

Immigration Alert

JULY 2, 2012

SEVP Implementation of the Accreditation Act

BY [SUSAN COHEN](#), [DOUGLAS HAUER](#), AND [ALEC ZADEK](#)

As the fall semester approaches, colleges and universities should be conscious of developments relating to the certification requirements that apply to schools that enroll foreign nonimmigrant students. During the first half of 2012, the Student and Exchange Visitor Program (“SEVP”), the federal agency responsible for certifying institutions to enroll foreign nonimmigrant students, began implementing changes that will affect all colleges, universities, and other educational institutions that provide English language training (“ESL”) programs. These changes stem from the Accreditation of English Language Training Act (“Accreditation Act”), which became effective in June of 2011.

The Accreditation of English Language Training Programs Act

Pursuant to the Accreditation Act, ESL programs that enroll foreign nonimmigrant students must obtain accreditation from a regional or national accreditation agency recognized by the Department of Education. This requirement has significant implications for educational institutions that enroll foreign nonimmigrant students in ESL programs.

According to recent guidance published by SEVP, the Accreditation Act applies to two types of ESL programs:

- Stand-Alone ESL Schools whose officials have indicated on the school’s Form I-17 the intention to offer only ESL programs of study; and
- Combined Schools whose officials have indicated on the school’s Form I-17 that the school offers an ESL program of study, as well as other programs of study (A Combined School may either contract out the ESL program of study or wholly own and operate the ESL program of study under the institution’s governance).

Any college or university that offers ESL programs in addition to general courses of study would fall within the “Combined School” category. Combined Schools are subject to the requirements imposed by the Accreditation Act.

Compliance with the Accreditation Act

Compliance with the Accreditation Act is not simple. There are few private agencies that accredit ESL programs and the process to apply for accreditation is lengthy; for some agencies it can take between one and two years, and, in some instances, even longer. This new law accounted for the delays associated with obtaining accreditation by granting a three-year reprieve from its requirements for ESL programs that applied for accreditation prior to December 15, 2011. Programs that did not meet the December deadline, however, may not continue to enroll foreign nonimmigrant students.

Implementation of the Accreditation Act by SEVP

SEVP has already started to issue out-of-cycle review notices to schools offering ESL programs. An out-of-cycle review is a demand for the school to submit evidence of its continued compliance with SEVP certification

requirements. Schools have 30 days from receipt of an out-of-cycle review to submit evidence of compliance to SEVP. If the school is unable to prove that its ESL program is accredited, then the school must cease enrolling foreign nonimmigrant students in its ESL program and may not issue new Form I-20s for its ESL program.

SEVP has not provided clear guidance as to what constitutes sufficient evidence of compliance with the Accreditation Act. All colleges and universities with SEVP certification are accredited by a regional or national accreditation agency, but, typically, the accreditation is general and applies to the entire institution. At this time, SEVP has not clarified whether this type of accreditation is sufficient to satisfy the Accreditation Act's requirements or whether ESL programs at Combined Schools will require separate accreditation that specifically addresses their ESL program.

Additional Considerations for Colleges and Universities

The Accreditation Act applies only to colleges and universities that offer ESL programs. The first step, therefore, is to determine if your English program is in fact an ESL program as defined by SEVP. According to SEVP, "[i]f English language training is just an adjunct or it will be taken in conjunction with another program of study, do not indicate English language training [on the Form I-17]." ¹ Based on this guidance, schools that teach English as part of their curriculum, but do not provide a separate, stand-alone, ESL program will not need to comply with the additional requirements imposed by the Accreditation Act.

The application of the Accreditation Act will vary between colleges and universities based on the details of their ESL program. We will continue to monitor the guidance issued by SEVP regarding compliance with the Accreditation Act. If you would like to discuss your SEVP compliance concerns, please contact [Susan Cohen](#) or [Douglas Hauer](#) of Mintz Levin's Immigration Practice.

* * *

View Mintz Levin's Immigration attorneys.

Endnotes

¹ See I-17 Frequently Asked Question: Preparing the Petition for SEVP Certification, U.S. Department of Homeland Security (available at http://www.ice.gov/sevis/i17/i17_4.htm).

Boston · London · Los Angeles · New York · San Diego · San Francisco · Stamford · Washington

www.mintz.com

Follow Us



Copyright © 2012 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

This communication may be considered attorney advertising under the rules of some states. The information and materials contained herein have been provided as a service by the law firm of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.; however, the information and materials do not, and are not intended to, constitute legal advice. Neither transmission nor receipt of such information and materials will create an attorney-client relationship between the sender and receiver. The hiring of an attorney is an important decision that should not be based solely upon advertisements or solicitations. Users are advised not to take, or refrain from taking, any action based upon the information and materials contained herein without consulting legal counsel engaged for a particular matter. Furthermore, prior results do not guarantee a similar outcome.

2039-0712-NAT-IMM