

TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 99 DISTANCE EDUCATION
PART 1 PUBLIC AND PRIVATE POST-SECONDARY INSTITUTIONS OPERATING UNDER
THE INTERSTATE DISTANCE EDUCATION ACT

5.99.1.1 ISSUING AGENCY: New Mexico Higher Education Department.
[5.99.1.1 NMAC - N, 12/15/2017]

5.99.1.2 STATUTORY AUTHORITY: The Interstate Distance Education Act Sections 21-23B-1 through 21-23B-6 NMSA 1978 authorizes the New Mexico higher education department to adopt rules and regulations for the receipt of distance education by students in New Mexico and the provision of distance education by New Mexico participating post-secondary educational institutions to students in other states.
[5.99.1.2 NMAC - N, 12/15/2017]

5.99.1.3 SCOPE: Provisions of 5.99.1 NMAC apply to public and private post-secondary institutions offering distance education to any student within New Mexico and the provision of distance education by participating New Mexico post-secondary educational institutions to students in other states.
[5.99.1.3 NMAC - N, 12/15/2017]

5.99.1.4 DURATION: Permanent.
[5.99.1.4 NMAC - N, 12/15/2017]

5.99.1.5 EFFECTIVE DATE: December 15, 2017, unless a later date is cited at the end of a section.
[5.99.1.5 NMAC - N, 12/15/2017]

5.99.1.6 OBJECTIVES AND GENERAL PRINCIPLES:

A. Every post-secondary educational institution providing distance education from New Mexico shall be subject to the provisions of the Interstate Distance Education Act ("the act") unless expressly exempted by the department.

B. Every post-secondary educational institution providing distance education from a home state outside of New Mexico to a student located in New Mexico as defined in Section 5.99.1.8 NMAC shall be subject to the provisions of the act.

C. Post-secondary educational institutions must be accredited in order to apply for distance education authorization under the act.

D. Post-secondary educational institutions that do not have distance education authorization or have not been granted express exemption by the department, and are offering distance education, shall be notified by certified mail that they shall cease immediately to offer such education until they obtain a distance education authorization or exemption from the department; the department shall initiate appropriate legal action if institutions fail to comply; whoever violates any provision of the act may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation.
[5.99.1.6 NMAC - N, 12/15/2017]

5.99.1.7 DEFINITIONS:

A. "**Accreditation**" means a verified accreditation status with an accrediting agency recognized by the United States department of education.

B. "**Asynchronous**" means instruction that does not occur in the same place or at the same time.

C. "**Department**" means the higher education department;

D. "**Distance education**" means instruction offered online or through correspondence or interactive video or other means enabling a student in one state to receive instruction from a higher education provider in another state;

E. "**Distance education authorization**" means written authorization under the act that a post-secondary educational institution is authorized to provide educational activity or activities from:

1. a New Mexico location to students located outside New Mexico; or

2. an out-of-state post-secondary educational institution to a student located in New Mexico.

F. "**Higher education**" means education or training beyond secondary education;

G. “Home state” means a state or territory where the institution holds its legal domicile and accreditation. To operate under the act an institution must have a single home state.

H. “Operate” means providing instruction, marketing, recruiting, tutoring, field experiences and other services for students in support of offering distance education;

I. “Out-of-state public post-secondary institution” means a higher education institution outside of the geographical boundaries of the state of New Mexico primarily funded by public funds.

J. “Physical presence” means engaging in educational activity, the ongoing occupation of a physical location in the state for, or the ongoing maintenance of an administrative office to support, the provision of higher education instruction unless expressly exempted under the act.

K. “Post-secondary educational institution” includes public post-secondary educational institutions and private post-secondary educational institutions.

L. “State authorization reciprocity agreement” (“SARA”) means an agreement, developed by the national council for state authorization reciprocity agreements that provides uniform standards and parameters for the interstate provision of post-secondary distance education courses and programs.

M. “Synchronous” means instruction in which a group of students engage in learning at the same time.

[5.99.1.7 NMAC - N, 12/15/2017]

5.99.1.8 STUDENT LOCATION: Student location will be determined based on the physical location in which the student engages in educational activity. The student’s legal state of residence will not be a criteria for determining the student’s physical location for purposes of the act.

[5.99.1.8 NMAC - N, 12/15/2017]

5.99.1.9 EDUCATIONAL ACTIVITY: Engaging in one or more of the following factors constitutes educational activity:

- A.** Offering courses to individuals;
- B.** Establishing a physical location for students to receive synchronous or asynchronous instruction;
- C.** Requiring students to physically meet in a location for instructional purposes more than twice per full-term (quarter or semester) course for a total of more than six hours;
- D.** Establishing an administrative office;
- E.** Providing student support services, from a physical site operated by or on behalf of the institution in the state;
- F.** Providing office space to instructional or non-instructional staff;
- G.** Maintaining a mailing address or phone exchange in a state;
- H.** Holding proctored exams on behalf of the institution in the host state;
- I.** Carrying out field study or field research located at a field station, research station or other physical site at which a faculty member or other institutional employee or otherwise directs students in an activity which either bears academic credit or is a requirement for a course or program; or
- J.** Supervising field experiences.

[5.99.1.9 NMAC - N, 12/15/2017]

5.99.1.10 NON-EDUCATIONAL ACTIVITY: The following is a non-exhaustive list of non-educational activity:

- A.** Advertising to students whether through print, billboard, direct mail, internet, radio, television or other medium;
- B.** Maintaining a server, router or similar electronic service device housed in a facility that otherwise would not constitute physical presence (the presence of a server or similar pass-through switching device does not by itself constitute the offering of a course or program in that state);
- C.** Having faculty, adjunct faculty, mentors, tutors, recruiters or other academic personnel residing in New Mexico and working from their homes or another private, non-institutional site, provided that such staff is not engaged in activities that would otherwise constitute physical presence as defined by these Policies and Standards; or
- D.** Using recruiters in New Mexico.

[5.99.1.10 NMAC - N, 12/15/2017]

5.99.1.11 INSTITUTION EXEMPT FROM DISTANCE EDUCATION AUTHORIZATION:

Institutions that meet the following criteria are exempted by the department from distance education authorization and are not required to submit an application for distance education authorization:

- A.** Institutions authorized to operate as a member under SARA.
- B.** Institution has a physical presence in New Mexico exclusively offering distance education or on-line courses to students located only in New Mexico, pursuant to criteria set out in Section 5.99.1.8 NMAC.
- C.** The department has entered into a reciprocal agreement pursuant to Subsection B of 21-23B-3 NMSA 1978.
- D.** Institution offers distance education courses on a military base or vessel if enrollment in such courses is limited to active and reserve military personnel, and their dependents.
- E.** Institution has contractual arrangements in New Mexico for course offerings through consortium agreements and who have notified the department of the agreement.
- F.** Institutions that are only offering courses as a means of continuing education units. The continuing education units must meet the criteria set out by the professional organization or authority requiring the continuing education.

[5.99.1.11 NMAC - N, 12/15/2017]

5.99.1.12 SARA:

A. Non-home state SARA institutions: Non-home state SARA institutions providing distance education in New Mexico shall be governed by guidelines set forth by the national council for state authorization reciprocity agreements and the applicable regional compact. Non-home state SARA institutions will notify the department that they are operating in New Mexico as a SARA institution. Non-home state SARA institutions that exceed the maximum of ten students from an individual academic program placed simultaneously at one clinical or practicum site in supervised field experiences in New Mexico shall notify the department and may be subject to additional requirements.

B. Home state SARA institutions providing distance education in New Mexico shall be governed by guidelines set forth by the national council for state authorization reciprocity agreements and the western interstate commission on higher education. Application fees for home state SARA institutions apply, detailed in Section 5.99.1.15 NMAC.

[5.99.1.12 NMAC - N, 12/15/2017]

5.99.1.13 DISTANCE EDUCATION AUTHORIZATION REQUIREMENTS: Institutions operating under the act shall apply for distance education authorization unless exempt as defined in Section 5.99.1.11 NMAC. The department shall promulgate forms and require the institution to meet criteria as applicable to each of the following sectors:

- A.** Public post-secondary educational institution must submit to department:
 - 1.** certification of compliance with the interregional guidelines for the evaluation of distance education programs adopted by the council of regional accrediting commission;
 - 2.** certification of compliance with the western interstate commission for higher education principles outlined in Section 5.99.1.20 NMAC;
 - 3.** current accreditation; and
 - 4.** fully executed participation agreement with the department.
- B.** Out-of state public post-secondary educational institution must submit to the department:
 - 1.** obtain distance education authorization by submitting an application set out by the department;
 - 2.** certification of compliance with the interregional guidelines for the evaluation of distance education programs adopted by the council of regional accrediting commission;
 - 3.** certification of compliance with the western interstate commission for higher education principles outlined in Section 5.99.1.20 NMAC;
 - 4.** current accreditation;
 - 5.** financial responsibility composite score of 1.5 or above as computed using the latest version of the united states department of education index score formula. The composite score must be calculated by the united states department of education, a recognized accreditor, or a certified public accountant contracted at the expense of the institution; and
 - 6.** fully executed participation agreement with the department.
- C.** Private post-secondary educational institution must submit to the department:

1. obtain distance education authorization by submitting an application set out by the department;
 2. certification of compliance with the interregional guidelines for the evaluation of distance education programs adopted by the council of regional accrediting commission;
 3. certification of compliance with the western interstate commission for higher education principles outlined in Section 5.99.1.20 NMAC;
 4. current accreditation;
 5. financial responsibility composite score of 1.5 or above as assigned by the united states department of education in the institution's most recent fiscal report; and
 6. fully executed participation agreement with the department.
- [5.99.1.13 NMAC - N, 12/15/2017]

5.99.1.14 APPLICABLE DISTANCE EDUCATION AUTHORIZATION FEES:

- A. The department will assess application and administrative fees and publish a fee schedule.
 - B. The department will assess an application fee for providing the services associated with application review and determination of eligibility for distance education authorization.
 - C. The department shall assess a fee upon determination that the institution has met all satisfactory conditions for distance education authorization.
 - D. The department shall assess an administrative fee for filing annual reporting; any costs associated with review committee evaluation and determination; any costs associated with specialized review, program changes, and institution or administrative changes.
- [5.99.1.14 NMAC - N, 12/15/2017]

5.99.1.15 APPLICABLE SARA FEES AND SURETY BOND: Acting in the capacity of the state portal entity, the department will assess a non-refundable application fee for SARA home state applicants and publish a fee schedule. The department may require SARA institutions to obtain a surety bond in the amount of 20% of the gross online tuition and fees revenue from students in SARA states as a condition of SARA approval.

[5.99.1.15 NMAC - N, 12/15/2017]

5.99.1.16 MONITORING; COMPLAINT RESOLUTION; SANCTIONS:

- A. Any institution operating pursuant to the act shall be subject to section 21-23B-5 NMSA 1978.
 - B. An institution found in violation of the act may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation.
 - C. An institution that does not submit an application for renewal within deadlines set by the department may have a lapse in distance education authorization.
 - D. The department shall provide notification for public viewing on the department's website if a distance education authorized institution has been sanctioned or penalized by their accreditor or the US Department of Education.
- [5.99.1.16 NMAC - N, 12/15/2017]

5.99.1.17 REPORTING FOR DISTANCE EDUCATION AUTHORIZED INSTITUTIONS:

- A. Distance education authorization institutions shall annually submit a standard reporting form on a deadline set by the department.
 - B. The department shall promulgate a standard form for annual reporting to include curriculum and enrollment information.
 - C. An institution must comply with reporting requirements in order to be eligible renewal.
- [5.99.1.17 NMAC - N, 12/15/2017]

5.99.1.18 REPORTING FOR SARA INSTITUTIONS: Institutions authorized under SARA shall comply with the reporting requirements set out by the national council for state authorization reciprocity agreement.

[5.99.1.18 NMAC - N, 12/15/2017]

5.99.1.19 WESTERN INTERSTATE COMMISSION FOR HIGHER EDUCATION PRINCIPLES: Principles of good practice for electronically offered academic degree and certificate programs: quality is an essential component of the department's agenda for higher education in New Mexico. The department endorses the

principles of good practice established by the western interstate commission for higher education (WICHE). It is expected that all distance learning courses and programs meet the following principles:

- A.** each program of study results in learning outcomes appropriate to the rigor and breadth of the degree or certificate awarded;
- B.** an electronically offered degree or certificate program is coherent and complete;
- C.** the program provides for appropriate real-time or delayed interaction between faculty and students and among students;
- D.** qualified faculty provide appropriate oversight of the program electronically offered;
- E.** the program is consistent with the institution's role and mission;
- F.** review and approval processes ensure the appropriateness of the technology being used to meet the program's objectives;
- G.** the program provides faculty support services specifically related to teaching via an electronic system;
- H.** the program provides training for faculty who teach via the use of technology;
- I.** the program ensures that appropriate learning resources are available to students;
- J.** the program provides students with clear, complete, and timely information on the curriculum, course and degree requirements, nature of faculty/student interaction, assumptions about technological competence and skills, technical equipment requirements, availability of academic support services and financial aid resources, and costs and payment policies;
- K.** enrolled students have reasonable and adequate access to the range of student services appropriate to support their learning;
- L.** accepted students have the background, knowledge and technical skills needed to undertake the program;
- M.** advertising, recruiting, and admissions materials clearly and accurately represent the program and the services available;
- N.** policies for faculty evaluation include appropriate consideration of teaching and scholarly activities related to electronically offered programs;
- O.** the institution demonstrates a commitment to ongoing support, both financial and technical, and to continuation of the program for a period sufficient to enable students to complete a degree or certificate;
- P.** the institution evaluates the program's educational effectiveness, including assessments of student learning outcomes, student retention, and student and faculty satisfaction; students have access to such program evaluation data; and
- Q.** the institution provides for assessment and documentation of student achievement in each course and at completion of the program.

[5.99.19.1 NMAC - N, 12/15/2017]