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**MEMORANDUM**

DATE: July 31, 2015

TO: Dr. Gene Sharratt, Executive Director  
Washington Student Achievement Council

FROM: Rick Brady, Assistant Attorney General *ROB*

SUBJECT: **Determination of Residency for Tuition and Other Purposes for Students in Deferred Action for Childhood Arrival (DACA) Status**

**I. ISSUE PRESENTED**

On June 15, 2015, the Department of Homeland Security's office of U.S. Citizenship and Immigration Services (USCIS) issued updated information and clarification about individuals granted Deferred Action for Childhood Arrival (DACA) status. USCIS clarified that individuals granted deferred action are not precluded by federal law from establishing domicile in the U.S. You have asked us to consider the implications that USCIS information and clarifications have for the Washington Student Achievement Council (WSAC), residency determination by colleges and universities, and Washington financial aid programs that reference the residency statute (RCW 28B.15.012).

**II. DISCUSSION**

To establish domicile, noncitizens must be able to form the intent to remain permanently in the U.S.; and it has been generally accepted authority that an individual who may be subject to removal from the U.S. at any time lacks the capacity to form the intent necessary to remain permanently in the U.S. At the same time, some Washington financial aid programs have been open only to students domiciled in Washington and excluded individuals who potentially face removal such as those who have been granted deferred action (DACA students).

Previous advice from the Washington Attorney General's Office has been that DACA students do not qualify for resident tuition because they cannot form the intent required to establish domicile in Washington. Thus, DACA students, being nonresidents and also unable to establish domicile, could only qualify for residency under RCW 28B.15.012(2)(e).

Now, as memorialized in its June 15, 2015 updated information, USCIS determined that it is possible for DACA students to establish domicile in the U.S., including Washington. The

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implication is that DACA students may now qualify for resident tuition pursuant to RCW 28B.15.012(2)(a)-(d) and qualify under the exception from the definition of nonresident student for individuals “permanently residing under color of law” found in RCW 28B.15.012(3)(b).<sup>1</sup>

As a consequence, some Washington financial aid programs may be available to more students. One example is the College Bound Scholarship Program (CBS) found in RCW 28B.118. This program limits eligibility to students qualifying as resident students pursuant to RCW 28B.15.012(2)(a)-(d), which require domicile in the state of Washington. The effect of the USCIS clarification leads us to conclude that individuals with DACA status now have the ability to establish domicile and qualify for residency under RCW 28B.15.012(2)(a)-(d). This also means that such students may participate in the CBS program provided they meet all other program requirements.

The implication for WSAC is that it may need to expedite the development and implementation of “domicile determination” training for counselors, residency officers, and financial aid officers at high schools and institutions of higher learning around the state.

You can find the updated USCIS guidance at: <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions>.

Thank you. Please do not hesitate to call us with any questions.

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<sup>1</sup> “Permanently residing under color of law” is a term of art that was incorporated from federal law. It has been interpreted to include an individual who is an alien residing in the United States with the knowledge and permission of the USCIS and that agency does not contemplate enforcing their removal.