

**TITLE 5 POST-SECONDARY EDUCATION**  
**CHAPTER 100 PRIVATE INSTITUTIONS OF HIGHER EDUCATION**  
**PART 6 REGISTRATION UNDER THE POST- SECONDARY EDUCATIONAL INSTITUTION ACT**

**5.100.6.1 ISSUING AGENCY:** New Mexico Higher Education Department.

**5.100.6.2 SCOPE:** Provisions of Part 6 of Chapter 100 apply to all private post-secondary institutions that meet the standards set by the department to obtain state authorization under the registration status of the post-secondary educational institution act within the state of New Mexico.

**5.100.6.3 STATUTORY AUTHORITY:** The Post-Secondary Educational Institution Act (Sections 21-23-1 et. seq. NMSA 1978) authorizes the New Mexico higher education department (“department”) to establish standards and oversight for registered private post-secondary institutions under the act while operating in New Mexico.

**5.100.6.4 DURATION:** Permanent

**5.100.6.5 EFFECTIVE DATE:** December 15, 2017 unless a later date is cited at the end of a section.

**5.100.6.6 OBJECTIVES AND GENERAL PRINCIPLES:**

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

**B.** Every college or university operating in New Mexico that is regionally accredited or seeking regional accreditation by an accrediting agency shall register with the department.

**C.** A college or university that is regionally accredited or seeking regional accreditation deemed by the department to meet satisfactory criteria, as determined by the department, will be registered with the state. A college or university that has successfully registered with the state shall be considered to hold state authorization.

**D.** 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.** As a condition of registration, all private post-secondary institutions shall agree to comply with Section 21-23-15 NMSA 1978 and 5.100.8 NMAC in the event of institutional closure.

**5.100.6.7 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.** “**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.

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

**D.** “**Exception**”, “**Exemption**”, or “**Exempt**” 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.

**E.** “**Licensure**” 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;

**F. “Management plan of action”** means a plan that has been developed, reviewed and implemented by managers of the institution which details specific steps the institution will commit to taking in order to remediate an identified weakness, shortcoming or insufficiency.

**F. “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;

**G. “Post-secondary educational institution”** includes 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.

**H. “Regional accreditation”** means a verified accreditation status with an accrediting agency recognized by the United States department of education that accredits degree granting institutions operating in a designated geographic region.

**I. “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.

**J. “State Authorization”** means a post-secondary educational institution that 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 through application for registration or licensure shall be accredited or be seeking appropriate external accreditation. Authorization is not an endorsement of the institution by the department.

#### **5.100.6.8 GENERAL STANDARDS FOR REGISTRATION:**

**A.** A regionally accredited college or university seeking state authorization through registration must submit a complete application and all supporting documentation, as requested by the department.

**B.** A branch campus that operates under the regional accreditation of a primary New Mexico campus is not considered a separate institution for purposes of state authorization. To be considered a branch campus the institution shall meet the following criteria:

1. it has the same ownership, financial management or control as that of the primary New Mexico campus;
  2. it operates under the regional accreditation of the primary New Mexico campus;
  3. it is not considered a separate institution for the purpose of accreditation;
  4. it has previously operated as a state authorized and accredited institution in New Mexico;
- and
5. it is a secondary physical presence by the same institution in New Mexico.

**C.** A regionally accredited college or university that has been granted state authorization through registration must submit an annual report, as requested by the department. The department shall promulgate a standard reporting form for registration to include: curriculum and enrolment information, financial information, and all publication material requested by the department.

**D.** A regionally accredited college or university registering with the department shall adopt the student complaint procedure, as defined by the department, for the resolution of student complaints. State authorization through registration granted by the department is valid for the same period as its grant of regional accreditation from its accrediting agency.

**E.** As a condition of registration, program and ownership changes may be acknowledge by the department, only upon approval of the regional accreditor.

#### **5.100.6.9 APPLICATION FOR REGISTRATION:**

**A.** The department shall create an application form for registration.

**B.** The application criteria, all of which are defined in Sections 5.100.6.10 through 5.100.6.17 NMAC, shall include the following:

1. Curriculum Requirements
2. Enrollment Agreements
3. Proof of Financial Stability
4. Materials and Information
5. Student Complaint Procedure
6. Cooperation
7. Records Maintenance and Retention Policy
8. Surety Bond

**5.100.6.10 CURRICULUM REQUIREMENTS:** Regionally accredited institutions shall be governed by their accrediting agencies in establishing curriculum standards. Accredited institution shall submit formal documentation from the accreditor listing all approved campuses, credentials and programs; and written notification of any changes related to accreditation.

**A.** The institution shall submit a complete catalog that includes all programs of study, course descriptions, methods of delivery for each course, and number of credit hours for each course. When applicable, identify specialized programmatic accreditation in the catalog.

**B.** The institution shall submit the organizational profile from the regional accreditor that lists all programs offered by the institution.

**C.** Accredited institutions proposing to change or add degree programs shall submit approval by the accreditor to the department. Upon receipt of the approval, the department will provide a formal acknowledgment of the accreditor approved new or modified degrees and programs. The institution may begin to advertise for the program based on the accreditors approval.

**D.** Accreditation for new degree-granting institutions: New degree-granting institutions who have applied for regional accreditation must submit a written accreditation plan, which shall include:

**1.** the institution shall submit a complete catalog that includes all programs of study, course descriptions, methods of delivery for each course, and number of credit hours for each course. When applicable, identify specialized programmatic accreditation in the catalog;

**2.** the name and contact information of the U.S. department of education recognized accrediting agency;

**3.** the planned timeline for application with and approval by the U.S. department of education recognized accrediting agency;

**4.** any contracts already made with the U.S. department of education recognized accrediting agency, including supporting documents;

**5.** certification that the institution will complete the accreditation process with in the planned timeline provided. Any modification to the timeline must be approved by the accreditor and communicated to the department; and

**6.** any additional information which the department may request.

**5.100.6.11 ENROLLMENT AGREEMENT:** Before a student begins work at an institution, the institution shall execute an enrollment agreement with the student. An enrollment agreement will be binding only when it has been fully completed, signed, and dated by the student and authorized institution representative prior to the beginning of instruction. The institution shall retain the original enrollment agreement and a copy shall be delivered to the student at the time of execution or by mail when the enrollment is solicited by mail. Each enrollment contract or agreement shall include at least the following and a copy of the blank agreement or contract shall be submitted to the department:

**A.** information that will clearly and completely define the terms of the agreement between the student and the school;

**B.** names and addresses of the school and the student;

**C.** the program or course title the student is enrolling in and the applicable catalog date or version reference;

**D.** program start date and estimated end date;

**E.** the number of hours or units of instruction;

**F.** the school's cancellation and refund policies;

**G.** an itemization of all charges, fees and required purchases being incurred by the student or their sponsor in order to complete the training, e.g., tuition, books, supplies and all other items of expense required by the school;

**H.** the method of payment and payment schedule being established; and

**I.** when applicable, a statement detailing the institution's placement policy.

**5.100.6.12 PROOF OF FINANCIAL STABILITY:** Standards for reviewing and analyzing financial stability are a critical component of the institution's overall assessment. The institution's financial stability will be reviewed by the department to assess the institutions ability to meet financial obligations including, but not limited to, obligations to enrolled students. In determining financial stability of the institution the department shall review the following requirements:

**A.** Insurance: Institutions registered by the department shall maintain valid standard, commercial liability insurance, worker's compensation insurance, and property insurance sufficient to protect students, employees, and other citizens from hazards in the institution's facilities. Where applicable institutions shall have liability insurance covering students involved in internships at sites and locations other than the institution.

**B.** Financial statement analysis: The department shall consider an institution's financial history when reviewing an application for registration. In the case where an institution submits an audit report and management letter provided by a certified public accountant, the department shall normally accept the report as accurate and rely on the auditor's professional responsibility to evaluate and to make known whether there is substantial doubt about the entity's ability to continue as a going concern for a reasonable period of time, not to exceed one year beyond the period of the financial statement being audited.

**C.** New institutions not previously operating in any capacity in any state or jurisdiction shall demonstrate liquid assets sufficient to operate the institution for a period of one year exclusive of anticipated revenue from tuition and fees. These assets shall be sufficient to pay all projected salary and benefits of employees and the rent, utilities, insurance and other costs of operating the institution's facilities for a period of one year. If an institution has audited financials available for the year prior to that of the application, such audited financials shall be submitted for review. Any new institution shall submit the following:

1. bank statements, investor agreements, any other financial donations or gifts used to develop the institution;
2. the institution's projected income statement certified as accurate by the institution. The income statement must include details of projected salaries and benefits of employees, rent, utilities, insurance, any financial obligations made by the institution, and any other operating costs; and
3. any additional information which the department may request.

**D.** Existing Institutions: If an institution has previously operated in any capacity in any jurisdiction, it must submit documents based on the following thresholds:

1. An institution with seven hundred fifty thousand dollars (\$750,000) or more in gross annual tuition revenue and all federal Title IV financial aid institutions shall submit, on a schedule set by the department, an audit report and management letter prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act Sections 61-28B-1 et seq. NMSA 1978.
2. An institution with gross annual tuition revenue of two hundred fifty thousand dollars (\$250,000) or more but less than seven hundred fifty thousand dollars (\$750,000) shall submit, on a schedule set by the department, either an audit report and management letter prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act Sections 61-28B-1 et seq. NMSA 1978 or a review of financial statements prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act.
3. An institution with gross annual tuition revenue of less than two hundred fifty thousand dollars (\$250,000) shall submit on a schedule set by the department either an audit report and management letter prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act New Mexico Public Accountancy Act Sections 61-28B-1 et seq. NMSA 1978, a review of financial statements prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act, or an income statement and balance sheet certified as accurate by the institution. In addition to the audit report and management letter, the review of financial statements, or the income statement and balance sheet as described in this paragraph, the institution shall submit copies of business tax returns and bank statements for the most current year.

**E.** Failure to satisfactorily meet financial requirements: If considerable concern is established as to the institution's ability to maintain its operation, department staff may contact the school to obtain additional information that may influence the institution's financial picture. If concerns are not addressed through the additional information requested, a department financial analyst may conduct a second financial review. If after the second review, substantial doubt remains about the institution's ability to continue, the department may contract for further independent review of the records. All costs associated with contracting a third party independent reviewer will be charged to the institution. Following review and based on the determination of the department:

1. the institution may be authorized for operation;
2. the institution may be placed on probationary status and required to submit a management plan of action; and
3. the department may report the failure to satisfactorily meet financial requirements to the U.S. department of education and the institution's accreditor. If the issue is not resolved, the department may take action to forward the file to the attorney general's office for issuance of a notice of contemplated action to deny licensure.

**5.100.6.13 MATERIALS AND INFORMATION:** The department shall regulate the use of deceptive and misleading materials and information. An institution shall not disseminate material or information that is deceptive, misleading or untrue. The institution shall certify compliance with all laws and regulations related to materials and information. The department may request copies of publications, advertisements, agreements, marketing collateral, or contracts in order to regulate the use of deceptive and misleading information. All materials and information shall comply with the following requirements:

**A.** Representation of accreditation and state authorization status:

**1.** Institution may not make claims to or advertise an accreditation status if the accrediting agency is not recognized by the U.S. department of education.

**2.** Institution not accredited by a U.S. department of education recognized accreditor shall clearly state that the institution is not accredited.

**3.** An institution registered by the department may not use terms such as "accredited," "endorsed," or "recommended" in reference to its approval by the department.

**B.** Enrollment agreement: Before a student begins work at an institution, the institution shall execute an enrollment agreement with the student. An enrollment agreement will be binding only when it has been fully completed, signed, and dated by the student and authorized institution representative prior to the beginning of instruction. The institution shall retain the original enrollment agreement and a copy shall be delivered to the student at the time of execution or by mail when the enrollment is solicited by mail. Each enrollment contract or agreement shall include at least the following:

**1.** information that will clearly and completely define the terms of the agreement between the student and the school;

**2.** names and addresses of the school and the student;

**3.** the program or course title the student is enrolling in and the applicable catalog date or version reference;

**4.** program start date and estimated end date;

**5.** the number of hours or units of instruction;

**6.** the school's cancellation and refund policies;

**7.** an itemization of all charges, fees and required purchases being incurred by the student or their sponsor in order to complete the training, e.g., tuition, books, supplies and all other items of expense required by the school;

**8.** the method of payment and payment schedule being established; and

**9.** when applicable, a statement detailing the institution's placement policy.

**C.** Advertising, Marketing, Promotional Materials and Recruitment: All advertisements and promotional literature must be truthful regarding the content of an institution's educational program(s), the duration of the program(s), student attributes and skills needed for successful completion of the program(s), and costs of the program(s). An institution shall use no advertisements or promotional materials that are false, deceptive, inaccurate, or misleading. Materials must comply with all of the following regulations:

**1.** Advertisements and promotional literature shall not contain promises of job placement or employment, either explicitly or implicitly, but may refer to an institution's services to assist students in obtaining employment.

**2.** Advertisements shall clearly indicate by their content and location in media that the institution is offering education or training and may not either explicitly or implicitly suggest that the institution is offering employment.

**3.** An institution advertising salary ranges or averages for its graduates must have on file and available to inspection by students, the department, or their representatives current and accurate data that includes New Mexico employers and that validates such claims.

**4.** An institution shall not advertise the transferability of its courses or programs to a regionally accredited institution unless it has signed transfer or articulation agreements with that institution.

**5.** An institution shall not include in its advertising or promotional materials any photograph or other illustration of facilities unless those facilities serve predominantly as sites of instruction or related activities provided by the institution, either in New Mexico or in other states. Photographs or other illustrations must accurately depict the size and condition of any facilities or equipment illustrated.

**6.** No person shall for a fee solicit enrollment at an institution who is not employed by and under supervision of the institution. The institution shall be responsible for the representations of its employees.

7. Prospective students shall not be solicited by any representative of an institution on the sites of any government agency such as motor vehicle registration offices, unemployment offices, or public assistance offices. However, leaflets or other promotional material may be made available at such sites.

8. Prospective students shall not be solicited by any representative of an institution on the site of any public school, except at the invitation of school personnel. No institution shall offer or provide financial inducement to any public school in return for permission to solicit students.

9. No institution shall solicit the enrollment of any student who is currently attending another institution in New Mexico by using any inducement of greater financial assistance in meeting the costs of education.

10. On all materials, an institution shall use the full name in which it is registered and list any other names in which the institution holds other government registrations. Permutations of its name, e.g., initials, or shortened name or nicknames, cannot be employed without prior written permission of the department.

11. On all materials, the name of an institution shall not be misleading.

**5.100.6.14 STUDENT COMPLAINT PROCEDURE:** An institution shall provide proof of an adopted complaint procedure that complies with the minimum requirements set by the department. The institution shall have and make available to all students, the adopted complaint procedure that describes, in detail, how students or other parties may register a complaint or grievance, how the institution will investigate the complaint, and how the institution will attempt to resolve the complaint. Such policies shall at a minimum include the following components:

A requirement that students or other parties with complaints or grievances against an institution first seek to resolve their complaint or grievance directly with the institution;

B. a time frame within which the institution will investigate the complaint and respond to the complainant;

C. assurance of the involvement of a person who will serve as an impartial representative of the institution but not be directly involved in the area of the complaint;

D. assurance that no adverse action will be taken against the complainant for registering the complaint; and

E. identification of the higher education department as the agency to be contacted in cases where a complaint cannot be resolved.

**5.100.6.15 COOPERATION:** The institution shall provide copies of valid certificates from other federal, state and municipal agencies, and any other higher education authorities as proof of compliance with applicable bodies. At minimum the application submission must include:

A. a copy of the notification of good standing and ability to do business in New Mexico issued by the New Mexico secretary of state's office;

B. a copy of the New Mexico taxation and revenue department registration;

C. as applicable a copy of the national council of state authorization reciprocity agreements (NC-SARA) welcome letter;

D. as applicable a list and copy of authorization granted by other jurisdictions; and

E. as applicable a list and copy of authorization granted by other New Mexico boards, commission or agencies.

**5.100.6.16 RECORD MAINTENANCE AND RETENTION POLICY:**

A. Each regionally accredited college or university registered by the department shall provide a records maintenance and retention plan. The plan shall consist of a records maintenance and disposal schedule that follows the minimum retention schedule set out and published by the department. The plan must include a description of how records will be maintained in the event of closure, which includes, but is not limited to, designation of a custodian of records, digitization, and process for obtaining transcripts from the custodian of record.

B. Each institution must submit a certification of compliance with all applicable laws, rules and regulations that govern records management for closed institution.

**5.100.6.17 SURETY BOND:**

A. Each institution registered by the department shall maintain in force a surety bond or alternative surety accepted by the department, in an amount set by the department, and payable to the department. The institution must have and adhere to the following requirements:

1. the amount of the bond or alternative surety shall be sufficient to indemnify any student damaged as a result of fraud or misrepresentation by a registered institution or as a result of the institution ceasing operation prior to its students having completed the programs for which they have contracted. If a registered institution closes, the department may draw upon the bond to pay costs associated with preservation of student records;

2. the bond required for each institution shall be twenty percent of the institution's projected or actual gross annual tuition and fee revenue in New Mexico, which in effect takes into consideration the size, number of students and total income and assets of an institution. In no case shall the bond be less than \$5,000;

3. bonds provided by institutions must be accompanied by the name, office address and phone number of the issuing company representative; and

4. if an institution seeks to cancel a surety bond, written notice must be delivered to the department. The institution may not cancel the surety bond until provided with written release by the department. The institution shall provide the department with a like surety or acceptable alternative in order to maintain registration status.

**B.** Alternative forms of surety. An institution may request a waiver from the bond requirement and provide to the department an explanation of the alternative form for which they are seeking approval. The department has the authority to accept or reject any request. Such alternative may be a cash deposit escrow account, irrevocable letter of credit, or similar alternative payable to the department in the amount equal to the bond requirement.

#### **5.100.6.18 COMPLAINT TO THE DEPARTMENT:**

**A.** A student or other party not satisfied with an institution's resolution of a complaint may submit a complaint to the department in writing on a form provided by the department. A student must file a complaint with the department within three (3) years of their last date of enrollment.

**B.** Upon receipt of a written complaint, the department or its authorized representative shall verify that the complaint involves one or more standards for registration of the institution and is therefore a legitimate subject of complaint to the department. If the complaint is determined to be legitimate, the department or its authorized representative shall forward the complaint to the institution for a written response and shall facilitate possible resolution of the complaint between the student and the institution. The institution shall have ten (10) days to forward its response to the department. A copy of the institution's response will be forwarded to the student with a request that the student indicate satisfaction or dissatisfaction with the response.

**C.** In attempting to resolve a complaint, the department or its authorized representative may, but is not obliged to, convene a hearing or meetings and shall give written notice to the institution and to all persons involved, regarding the time, date, and place of the hearing or meeting. Such hearings or meetings, if held, shall be informal and for the purpose of determining the facts surrounding the claim and if the parties can come to a resolution or compromise.

**D.** In the event that the institution refuses to respond or refuse to attend a hearing or meeting:

1. The department shall make three attempts to contact the institution including at least one attempt through certified mail, to notify the institution of the complaint, request, action, hearing or meeting; and

2. If the institution does not respond or fails to attend the hearing or meeting after three attempts to contact the institution by the department have been made, the department may invoke its powers to take such action as shall be necessary for the indemnification of the claimant.

#### **5.100.6.19 APPLICABLE FEES:**

**A.** The department will assess application and administrative fees for registration, pursuant to Section 21-23-6.3 NMSA 1978, 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 registration.

**C.** The department shall assess an administrative fee upon determination that the institution has met all satisfactory conditions for registration.

**D.** The department shall assess an administrative fee for annual reporting.

#### **5.100.6.20 REPORTING REQUIREMENTS:**

**A.** Registered colleges or universities shall annually submit a standard reporting form.

**B.** The department shall promulgate a standard form for annual reporting to include: curriculum and enrolment information, financial information, all publication material requested by the department, and certification

of compliance with current New Mexico Administrative Code or Statutes applicable to post-secondary educational institutions.

**5.100.6.21 PENALTY:**

**A.** 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 offer such until they obtain a state authorization or exemption from the department; the department shall initiate appropriate legal action if 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.

**B.** A post-secondary institution that does not submit an application for renewal within deadlines set by the department and has a lapse in authorization for one or more years will be required to complete a provisional period of two years.

**C.** The department shall provide notification for public viewing on the department's website if a registered private post-secondary institution has been sanctioned or penalized by their accreditor or the US department of education.

**D.** The department may report any failures to comply with provisions of 5.100.6 NMAC to the U.S. department of education and the institution's accreditor. If the institution does not comply, the department may take action to forward the file to the attorney general's office for issuance of a notice of contemplated action to deny licensure

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