

**TITLE 5 POST-SECONDARY EDUCATION**  
**CHAPTER 100 PRIVATE INSTITUTIONS OF HIGHER EDUCATION**  
**PART 5 EXEMPTION UNDER THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT**

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

**5.100.5.2 SCOPE:** Provisions of 5.100.5 NMAC apply to all post-secondary institutions that meet the standards set by the department to obtain exempt status from the post-secondary educational institution act within the state of New Mexico.  
[5.100.5.2 NMAC - N, 12/15/2017]

**5.100.5.3 STATUTORY AUTHORITY:** The Post-Secondary Educational Institution Act Section 21-23-1 et. seq. NMSA 1978 authorizes the New Mexico higher education department (“department”) to establish standards to exempt post-secondary educational institutions from the act while operating in New Mexico.  
[5.100.5.3 NMAC - N, 12/15/2017]

**5.100.5.4 DURATION:** Permanent  
[5.100.5.4 NMAC - N, 12/15/2017]

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

**5.100.5.6 OBJECTIVES AND GENERAL PRINCIPLES:**

**A.** Each private post-secondary institution with a physical presence in New Mexico shall be classified by the department as either subject to or exempt from provisions of the Post-Secondary Educational Institution Act (“the act”).

**B.** A post-secondary educational institution is subject to the act unless expressly exempted by the department. Post-secondary educational institutions or programs shall apply to the department to receive formal exemption status. Such institutions may use the term exempt but may not refer to their status with the department using terms such as “accredited,” “licensed,” “approved,” or “endorsed.”

**C.** Post-secondary educational institutions that do not have state authorization or have not been granted express exemption by the department, and meet the definition of physical presence in New Mexico, shall be notified by certified mail that they shall cease immediately to offer instruction until they obtain a state authorization or exemption from the department; the department shall initiate appropriate legal action if post-secondary educational institutions fail to comply; whoever violates any provision of Sections 21-23-10 et. seq. NMSA 1978 of the Post-Secondary Educational Institution Act may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation.

**E.** An exemption status shall in no way constitute state approval. Therefore, references to the department shall not be used in any advertisements, brochures, etc. without written consent of the department.

**D.** Non-accredited private post-secondary educational institutions that offer a degree program shall not be granted exemption.  
[5.100.5.6 NMAC - N, 12/15/2017]

**5.100.5.7 DEFINITIONS:**

**A.** “**Accreditation**” means a verified accreditation status with an accrediting agency recognized by the United States department of education that accredits degree granting institutions, as a means of assuring quality instruction.

**B.** “**Avocation or recreation**” means an activity taken up in addition to one’s regular work or profession, usually for enjoyment; a hobby.

**C.** “**Career school**” means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a certificate, diploma, associate degree, or comparable confirmation of completion of the curriculum.

**D.** “**Charter**” means a formal document by which a sovereign authority or a government grants rights, powers, and privileges to a person, business, or the people.

**E. “College” or “University”** means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a baccalaureate degree, master's degree, or doctoral degree or comparable confirmation of completion of the curriculum.

**F. “Continuing education”** means only brief courses of instruction designed to teach specific skills that may be applicable in a work setting but are not sufficient in themselves to be considered a program of training for employment. Typically, a student only enrolls for one course rather than a sequence of courses or the courses are on-site or contract training.

**G. “Department”** means the New Mexico higher education department or its designated employee.

**H. “Degree”** means any title, designation, mark, abbreviation, appellation, or series of letters or words, including “associate”, “bachelor's”, “master's”, “doctor's” and their equivalents, which are generally taken to signify satisfactory completion of the requirements of a program of study designed to be comparable to those provided by institutions accredited by agencies recognized by the United States department of education.

**I. “Degree-granting”** means a post-secondary educational institution that offers instruction resulting in a credential as defined by “degree.”

**J. “Exemption”** means a written acknowledgment by the department that an institution, organization, or other entity, has met requirements and filed pertinent information as required by the department to provide educational services in New Mexico, and is not subject to the post-secondary educational institution act.

**K. “Instruction provided by employer”** means only a brief course of instruction designed to teach specific skills that may be applicable in a work setting or as professional development but are not sufficient in themselves to result in a credential.

**L. “License ”or “Licensed”** means a written acknowledgment by the department that a career school or nonregionally accredited college or university has met the requirements of the department for offering a formal educational curriculum within New Mexico;

**M. “Physical presence”** means 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.

**N. “Post-secondary educational institution”** means an academic, vocational, technical, business, professional, or other school, college, or university or other organization or person offering or purporting to offer courses, instruction, training, or education, through correspondence or in person, to any person within New Mexico.

**O. “Registration” or “Registered”** means a written acknowledgment by the department that a regionally accredited college or university has filed pertinent curriculum and enrollment information, as required by the department, and is authorized to operate a private post-secondary educational institution.

**P. “State Authorization”** means a post-secondary educational institution has been deemed by the department to meet satisfactory criteria, as determined by the department, for registration or licensure under the post-secondary educational institution act. All degree-granting institutions seeking state authorization shall be accredited or be seeking appropriate external accreditation. Authorization is not an endorsement of the institution by the department.

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

#### **5.100.5.8 GENERAL STANDARD FOR OBTAINING EXEMPTION STATUS BY THE DEPARTMENT:**

**A.** The department shall provide an application form and assess an administrative fee to provide a formal exemption status. The department has the sole discretion to determine whether an institution meets the criteria for exemption status. If the department determines that an institution does not meet the criteria for exemption, the department may require the institution to apply for state authorization.

**B.** The exemption status will be valid for a term of five years from the date that the department makes the final determination.

**C.** As a condition of exemption, all post-secondary educational institutions shall agree to comply with Section 21-23-15 NMSA 1978 in the event of institutional closure.

**D.** An exempt institution shall provide the department with immediate written notification of any changes or events that may trigger the whole or part of the claim for exemption application to be untrue. In no case shall a change be made without an acknowledgement from the department. An institution shall provide the department with notification in no less than 30 days prior to the proposed changes going in effect.

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

**5.100.5.9**      **PENALTY:** A post-secondary institution that does not have state authorization or have not been granted express exemption by the department, and meet the definition of physical presence in New Mexico, shall be notified by certified mail that they shall cease immediately to operate until they obtain a state authorization or exemption from the department; the department shall initiate appropriate legal action if an institution fails to comply; whoever violates any provision of Sections 21-23-10 et. seq. NMSA 1978 of the Post-Secondary Educational Institution Act may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation.

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

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