



Town Hall: SEVP Fall 2020 Guidance

July 16, 2020

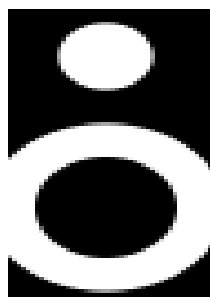
NAFSA: ASSOCIATION OF INTERNATIONAL EDUCATORS

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**THE VOLUME ON THE
COMPUTER SPEAKERS**



**THE SOUND CARD ON
THE COMPUTER**

Today's Panelists

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Partner,
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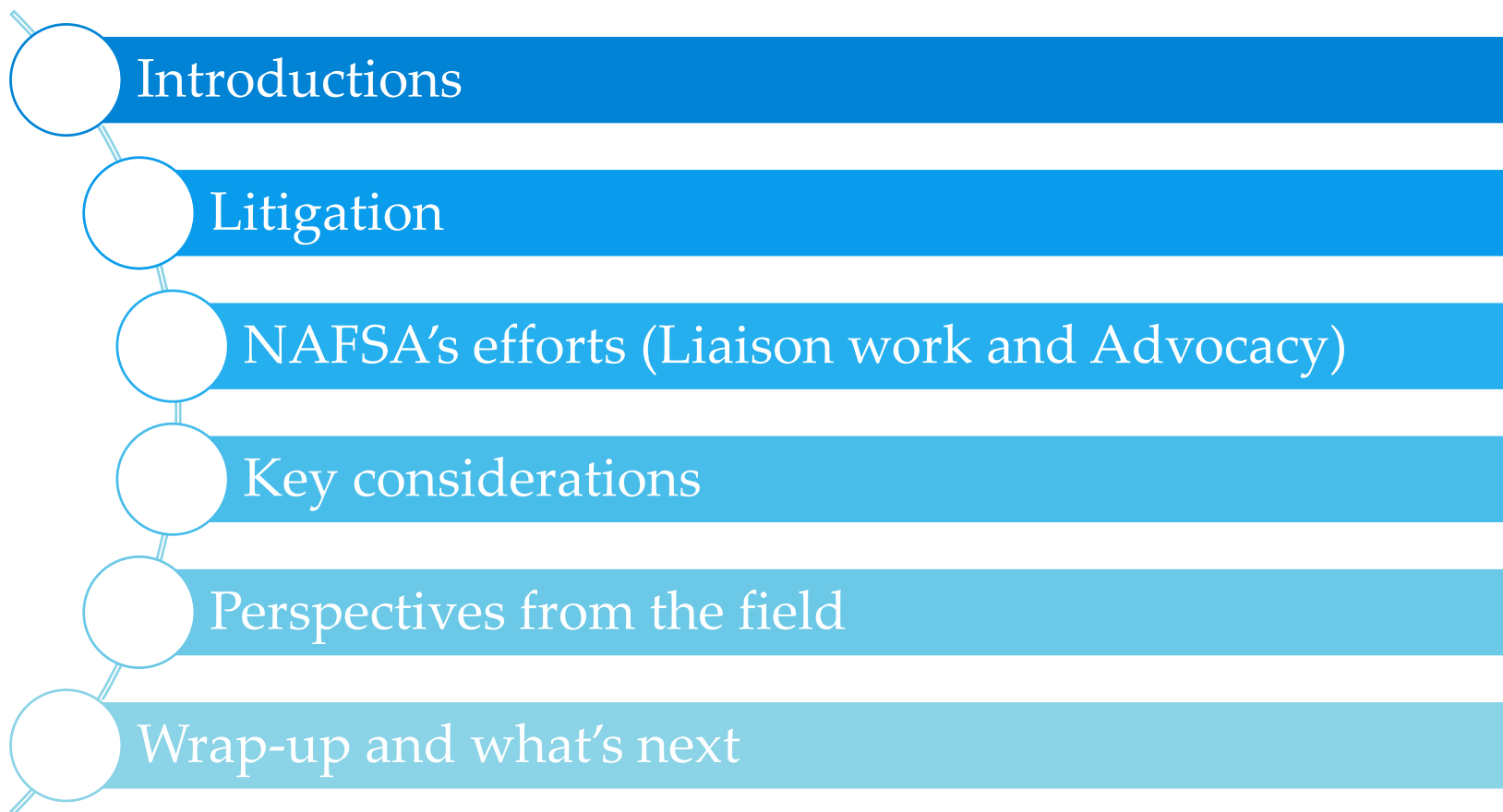
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Overview



Litigation – Dan Berger

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Litigation

- In a July 14, 2020 hearing in the Harvard/M.I.T. case DHS agreed to rescind the July 6, 2020 policy directive and July 7 FAQs
- DHS agreed to rescind any implementation of the directive
- DHS agreed to return to the status quo as established by the March 9, 2020 policy directive and the addendum issued on March 13, 2020
- What to expect next?
- More information and updates at: <https://www.nafsa.org/regulatory-information/coronavirus-critical-resources>

NAFSA's Efforts – Steve Springer

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New Questions/Issues



- Reversion to March 9 guidance raises many questions
- We'll reiterate NAFSA's recommendations to DHS/SEVP
 - <https://www.nafsa.org/regulatory-information/nafsa-covid-19-regulatory-requests-agencies>
 - The basic recommendations to SEVP were to:
 - Allow schools to determine mode (online, in-person, hybrid)
 - Allow SEVIS actions regardless of student's physical location
- We'll seek clarification and updates to March 9 guidance

Updates and Resources



- **COVID-related updates and resources**

- <https://www.nafsa.org/regulatory-information/coronavirus-critical-resources>
- Chronological updates
- Updates by category:
 - ICE and SEVP
 - DOS and EVP
 - Visas and Entry

- **COVID-related legislation and policy resources**

- <https://www.nafsa.org/policy-and-advocacy/policy-resources/covid-19-legislation-and-policy-resources>

NAFSA Response

- Spend time expressing outrage or get to work?
- July 6 [statement](#) by Dr. Esther Brimmer, NAFSA Executive Director and CEO
- We focused on:
 - What can NAFSA do individually?
 - What NAFSA can do in collaboration with colleague associations?
 - How NAFSA can support efforts of others?

NAFSA Response, ctd.

- What can NAFSA do individually?
 - Inform NAFSAns
 - Organize advocacy via www.ConnectingOurWorld.org (you advocated!)
 - Informal and formal ([Dr. Brimmer letter to DHS](#)) engagement with DHS
 - Communicate extensively with media
 - Source of information for gov't. officials including members of Congress
 - Speak out in the media
 - Dr. Brimmer on [CNN International](#) and other NAFSA staff on various media outlets

NAFSA Response, ctd.

- What can NAFSA do in collaboration with colleague associations (strength in numbers)?
 - Joined 81 associations in [Letter to DHS](#)
 - As member of Compete America coalition, sent [letter to DHS](#)
- How can NAFSA support others' efforts?
 - Joined 70 associations in [amicus brief in Harvard - MIT lawsuit](#)
 - Circulate calls for plaintiffs
 - Provide information for consideration by plaintiffs/prospective plaintiffs



Key Considerations – David Fosnocht

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In the July 14, 2020 hearing in the Harvard/M.I.T. case, the judge said that:

- the government had agreed to rescind its July 2020 policy directive and FAQs and any implementation of that guidance, and
- “return to the status quo as established by the March 9, 2020 policy directive and the addendum issued on March 13, 2020”
- there are still many questions about the meaning and implementation of this decision.

Overview

Basic Questions

Gaps between March 2020 policy (directives and FAQs) and Fall 2020 reality

- Will SEVP/DHS address those gaps, through future directives or new FAQs?
- If not, how do we proceed in the short term and long term?

March Back to the Future

The March 9, 2020 directive

- Required schools to advise SEVP “within 10 business days of the decision to initiate” a temporary closure or make other significant operational or curricular changes
- “[t]his guidance applies to students who are currently enrolled in a program of study and is not intended for new or initial students who are outside the United States.”

The March 13, 2020 follow-up guidance

- Described 3 scenarios to address “inquiries concerning the proper status for students in SEVIS who may have face slightly different scenarios related to emergency procedures implemented by SEVP-certified learning institutions.”

March 13 Scenarios

- **Scenario 1:** School completely closes and does not have online courses or other alternate learning procedures.
 - “Students should remain in active status in SEVIS so long as the students intend to resume their course of study when classes resume. This is similar to short-term breaks in the school calendar when classes are not in session.”
- **Scenario 2:** School temporarily stops in-person classes but implements online or other alternate learning procedures and the nonimmigrant student **remains in the United States**
 - “Students should participate in online or other alternate learning procedures and remain in active status in SEVIS”; limit on online course enrollment waived
- **Scenario 3:** A school temporarily stops in-person classes but implements online or other alternate learning procedures and the nonimmigrant student **departs the United States**
 - “Students should participate in online or other alternate learning procedures and remain in active status in SEVIS”; limit on online course enrollment waived “even if they have left the United States and are taking the online classes from elsewhere”

July 15, 2020 FAQs

- On July 15, 2020, SEVP published a set of FAQs
- The “new” FAQs are the same set of FAQs from Spring/Summer, with a new date.
- There were a number of FAQ-based accommodations (like electronic I-20s) that were not in the March 9/13 directives, but were established later by the FAQs.
- So it appears that these FAQs are now part of the March policy “status quo” to which we’ve returned.

Key Issues

- “Challenge Continuum”
 - Lowest challenge group: Students inside the United States
 - Highest challenge group: New students outside the United States with a SEVIS record in Initial status who wish to enter to begin a program of study consisting of more than one online course that does not “does not require the student's physical attendance for classes, examination or other purposes integral to completion of the class.”
- Post-Rescission Guidance Integration
 - Revision to March directives, or issuance of new Fall directive? – For now, March directives
 - Status of Spring/Summer FAQs – SEVP republished those same FAQs on July 15, 2020
- The regulatory definition of “online or distance education course”
- Practical and Logistical Details
 - Will consulates and ports of entry still be looking for some indication on the I-20, in SEVIS, or otherwise that the school will not be operating entirely online?
 - Status of visa services and proclamations

If Your School is All Online for Fall 2020



- Students **outside** the U.S. in **Initial** SEVIS status remain outside the U.S. They can study online, but schools would defer attendance so the SEVIS record stays in Initial status.
- Students **outside** the U.S. in **Active** SEVIS status “should participate in online or other alternate learning procedures and remain in active status in SEVIS.” Limit on online course enrollment waived “even if they have left the United States and are taking the online classes from elsewhere”
- Students **inside** the U.S. in **Active** SEVIS status “should participate in online or other alternate learning procedures and remain in active status in SEVIS.” The limit on online course enrollment is waived. The March directive does not exclude language training programs as did the revoked July 6 directive.
- Students **inside** the U.S. in **Initial** SEVIS status “that have reported to their school should be made Active in SEVIS and follow the guidelines the school provides to all its F and M students related to COVID-19.”

If Your School is “Hybrid” for Fall 2020



- Many schools plan to offer “hybrid” **programs** (a mix of online and in-person classes).
- These schools also plan to offer hybrid or blended **classes** (i.e., the class itself is delivered through a mix of online and in-person modalities).
- March guidance contemplated schools that moved their instruction completely online.
- The now rescinded July 6 guidance provided for “hybrid” schools and programs, but did not define “hybrid” at the course level. The March guidance does not define hybrid either at the program or the class level

Approaching the “Hybrid” gap for Fall 2020

Absent further SEVP/DHS clarification, how should we apply the March directives and FAQs to Fall 2020 hybrid programs?

- A school should submit its procedural adaptation plan for Fall 2020 to SEVP following the procedures outlined in the March 2020 guidance (within 10 days of the school’s decision to implement that plan)
- A hybrid plan is likely not a return to “normal operations”
- March 13 scenarios refer to a school that “temporarily stops in-person classes but implements online or other alternate learning procedures”
 - Can “temporarily stops in-person classes” be understood to mean that the school has not returned to normal operations?
 - Can “other alternate learning procedures” cover hybrid programs and classes?

- **Location:** Is Student Outside or Inside U.S. ?
- **Program Type:** Is Program All Online, Hybrid, or In-Person?
- **SEVIS Status:** Initial, Active, or In-Between (Transfer/COL)?

Outcome Factors

Issues Along a Challenge Continuum for U.S. Entry

- New Student Outside U.S. in Initial SEVIS Status
- Transfer or Change of Level Student Outside U.S. in Initial SEVIS Status
- Continuing Student Outside U.S. in Active SEVIS Status
- Continuing Student Inside U.S. in Active SEVIS Status

Key FAQs – Initial Students

Due to COVID-19, what is the requirement for Initial status students who have already arrived in the United States?

Initial students currently in the United States that have reported to their school should be made Active in SEVIS and follow the guidelines the school provides to all its F and M students related to COVID-19. If Initial students have not arrived in the United States, they **should** remain in their home country.

Based on SEVP's guidance from January 2020 and March 2020, are schools encouraged to cancel admission for new students?

SEVP is not encouraging any specific action regarding new students. If a school has accepted F and/or M students but will not maintain standard operations because of COVID-19, deferment **is an alternative**. For additional information about deferring enrollment, refer to the How Do I Defer My Enrollment? blog post on Study in the States.

Key FAQs – Active Continuing Students Outside the U.S.

Many F and M students may choose to travel home and complete the spring term remotely. Since they are still enrolled, do DSOs have to cancel their Forms I-20, “Certificate of Eligibility for Nonimmigrant Student Status,” if they are taking classes outside of the United States? If their Student and Exchange Visitor Information System (SEVIS) records remain in Active status, will students be subject to the five-month rule?

Under current conditions, **if an Active F student leaves the United States to complete the spring term online, their SEVIS record should remain in Active status and not be terminated.** While the temporary measures related to COVID-19 are in place, students deemed to be maintaining status if they are making normal progress in their course of study. For that reason, the five-month temporary absence provision addressed in 8 C.F.R. 214.2(f)(4) will not apply for students who remain in Active status.

SEVP will allow F and M students to temporarily count online classes toward a full course of study in excess of the limits stated in 8 CFR 214.2(f)(6)(i)(G) and 8 CFR 214.2(m)(9)(v), **even if they have left the United States and are taking the online classes elsewhere.** This temporary provision is only in effect due to COVID-19 and only for schools that comply with the requirement to notify SEVP of any procedural changes within 10 business days.

Key FAQs – Return to the U.S. by Continuing Students

Will F and M students be able to return to the United States if they are continuing their studies outside of the country as a result of COVID-19?

Students who continue to make normal progress in their course of study remain eligible for admission into the United States. However, because of the changing array of travel restrictions, students should refer to their local embassy's website through the U.S. Department of State for any updates about visa issuance. Also, DHS and the Center for Disease Control and Prevention's (CDC) websites provide information about current travel restrictions to the United States.

Key FAQs – Address Reporting and SEVIS Updates

What address should DSOs put in SEVIS for Active F and M students who have departed the United States? How should DSOs notate these SEVIS records?

DSOs should update these students' SEVIS records with the following comment in the remarks field: "Departed the United States due to COVID-19." All addresses may remain the same.

How should DSOs notate SEVIS records for Active F and M students living in the United States during the COVID-19 emergency?

DSOs should not provide any specific notation on these students' SEVIS records during the COVID-19 emergency, but should update the student's current U.S. address, if there has been a change.

As a reminder, per current regulations, students must notify schools within 10 days of an address change. DSOs must update student addresses in SEVIS within 21 days of the date a school is notified of an address change.

Key FAQs – “Return to normal operations”

If students cannot or will not return to school when in-person instruction resumes, should their records be terminated for authorized early withdrawal?

Once a school **returns to normal operations**, if students cannot or choose not to return to the United States to study, DSOs should terminate the records. Refer to the Terminate Student article in the SEVIS Help Hub on Study in the States for additional information.

How should DSOs manage F and M student records for students who do not have the technology resources to meet online or other alternative instruction requirements as provided in a school’s procedural change documents to SEVP?

F and M students unable to participate in online **or other alternative instruction requirements** due to the lack of available technology resources should notify their DSO. DSOs may keep these student records Active in SEVIS as long as the student intends to resume their course of study when in-person classes resume.

Key FAQs – Sending Form I-20 by Email

Can DSOs electronically send signed Forms I-20 to students instead of physically mailing the forms?

Yes, due to COVID-19, DSOs may electronically send Forms I-20 to student email addresses listed in SEVIS. In the case of a minor students, the email address may belong to their parent or legal guardian. Schools do not need to request permission from SEVP or report their plans to electronically send Forms I-20 as part of their COVID-19 procedural changes.

What methods can DSOs use to sign and send Forms I-20?

SEVP has identified the following methods to sign and send the Form I-20:

- Email a scanned version of the physically signed Form I-20;
- Email a digitally signed Form I-20 using electronic signature software; or
- Email a digitally signed Form I-20 that contains a digitally reproduced copy of a physical signature.

Key FAQs – Students Can't Take Less Than Full Course Simply Because They Don't Want To

If students wish to drop courses due to dissatisfaction with online courses not providing the same level of instruction, can a school submit a procedural change plan that allows this and keep the students' SEVIS records Active?

No, students should maintain a full course of study to the extent possible. If a student is unwilling to take online courses or participate in other alternate forms of study as provided in the school's procedural adaptation plan to SEVP, they should request a temporary absence and be terminated for Authorized Early Withdrawal.

If a school is not offering a full course of study because of COVID-related limitations, it is permissible to have students take whatever courses are being offered or request temporary leave. However, if a student is simply unwilling to take a full course of study because it is only offered online, they should request a temporary absence.

- Need a Visa?
 - Status of General Suspension of Routine Visa Services at the Consulate
 - Status of Country-Specific 14-Day Proclamation
 - Visa Appointment Available?
- Student's SEVIS Status (Initial v. Active)
- Student's Progress (New student v. Continuing Students)
- School Operational Plan (online, hybrid, in-person)
- Logistics
 - School Session Start Date
 - Flights Available?
 - CDC Recommendation of 14-Day Self-Quarantine for Travelers Arriving in the U.S.

Layered Hurdles for Students Outside the United States

Layered Hurdles for Students Inside the United States

- Once a school has decided what its operational plan will be for Fall 2020, it must notify SEVP within 10 business days of the school's decision to implement that plan.
- This is done pursuant to SEVP's March 9, 2020 directive, not the rescinded July 6 directive
- Students inside the United States are **generally** OK to continue in Active status to engage within the operational plan the school submitted to SEVP

Regulatory Definition of Online or Distance Education Class

8 CFR 214.2(f)(6)(i)(G)

“(G) For F-1 students enrolled in classes for credit or classroom hours, no more than the equivalent of **one class or three credits** per session, term, semester, trimester, or quarter **may be counted toward the full course of study requirement** if the **class is taken on-line** or through distance education **and does not require the student's physical attendance for classes, examination or other purposes integral to completion of the class**. An on-line or distance education course **is** a course that is **offered principally through the use of** television, audio, or computer transmission including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, or computer conferencing. If the F-1 student's course of study is in **a language study program**, **no on-line** or distance education classes may be considered to count toward a student's full course of study requirement.”



Perspectives – Lauren & Adam

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Guiding Questions

- What were some lessons learned and how are you moving forward into the fall semester given the March guidance?
- What is your institution's approach to "hybrid" or "online"?
- How is your institution handling conflicting rules/messages from local authorities? E.g.: if you are in-person and local authorities have rules on number of people allowed indoors, etc.
- How and what have you communicated to international students and your campus community?
- How have you and your staff planned to implement the guidance?
- What are the practical/logistical struggles/challenges you see with this guidance?



Wrap-Up

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Updates and Resources



- **COVID-related updates and resources**
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- **Advocacy** – www.connectingourworld.org



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