

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK,

Plaintiff,

v.

UNITED STATES DEPARTMENT
OF HOMELAND SECURITY; U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT; CHAD F. WOLF,
*in his official capacity as Acting
Secretary of Homeland Security*; and
MATTHEW ALBENCE, *in his official
capacity as Acting Director of United
States Immigration and Customs
Enforcement*,

Defendants.

20-cv-5349

DECLARATION OF MORENIKE FAJANA

Morenike Fajana, pursuant to penalty of perjury under 28 U.S.C. § 1746, does hereby state the following:

I am an attorney in the Office of the New York State Attorney General and counsel to the Plaintiff in this action.

I submit this Declaration in support of Plaintiff's motion for a temporary restraining order, preliminary injunction, or stay pursuant to 5 U.S.C. § 705.

Attached to this Declaration are true and correct copies of the following numbered exhibits that were referenced in the Complaint (ECF No. 1) filed in this action:

1. U.S. Immigration & Customs Enforcement, *Broadcast Message: Coronavirus Disease 2019 (COVID-19) and Potential Procedural Adaptations for F and M nonimmigrant students* (March 9, 2020).

2. U.S. Immigration & Customs Enforcement, *COVID-19: Guidance for SEVP Stakeholders* (Mar. 13, 2020).
3. U.S. Immigration & Customs Enforcement, *Broadcast Message: COVID-19 and Fall 2020* (July 6, 2020).

Dated: July 13, 2020

/s/ Morenike Fajana

Morenike Fajana

Office of the New York State Attorney General

28 Liberty Street

New York, NY 10005

Phone: (212) 416-6134

Morenike.fajana@ag.ny.gov

Attorney for the Plaintiff

Exhibit 1

Broadcast Message: Coronavirus Disease 2019 (COVID-19) and Potential Procedural Adaptations for F and M nonimmigrant students

To: All SEVIS Users

Date: March 9, 2020

Supersedes: Broadcast Message: 2019 Novel Coronavirus and Potential Procedural Adaptations for F and M nonimmigrant students; Jan. 29, 2020; Number 2001-05

Number: 2003-01

General Information

The Student and Exchange Visitor Program (SEVP) continues to monitor developments with the Coronavirus (COVID-19). Concurrent with other federal agencies, SEVP provides the following information.

SEVP-certified schools should advise students traveling from countries impacted by COVID-19 to refer to guidance from the Centers for Disease Control and Prevention (CDC), U.S. Department of State and U.S. Customs and Border Protection for specific port-of-entry screening processes, as well as any travel restrictions.

SEVP-certified Schools and F and M Students

SEVP-certified schools may need to adapt their procedures and policies to address the significant public health concerns associated with the COVID-19 crisis. To ensure that SEVP is able to continue to meet its oversight responsibilities, attached is a template to be used in reporting COVID-19 procedural adaptations to SEVP. In evaluating these changes, SEVP is focused on ensuring that nonimmigrant students are able to continue to make normal progress in a full course of study as required by federal regulations. SEVP intends to be flexible with temporary adaptations. In all cases, schools and students should document any decisions made and be able provide this information to SEVP upon request. Similarly, changes to workplace requirements may impact nonimmigrant students engaging in practical training. SEVP encourages such students to consult with their employer to seek alternative ways to maintain employment, such as teleworking or other arrangements.

SEVP recognizes that the COVID-19 crisis is fluid and rapidly changing. For that reason, SEVP is not requiring prior notice of procedural adaptations, leaving room for schools to comply with state or local health emergency declarations. However, as noted in the Appendix, SEVP must be notified of procedural adaptations within ten business days of the change.

This 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.

SEVP is monitoring this situation closely. The program will supplement this guidance with additional information and will adjust guidance as needed.

Comments

To comment on this Broadcast Message, please email SEVP@ice.dhs.gov with “Broadcast Message 2003-01 Comment” entered in the subject line.

Disclaimer

This Broadcast Message is not a substitute for applicable legal requirements, nor is it itself a rule or a final action by SEVP. 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 by any party in any administrative, civil or criminal matter.



Appendix 1: COVID-19 Impact on School Operations

Instruction:

SEVP recognizes that schools are updating their emergency operations plans to minimize the potential impact of COVID-19 on the school. If a school determines that it will exercise temporary closure or make other significant operational or curricular changes, the school must advise SEVP of accommodations it is making for its F and M nonimmigrant population.

Schools must provide SEVP notice of the requested information below within 10 business days of the date of the decision to initiate the operational change.

Please send the required information detailed below to the SEVP Response Center at SEVP@ice.dhs.gov. In the subject line, please include “COVID-19 School Operations [School code].”

Submissions to SEVP should include the following information:

- School name and all physical locations affected by the changes
- School code

If planning to provide online instruction:

- Mode and classroom setting (i.e., computer lab, students with laptops in a classroom connected to Wi-Fi, etc.)
- How the school will seek to provide oversight of these students
- The names of programs of study and classes that will be taught online
- Projected length of time for online instruction

If planning to provide instruction at an alternate physical location:

- Addresses of physical locations where students will be studying
- How the school will:
 - Offer instruction
 - Provide student oversight
 - Adequately offer DSO services to students
 - Seek to ensure students maintain a full course of study
 - Projected length of time for alternate instruction

SEVP maintains the right to conduct out-of-cycle reviews to ensure compliance with all recordkeeping and reporting requirements consistent with implementation of any approved plan.

Exhibit 2

Homeland Security Investigations
National Security Investigations Division
Student and Exchange Visitor Program



U.S. Immigration
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Enforcement

COVID-19: Guidance for SEVP Stakeholders

March 13, 2020

As follow up to the guidance issued by SEVP on Monday, March 9, 2020, concerning the COVID-19 situation, there have been 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:

Scenario 1: A school completely closes and does not have online courses or other alternate learning procedures.

Response: If a school closes temporarily without online instruction or other alternative learning procedures, the 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. Schools must notify SEVP of COVID-19 procedural changes within 10 business days.

Scenario 2: A school temporarily stops in-person classes but implements online or other alternate learning procedures and the nonimmigrant student remains in the United States

Response: If a school closes temporarily but offers online instruction or another alternative learning procedure, nonimmigrant students should participate in online or other alternate learning procedures and remain in active status in SEVIS. Schools must notify SEVP of COVID-19 procedural changes within 10 business days. Given the extraordinary nature of the COVID-19 emergency, SEVP will allow F-1 and/or M-1 students to temporarily count online classes towards 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). This temporary provision is only in effect for the duration of the emergency and in accordance with the procedural change documents filed in a timely manner to SEVP.

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

Response: If a school closes temporarily but offers online instruction or another alternative learning procedure, nonimmigrant students should participate in online or other alternate learning procedures and remain in active status in SEVIS. Schools must notify SEVP of COVID-19 procedural changes within 10 business days. Given the extraordinary nature of the COVID-19 emergency, SEVP will allow F-1 and/or M-1 students to temporarily count online classes towards 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

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United States and are taking the online classes from elsewhere. This temporary provision is only in effect for the duration of the emergency and in accordance with the procedural change documents filed in a timely manner to SEVP.

NOTE: Due to the fluid nature of this difficult situation, this guidance may be subject to change. SEVP will continue to monitor the COVID-19 situation and will adjust its guidance as needed.

Broadcast Message: COVID-19 and Fall 2020

To: All SEVIS Users

Date: July 6, 2020

Number: 2007-01

General Information

Temporary procedural adaptations related to online courses permitted by the Student and Exchange Visitor Program (SEVP) during the height of the Coronavirus Disease (COVID-19) crisis will be modified for the fall 2020 semester. There will still be accommodations to provide flexibility to schools and nonimmigrant students, but as many institutions across the country reopen, there is a concordant need to resume the carefully balanced protections implemented by federal regulations. The U.S. Department of Homeland Security plans to publish the procedures and responsibilities described in the below Broadcast Message in the near future as a Temporary Final Rule in the Federal Register. This message is intended to provide additional time to facilitate the implementation of these procedures.

Due to COVID-19, SEVP instituted a temporary exemption regarding the online study policy for the spring and summer semesters. This policy permitted F and M students to take more online courses than normally allowed for purposes of maintaining a full course of study to maintain their F-1 and M-1 nonimmigrant status during the COVID-19 emergency.

Temporary Exemptions for the Fall 2020 Semester

For the fall 2020 semester, SEVP is modifying these temporary exemptions. In summary, temporary exemptions for the fall 2020 semester provide that:

- 1) Students attending schools operating entirely online may *not* take a full online course load and remain in the United States. The U.S. Department of State will not issue visas to students enrolled in schools and/or programs that are fully online for the fall semester nor will U.S. Customs and Border Protection permit these students to enter the United States. Active students currently in the United States enrolled in such programs must depart the country or take other measures, such as transferring to a school with in-person instruction to remain in lawful status or potentially face immigration consequences including, but not limited to, the initiation of removal proceedings.
- 2) Students attending schools operating under normal in-person classes are bound by existing federal regulations. Eligible F students may take a maximum of one class or three credit hours online (*see 8 CFR 214.2(f)(6)(i)(G)*).
- 3) Students attending schools adopting a hybrid model—that is, a mixture of online and in person classes—will be allowed to take more than one class or three credit hours online. These schools must certify to SEVP, through the Form I-20, “Certificate of Eligibility for Nonimmigrant Student Status,” that the program is not entirely online, that the student is not taking an entirely online course load for the fall 2020 semester, and that the student is taking

the minimum number of online classes required to make normal progress in their degree program. The above exemptions do not apply to F-1 students in English language training programs or M-1 students, who are not permitted to enroll in any online courses (see 8 *CFR* 214.2(f)(6)(i)(G) and 8 *CFR* 214.2(m)(9)(v)).

Forms I-20 Requirements and Maintaining Student Records for the Fall 2020 Semester

For all students attending schools in the United States this fall 2020, designated school officials (DSOs) must issue new Forms I-20 to each student certifying that the school is not operating entirely online, that the student is not taking an entirely online course load for the fall 2020 semester, and that the student is taking the minimum number of online classes required to make normal progress in their degree program. DSOs must indicate this information in the Form I-20 Remarks field in the Student and Exchange Visitor Information System (SEVIS).

Schools must update and reissue all Forms I-20 to reflect these changes in program enrollment and student information within 21 business days of publication of this Broadcast Message (by Aug. 4, 2020.) When issuing new Forms I-20, please prioritize students who require new visas and are outside of the country.

For the fall 2020 semester, continuing F and M students who are already in the United States may remain in Active status in SEVIS if they make normal progress in a program of study, or are engaged in approved practical training, either as part of a program of study or following completion of a program of study. If a school changes its operational stance mid-semester, and as a result a nonimmigrant student switches to only online classes, or a nonimmigrant student changes their course selections, and as a result, ends up taking an entirely online course load, schools are reminded that nonimmigrant students within the United States are not permitted to take a full course of study through online classes. If nonimmigrant students find themselves in this situation, they must leave the country or take alternative steps to maintain their nonimmigrant status such as transfer to a school with in-person instruction.

For the fall 2020 semester, continuing F and M students outside of the United States, whose schools of enrollment are only offering online classes, may remain in Active status in SEVIS if they are taking online courses and are able to meet the normal full course of study requirements or the requirements for a reduced course of study. Only students enrolled at a school that is only offering online coursework can engage in remote learning from their home country. In this case, DSOs should annotate the student's record to make it clear that the student is outside the US but taking full time online courses as that is the only choice offered by the school.

School Reporting and Procedural Requirements

- 1) Schools that offer *entirely online classes or programs* or *will not reopen* for the fall 2020 semester *must* complete an operational change plan and submit it to SEVP@ice.dhs.gov no later than Wednesday, July 15, 2020. The subject line must read: "Fall 2020 (Fully Online/Will not Reopen) – School Name and School Code."
- 2) Certified schools that will not be entirely online but will reopen in the fall and that will use any of the following educational formats must update their operational plans by August 1, 2020 and include whether they will be:

- Solely in-person classes, or
- Delayed or shortened sessions, or
- A hybrid plan of in-person and remote classes.

These plans shall also be submitted to SEVP@ice.dhs.gov and the subject line must read: “Fall 2020 (in person/hybrid/modified session) – School Name and School Code

- 3) Schools should update their operational plans if circumstances regarding their operational posture change within 10 calendar days.

SEVP will continue to develop and provide resources to stakeholders on ICE.gov, including answers to frequently asked questions, to clarify and expand upon information in this Broadcast Message.

Disclaimer

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