

Domicile Determinations for Students Under Deferred Action for Childhood Arrivals

Frequently Asked Questions

On April 29, 2014, Virginia Attorney General Mark Herring issued a guidance letter to all of Virginia's public colleges and universities that individuals approved under Deferred Action for Childhood Arrivals (DACA) are capable under existing law of forming domiciliary intent.

What has changed?

The Attorney General's legal interpretation provides the opportunity for DACA recipients to apply for in-state tuition, subject to the domicile review process as provided in Virginia Code § 23-7.4. How the institutions administer the domicile review process remains unchanged.

SCHEV relies on the interpretation of the Office of the Attorney General on whether a specific category of individuals can form the intent to remain indefinitely in Virginia, the key element for establishing domicile in Virginia. DACA students are lawfully present in the United States according to the Department of Homeland Security and are not at risk of deportation, provided that DACA approval is maintained and renewed. Consequently, students under DACA can form the subjective intent to remain indefinitely in Virginia. DACA recipients should be considered within the domicile review process the same as U.S. citizens, permanent residents, political refugees, those under withholding of removal, those under Temporary Protected Status, and others determined capable to form the subjective intent to remain in Virginia.

Who is affected?

The guidance of the Attorney General solely addresses those approved for DACA.

When is the decision effective?

DACA recipients can be reviewed for domicile immediately; however, under domicile law, the student must be eligible as of "the first day of the term." Because the guidance was issued during the spring term, DACA students can be considered for in-state tuition beginning with the next upcoming term (summer 2014).

What is needed in order to verify DACA approval and eligibility to establish domicile?

The USCIS provides DACA recipients with an I-797 form indicating "Approval" of their "I-821D application for Deferred Action for Childhood Arrivals." This I-797 form is all that is needed in order to confirm DACA approval.

The institution should then follow the usual domicile review process and obtain the documents or applications routinely required under any other domicile review. The Code of Virginia provides a list of documents that may be reviewed for domicile but, given that no one factor is determinative, a student may still have presented sufficient evidence of Virginia domicile without one or more of these documents.

Who decides whether a DACA student has established domicile?

Ultimately, the domicile officers at the institutions are responsible for determining if a student is domiciled in Virginia.

When does a DACA student's Virginia domicile begin?

DACA approval, and the lawful presence that is gained with it, is what permits a person to have the intent to remain in Virginia indefinitely; therefore, eligibility to establish domicile can begin no earlier than the date of the DACA approval, regardless of how long a person has resided in Virginia prior to the approval.

How soon can a student with DACA approval qualify for in-state tuition?

The earliest date that a student may be eligible for in-state tuition is one year from the date of DACA approval. Pursuant to Virginia Code § 23-7.4, a person must demonstrate that he or she has been domiciled in Virginia for at least one full year prior to the start of the term. The date domicile is established can be no earlier than the date of the DACA approval. The institution could determine that domicile was established upon, or sometime following, DACA approval, depending on when the student establishes the objective factors, but it cannot determine that domicile was established prior to that approval. As with other students, no one objective factor is determinative but should be considered as part of the totality of evidence presented.



Once the institution identifies the date that the student established Virginia domicile, the student must then wait one year before becoming eligible for in-state tuition. As an example, if a student received DACA approval on December 15, 2013, has resided in Virginia for the past eight years, and otherwise meets the domicile criteria of the Code of Virginia, the institution reasonably could determine that domicile was established as of the date of DACA approval. That individual could then receive the in-state tuition rate as of the beginning of a term that begins on or after December 15, 2014, in this case either a winter or spring term in 2015.

What actions should a DACA student take in order to secure the in-state tuition rate?

State law places the burden of proof upon the student to demonstrate via clear and convincing evidence that he or she meets the domicile requirements for obtaining the in-state tuition rate. If the student fails to complete the required application, misses a deadline, or otherwise fails to provide clear and convincing evidence, the student is not considered to be domiciled in Virginia for purposes of obtaining the in-state tuition rate. Similarly, returning students previously assigned the out-of-state tuition rate must file for reclassification at the institution in order to be reviewed for domicile and eligibility for the in-state tuition rate for an upcoming term.

Won't a DACA student who is dependent on his parents have the same domicile as the parents?

No. The Code of Virginia creates a rebuttable presumption that a dependent student has the same domicile as the supporting parent. Due to circumstances associated with DACA recipients, their parents may not have lawful presence in the United States. It is important to remember, however, that the presumption that a dependent student has the same domicile as his parent can be rebutted. Because DACA recipients came to the United States prior to age 16, are not at risk of deportation, and often consider the United States to be their only home, a DACA student who has resided in Virginia for several years generally will be able to rebut the presumption that his or her domicile is the same as the parents.

Though not technically reviewing the parent's domicile, the parent's documents may still be useful for establishing a student's physical presence and for determining if the student, by way of the family, is residing in Virginia primarily for a temporary purpose.

What happens when the DACA expires?

DACA is what provides the legal presence necessary for a person to be eligible to establish domicile. If DACA is withdrawn or otherwise not renewed then the student no longer is considered to be domiciled in Virginia.

How many DACA students will qualify for in-state tuition?

As of December 2013, the United States Citizenship and Immigration Service (USCIS) reports 8,129 individuals from Virginia have been approved for DACA. Not all DACA recipients will enroll into a Virginia college or university; therefore, the actual number who will establish Virginia domicile and receive in-state tuition is indeterminate at this time.

Can a student under a temporary or student visa obtain in-state tuition under this new guidance?

No. Virginia Code § 23-7.4 (C) specifically precludes students with student or temporary visas from having the capacity to intend to remain in Virginia indefinitely, absent Congressional intent to the contrary. Further, individuals with valid visas of any type are not eligible for the DACA program.

Can an illegal alien -- a student who is not lawfully present in the United States -- obtain in-state tuition under this new guidance?

No. This guidance does not pertain to individuals who are not lawfully present in the United States. Students with DACA approval are in a period of stay authorized by the U.S. Department of Homeland Security and, thus, are lawfully present.

