

SEVP Open Forum / Q & A

NAFSA Region III and VII
Bi-regional conference
San Juan, PR, October 14 – 18, 2012

Participants

- Nosotros....
- Moderators:
 - Robin Catmur, NAFSA RegOmbud and UGA
 - Regina Henry, NAFSA RegOmbud and OSU

Agenda – pretty basic....

- Updates and reminders of recent changes or issues
- Q & A

Hanging in there...



Reminders of some recent “happenings”

- SEVIS performance issues - ongoing
- SEVIS-SAVE data issues; delays, delays, delays...
- Letter from SEVP to President of College / University if no re-cert app filed.
- SAOC unit creation
- SEVIS II vision document
- SEVIS II webinars
- OPT and SC's enforcing the 30 day filing window
- CBP halting the stamping of I-20 forms and DS-2019 forms
- Sanction Law passed regarding Iranian students and certain programs of study
- DACA and international students
- Automation of I-94 cards

...and more...

- IEP accreditation FAQ
- ELIS filings
- Updated STEM CIP list
- Syrian Special Student Relief
- IRS-ITIN new requirements – conf call 9/13/12
- New SEVP memo on Monday – re; out-of-cycle reviews

SEVP – J programs...

- EVP letter to program sponsors
- Emphasized focus on cultural components
- OIG report

Questions – more:

- SEVIS performance issues? Any hope for improvement?
- Update on regulation re-writes?
- Policy drafts published end of September
 - 4.1.1 –public and ED accredited schools do not need to add “every” instructional site – only those that allow a student to complete more than 51% of degree requirements at that location? BUT – that we may be asked for info on the other sites by DHS at any time?
 - 4.3 – We do not need to have an actual office at each instructional site, but must simply have an office at the MAIN school site? (that is accessible to all students....but...some of our students are 6 hours away from our main campus...is that “accessible”??

...and more...

- Records Retention and file integrity memo – but topic was actually out-of-cycle reviews– 10/15/2012
- Iranian sanction law and prohibiting study within certain fields based on conditions.
 - Are DSO's expected to judge and enforce this by denying I-20 issuance to certain Iranian students? Will this be based on CIP codes?
- Regarding DACA and F-1 or J-1 students who have fallen out of status....yes – they are asking us if they would qualify...

...and more...

- Transfers and travel...please clarify?
 - We are confused by these differing interpretations, as the transfer of the SEVIS record between schools has little to do with the U.S. presence of the student. Certainly the student has to travel ****back**** to the U.S. with the correct I-20 form, depending on which school still owns the SEVIS record – but why can a student not depart before the transfer release date, and then return with the new school's I-20 after the release date? We thought SEVP was trying to ensure that students remain on the same SEVIS record as much as possible – rather than having multiple SEVIS records for each student.
 - Also – what are DSO's to do if they do not know that a transfer student has departed, and have gone ahead and issued a transfer I-20 form? When the student re-enters with that transfer form, is he or she in valid status with the transferred SEVIS record? As the timing of this clarified policy is unfortunate (mid summer), and most schools have already issued whatever transfer I-20 forms are needed, can we let those transfers stand, regardless of the travel plans of the affected students?

...and more...

- More transfers:
 - DSO's often have questions about the timing of transfers. SEVP has continually reminded DSO's that they should always work with a student to allow a transfer whenever possible. The DSO training document however, states that: "A student must maintain status by attending classes until the transfer release date. An F-1 student cannot decide to transfer in the middle of a term and immediately stop attending classes. Such an action would be a violation of status and the student's SEVIS record should be terminated." Please confirm this statement – that in fact – if a student is enrolled mid-term, decides to withdraw and begin a new program of study at another school, and the start date is less than five months away, DSO's would then be required to terminate the record, and then transfer the terminated record?
 - And related: but how does this impact the student who arrives, and *immediately* wants to transfer? SEVP has said that indeed we should process these (even to the extent that we make up information to register the record so we can transfer it...)

...and more...

- Can strictly online schools be SEVP approved?
<http://studyinthestates.dhs.gov/school-search>
- An int'l student cannot get an I-20 from a non-SEVP school and cannot do concurrent enrollment, but can the student take a class at the unapproved school above and beyond their full course load or in the summer?
- Is it appropriate/legal for a SEVIS Help Desk Official to review a student's academic record. We have noticed that the SEVIS Help Desk has been requesting grades, transcripts, attendance, and or verification of enrollments to make correction decisions, even on correction requests that are due to technical or clerical errors. It seems like there's a push to review a student's "normal progress." Is this the case?

...and more...

- Regarding the “Letter to School President” if no recert app filed by 30 day window – but often these delays are due to SEVP processing and not DSO negligence. Can you NOT send the letter if you know that you are holding pending updates? People are worried they might get fired...;-(
• IEP FAQ: we need proof from the accrediting agency that the IEP is specifically accredited -- But – accrediting agencies do not generally accredit individual programs...??

...and more...

- Primary AND secondary majors may be used to confirm eligibility for a STEM OPT extension per 8.1.3 of the OPT guidance, which indicates:
 - “The DSO must annotate the Form I-20 with the proper CIP Code of the secondary major.” And “If a student has a double major and obtained regular post-completion OPT on the non-STEM CIP or a STEM CIP that is not approved by DHS, the student is ineligible for the 17-month extension.”
 - Batch schools must swap majors around in RTI, which often violates business processes, not to mention that it just shouldn't be necessary. Any way this might be corrected in a future upgrade?

...and more...

- The regulations require F-1 students to attend full-time, with limited and carefully defined exceptions. We have been informed that historically, the ADA does not apply to international students, and so they cannot attend school part-time for longer than the regulations allow (one year). We have heard that in cases where a disability has been confirmed, that schools may write to SEVP and receive “a letter” confirming the non-standard program of study, that would allow part-time enrollment. Can you confirm this?
- F-2 child currently present in the U.S., needs to switch parental sponsorship from one F-1 parent (Parent A) to the other (Parent B)?
 - Is it necessary to file an I-539 and go through a change / extension of status application in order to place the child’s I-20 form and SEVIS record on Parent B’s SEVIS record?
 - depart the U.S. and re-enter with Parent B’s sponsored I-20 form?
 - More simply – can we just add the child’s dependent record to Parent B’s SEVIS record, and issue the new I-20 form, and terminate the old dependent record on Parent A’s SEVIS record?
 - If we can use the latter process, will there be a problem if the new SEVIS ID # does not match the number on the visa?

...and more...

- Summer term enrollment:
 - Is this required for students who begin their academic programs in January?
 - What if your school does not offer a full complement of summer courses?
- Short-term and Hybrid Programs:
 - Can you discuss the guidance given from USCIS on how universities should handle hybrid programs? For example, should the I-20 dates be set for the entire program period, or just for the period of US presence? How is USCIS handling the various trends in online and hybrid education?
 - If a program has a required two-week residency period, and the I-20 is issued for that period, is there a 60 day grace period after the two week period (and the I-20 form) expire?
- Can Cap exempt employers filing H-1B's employ F-1 students under cap gap?
 - We think the answer is no ...but please confirm?

...and more...

- In the DSO training document, it states: “**Important Note:** For those school officials who are directed to complete training as either a pre-qualification for school certification or as part of a corrective action plan, it is recommended that you view all the available lessons and complete each of the exercises and quizzes. You must complete the course exam with a satisfactory grade of 80%. You will be able to print out a certificate as proof of completion which you must retain.”
 - Is DSO training via this course now required?
- In the DSO Training document, it states: “Defer the program start date when a student is within five working days of their program start date and USCIS has not adjudicated the change of status. If the student is nearing the end of their current status, advise them to file for an extension of status to the next program start date. Deferring the program start date keeps the record from canceling while the Form I-539 is pending with USCIS. So long as the change of status application is pending with the USCIS, the student's name will display on the associated lists of students.”
 - If a student maintained status to within 30 days of the program start date however, , and the change of status was timely filed, he or she should not need to file an extension. Please confirm?

...and more...

- What to do when a student fails to complete by end date – and fails to submit a request for an extension prior to the program completion date listed. Leave alone or terminate?
 - Regulations (8 CFR 214.2 (f)(7)) state that the student must apply for an extension prior to the program completion date listed in order for an extension to be approved and that a student who does not complete his/her program by the completion date listed and is ineligible for an extension is considered out of status, so a termination of the record seems required?
 - However...recent guidance from the SEVIS Help Desk: records of students in this situation should be left alone and will be “auto-completed” by SEVIS at the end of the grace period.

...and more...

- Grad student's professor leaves school A to work at school B. Grad student will still get degree from School A, and be funded with an assistantship from School A, but will physically work at School B.
 - Can we do this as on-campus work at an off-campus location? How to document?
- We have seen an increase in students admitted by CBP on terminated or expired SEVIS records. Admission has been granted without an I-515.
 - apply for reinstatement, OR
 - Students have been admitted "incorrectly" if they were not given an I-515, and do not really have the opportunity for reinstatement: they have 30 days to resolve status or leave.
 - Reinstatement or re-entry both seem like viable options here - can we have guidance on these situations?

...and more...

- Does SEVP have the legal right to require I-9 form copies to confirm employment status of DSO's?
- For I-17 updates concerning DSO additions or deletions, should we be mailing an original signed copy of the I-17? Should we email it? Or not send it at all? We have had conflicting advice.
- There was a known glitch that the name of newly added or amended DSO's were not printing on the I-17. Has this been fixed? Are we allowed to write in the name if not?
- Where and how do we list non-degree and certificate programs on the I-17 form?

...and more...

- When the I-17 asks for average number of classes, are they asking for the number of sections taught all year, or the number of distinct courses offered throughout the year?
- NAFSA has received literally dozens and dozens of complaints regarding the process being followed for I-17 updates, and recertification.
 - Can you update us on how this process is going, and whether you are making any progress in improving things for both your adjudicators and PDSO / DSO's at applying institutions?
 - Why are your template emails for I-17 updates so confusing and contradictory, in some cases?

...and more...

- Similar to the “Trusted Traveler programs, can SEVP set in place agreements between long established and accredited schools to streamline the re-certification process? For instance, it seems a waste of everyone’s time to have to provide evidence of large public universities’ authority to operate in the State, and then to have to follow up and respond to RFE’s for more information on what specific state agency or authority granted our right to exist...in some cases the existing Board of Regents or Trustees actually have no authority to approve or deny the universities’ operation in any given campus or city.

...and more...

- We have heard anecdotally that ICE may be following up with students who indicate a mailing address on the I-765 that is geographically distant from the employer location as updated in SEVIS. Often a student will use the mailing address of a friend, to ensure the card is received, if they are in the process of moving to the employment location...
 - Can you confirm that ICE / SEVP is following up on these cases routinely – or not?
 - Should we change our advice to students as far as mailing addresses go?
- Have we had clarification on volunteering for an e-verify organization for the purposes of the 17 month extension application? The 2010 SEVP guidance removed the stipulation that it has to be paid employment; however, it cites the necessity for further rule making. I have had a student receive the extension based on volunteer work for an e-verify organization, but I have been hesitant to advise students that it is acceptable by USCIS. In fact, I had an immigration attorney tell one student he was ineligible for an H-1B petition because he had violated status by volunteering. Yet this same employee used a volunteer position as the basis for a USCIS approved extension application.

...and more...

- The I-17 has limited capacity for program and degree listings. How are schools supposed to update the I-17 with all degrees and certificate programs – when we often have hundreds. Where are certificate programs to be listed? (Areas of Study (set list plus “Other”) and Degrees available (set list plus “Other”) are the only fields.
- From NAFSA: Can you discuss the legal or regulatory basis for adjudicating Form I-17 updates, particularly updates to:
 - “Courses of study and the time necessary to complete each” and
 - “Average annual numbers: Classes, Students, Teachers or Instructors, and Non Teaching Employees”
- We note that 8 CFR 214.3(h)(3)(i) lists the “Form I-17 information that requires out-of-cycle review when changed.” “Courses of study and the time necessary to complete each” is not listed there.

...and more...

- OPT cap gap – SEVIS record was terminated at end of 60 day grace period after H denial – and NOT given the 60 days from the date of denial...as indicated in the regs:
 - "A5. If USCIS denies, rejects, or revokes an H-1B petition filed on behalf of an F-1 student covered by the automatic cap-gap extension of status, the student will have the standard 60-day grace period (from the date of the notification of the denial, rejection, or revocation of the petition) before he or she is required to depart the United States...."
- Ie: student's H1B application was denied and she is beginning a new degree. But even though she is within her 60 days following her H1B denial (7/23/12), SEVIS completed her record completed in less than 2 weeks (07/31/12). SEVIS helpdesk was called to ask that the student's completed record be returned to active. DSO tried to explain to the SEVIS helpdesk tech that she was still within her 60 days but the tech said she has to file a reinstatement (or travel and reenter) to regain her status. The tech said she didn't have the cap-gap extension, but her H1B application was filed while her OPT was still valid. Please confirm the helpdesk was wrong...

Questions – open:

NAFSA Regulatory Ombudspersons

- Region III:
 - Kathleen Gasparian, Scholar / Employment Issues:
 - kgasparian@david-ware.com
 - Regina Henry, Student Issues:
 - regina.henry@okstate.edu
- Region VII:
 - Robin Catmur, Scholar / Employment Issues:
 - rcatmur@uga.edu
 - Gwen Fernandes, Student Issues
 - Gwen.fernandes@oie.gatech.edu
- IssueNet: <http://issuenet.nafsa.org/>