

**Residency for Tuition/Fee and State Scholarship/Grant Purposes of
US Citizen Students with Undocumented Parents**

Approved October 1, 2015, SC Commission on Higher Education

I. Introduction

The South Carolina Commission on Higher Education is currently a party in litigation brought on behalf of students who are United States citizens but are dependent on a parent or guardian who has an undocumented immigration status. The Commission first learned of such a scenario in 2013, and have since learned of other cases where this unique factual circumstance has presented itself to admissions and financial aid officials at South Carolina's colleges and universities.

The purpose of this document is to provide guidance to institutional residency officials and institutional residency appeal committees when this scenario is encountered. As the state higher education coordinating authority, this guidance sets forth the Commission's recommendations. However, in providing this guidance, the Commission fully recognizes that South Carolina statutory law places the responsibility for making residency determinations on the designated residency official for each institution. It is the designated residency official who is charged with the duty "to administrate the provisions of this chapter." S.C. Code Ann. § 59-112-80. In issuing this guidance, the Commission is not attempting to usurp or assume the ultimate authority of the colleges and universities in making residency determinations consistent with state law and Commission regulations.

II. Commission Recommendations

In determining the legal residency status of a student, South Carolina law differentiates between students who are independent and those who are still dependent on a parent or guardian. If the student is dependent, state law provides that the student is *presumed* to have the same residency status as the parent or guardian on whom he/she is dependent. S.C. Reg. § 62-603(B) specifically provides that "the residence and domicile of a dependent person shall be presumed to be that of their parent, spouse, or guardian."

Therefore, in the typical case, where a student is dependent on a parent or guardian, that student's residency is *presumed* to be that of the parent or guardian. Where the student is dependent on a parent or guardian who has an undocumented immigration status, the preliminary residency decision will typically be that the student qualifies as a "non-resident alien." According to Commission regulations, a "non-resident alien" is defined as "a person who is not a citizen or permanent resident of the United States. By virtue of their non-resident status 'non-resident aliens' generally do not have the capacity to establish domicile in South Carolina." S.C. Reg. § 62-602(K).

However, *where that student is also a United States citizen*, the Commission recommends that the analysis should not stop there. In that circumstance, the Commission recommends that the student should be informed that state law only presumes that he/she is a "non-resident alien" like the parent or guardian on whom he/she is dependent. That presumption is *rebuttable*, and the burden remains on the student to rebut that presumption, if possible, by presenting evidence to establish that that student is entitled to in-state residency status notwithstanding the undocumented status of his/her parent or guardian.

The Commission recommends that the following information may be obtained from the student to form the basis for the determination by the college or university that the U.S. citizen student may be granted in-state residency status:

1. Years that the student has resided continuously in South Carolina.
2. Official high school transcript(s) showing whether the student graduated from a South Carolina high school and showing years of attendance at a South Carolina high school.
3. Possession by the student of a valid South Carolina driver's license, or if a non-driver, a South Carolina identification card.
4. Possession of a valid SC vehicle registration if the student owns a motor vehicle.
5. Proof that the student filed South Carolina tax returns as a resident for prior tax years.
6. Proof that the parent or guardian on whom the student is dependent filed South Carolina tax returns as a resident for prior tax years.
7. Other proof that the parent or guardian on whom the student is dependent is living in South Carolina, including evidence of employment in South Carolina, a lease showing a rental home or apartment in South Carolina, utility bills, and the like.

This list is not intended to be exhaustive, and no single piece of evidence is necessarily conclusive. However, the Commission recommends that the institutional residency official weigh the evidence to make a determination whether the U.S. citizen student is domiciled in South Carolina. Students with an undocumented parent or guardian should not gain any advantage over other students whose parent or guardian on whom they are dependent qualify as a "non-resident," such as a resident of another state or country. However, a U.S. citizen student who can establish domicile in South Carolina should not be denied in-state residency status on the basis of his/her parent's undocumented status.

The Commission further recommends that a U.S. citizen student who is denied in-state residency status by the institutional residency official should be advised of his/her right to appeal that decision to the institution's residency appeal committee.

The Commission further recommends that the ultimate residency decision reached by the institutional residency official, and as applicable, the residency appeal committee, should be fully documented. The residency decision reached by the college or university shall be final. There is no appeals process by which the Commission will review and reverse or modify the residency decision reached by the college or university. Likewise, to the extent it has the authority, the Commission will not impose any sanction on the college or university for its residency decision made with regard to students who are United States citizens but are dependent on a parent or guardian who has an undocumented immigration status.