

NAFSA Comments on SEVP Draft Policy Guidance for Adjudicators 1206-031: Governance

SEVP Draft Guidance with NAFSA Suggestions	NAFSA Comments
<p>SEVP Draft Policy Guidance for Adjudicators 1206-01: Governance</p> <p>1. Purpose/Background.</p> <p>Schools have a variety of relationships with other schools and with their academic programs. These relationships raise questions for Student and Exchange Visitor Program (SEVP) adjudications regarding whether they should be certified by SEVP separately, with individual petitions, or collectively on a single petition. The answers to these questions are found by examining school governance.</p> <p>2. Definitions.</p> <p>2.1 Governance. Governance is ownership (legal possession) and executive management (substantive operation) of an organization. In this context, the organization is a school <u>or school system</u>. <u>For purposes of this guidance, the term “school” applies to both schools and school systems.</u></p> <p>2.2 Management. Management includes:</p> <ul style="list-style-type: none"> • The people in an organization with authority over long-term planning and decision-making—executive management, and • The people given day-to-day leadership of and responsibility for the operation of the organization—day-to-day management. <p>2.3 Ownership. Ownership is the person, persons, or group legally in possession—control, conveyance, benefit, responsibility, and liability—of an organization.</p> <p>3. Policy.</p> <p>Submission and adjudication collectively on the same Form I-17, “Petition for Approval of School for Attendance by Nonimmigrant Student,” is only permissible for schools that share governance <u>(i.e., ownership and executive management)</u>.</p>	<p>The guidance on governance and instructional sites should be consistently developed. Generally, schools should be defined as the legal entities petitioning SEVP for certification, and as the legal entities bound by the obligations of certification. While in many cases a “school” will be coterminous with a single instructional site, the instructional site itself should remain conceptually a physical location where the school provides instruction to F or M students, rather than the entity that takes on legal obligations.</p> <p>The current SEVIS Form I-17 contains hard-coded fields with specific labels that do not readily map to the possible configurations of some schools. For example, the fields currently labeled as “campuses” on the I-17 must be used for instructional sites (e.g., in a multi-campus scenario) as well as for schools (e.g., in a school system scenario).</p> <p>Because of these and other limitations of Form I-17 in the current SEVIS environment, SEVP should develop precise guidance on how the I-17 should be completed, either as part of this guidance for adjudicators, or in the SEVP Form I-17 user manual.</p> <p>This also has implications for how I-20s are issued and managed.</p> <p>Another essential element is to identify the proper standard of proof that adjudicators will use. That would go far towards eliminating the back-and-</p>

Any instructional site (see Guidance 1003-03) listed on a petitioning school or school system's Form I-17 must be under the governance of the petitioning school or school system.

4. Procedures/Requirements.

4.1 Governance: Ownership and Management. Submission and adjudication collectively on the same Form I-17 is only permissible for schools and instructional sites that share governance (i.e., ownership and executive management).

4.1.1 Ownership. The owner of a school (e.g., a person, a board, the state, the government, etc.) is ultimately responsible for the school, directing the profits (if for-profit) and/or ultimately exercising control. While possibly not directly involved in the day-to-day management of the school, the owner has final control and accountability over all aspects of the school, including the issuance of the Form I-20, "Certificate of Eligibility for Nonimmigrant Student Status," to F and/or M students. The owner's "head of school" certification on the Form I-17 acknowledges this responsibility.

4.1.2 Management. Management of a school includes entities such as the president, administration and faculty. It may also include a board of trustees or other administrative bodies. Schools and their academic programs often have the same executive management (i.e., the president and other senior members of the administration) but separate and distinct day-to-day operations management structures (i.e., differing head librarians for libraries located at different instructional sites). Schools and their academic programs may have differing day-to-day leadership and be on the same Form I-17, but only if executive management is the same.

4.2 Blends of Ownership and Management. Some schools require special consideration due to blended relationships. Depending on the nature of the relationships, collective submission and adjudication on the same Form I-17 may or may not be possible. Schools that do not share owners do not share governance. They are distinct entities, and their officials must seek separate SEVP certification. Schools that share ownership but have different executive

forth that many schools have reported when responding to multiple RFEs arising out of their I-17 updates. NAFSA suggests that the "preponderance of the evidence" standard is proper for these types of adjudications.

management are, also, distinct entities, and their officials must seek SEVP certification individually. Common blends that require special consideration include the following:

1) For-Profit Schools. For-profit schools (particularly those with located locations across the United States) with the same owner may have local franchises separately managed from those owned and managed by the corporate office. Additionally, even for those schools managed by the corporate office, a school in a different state will have different state licensure and possibly different accreditation. Because of these complexities, give special note to the local management structure vis-à-vis the corporate office and span of control of the principal designated school official (PDSO) before deciding whether officials can list two or more schools on the same Form I-17. If the legal entity, owner, executive management and/or PDSO are different between the corporate office and that of the local franchise, officials should list each school on a separate Form I-17. Similarly, if the relationship between executive management and day-to-day management is not substantive in nature, officials should list the two schools on a separate Form I-17.

2) Contract Programs. School officials may contract certain programs out to separately owned and/or managed programs. This is common with English language training (commonly known as ESL) programs. Make note of the governance relationship, or lack thereof, between the contracted program and the school. All schools that enroll F or M students, including separately governed contracted programs, must be SEVP-certified.¹ (1 For more information on contract relationships between schools, see SEVP's contractual relationships policy guidance. 3 4.3 Instructional Sites.) Physical ownership and/or management by the school of the physical property where a particular instructional site is located by the school are irrelevant when determining governance. School officials often rent classroom space that someone else owns and manages. SEVP's focus on governance is on whether a school employs teachers, manages classes, monitors students, and disseminates instruction all under its governance structure. SEVP's interest is in governance of the program of study, which is not necessarily the control of the property.

4.4 Governance and Issuance of Forms I-20. Officials at schools that do not share governance must file separate Forms I-17 for each. A school may only issue Forms I-20 for students that enroll in and attend classes at the particular school identified in the approved Form I-17. A contractual relationship between SEVP-certified schools is not evidence of shared governance. A school issuing Forms I-20 for another school with which it does not share governance constitutes a violation of 8 CFR 214.2(f)(1)(i)(A) and (m)(1)(i)(A), 8 CFR 214.3(k), and 8 CFR 214.4(a)(2)(xviii).

5. Responsibilities.

5.1 Evidence/Documentation of Governance.

Examples of evidence of governance include, but are not limited to, the following:

1) Ownership.

- a) Incorporation documents.
- b) Official state documents.
- c) Evidence of legal liability.

2) Management.

- a) Pay stubs.
- b) Map of organizational structure.
- c) Financial documents.
- d) Employment documents.
- e) Signed letter by owner on official letterhead explaining nature of management of the various schools.

5.1.1 Standard of proof.

Preponderance of the evidence is the standard of proof for most administrative immigration proceedings, and is the standard adjudicators should use when evaluating evidence of governance. See Matter of Chawathe, 25 I&N Dec. 369 (AAO 2010). Thus, if the petitioner submits relevant, probative, and credible evidence that leads the adjudicator to believe that the claim is "more likely than not" or "probably true," the petitioner has satisfied the standard of proof. Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989); see also U.S. v. Cardozo-Fonseca, 480 U.S. 421 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place).

If a petitioner provides initial evidence that is probative (e.g., does not merely recite the regulations) and credible, SEVP officers should objectively evaluate such initial evidence under a preponderance of the evidence standard to determine whether or not it is acceptable. In other words, SEVP officers may not unilaterally impose novel substantive or evidentiary requirements beyond those set forth in the regulations, but instead should evaluate the evidence to determine if it falls within the parameters of the regulations applicable to that type of evidence by a preponderance of the evidence standard. SEVP officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established shared governance by a preponderance of the evidence.

6. Authorities/References.

6.1 8 USC 1101(a)(15)(F)(i), (a)(15)(M)(i) and (a)(52).

6.2 8 CFR 214.2 (f) and (m), 214.3 and 214.4.

7. Attachments. None.

8. Scope and Use. This SEVP Draft Policy Guidance for Adjudicators applies to and is binding on all SEVP employees. It is intended solely for the guidance of SEVP personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in litigation with

the United States, or in any other form. Until issued in final form, this draft Policy Guidance for Adjudicators does not constitute SEVP policy in any way or for any purpose.

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