



# COMMONWEALTH of VIRGINIA

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Director, State Council of Higher Education for Virginia

Chancellor, Virginia Community College System

Presidents, Virginia's Public Colleges and Universities

Dear Ladies and Gentlemen:

This Office has received numerous inquiries regarding the ability of students who have been approved by the U.S. Department of Homeland Security under Deferred Action for Childhood Arrivals (DACA) to establish domicile in Virginia and, thereby, to qualify for in-state tuition at Virginia's public colleges and universities. I have concluded that no provision of state or federal law precludes individuals approved under DACA from forming subjective domiciliary intent to remain in Virginia; they are capable of establishing domicile and qualifying for in-state tuition in accordance with Virginia Code § 23-7.4.

The DACA program was initiated by the U.S. Department of Homeland Security in 2012. It provides for a deferral of deportation action for individuals who arrived in the United States prior to the age of 16 and are currently under the age of 31; were brought to the United States illegally, often by their parents, or have lost lawful status; have resided in the United States from June 15, 2007 to the present; are in school, have completed high school, obtained a general education development (GED) certificate, or were honorably discharged from the United States military; and have not been convicted of a felony or a significant misdemeanor.<sup>1</sup> Students under DACA are considered by the Department of Homeland Security to be lawfully present in the United States during the period of deferred action.<sup>2</sup> DACA is not a permanent path to citizenship, but it is indefinitely renewable.<sup>3</sup>

The primary method for a student to gain eligibility for in-state tuition is to establish Virginia domicile, defined in Virginia Code § 23-7.4 (A) as "the present, fixed home of an

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<sup>1</sup> Department of Homeland Security, Deferred Action for Childhood Arrivals ([www.dhs.gov/deferred-action-childhood-arrivals](http://www.dhs.gov/deferred-action-childhood-arrivals)).

<sup>2</sup> U.S. Citizenship and Immigration Services Frequently Asked Questions, January 18, 2013.

([www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions](http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions))

<sup>3</sup> *Id.*

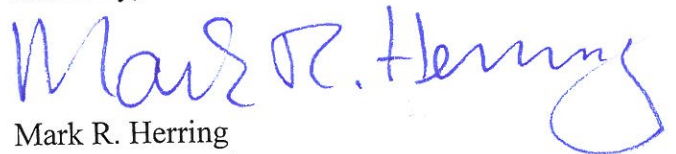
individual to which he returns following temporary absences and at which he intends to stay indefinitely," and to maintain it for at least one year. The hallmark of domicile is domiciliary intent, defined as "the present intent to remain indefinitely."<sup>4</sup> Domiciliary intent is a subjective test, a frame of mind.<sup>5</sup> As it is not possible to ascertain a student's frame of mind, Virginia's institutions of higher education must use the objective factors in Virginia Code § 23-7.4 (B) to determine domiciliary intent.

Pursuant to Virginia Code § 23-7.4 (C), a person holding a student or other temporary visa does not have the capacity to establish domicile. Individuals who have a student or temporary visa are not eligible to apply for DACA under the criteria established by the Department of Homeland Security.<sup>6</sup> Therefore, DACA students, none of whom have current student or temporary visas, are not precluded by Virginia Code § 23-7.4 (C) from forming the intent to remain in Virginia indefinitely. DACA students are lawfully present under approval that is renewable, permitting them to remain in the United States and to form a subjective intent to remain in Virginia indefinitely. Consequently, DACA students may establish domicile in Virginia in accordance with Virginia Code § 23-7.4.<sup>7</sup>

Such legal interpretation will not result in all DACA students becoming eligible for in-state tuition. The DACA student, like the non-immigrant student, must provide sufficient documentation to support the objective indicia of domiciliary intent listed in Virginia Code § 23-7.4 (B) and must maintain domicile in Virginia for at least one year after DACA approval and other steps taken to meet the criteria. We will work with the State Council of Higher Education for Virginia to implement the advice of this Office in the Domicile Guidelines and periodic training programs for admissions officers.

No provision of federal or Virginia law can be read to punish these smart, talented, hard-working young people or to relegate them to a life of limited opportunities. To the contrary, these young people are legally entitled to in-state tuition if they otherwise meet Virginia's domiciliary requirements. Even apart from being the right thing to do, it is what the law requires.

Sincerely,

  
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Attorney General

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<sup>4</sup> Virginia Code § 23-7.4 (A)

<sup>5</sup> *Holder v. Martinez Guitierrez*, 132 S. Ct. 2011, 2018 (2012), quoting *Mississippi Band of Choctaw Indians v. Holyfield*, 109 S. Ct. 1597 (1989).

<sup>6</sup> Department of Homeland Security, Deferred Action for Childhood Arrivals ([www.dhs.gov/deferred-action-childhood-arrivals](http://www.dhs.gov/deferred-action-childhood-arrivals)).

<sup>7</sup> This Office provided similar guidance during the administration of then-Attorney General McDonnell that students in Temporary Protective Status are capable of establishing domiciliary intent.