

Virginia In-State Education Benefits for Military Families Not Domiciled in Virginia

**Harmonizing federal Title IV law with Virginia state provisions for higher
education benefits – tuition and financial aid for military families.**

FEDERAL LAW

Federal Higher Education Opportunity Act - 2008

<http://www.ed.gov/policy/highered/leg/hea08/index.html>

SEC. 114. IN-STATE TUITION RATES FOR ARMED FORCES MEMBERS, SPOUSES, AND DEPENDENT CHILDREN.

Part C of title I (20 U.S.C. 1015) is further amended by adding after section 134 (as added by section 113 of this Act) the following:

SEC. 135. IN-STATE TUITION RATES FOR MEMBERS OF THE ARMED FORCES ON ACTIVE DUTY, SPOUSES, AND DEPENDENT CHILDREN.

(a) REQUIREMENT.—In the case of a member of the armed forces who is on active duty for a period of more than 30 days and whose domicile or permanent duty station is in a State that receives assistance under this Act, such State shall not charge such member (or the spouse or dependent child of such member) tuition for attendance at a public institution of higher education in the State at a rate that is greater than the rate charged for residents of the State.

(b) CONTINUATION.—If a member of the armed forces (or the spouse or dependent child of a member) pays tuition at a public institution of higher education in a State at a rate determined by subsection (a), the provisions of subsection (a) shall continue to apply to such member, spouse, or dependent while continuously enrolled at that institution, notwithstanding a subsequent change in the permanent duty station of the member to a location outside the State.

(c) EFFECTIVE DATE.—This section shall take effect at each public institution of higher education in a State that receives assistance under this Act for the first period of enrollment at such institution that begins after July 1, 2009.

(d) DEFINITIONS.—In this section, the terms ‘armed forces’ and ‘active duty for a period of more than 30 days’ have the meanings given those terms in section 101 of title 10, United States Code.’

10 U.S.C. § 101 – Military definitions:

http://www.law.cornell.edu/uscode/10/usc_sec_10_00000101----000-.html

(a)(4) The term “armed forces” means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(d)(2) The term “active duty for a period of more than 30 days” means active duty under a call or order that does not specify a period of 30 days or less.

Definition of “Military Dependent”

For full definition of “military dependent” as referenced in Virginia law, see 37 U.S.C. § 401 or refer to the web address below:

http://www.law.cornell.edu/uscode/37/usc_sec_37_00000401----000-.html

VIRGINIA STATE LAW

Code of Virginia - §23-7.4 – In-state for Military Dependents

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+23-7.4>

E. Notwithstanding any other provision of law, all dependents, as defined by 37 U.S.C. § 401, of active duty military personnel, or activated or temporarily mobilized reservists or guard members,

(i) assigned to a permanent duty station or workplace geographically located in Virginia, or in a state contiguous to Virginia or the District of Columbia, who reside in Virginia;

(ii) assigned unaccompanied orders and immediately prior to receiving such unaccompanied orders were assigned to a permanent duty station or workplace geographically located in Virginia, or in a state contiguous to Virginia or the District of Columbia, and resided in Virginia; or

(iii) assigned unaccompanied orders with Virginia listed as the designated place move

shall be deemed to be domiciled in Virginia for purposes of eligibility for in-state tuition and shall be eligible to receive in-state tuition in Virginia in accordance with this section. All such dependents shall be afforded the same educational benefits as any other individual receiving in-state tuition pursuant to this section.

Such benefits and in-state tuition status shall continue so long as they are continuously enrolled in an institution of higher education in Virginia or are transferring between Virginia institutions of higher education or from an undergraduate degree program to a graduate degree program, regardless of any change of duty station or residence of the military service member.

For the purpose of this subsection:

"Date of alleged entitlement" means the date of admission or acceptance for dependents currently residing in Virginia or the final add/drop date for dependents of members newly transferred to Virginia.

"Temporarily mobilized" means activated for service for six months or more.

"Unaccompanied orders" means orders that assign the active duty military personnel, or activated or temporarily mobilized reservists or guard members, an unaccompanied tour listed in Appendix Q of the Joint Federal Travel Regulations.

Code of Virginia - §23-7.4:2 – Tuition Rate for Military Members

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+23-7.4C2>

G. Any active duty members, activated guard or reservist members, or guard or reservist members mobilized or on temporary active orders for six months or more, that reside in Virginia, shall pay tuition, to the public institution of higher education in which they are enrolled, in an amount no more than the institution's in-state tuition rate.

Harmonizing Federal and State Law

Federal law supersedes state law and differs on several points. The following is a summary of those differences and the subsequent recommended treatment of the student by the institution. Note that any follow up guidance on federal law from official USDOE sources supersedes this document. If a student qualifies under both provisions, they receive the more generous of the tuition, financial aid, or continuation benefits available.

Definition of Military Member

- As used in the federal provision, “active duty” includes the military members on active duty as well as “activated guard or reservist members,” and “guard or reservist members mobilized or on temporary active orders.” The important point is that they are currently activated and under federal orders for a permanent duty station (PDS) assignment; therefore, the only difference between the federal and state provisions is length of activation to date. The federal provision requires a minimum of 30 days or more while the state provision requires at least six months of duty.

Guidance: Except for length of service requirements, the two provisions refer to the same group of military members with PDS assignment. If the military orders are not clear under which provision the military member qualifies, contact SCHEV and we will handle on a case-by-case basis. **Note** that state National Guard members who have not been federally activated are not included in either provision.

Definition of Military Dependents

- Federal law references only the “spouse and dependent child” which is narrower than the state reference to “dependents of a military member.” Dependent persons not covered under the federal standard of “spouse and dependent child” may be considered under Virginia provisions only and not covered by the federal provision.

Guidance: Be aware that a dependent parent, or other person meeting the definition of a dependent under military law, might be eligible under current state law - and subject to all its conditions - while only a spouse or dependent child would benefit from the federal provision.

Residency

- Federal law references only the “domicile” and “permanent duty station” of the military member; and makes no reference to the physical residency of either the military member or his family. This differs from current Virginia state law that restricts residency to Virginia when utilizing the military exception for dependents.

Guidance:

For dependents: Be aware that if a military member is assigned Permanent Duty Station (PDS) to Virginia, his non-residential spouse and children (e.g. military member PDS to Virginia but family still residing in California) would be eligible for in-state under federal law regardless of where they reside but would only receive the benefit (in-state tuition) provided by federal law. State residency is required in order to be considered “deemed as domiciled” under the state provision and then receive benefits reserved for all Virginia domiciled residents.

For the military member: A military member PDS to Virginia but residing in another state (e.g. assigned to Virginia but residing in Maryland) would be eligible under the federal provision.

Military Assignment

- The federal provision refers to permanent duty station assignment in Virginia while state law for dependents expands to bordering states but is silent on the assignment in the provision for the military member.

Guidance:

Dependents: If the military family is residing in Virginia while the military member is assigned to a neighbor state (such as residing in Northern Virginia while assigned to Washington DC or Maryland), the family does not qualify under the federal provision but would be eligible under the state. This is the one example where the state residency/assignment provision expands eligibility.

Tuition Rate

- Federal law is permissive in allowing the tuition rate for eligible students to not be greater than “the rate charged for residents of the State.” This allows for a lower rate than in-state but state law for military dependents is restrictive to the in-state tuition amount.

Guidance: Since federal law is permissive, state law would set the standard and does not allow a rate lower than the in-state tuition rate for the spouse and dependents.

Unaccompanied Orders

- The state provision addresses instances where the military member is assigned unaccompanied orders, which do not permit the family to follow. Since the federal provision does not address unaccompanied orders, there is no conflict.

Guidance:

If a military member is not assigned to Virginia or contiguous state, the family could still qualify under one of two very specific circumstances.

1. If the unaccompanied orders immediately followed a time when the military member was assigned to Virginia or contiguous state, and resided in Virginia.
2. The unaccompanied orders designated Virginia as the “place move” where the family should reside while the member proceeded with unaccompanied orders.

Continuation Requirement

- The federal continuation provision is similar to Virginia law but differs on two points: 1. it extends the continuation benefit to the military member; 2. Virginia law is more expansive in allowing continuous enrollment to include any Virginia institution.

Guidance:

1. Most military members will be unable to continue enrollment if they are reassigned but if a person was able to continue enrollment via distance learning or other means, the student continues to be eligible for the in-state tuition under the federal provision until they break enrollment.
2. The federal law does not contain a definition of “continued enrollment,” so unless further clarification is obtained through federal guidance, the state definition of one class per term (fall-spring-fall with no penalty for lack of summer enrollment) holds.
3. Finally, Virginia law is more expansive in allowing consideration of enrollment at any Virginia institution. Once a student fails to meet the federal definition by transferring institutions, they may then be reviewed under the current state law for retaining the in-state tuition rate but are subject to meeting the state’s initial eligibility criteria regarding residency.

Financial Aid

- The federal provision addresses only tuition and fees while the state provision allows for military dependents to be considered for state financial aid.

Guidance:

1. A spouse or dependent child could qualify for in-state tuition under the federal provision but would not be eligible for financial aid unless they meet the state criteria. For example, if a military member is assigned to a Virginia base but whose child resides in another state (let's say Delaware), the student would qualify for in-state tuition via the federal provision but not state financial aid. If the student resided in Virginia, they could qualify for both.
2. The military personnel does not have a state financial aid provision other than by establishing domicile, so there is no conflict. Regardless of meeting the eligibility criteria for in-state tuition under either the federal or state provisions, they cannot be considered for state financial aid other than by establishing domicile in Virginia.
3. A dependent other than a spouse or child (e.g. dependent parent) is only addressed by the state provision and so there is no conflict. They can only be considered by using the state standard and, if eligible, would receive the in-state tuition rate and can be considered for state financial aid.

Veterans

Veterans should first be considered under domicile law. If found to be domiciled in Virginia, the veteran - and his/her dependents - are not subject to the one year waiting period and may receive the in-state tuition benefit as of the next term after domicile has been established. The veteran - and his/her dependents - is then afforded all benefits available to a domiciled Virginia resident.

If domicile is not established, the veteran can be considered under the following provision:

23-7.4:2

H. Notwithstanding any other provision of law, veterans residing within the Commonwealth shall be eligible for in-state tuition charges. Any students granted in-state tuition pursuant to this subsection shall be counted as in-state students for the purpose of determining college admissions, enrollment, and tuition and fee revenue policies.

Eligibility: The veteran must meet the definition of a veteran, meaning that they must have served and then have separated under conditions other than dishonorable. Also, the veteran must demonstrate physical residency within the Commonwealth as of the date of alleged entitlement (first day of the term).

Benefit: The provision provides the in-state tuition rate. The benefit is reserved for the veteran only and is not extended to family members.

Continuity: The veteran must continue to meet the conditions of the provision (reside in the Commonwealth). Once residency is broken, they are no longer eligible under this provision beginning with the next term. Eligibility can be reestablished by renewing residency.

Chart of Eligibility Criteria and Benefits for Virginia Military Families Not Domiciled in Virginia

It is possible to be eligible under both provisions.

Military Member		
	Federal	State
ELIGIBILITY CRITERIA		
Residency	No residency requirement	Must reside in Virginia
Duty Station	Virginia	Not specified
Length of Military Member Activation	More than 30 days	At least six months
BENEFITS		
Tuition Rate	No more than in-state tuition	No more than in-state tuition
State Financial Aid	None	None
Continuation	Continuous enrollment at initial institution	Continuation not automatic. Must continue to meet initial eligibility criteria.

Military Dependents		
	Federal	State
ELIGIBILITY CRITERIA		
Dependents	Spouse and dependent children	Spouse and children but also could include other relationships such as a dependent parent
Residency	No residency requirement	1. Assigned to Virginia or contiguous state or DC; and reside in Virginia OR 2. Assigned unaccompanied orders and immediately prior to receiving such orders was assigned to a permanent duty station or workplace geographically located in Virginia, or in a state contiguous to Virginia or DC; and resided in Virginia OR 3. Assigned unaccompanied orders with Virginia listed as the designated place move
Military Member Permanent Duty Station	Virginia	
Length of Military Member Activation	More than 30 days	No minimum
BENEFITS		
Tuition Rate	No more than in-state tuition	In-state tuition
State Financial Aid	None	Eligible for consideration
Continuation	Continuous enrollment at <u>initial</u> institution	Continuous enrollment in <u>any Virginia</u> institution