – In-state tuition for high school completers

- *Students who meet these criteria shall be eligible for in-state tuition regardless of their citizenship or immigration status, except that students with currently valid visas issued under 8 U.S.C. § 1101(a)(15)(F), 1101(a)(15)(H)(iii), 1101(a)(15)(J) (including only students or trainees), or 1101(a)(15)(M) are not eligible.*

HB 1547 / SB 935 – In-state tuition for high school completers

Legal status

- Eligibility is generally not dependent upon a person's citizenship or immigration status, or the lack thereof
 - Specific language in the statute, however, excludes from eligibility students in the following visa categories:
 - Individuals with a current valid F, H3, J, or M visas as of the first day of enrollment
 - Individuals who, subsequent to enrollment, obtain a valid F, J, M, H3 visa.
 - Individuals with a Receipt Notice for I-485 Application for Permanent Residency are no longer held to the restrictions of their prior visa status and so would be eligible.
 - The status of the parent, guardian, or person standing in loco parentis filing Virginia income taxes for two years prior to the student's enrollment is immaterial and not restricted.

HB 1547 / SB 935 – In-state tuition for high school completers

- *Information obtained in the implementation of this subdivision shall only be used or disclosed to individuals other than the student for purposes of determining in-state tuition eligibility."*

HB 1547 / SB 935 – In-state tuition for high school completers

Protection of student information

- Institutions should gather and retain only the minimum information needed to verify eligibility under this provision.
- Information gathered under this provision
 - is to be used solely for determining eligibility for in-state tuition under this provision.
 - May not be made available to any other person, including employees of the institution, other than the student and institutional staff necessary for administration of in-state tuition eligibility.
 - Any external subpoena or FOIA for such information should be reported to the institutional counsel before fulfilling the request.

HB 1547 / SB 935 – In-state tuition for high school completers

Administrative guidance:

- Institutions should combine this provision into the standard application for in-state tuition or make clear reference to an alternate application. Students should not be required to complete the domicile review process prior to consideration under this provision.
- Students are not required to provide a reason for seeking eligibility for in-state tuition under this provision rather than the domicile review process.
- The law is effective July 1, 2020 and is applicable to all new students enrolling for terms beginning on or after July 1, 2020 as well as all current or previously enrolled students. This provision does not require or permit any retroactive adjustment from out-of-state to in-state tuition for any term beginning prior to July 1, 2020.
- This provision provides access to in-state tuition if the student meets the eligibility criteria but not access to state financial aid.

Questions