



South Carolina Commission on Higher Education

Residency Workshop 2011

9:00 AM – 11:00 AM

Agenda

- | | |
|---------|--------------------------------|
| 9:00am | Welcome |
| 9:05am | Review of the Regulation |
| 10:00am | Break |
| 10:05am | Review of Regulation Continued |
| 10:50am | Current Issues/Questions |
| 11:00am | Adjourn |

A copy of this presentation will be made available on July 29th, and can be found at:

- http://www.che.sc.gov/StudentServices/Residency/South Carolina CHE Residency Workshop_2010_NO%20SCENARIOS.pdf

Disclaimer

Throughout the morning you will be introduced to **ACTUAL** scenarios that have occurred within the past year dealing with SC Residency. Most of the scenarios will end with questions on how to handle them. The individuals and events presented in each of these scenarios are real. The names of the institutions, students and parents involved have been removed to protect the innocent! CHE staff feels compelled to inform you that no institutions were harmed in the making of this workshop presentation.

Review of Residency Regulation

Section 62-600

Rates of Tuition and Fees

- A. Resident classification is an essential part of tuition and fee determination, admission regulations, scholarship eligibility, and other relevant policies of the state. It is important that institutions have fair and equitable regulations that can be administered consistently and are sensitive to the interests of both students and the state.

What does this mean?

Each institution is responsible for making residency decisions according to guidelines provided by CHE. Institutions should take into account that they should be fair and consistent in their decisions.

Section 62-600

Rates of Tuition and Fees

- B. Institutions of higher education are required by the Statute to determine the residence classification of applicants. The initial determination of one's resident status is made at the time of admission. The initial determination made at that time, and any determination made thereafter, prevails for each subsequent semester until information becomes available that would impact the existing residency status and the determination is successfully challenged. The burden of proof rests with the students to show evidence as deemed necessary to establish and maintain their residency status.

What does this mean?

- The actual determination of residency status is made by the institution. The institution collects the information, and therefore should make the determination of residency classification, based on the regulations provided by CHE. Commission staff is more than willing to assist the institution in its decision, especially in cases where the interpretation or application of the residency regulation is challenging. A record of your determination should be kept in your files.

What does this mean (continued)

- It is the responsibility of the student to prove his/her case to the institution. In return, it is the responsibility of the institution to ensure that the student is correctly classified based on the information provided, and the regulations provided by CHE. It is important that institutions take all necessary steps to ensure that they make correct decisions regarding tuition and fees, as each institution is subject to a CHE audit of scholarship and grant disbursement, lawful presence in the United States as well as SC Residency Classification.

62-602. Definitions

N. "Resident" for tuition and fee purposes is defined as an independent person who has abandoned all prior domiciles and has been domiciled in South Carolina continuously for at least twelve months immediately preceding the first day of class of the term for which resident classification is sought and for whom there is an absence of domiciliary evidence in other states or countries, not withstanding other provisions of the Statute.

What does this Mean?

The twelve month residency period starts when the independent person establishes the intent to become a South Carolina resident per Section 62-605.

62-605. Establishing the Requisite Intent to Become a S.C. Domiciliary

- C. For independent persons or the parent, spouse, or guardian of dependent persons, examples of intent to become a South Carolina resident may include, although any single indicator may not be conclusive, the following indicia:
- (1) Statement of full-time employment;
 - (2) Designating South Carolina as state of legal residence on military record;
 - (3) Possession of a valid South Carolina driver's license, or if a non-driver, a South Carolina identification card. Failure to obtain this within 90 days of the establishment of the intent to become a South Carolina resident will delay the beginning date of residency eligibility until a South Carolina driver's license is obtained;

62-605. Establishing the Requisite Intent to Become a S.C. Domiciliary

- (4) Possession of a valid South Carolina vehicle registration card. Failure to obtain this within 45 days of the establishment of the intent to become a South Carolina resident will delay the beginning date of residency eligibility until the applicant obtains a South Carolina vehicle registration card;
- (5) Maintenance of domicile in South Carolina;
- (6) Paying South Carolina income taxes as a resident during the past tax year, including income earned outside of South Carolina from the date South Carolina domicile was claimed;
- (7) Ownership of principal residence in South Carolina; and
- (8) Licensing for professional practice (if applicable) in South Carolina.

D. The absence of indicia in other states or countries is required before the student is eligible to pay in-state rates.

Scenario

- A family moves to South Carolina in November 2009.
- The family registered their vehicles in December 2009, received a SC Voter's Registration card in November 2009 and changed over his previous driver's license to a SC driver's license in October 2010.
- The father works full-time for a company just across the state line in GA.
- The student is attending a SC institution in the fall. Is the student eligible for the in-state tuition in Fall 2011?

Answer(s)

- Under the current Scenario, the student COULD NOT be charged the in-state tuition rate until Spring 2012, because the father failed to obtain a SC Driver's license within 90 days of moving into the state. The father's twelve month period would end in October 2011. The next term of attendance would be Spring 2012.

Section 62-605 (D) The absence of indicia in other states or countries is required before the student is eligible to pay in-state rates.

62-605. Establishing the Requisite Intent to Become a S.C. Domiciliary

- A. Resident status may not be acquired by an applicant or student while residing in South Carolina for the primary purpose of enrollment in an institution or for access to state-supported programs designed to serve South Carolina residents. An applicant or student from another state who comes to South Carolina usually does so for the purpose of attending school. Therefore, an applicant or student who enrolls as a non-resident in an institution is presumed to remain a non-resident throughout his or her attendance and does not qualify under any of the residency provisions.

What does this mean?

- Initially, anyone entering the state will be considered to be coming for educational purposes until they can demonstrate intent.
- For graduate programs, this does not mean they can NEVER gain instate tuition, but that they will have to demonstrate intent to the residency official, as evidenced by the items in 62-605 (C).

62-605. Establishing the Requisite Intent to Become a S.C. Domiciliary

- B. If a person asserts that his/her domicile has been established in this State, the individual has the burden of proof. Such persons should provide to the designated residency official of the institution to which they are applying any and all evidence the person believes satisfies the burden of proof. The residency official will consider any and all evidence provided concerning such claim of domicile, but will not necessarily regard any single item of evidence as conclusive evidence that domicile has been established.

62-602(D) Domicile

D. "Domicile" is defined as the true, fixed, principal residence and place of habitation. It shall indicate the place where a person intends to remain, or to where one expects to return upon leaving without establishing a new domicile in another state. For purposes of this section, one may have only one legal domicile. One is presumed to abandon automatically an old domicile upon establishing a new one. **Housing provided on an academic session basis for students at institutions shall be presumed not to be a place of principal residence, as residency in such housing is by its nature temporary.**

62-603. Citizens and Permanent Residents

- A. Independent persons who have physically resided and been domiciled in South Carolina for twelve continuous months immediately preceding the date the classes begin for the semester for which resident status is claimed may qualify to pay in state tuition and fees. **The twelve month residency period starts when the independent person establishes the intent to become a South Carolina resident per Section 62-605 entitled “Establishing the Requisite Intent to Become a South Carolina Domiciliary.” The twelve month residency period cannot start until the absence of indicia in other states is proven.** Absences from the State during the twelve month period may affect the establishment of permanent residence for tuition and fee purposes.

62-603 Citizens and Permanent Residents

- B. The resident status of a dependent person is based on the resident status of the person who provides more than half of the dependent person's support and claims or only in the case of those individuals who are supported by family members who do not earn enough reportable income for taxation purposes, qualifies to claim the dependent person as a dependent for federal income tax purposes. **Thus, the residence and domicile of a dependent person shall be presumed to be that of their parent, spouse, or guardian.**

62-603 Citizens and Permanent Residents (Continued)

C. In the case of divorced or separated parents, the resident status of the dependent person may be based on the resident status of the parent who claims the dependent person as a dependent for tax purposes; **or** based on the resident status of the parent who has legal custody or legal joint custody of the dependent person; **or** based on the resident status of the person who makes payments under a court order for child support **and** at least the cost of his/her college tuition and fees.

What does this mean?

- There are three ways that a child of divorced or legally separated parents can gain instate tuition and fees:
 1. The SC parent is a resident and claims the child on taxes; or
 2. There is a joint custody agreement and one of the parents is a SC resident; or
 3. The SC resident parent is responsible for paying court ordered child support AND the cost of college.

Scenario

- After 4 years of marriage, John and Kate decide to divorce. John remains in SC and Kate moves to California, taking their 8 children with her. They establish a joint custody agreement in their divorce, and Kate gets to claim the kids on her taxes each year. Burdened down by child support payments, John simply disappears one day, and remains under the radar. Their oldest child decides he wants to attend a college in SC. Can he be charged instate tuition and fees?

Answer

- No. However, if John can be found and verified as a SC resident, and the student can produce a copy of the divorce decree between John and Kate that shows an established joint custody agreement, then he can be charged as a resident.

Examples of Documentation for Verification

- Divorce Decree showing custodial agreement.
- Copies of income taxes.
- Copies of legal documentation of child support and determination of who shall pay cost of college.

Note: Documents from a notary public do not count as examples for verification

62-606. Maintaining Residence

A person's temporary absence from the State does not necessarily constitute loss of South Carolina residence unless the person has acted inconsistently with the claim of continued South Carolina residence during the person's absence from the State. The burden is on the person to show retention of South Carolina residence during the person's absence from the State. Steps a person should take to retain South Carolina resident status for tuition and fee purposes include:

62-606. Maintaining Residence

- (1) Continuing to use a South Carolina permanent address on all records;
- (2) Maintaining South Carolina driver's license;
- (3) Maintaining South Carolina vehicle registration;
- (4) Satisfying South Carolina resident income tax obligation.

Individuals claiming permanent residence in South Carolina are liable for payment of income taxes on their total income from the date that they established South Carolina residence. This includes income earned in another state or country. (ex. Individual who crosses state lines to work daily)

62-606. Maintaining Residence

- B. Active duty members of the United States Armed Forces and their dependents are eligible to pay in-state tuition and fees as long as they continuously claim South Carolina as their state of legal residence during their military service.

Documentation will be required in all cases to support this claim. South Carolina residents who change their state of legal residence while in the military lose their South Carolina resident status for tuition and fee purposes.

62-606. Maintaining Residence

What does this mean?

Military personnel must maintain legal residence in SC if they are reassigned to another state.

Examples of documentation for verification

- Copies of SC Taxes filed on a SC 1040
- Copies of Military Leave and Earnings Statement

Military Scenario

- Student was admitted to a SC institution on December 10, 2008. Student receives a Palmetto Fellows Scholarship and a SC Tuition Grant. The student's father is military, lists Texas as his state of residence on his LES, and has been stationed in South Carolina since August 2003.
- Father retires from the military on June 1, 2009 (AFTER the student was admitted and notified of eligibility for state aid, but BEFORE he enrolls). Upon retirement, the father gets a civilian job in Charleston and plans to stay put, but does not obtain a SC driver's license. He is recalled to the military less than two months after his retirement. His recall to active duty is for 3-4 years, and he is now stationed in Hawaii.

Military Scenario

- The student has maintained continuous full-time enrollment since Fall 2009.
- Is the student a SC resident?

Answer(s)

- During the time of being stationed in SC, the dad never took any active steps to become a SC resident. At the time the father retired, which was before the student enrolled, the father was not a SC resident. As a result, the student should not have been considered a SC resident. The institution had to return the Palmetto Fellows Scholarship and the SC Tuition Grant.

62-609 Exceptions

- A. Persons in the following categories qualify to pay in-state tuition and fees without having to establish a permanent home in the state for twelve months. Persons who qualify under any of these categories must meet the conditions of the specific category on or before the first day of class of the term for which payment of in-state tuition and fees is requested. Please note that these individuals do not automatically qualify for State Scholarships and Grants.

62-609 Exceptions

(1) “Military Personnel and their Dependents”: Members of the United States Armed Forces who are permanently assigned in South Carolina on active duty and their dependents are eligible to pay in state tuition and fees. When such personnel are transferred from the State, their dependents may continue to pay in state tuition and fees as long as they are continuously enrolled. Such persons (and their dependents) may also be eligible to pay in state tuition and fees as long as they are continuously enrolled after their discharge from the military, provided they have demonstrated an intent to establish a permanent home in South Carolina and they have resided in South Carolina for a period of at least twelve months immediately preceding their discharge. Military personnel who are not stationed in South Carolina and/or former military personnel who intend to establish South Carolina residency must fulfill the twelve month “physical presence” requirement for them or their dependents to qualify to pay in state tuition and fees.

59-112-50 SC Code of Laws

- “...When these armed service personnel are ordered away from the State, their dependents are eligible for in-state tuition rates as long as they remain continuously enrolled at the state institution in which they are enrolled at the time the assignment ends or transfer to an eligible institution during the term or semester, excluding summer terms, immediately following their enrollment at the previous institution. In the event of a transfer, the receiving institution shall verify the decision made by the student's previous institution in order to certify the student's eligibility for in-state tuition rates. It is the responsibility of the transferring student to ensure that all documents required to verify both the previous and present residency decisions are provided to the institution...”

What does this mean?

- Active duty military members stationed in SC and their dependents are eligible for instate tuition and fees. When they are transferred away, their dependents can maintain instate tuition and fee status as long as they remain continuously enrolled. These students can transfer to an eligible institution. If they do, the new institution will not verify their current residency status, but they will verify the status at the time of enrollment at the prior institution.

62-609 Exceptions Continued

(2) “Faculty and Administrative Employees with Full-Time Employment and their Dependents:” Full-time faculty and administrative employees of South Carolina state-supported colleges and universities and their dependents are eligible to pay in-state tuition and fees.

Note: The dependent does not have to attend the same SC Institution as their parent or guardian.

CHE’s interpretation is that these students will need to establish domicile and take necessary steps to become SC residents before the State Scholarships and Grants can be awarded.

62-609 Exceptions Continued

(3) **“Retired Persons and their Dependents:”** Retired persons who are receiving a pension or annuity who reside in South Carolina and have been domiciled in South Carolina as prescribed in the Statute for less than a year may be eligible for in-state rates if they maintain residence and domicile in this State. Persons on terminal leave who have established residency in South Carolina may be eligible for in-state rates even if domiciled in the State for less than one year if they present documentary evidence from their employer showing they are on terminal leave. The evidence should show beginning and ending dates for the terminal leave period and that the person will receive a pension or annuity when he/she retires.

62-609 Exceptions Cont'd

(4) **“Residents with Full-Time Employment and their Dependents:”** Persons who reside, are domiciled, and are full-time employed in the State and who continue to work full-time until they meet the twelve-month requirement and their dependents are eligible to pay in-state tuition and fees, provided that they have taken steps to establish a permanent home in the State. Steps an independent person must take to establish residency in South Carolina are listed in section 62-605 entitled (“Establishing the Requisite Intent to Become a South Carolina Domiciliary”).

62-602.(F) Full time employment

“Full-time employment” is defined as employment that consists of at least thirty seven and one half hours a week on a single job in a full-time status. However, a person who works less than thirty seven and one half hours a week but receives or is entitled to receive full-time employee benefits shall be considered to be employed full-time if such status is verified by the employer. A person who meets the eligibility requirements of the Americans with Disabilities Act must present acceptable evidence that they satisfy their prescribed employment specifications in order to qualify as having full-time employment.

Examples of Documentation for Verification

- Copies of pay stubs – Evidence based on an income stream
- W-2
- Current letter of full-time employment

Scenario

- A family of three (mother, father and first year college student son) moves into SC to take advantage of the lower cost of living. The father obtains a domicile, changes his DL to SC, and registers his vehicle within the mandatory time limits. The father is able to secure a job at a local factory, working 35 hours a week, and a job on the weekends at a Coldstone Creamery working 15 hours each weekend. The son enrolls at a local four year college. Is he a resident?

Answer(s)

- No. Because the father is not working at least 37.5 hours a week on one job, the family cannot take advantage of the full-time employment exception, and will need to fulfill the 12 month period before they can be considered residents for instate tuition and fee purposes.

62-602. Definitions

“Independent Person” is defined as one in his/her majority (eighteen years of age or older) or an emancipated minor, whose predominant source of income is his/her own earnings or income from employment, investments, or payments from trusts, grants, scholarships, commercial loans, or payments made in accordance with court order. An independent person must provide more than half of his or her support during the twelve months immediately prior to the date that classes begin for the semester for which resident status is requested. An independent person cannot be claimed as a dependent or exemption on the federal tax return of his or her parent, spouse, or guardian for the year in which resident status is requested.

Scenario

- After going through a terrible divorce, Dianna and her 16-year old daughter decide to move to SC to be closer to her family while she gets back on her feet. She decides to go back to school to get her degree and moves in with her father to save money while in school. She has a full-time job and a SC Driver's license. She's registered her vehicle here in SC and she files SC taxes. When can she qualify for instate tuition and fees?

Answer

- She cannot gain instate status until she obtains a SC domicile. She has declared herself an independent person, but has not obtained a SC domicile in her name. She cannot fulfill her 12 month residency requirement until she obtains a SC domicile in her name. Because she is working full-time, she could qualify for an exception to the 12 month period, but only after establishing domicile.

62-607 Effect of Change of Residency

- A. Notwithstanding other provisions of this section, any dependent person of a legal resident of this state who has been domiciled with his/her family in South Carolina for a period of not less than three years and whose family's domicile in this state is terminated immediately prior to his/her enrollment may enroll at the in state rate. Any dependent person of a legal resident of this state who has been domiciled with his/her family in South Carolina for a period of not less than three years and whose family's domicile in this state is terminated after his/her enrollment may continue to receive in state rates, however, a student must continue to be enrolled and registered for classes (excluding summers) in order to maintain eligibility to pay in state rates in subsequent semesters. Transfers within or between South Carolina colleges and universities of a student seeking a certificate, diploma, associate, baccalaureate, or graduate level degree does not constitute a break in enrollment.

What does this mean?

- If you and your family have been here at least 3 years, and your family domicile has been terminated immediately prior to or any time after your enrollment, you can continue paying instate tuition and fees.

62-602.(E) Family's Domicile is Terminated

“Family's Domicile in this State is Terminated” is defined as an employer directed transfer of the person upon whom the student is dependent and is not construed to mean a voluntary change in domicile. Also included is a relocation of the person upon whom the student is dependent who is laid off through no fault of their own, e.g., plant closure, downsizing, etc., who accepts employment in another state prior to relocating.

62-607 Effect of Change of Residency

- B. If a dependent or independent person voluntarily leaves the state, and information becomes available that would impact the existing residency status, eligibility for in state rates shall end on the last day of the academic session during which domicile is lost. Application of this provision shall be at the discretion of the institution involved. However, a student must continue to be enrolled and registered for classes (excluding summers) in order to maintain eligibility to pay in state rates in subsequent semesters.

62-604 Non Resident Aliens, Non Citizens, and Non Permanent Residents.

- A. Except as otherwise specified in this section or as provided in Section 62-609 (1) & (2), independent non citizens and non permanent residents of the United States will be assessed tuition and fees at the non resident, out of state rate. Independent non resident aliens, including refugees, asylees, and parolees may be entitled to resident, in state classification once they have been awarded permanent resident status by the U.S. Department of Justice and meet all the statutory residency requirements provided that all other domiciliary requirements are met. Time spent living in South Carolina immediately prior to the awarding of permanent resident status does not count toward the twelve month residency period. Certain non resident aliens present in the United States in specified visa classifications are eligible to receive in state residency status for tuition and fee purposes as prescribed by the Commission on Higher Education. They are not, however, eligible to receive state sponsored tuition assistance/scholarships.

What does that mean?

- Independent non-citizens and non-permanent residents of the United States will be assessed tuition and fees at the non-resident, out-of-state rate.
- Refugees, asylees, and parolees may be entitled to in-state residency once they have received their Green card and met the SC Residency requirement.
- Time spent waiting for permanent resident status (time prior to getting your green card) does not count towards the 12 month physical presence requirement.
- Certain VISA classifications are entitled to in-state tuition and fees.
- Note: Student who are granted I-485 Pending status, as well as students in the US on Temporary Protective Status, are NOT green card holders and therefore cannot be considered SC Residents.

Approved Visa Classifications

Visa Classification Description

- A-1** Highest diplomatic officers and their families
- A-2** Staff under diplomatic officers and their families
- E-2** Investor assisting in operating an enterprise who also invests a large amount of capital (and their families)
- G-1** Principal representatives to international organizations (and their families)
- G-2** Other representatives of foreign governments or international organizations (and their families)
- G-3** Representatives of foreign governments (and their families)
- G-4** Officers and employees of international organizations (and their families)

Approved Visa Classifications - Continued

Visa Classification Description

H-1B	Temporary Professional Workers
H-2A	Temporary Agricultural Workers
H-2B	Temporary workers whose skills are needed in the U.S.
H-3	Trainees or participants in a special education exchange program
H-4	Dependents of H-1, H-2, H-3 employees
K-1	Fiancée or Fiancé of U.S. Citizens*
K-2	Child of Fiancée or Fiancé of U.S. Citizens*
L-1	Intra-company transfers, i.e., managers or executives who have worked abroad for branch of U.S. firm
L-2	Dependents of L-1 visa holder
N-8	Parent of alien child accorded special immigrant status
N-9	Child of an alien parent accorded special immigrant status

Clarification on Visa List

- Due to the time sensitive nature of the K1 & K2 Visa, CHE asks that students in on these Visas be notified that they are granted for one term, and their status will be changed to out-of-state if they have not satisfied the requirements of their K Visa by the start of the second term.

62-611. Incorrect Classification

- A. Persons incorrectly classified as residents are subject to reclassification and to payment of all non resident tuition and fees not paid. **If incorrect classification results from false or concealed facts, such persons may be charged tuition and fees past due and unpaid at the out of state rate.** The violator may also be subject to administrative, civil, and financial penalties. Until these charges are paid, such persons will not be allowed to receive transcripts or graduate from a South Carolina institution.

- B. Residents whose resident status changes are responsible for notifying the Residency Official of the institution attended of such changes.

62-612. Inquiries and Appeals

- A. Inquiries regarding residency requirements and determinations should be directed to the institutional residency official.
- B. Each institution will develop an appeals process to accommodate persons wishing to appeal residency determinations made by the institution's residency official. Each institutions appeal process should be directed by that institutions primary residency officer, in conjunction with those individuals who practice the application of State residency regulations on a daily basis. The professional judgment of the residency officer and administrators will constitute the institutional appeal process. Neither the primary residency official nor appellate official(s) may waive the provisions of the Statute or regulation governing residency for tuition and fee purposes.

Residency Hot Topics

- Checking in with the SC Illegal Immigration Reform Act Update
 - June Update – No changes to higher education
- Boomerang Students - Domicile

SC Illegal Immigration Reform Act

SECTION 17. Chapter 101, Title 59 of the 1976 Code is amended by adding:

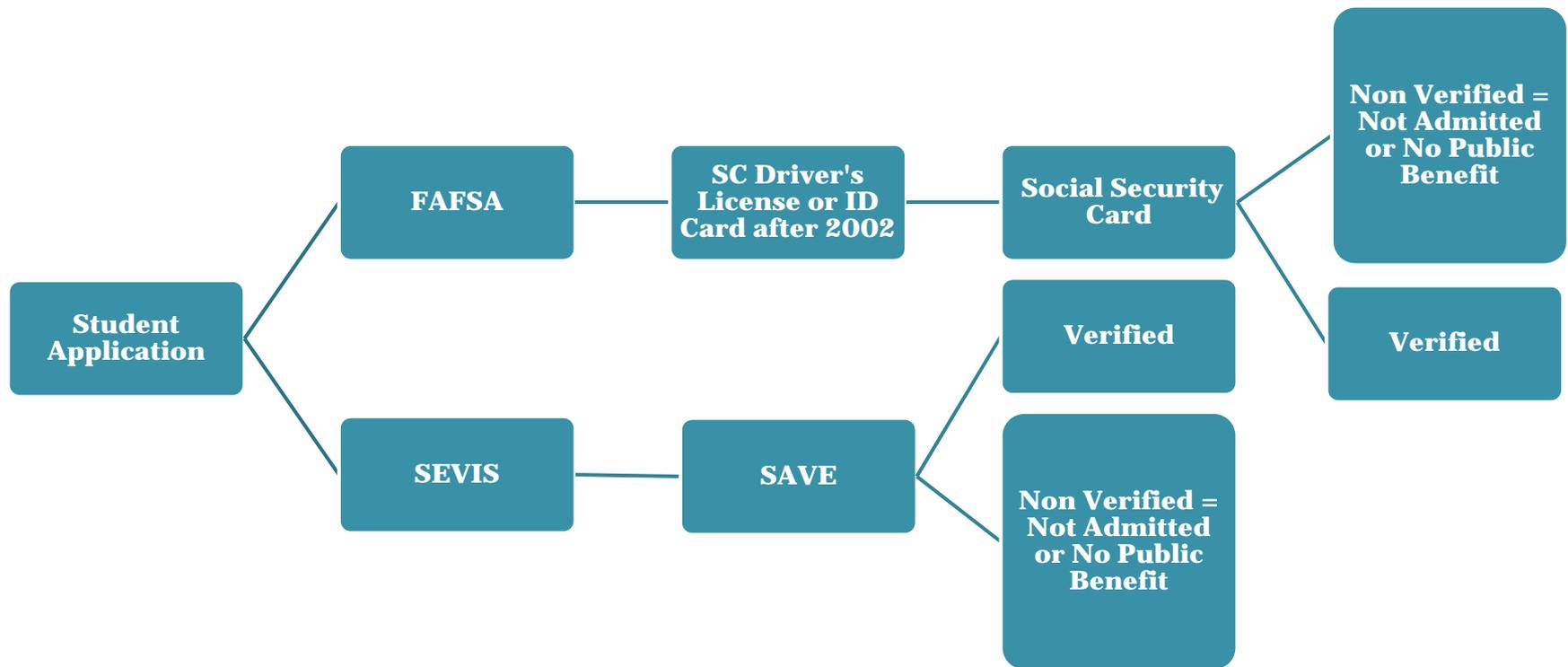
Section 59-101-430

(A) An alien unlawfully present in the United States is not eligible to attend a public institution of higher learning in this State, as defined in Section 59-103-5. The trustees of a public institution of higher learning in this State shall develop and institute a process by which lawful presence in the United States is verified. In doing so, institution personnel shall not attempt to independently verify the immigration status of any alien, but shall verify any alien's immigration status with the federal government pursuant to 8 U.S.C. Section 1373(c).

SC Illegal Immigration Reform Act

(B) An alien unlawfully present in the United States is not eligible on the basis of residence for a public higher education benefit including, but not limited to, scholarships, financial aid, grants, or resident tuition

SC Illegal Immigration Reform Act Recommended Process for Verification



“Boomerang” Students

- Students who have are forced to return to their parents home after having been independent.
- Many do not have the financial resources to obtain their own domicile.
- Currently there is no exception to the domicile requirement in the residency regulation for these students.
- How frequent are these cases at your institution?
- How do you handle these cases?

Items on the CHE Website that deal with SC Residency

<http://www.che.sc.gov/StudentServices/Residency/Residency.htm>

- Residency Law
- Residency Regulation (Approved as of June 26, 2009)
- Approved Visa Classifications
- Frequently Asked Questions
- Military Scenarios

Residency Contact Information

- Dr. Karen Woodfaulk
Director of Student Services
(803) 737-2244 or kwoodfaulk@che.sc.gov
- Mr. Gerrick Hampton
SC Residency, Scholarship/Grants Manager
(803) 734-4397 or ghampton@che.sc.gov

Questions and Answers