

South Carolina
Commission on Higher Education
Access | Affordability | Excellence

South Carolina Residency Workshop

SC Commission on Higher Education Staff
Summer 2024

Agenda

- | | |
|---------|--------------------------|
| 9:00am | Welcome |
| 9:05am | Review of the Regulation |
| 10:45am | Special Topics |
| 11:00am | Adjourn |
| 11:30am | Scholarships & Grants |

* After the final workshop on July 19th, a copy of this presentation can be found on the CHE website *

Disclaimer!

The presentation will cover the current residency regulation, and will address each section in some way. While every individual line of the regulation may not be addressed, every section is represented in the presentation. Red indicates point of emphasis in regulation, and changes that are now in place for the 2024-25 academic year.

Typical Steps to a Residency Determination

- After Student has Indicated if They are Independent or Dependent

Moves into State and Establishes Domicile

- Establishes Domicile - Rent/Lease/Own - Need paperwork in file for audit purposes

Check Important Documents

- 45 Days from date of signature on domicile to register vehicle
- 45 Days from date of signature on domicile to relinquish out of state license (as of Fall 2023)
- Taxes/Divorce Decree/LES

Check for Exceptions

- Active duty military
- Retirees
- Faculty at Public Colleges/Universities
- Working Full-time in SC
- Veterans and covered individuals using specific education benefits

Wait 12 months

- If no exceptions are met, then 12 months from date of domicile. The next academic term of attendance will be first term of eligibility for in-state rates

* CHE staff's primary role in this process is to provide guidance to institutions as they make their decisions.

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. The Commission on Higher Education hereby establishes regulations for the Statute Governing Residency for Tuition and Fee Purposes to be applied consistently by all South Carolina institutions of higher education. These regulations do not address residency matters relating to in county categories used within the State's technical colleges.

What this means

Every S.C institution that awards state scholarship or grants, regardless of type, has the responsibility of making residency decisions. It is important that proper training is given to all residency officers so that they can make correct determinations.

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 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 this means

Each institution (not CHE) is responsible for making residency decisions according to state law & regulations provided by CHE and vetted by the SC General Assembly. Institutions should be fair and consistent in their decisions.

Institutions should ask for any documentation they feel necessary to render a fair decision.

62-602. Definitions

M. “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.

62-602. Definitions

H. “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, educational or student loans in the name of the independent person and provided by an insured and federally regulated financial entity, or payments made in accordance with court order and for the purposes of determining residency for tuition and fees. An independent person:

1. Must provide more than half of his or her support, which shall include the institutional cost of attendance as defined by Title IV, during the twelve months immediately prior to the date that classes begin for the semester for which resident status is requested;

62-602. Definitions

2. Cannot claim the domicile of another individual as their own for the purposes of establishing intent to become a South Carolina resident;
3. Must have established his/her own domicile and provide documentation of establishing his/her own domicile for twelve months to include documentation of renting a domicile if applicable, prior to receiving in-state tuition and fees; and
4. 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.

62-602. Definitions

C. “Dependent Person” is defined as one whose predominant source of income or support is from payments from a parent, spouse, or guardian, who claims the dependent person on his/her/their federal income tax return. In situations where the dependent is submitting the tax return of joint filers, the residency of both filers should be considered. In the case of those individuals who are supported by family members who do not earn enough reportable income for taxation purposes, a dependent person can be defined as one who qualifies as a dependent or exemption on the federal income tax return of the parent, spouse, or guardian. A dependent person is also one for whom payments are made, under court order, for child support and the cost of the dependent person’s college education. A dependent person’s residency is presumed to be that of the person upon whom they are dependent.

62-603 Establishing Residency, 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 Establishing Residency, 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.

IRS Tests for Dependency

Qualifying Child

- Relationship - Your child, stepchild, foster child, grandchild, siblings, half-siblings, step-siblings, niece or nephew
- Age – under 19 or student up to 24 and younger than filer
- Residency – lived with you more than half the year
- Support – You must provide more than half person's support
- Joint Return – child can't file joint return for year

Qualifying Relative

- Not a Qualifying Child of yours or another taxpayer
- Member of Household or Relationship – Lives with you or related to you in a legal manner
- Gross Income – makes less than \$4700 for year (2023)
- Support – You must provide more than half person's support

**No age restriction on Qualifying relative*

62-603 Establishing Residency, Citizens and Permanent Residents.

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 in-state 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.

Examples of Documentation for Verification

- Document of legal separation.
- 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

62-605. 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.

B. If a person asserts that his/her domicile has been established in this State, the individual has the **burden of proof**. Such persons must 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.

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

C. For independent persons or the parent, spouse, or guardian of dependent persons, indicia showing 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;
- (4) Possession of a valid South Carolina vehicle registration card **for every vehicle the independent person is in sole or partial ownership**. 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 valid South Carolina vehicle registration card(s);

Driver's License Change – Act 51 of 2023

Act 51 of 2023

Issuance of motor vehicle drivers' licenses

SECTION 37. Section [56-1-20](#) of the S.C. Code is amended to read:

Section [56-1-20](#). No person, except those expressly exempted in this article shall drive any motor vehicle upon a highway in this State unless such person has a valid motor vehicle driver's license issued to him under the provisions of this article. No person shall receive a motor vehicle driver's license unless and until he surrenders to the Department of Motor Vehicles all valid operators' licenses in his possession issued to him by any other state within **forty-five days** of becoming a resident of this State, unless specifically exempted by law. All surrendered licenses shall be returned by the department to the issuing department, agency, or political subdivision. No person shall be permitted to have more than one valid motor vehicle driver's license or operator's license at any time.

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

- (5) Maintenance of **an established and current** 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;
- (8) Licensing for professional practice (if applicable) in South Carolina.

D. **The individual seeking residency must ensure that no item from the list above or any other item, reflects residency or intent to be a resident in another state or country.** Having any one item from the list above or any other item(s) reflecting residency in another state or country will delay the beginning date of residency. The absence of indicia in other states or countries is required before the student is eligible to pay in state rates.

62-602 Definitions

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.

62-606. Maintaining Residence

A. 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. A person who obtains indicia in another state after leaving the state is demonstrating intent to be a resident of that state. Steps a person should take to retain South Carolina resident status for tuition and fee purposes include:

- (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 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, including an official Leave and Earnings Statement (LES) demonstrating South Carolina as the member's state of legal residence. 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.

62-609 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. The following categories apply only to in state tuition and do not apply to State supported scholarships and grants. Individuals who qualify for in state tuition and fees under the following exceptions do not automatically qualify for LIFE, SC HOPE or Palmetto Fellows Scholarships. However, where all scholarship & grant timelines related to residency and academic requirements are met, persons in categories (1), (3) and (4) may qualify for state scholarships or 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 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.

62-609 Exceptions (Continued)

Members of the United States Armed Forces who are permanently assigned in South Carolina on active duty (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.

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.

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

Note 2: These individuals would not qualify for State Scholarships or Grants until intent to be a SC resident was established.

62-609 Exceptions Cont'd

(3) “Residents with Full Time Employment and their Dependents:” Persons who reside, are domiciled, and are full time employed with an employer that is physically located 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.(E) 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, with gross earning of at least minimum wage. 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 or part-time enrollment with full-time benefits

Note: Two part-time jobs do NOT equal one full-time job

62-609 Exceptions Continued

- (4) “Retired Persons and their Dependents:” Retired persons with taxable retirement income received as monthly/quarterly/annual disbursements from a retirement account, or 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. All retirement income must show South Carolina income tax withholdings prior to the first day of classes for the term in which residency is being sought. Social Security is not considered as a type of eligible retirement income. 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. 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”).

62-609 Exceptions Cont'd

(5): Covered Individuals Receiving Specific Education

Benefits: Covered individuals living in South Carolina, who are enrolled in a public institution of higher education and receiving educational assistance under Chapter 30, Chapter 31 and Chapter 33, Title 38 of the United States Code, are entitled to pay in-state tuition and fees without regard to the length of time the covered individual has resided in this State. For purposes of this subsection, a covered individual is defined as:

62-609 Exceptions Cont'd (NEW)

- a) a veteran who served ninety days or longer on active duty in the Uniformed Service of the United States, their respective Reserve forces, or the National Guard;
- b) a person who is entitled to and receiving assistance under Section 3319, Title 38 of the United States Code by virtue of the person's relationship to the veteran described in subitem (a);
- c) a person using transferred benefits under Section 3319, Title 38 of the United States Code while the transferor is on active duty in the Uniformed Service of the United States, their respective Reserve forces, or the National Guard; or

62-609 Exceptions Cont'd (NEW)

- d) a person who is entitled to and receiving assistance under Section 3311(b)(9), Title 38 of the United States Code
- e) A person who is entitled to and receiving rehabilitation benefits under (38 U.S.C. § 3102(a)) who lives in the state in which the institution is located (regardless of his/her formal State of residence).

*As of July 1, 2024, with the enactment of the General Appropriations Bill for 2024-25 (via proviso), Chapter 35 recipients are now considered a new category of covered individuals.

62-609 Exceptions Cont'd (NEW)

A covered individual shall remain eligible for in-state rates as long as he remains continuously enrolled in an in-state institution or transfers to another in-state institution during the term or semester, excluding summer terms, immediately following his enrollment at the previous in-state institution. In the event of a transfer, the in-state institution receiving the covered individual shall verify the covered individual's eligibility for in-state rates with the covered individual's prior in-state institution. It is the responsibility of the transferring covered individual to ensure all documents required to verify both the previous and present residency decisions are provided to the in-state institution.

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 immediately prior to his/her enrollment** may enroll at the in state rate and may continue to be enrolled at such rate even if the parent, spouse or guardian upon whom he is dependent moves his domicile from this State. The 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.

62-602. (H) - Definition of “Immediately prior”

- H. “Immediately Prior” is defined as the period of time between the offer of admission and the first day of class of the term for which the offer was made, not to exceed one calendar year.

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 United States Citizenship and Immigration Services (USCIS) 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.

What does that mean?

- 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 Classification Descriptions

- 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

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

<https://travel.state.gov/content/visas/en/immigrate.html> - Link to the U.S Department of State, Bureau of Consular Affairs's VISA page.

* There is a 90 day marriage or green card stipulation that the student must fulfill for the K Visas

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 institution's 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.


What does this mean?

Each institution is responsible for developing an appeal process for students wishing to appeal institutional residency decisions.

While CHE can be contacted for assistance with interpretation of an existing regulation or statute during the institutional residency process, the institution will make the final determination of residency classification.



Special Topics



Public Law 118-42 Freely Associated States

Memo Dated May 8, 2024- Freely Associated States

- On March 9, 2024, President Biden signed the Consolidated Appropriations Act of 2024 into law, which became Public Law 118-42.
- Section 209(b)(1)(E) requires that beginning July 1, 2024, public institutions of higher learning that receive Title IV funding must charge in-state tuition rates to residents of the Freely Associated States, which are the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.
- To comply with federal law, institutions should use the authority granted to them under section 59-112-70(A) to fully abate out-of-state rates for residents of the Freely Associated States beginning in Academic Year 2024-25.
- CHE staff will seek either a statutory or proviso change for 2025-26.



South Carolina Illegal Immigration Reform Act

SC Illegal Immigration Reform Act

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

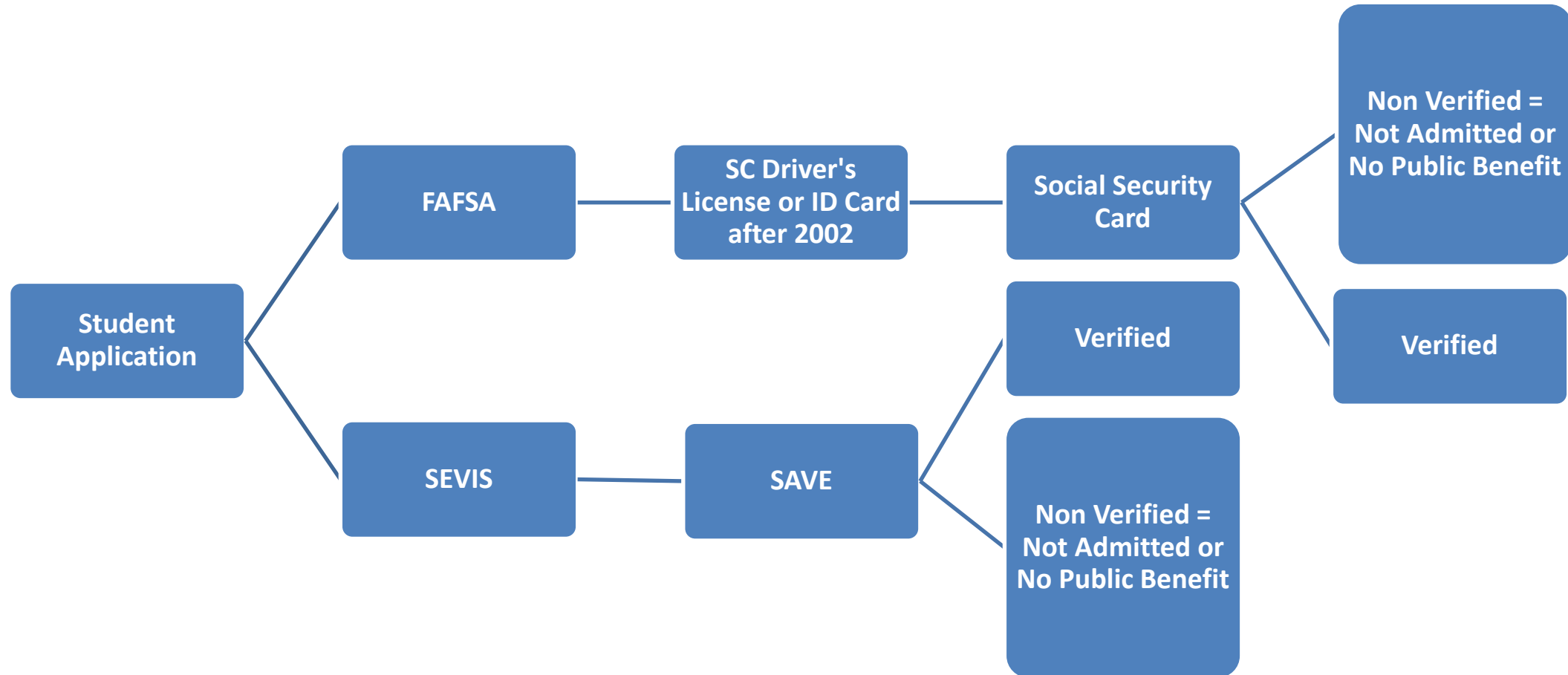
Section 59-101-430

(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



CHE GUIDANCE REGARDING US CITIZEN CHILDREN WITH UNDOCUMENTED PARENTS

CHE Guidance Re: US Citizen Children with Undocumented Parents

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."

CHE Guidance Re: US Citizen Children with Undocumented Parents

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).

CHE Guidance Re: US Citizen Children with Undocumented Parents

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.

CHE Guidance Re: US Citizen Children with Undocumented Parents

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.

CHE Guidance Re: US Citizen Children with Undocumented Parents

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.

CHE Guidance Re: US Citizen Children with Undocumented Parents

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.

CHE Guidance Re: US Citizen Children with Undocumented Parents

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.

CHE Guidance Re: US Citizen Children with Undocumented Parents

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

Items on the CHE Website Pertaining to SC Residency

<https://www.che.sc.gov/Students,FamiliesMilitary/PayingForCollege/ResidencyConsiderations.aspx>

- Residency Law & Residency Regulation (Effective as of May 27, 2022)
- Sister-State Agreements
- Approved Visa Classifications
- Frequently Asked Questions
- June 15th Presentation on Act 11 of 2015
- CHE Guidance pertaining to US Citizen Children with Undocumented Parents

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