

chapter, and school approval under §§ 214.3 and 214.4, and affirming the official's intent to comply with these regulations. At the time a new designated official is added, the designated official must make the same certification.

[30 FR 919, Jan. 29, 1965]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 214.3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 214.4 Denial of certification, denial of recertification, or withdrawal of SEVP certification.

(a) *General*—(1) *Denial of certification.* The petitioning school will be notified of the reasons and its appeal rights if a petition for certification is denied, in accordance with the provisions of 8 CFR 103.3(a)(1)(iii). A petitioning school denied certification may file a new petition for certification at any time.

(2) *Denial of recertification or withdrawal on notice.* The school must wait at least one calendar year from the date of denial of recertification or withdrawal on notice before being eligible to petition again for SEVP certification if a school's petition for recertification is denied by SEVP pursuant to 8 CFR 214.3(h)(3)(v), or its certification is withdrawn on notice pursuant to paragraph (b) of this section. Eligibility to re-petition will be at the discretion of the Director of SEVP. SEVP certification of a school or school system for the attendance of nonimmigrant students, pursuant to sections 101(a)(15)(F)(i) and/or 101(a)(15)(M)(i) of the Immigration and Nationality Act, will be withdrawn on notice subsequent to out-of-cycle review, or recertification denied, if the school or school system is determined to no longer be entitled to certification for any valid and substantive reason including, but not limited to, the following:

(i) Failure to comply with 8 CFR 214.3(g)(1) without a subpoena.

(ii) Failure to comply with 8 CFR 214.3(g)(2).

(iii) Failure of a DSO to notify SEVP of the attendance of an F-1 transfer student as required by 8 CFR 214.2(f)(8)(ii).

(iv) Failure of a DSO to identify on the Form I-20 which school within the system the student must attend, in compliance with 8 CFR 214.3(k).

(v) Willful issuance by a DSO of a false statement, including wrongful certification of a statement by signature, in connection with a student's school transfer or application for employment or practical training.

(vi) Conduct on the part of a DSO that does not comply with the regulations.

(vii) The designation as a DSO of an individual who does not meet the requirements of 8 CFR 214.3(1)(1).

(viii) Failure to provide SEVP paper copies of the school's Form I-17 bearing the names, titles, and signatures of DSOs as required by 8 CFR 214.3(1)(2).

(ix) Failure to submit statements of DSOs as required by 8 CFR 214.3(1)(3).

(x) Issuance of Forms I-20 to students without receipt of proof that the students have met scholastic, language, or financial requirements as required by 8 CFR 214.3(k)(2).

(xi) Issuance of Forms I-20 to aliens who will not be enrolled in or carry full courses of study, as defined in 8 CFR 214.2(f)(6) or 214.2(m)(9).

(xii) Failure to operate as a bona fide institution of learning.

(xiii) Failure to employ adequate qualified professional personnel.

(xiv) Failure to limit advertising in the manner prescribed in 8 CFR 214.3(j).

(xv) Failure to maintain proper facilities for instruction.

(xvi) Failure to maintain accreditation or licensing necessary to qualify graduates as represented in the school's Form I-17.

(xvii) Failure to maintain the physical plant, curriculum, and teaching staff in the manner represented in the Form I-17.

(xviii) Failure to comply with the procedures for issuance of Forms I-20 as set forth in 8 CFR 214.3(k).

(xix) Failure of a DSO to notify SEVP of material changes, such as changes to the school's name, address, or curricular changes that represent material change to the scope of institution offerings (e.g., addition of a program, class or course for which the school is issuing Forms I-20, but which

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does not have Form I-17 approval), as required by 8 CFR 214.3(f)(1).

(3) *Automatic withdrawal.* A school that is automatically withdrawn and subsequently wishes to enroll non-immigrant students in the future may file a new petition for SEVP certification at any time. The school must use the certification petition procedures described in 8 CFR 214.3(h)(1) to gain access to SEVIS for submitting its petition. Past compliance with the recordkeeping, retention, reporting and other requirements of 8 CFR 214.3(f), (g), (j), (k), and (l), and with the requirements for transition of students under paragraph (i) of this section will be considered in the evaluation of a school's subsequent petition for certification. SEVP certification will be automatically withdrawn:

(i) As of the date of termination of operations, if an SEVP-certified school terminates its operations.

(ii) As of a school's certification expiration date, if an SEVP-certified school does not submit a completed recertification petition in the manner required by 8 CFR 214.3(h)(2).

(iii) Sixty days after the change of ownership if an SEVP-certified school changes ownership, unless the school files a new petition for SEVP certification, in accordance with the procedures at 8 CFR 214.3(h)(1), within 60 days of the change of ownership. SEVP will review the petition if the school properly files such petition to determine whether the school still meets the eligibility requirements of 8 CFR 214.3(a)(3) and is still in compliance with the recordkeeping, retention, reporting and other requirements of 8 CFR 214.3(f), (g), (j), (k), and (l). SEVP will institute withdrawal proceedings in accordance with paragraph (b) of this section if, upon completion of the review, SEVP finds that the school is no longer eligible for certification, or is not in compliance with the recordkeeping, retention, reporting and other requirements of 8 CFR 214.3(f), (g), (j), (k), and (l).

(iv) If an SEVP-certified school voluntarily withdraws from its certification.

(4) *Automatic withdrawal as of SEVIS mandatory compliance date.* The present approval of any school that has not

filed for enrollment in SEVIS by the mandatory compliance date for attendance of nonimmigrant students under section 101(a)(15)(F)(i) or 101(a)(15)(M)(i) of the Act is automatically withdrawn as of the day following the mandatory compliance date for SEVIS. Given the time necessary to conduct a review of each school, the Service will review and adjudicate Form I-17 petitions for approval in SEVIS prior to the SEVIS mandatory compliance date only for Form I-17 petitions filed at least 75 days prior to this mandatory date. If a Form I-17 petition is filed less than 75 days prior to the mandatory compliance date and is not adjudicated prior to the mandatory compliance date, the school will not be authorized to access SEVIS and will be unable to issue any SEVIS Forms I-20 until the adjudication is complete.

(b) *Withdrawal on notice.* SEVP will initiate an out-of-cycle review and serve the school with an NOIW if SEVP has information that a school or school system may no longer be entitled to SEVP certification prior to the school being due for its two-year recertification. The NOIW will inform the school of:

(1) The grounds for withdrawing SEVP certification.

(2) The 30-day deadline from the date of the service of the NOIW for the school to submit sworn statements, and documentary or other evidence, to rebut the grounds for withdrawal of certification in the NOIW. An NOIW is not a means for the school to submit evidence that it should have previously submitted as a part of its established reporting requirements.

(3) The school's right to submit a written request (including e-mail) within 30 days of the date of service of the NOIW for a telephonic interview in support of its response to the NOIW.

(c) *Assistance of counsel.* The school or school system shall also be informed in the notice of intent to withdraw approval that it may be assisted or represented by counsel of its choice qualified under part 292 of this chapter, at no expense to the Government, in preparation of its answer or in connection with the interview.

(d) *Allegations admitted or no answer filed.* If the school or school system admits all of the allegations in the notice of intent to withdraw approval, or if the school or school system fails to file an answer within the 30-day period, the district director shall withdraw the approval previously granted and he/she shall notify the designated school official of the decision. No appeal shall lie from the district director's decision if all allegations are admitted or no answer is filed within the 30-day period.

(e) *Allegations denied.* If the school or school system denies the allegations in the notice of intent to withdraw approval, then the school or school system shall, in its answer, provide all information or evidence on which the answer is based.

(f) *Interview requested.* (1) If in its answer to the notice of intent to withdraw approval the school or school system requests an interview, the school or school system shall be given notice of the date set for the interview.

(2) A summary of the information provided by the school or school system at the interview shall be prepared and included in the record. In the discretion of the district director, the interview may be recorded.

(g) *Decision.* The decision of SEVP will be in accordance with 8 CFR 103.3(a)(1).

(h) *Appeals.* A school may file an appeal of a denial or withdrawal no later than 15 days after the service of the decision by ICE. The appeal must state the reasons and grounds for contesting the denial or withdrawal of the approval. The appeal must be accompanied by the fee as provided in 8 CFR 103.7(b)(1)(ii)(O).

(i) *Operations at a school when SEVP certification is relinquished or withdrawn, or whose recertification is denied and on the SEVIS access termination date—(1) General.* A school whose certification is relinquished or withdrawn, or whose recertification is denied may, at SEVP discretion, no longer be able to create Initial student records or issue new Forms I-20, Certificate of Eligibility for Nonimmigrant Student, for initial attendance. Schools must comply with the instructions given in the notice of withdrawal or denial with regard to management of status for their Initial

and continuing F and/or M students. All other SEVIS functionality, including event reporting for students, will remain unchanged until the school's SEVIS access termination date. The school must continue to comply with the recordkeeping, retention, reporting and other requirements of 8 CFR 214.3(f), (g), (j), (k), and (l) until its SEVIS access termination date.

(2) *SEVIS access termination.* In determining the SEVIS access termination date, SEVP will consider the impact that such date will have upon SEVP, the school, and the school's non-immigrant students in determining the SEVIS access termination date. In most situations, SEVP will not determine a SEVIS access termination date for that school until the appeals process has concluded and the initial denial or withdrawal has been upheld unless a school whose certification is withdrawn or whose recertification is denied is suspected of criminal activity or poses a potential national security threat. The school will no longer be able to access SEVIS, and SEVP will automatically terminate any remaining Active SEVIS records for that school on the SEVIS access termination date.

(3) *Legal obligations and ramifications for a school and its DSOs when a school is having SEVP certification denied or withdrawn.* Schools are obligated to their students to provide the programs of study to which they have committed themselves in the students' application for enrollment and acceptance process. Schools are obligated to the U.S. government to comply with the recordkeeping, retention, reporting and other requirements contained in 8 CFR 214.3. With any new petition for SEVP certification, SEVP will consider the extent to which a school has fulfilled these obligations to students and the U.S. government during any previous period of SEVP certification.

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