

TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 100 PRIVATE INSTITUTIONS OF HIGHER EDUCATION
PART 7 LICENSURE UNDER THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT

5.100.7.1 ISSUING AGENCY: New Mexico Higher Education Department.

5.100.7.2 SCOPE: Provisions of Part 7 of Chapter 100 apply to all private post-secondary institutions that meet the standards set by the department to obtain state authorization under the licensure status of the post-secondary educational institution act within the state of New Mexico.

5.100.7.3 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 licensed private post-secondary institutions under the act while operating in New Mexico.

5.100.7.4 DURATION: Permanent

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

5.100.7.6 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 exempted by the department.

B. Every career school or nonregionally accredited college or university operating in New Mexico shall annually license with the department.

C. A career school or nonregionally accredited college or university deemed by the department to meet satisfactory criteria, as determined by the department, will be licensed with the state. A career school or nonregionally accredited college or university that has successfully licensed with the state shall be considered to hold state authorization.

D. A career school or nonregionally accredited college or university that does not have state authorization or has not been granted express exemption by the department, and meets the definition of physical presence in New Mexico, shall be notified by certified mail that they shall cease immediately offering instruction or enrolling new students 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 Section 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. No person other than an employee of an institution licensed pursuant to this rule shall, for a salary or fee, solicit attendance at that institution.

5.100.7.7 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. “**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.

C. “**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.

D. “**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.

E. “**Cooling off period**” means at least three work days from the date of agreement or payment or from the date that the student first visits the institution, whichever is later.

F. “**Credit hour**” means an institution’s count of the amount of work represented in the intended learning outcomes and verified by evidence of student achievement, proof of commonly-accepted industry practices or consistent with the federal definition of the credit hour.

G. “**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.

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

I. “**Enrollment Agreement**” means any agreement, instrument or note executed before a student begins course work which creates a binding obligation between the student and the institution.

J. “**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.

K. “**Institution**” means a career school or nonregionally accredited college or university

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. “**Manager**” or “**Managers**” means the chief executive officer, chief operations officer, chief financial officer, senior business or finance officer, senior financial aid administrator, and senior or chief academic officer of a New Mexico post-secondary educational institution.

N. “**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.

O. “**Non-traditional instruction**” means instruction provided in other than a traditional on-site manner involving direct contact between instructor and student(s), for example, instruction provided all or mostly through means such as correspondence, electronic delivery, or individualized or mentored study.

P. “**Owner**” or “**Ownership**” means all individuals or entities that have any ownership interest in the institution.

Q. “**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 Interstate Distance Education Act.

R. “**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.

S. “**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.

T. “**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.

U. “**Review Committee**” means a committee established by the department pursuant to Section 5.100.7.11 NMAC.

V. “**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.

W. “**Work day**” means a week day, Monday through Friday that is not recognized as a federal holiday.

5.100.7.8 GENERAL STANDARDS FOR LICENSURE:

A. An institution seeking state authorization through licensure must submit a complete application and all supporting documentation as described in Section of 5.100.7.10 NMAC. The department shall create application forms for institutions to apply for licensure.

B. A branch campus that operates under the 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 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. An institution licensed by the department shall adopt the student complaint procedure, as defined in Subsection Q of 5.100.7.10 NMAC, for the resolution of student complaints.

D. As a condition of licensure, all institutions shall agree to comply with surety bond requirements as defined in Subsection O of 5.100.7.10 NMAC.

E. As a condition of licensure, all institutions shall agree to comply with Section 21-23-15 NMSA 1978 and 5.100.8 NMAC and applicable rules and regulations in the event of institutional closure.

F. An institution that has been granted state authorization through licensure must submit an annual report, as requested by the department. The department shall promulgate a standard reporting form for licensure to include: enrollment, program completion by students, employment and other educational placements of students, operating revenue budgets, changes to teach-out agreements, and changes to record management plan.

5.100.7.9 TYPES OF LICENSURE: The department will determine the type of license an institution is eligible to receive based on standards set by the department. An institution holding a provisional license or license as described below is authorized to operate in New Mexico:

A. Provisional License: An institution that has never applied for licensure is required to submit an annual application for a provisional license to the department. An institution must hold a provisional license for a minimum of two years. The department will review the application to ensure the institution satisfactorily meets the application requirements in section 5.100.7.10 NMAC. The provisional license may be extended beyond two years if an institution fails to meet the requirements for full licensure. Provisional license does not imply automatic eligibility for licensure.

B. License: After successful completion of the provisional license period, an institution is required to submit an application for a license to the department. The department will review the application to ensure the institution satisfactorily meets the application requirements in section 5.100.7.10 NMAC. A renewal application must be submitted annually to the department on forms created by the department.

5.100.7.10 APPLICATION REQUIREMENTS: The institution must provide complete and accurate information to the department. The department may request any additional supporting documentation. Upon request of the department, the applicant must supply any missing or requested information to the department. An applicant must respond to the department within deadlines set by the department. The department application will require institutions to supply information described in Subsections A through W 5.100.7.10 NMAC:

A. Evaluation plan: The plan shall include measures of institutional success. The institution shall provide a plan for evaluation of the following:

1. the satisfaction of its graduates and shall make available to the department all reports of these assessments prepared during the past five years;
2. a written plan for keeping its courses current;
3. a written plan for faculty improvement in terms of content knowledge and relevant instructional techniques and the use of new and applicable technologies to support instruction; and
4. if the institution is subject to the Student-Right-to-Know Act, it shall provide the department with copies of all reports submitted to the federal agency.

B. Tuition policy: Tuition and fee charges shall be the same for all students admitted to a given program for a given term of instruction. An institution may not discount its tuition and fees charged to individual students as an incentive for quick enrollment or early payment. An institution may negotiate special rates with business, industrial, governmental, or similar groups for group training programs and may establish special rates for students who transfer between programs. An institution may charge a reasonable carrying fee associated with deferred payments or payment plans. All tuition and fees must be comprehensively listed in the institution's catalog as required in Subsection G of 5.100.7.10 NMAC.

C. Tuition refund policy: An institution licensed by the department shall adhere to the following tuition refund policy:

1. An institution accredited by agencies recognized by the United States department of education shall adhere to the tuition refund schedule established by the institution's accrediting body or the U.S.

department of education. If an institution is required to adopt such refund schedule, it is required to provide proof of adoption and a copy of the refund schedule policy from either the accreditor or the US department of education.

2. If an institution is not required to adopt a refund schedule policy by an accreditor or the US department of education, the following refund schedule policy set out by the department shall be adopted:

Date of student withdrawal as a % of the enrollment period for which the student was obligated	Portion of tuition and fees obligated and paid that are eligible to be retained by the institution
On 1st class day	0%
After 1st day; within 10%	10%
After 10%; within 25%	50%
After 25%; within 50%	75%
50% or thereafter	100%

3. Any student signing an enrollment agreement or making an initial deposit or payment toward tuition and fees of the institution shall be entitled to a cooling off period as defined in Section 5.100.7.7 NMAC. During the cooling off period the agreement can be withdrawn and all payments shall be refunded. Evidence of personal appearance at the institution or deposit of a written statement of withdrawal for delivery by mail or other means shall be deemed as meeting the terms of the cooling off period.

4. Following the cooling off period, but prior to the beginning of instruction, a student may withdraw from enrollment, effective upon personal appearance at the institution or deposit of a written statement of withdrawal for delivery by mail or other means, and the institution shall be entitled to retain no more than \$100 or 5 percent in tuition or fees, whichever is less, as the institution's registration charges.

5. In the case of students enrolling for non-traditional instruction, a student may withdraw from enrollment following the cooling off period, prior to submission by the student of any lesson materials and effective upon deposit of a written statement of withdrawal for delivery by mail or other means, and the institution shall be entitled to retain no more than \$100 or 5 percent in tuition or fees, whichever is less, as the institution's registration charges or an alternative amount that the institution can demonstrate to have been expended in preparation for that particular student's enrollment.

6. Upon request by a student or by the department, the institution shall provide an accounting for such amounts retained under this standard within five work days.

D. Record maintenance and retention policy: Each private career school or non-regionally accredited college or university licensed 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.

E. 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:

1. Representation of accreditation and state authorization status:

a. An 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.

b. An institution not accredited by a U.S. department of education recognized accreditor shall clearly state that the institution is not accredited.

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

2. 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:

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.** the 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.

3. 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 requirements:

a. 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.

b. 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.

c. 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.

d. 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.

e. 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.

f. 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.

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

h. 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.

i. 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.

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

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

F. Name of the institution: The department reserves the right to deny licensure to an institution proposing to operate under a name that the department determines to be misleading or so similar to that of another institution operating within the state that it may result in substantial confusion. Institution names must comply with each of the following regulations:

1. institutions including the term "college" in their name must offer at least an associate degree and enroll a substantial portion of their students in such degree programs; and

2. institutions including the term "university" in their name must offer graduate degree programs and must enroll a preponderance of their students in baccalaureate and graduate degree programs.

G. Information Provided to Students: Information shall be provided to students prior to their signing an enrollment agreement and the institution shall make reasonable effort to assure and verify that each student understands their academic and financial obligations prior to enrolling in the institution. An institution shall publish and make available to all students a catalog or other materials that clearly describe:

1. accurate representation of accreditation and state authorization status as described in Paragraph 1 of Subsection E of 5.100.7.10 NMAC;
2. admission policies and procedures that provide criteria and methods used to assess and admit or deny admission;
3. admission methods and criteria used to assess student ability to complete program requirement;
4. programs offered, the program completion requirements of each, and descriptions of all courses offered;
5. requirements for those occupations that require licensure and for which the institution is offering preparation;
6. tuition and fees and refund policies, consistent with requirements stated elsewhere in these regulations;
7. types of financial aid available to students and the procedure for applying for such aid;
8. the institution's policy regarding program or course cancellations;
9. rules and regulations pertaining to academic progress;
10. rules and regulations pertaining to student conduct;
11. the procedure to be followed in the instance that a student decides to withdraw from the institution prior to completing a program; and
12. the institution's policy regarding student complaints and the resources available to students for resolving differences with the institution. The institution must adopt the student complaint process established by the department and published by the department; and
13. the institution's policy regarding release of transcripts.

H. Financial aid: Prior to a student signing a financial aid agreement, each student must be informed in writing regarding his or her obligations associated with receipt of financial aid and the institution must take reasonable steps to assure that the student understands that obligation. The institution shall provide financial aid resources to students.

I. Proof of teach-out agreement: Each institution shall enter into a teach-out agreement with at least one other private or public institution operating in the state. Proof of such teach-out agreement(s) must be submitted to the department. The department may determine that such agreement is not feasible after consideration of evidence submitted to the department, as requested by the department.

J. Adoption of degree standards: Institutions accredited by a recognized U.S. department of education accreditor shall adopt degree standards governed by their accrediting body. Any non-accredited degree granting institution shall adopt the following degree standards for each credential as listed below:

1. Associate degree program:
 - a. Associate degree programs must include both technical or vocational and general education instruction. No associate degree program shall consist of 60 credit hours of study or the equivalent;
 - b. Associate of applied science degrees, associate of occupational studies degrees or comparable appellations must be based upon the institution's certification that the recipient is prepared for immediate employment in a specified career field and must be comprised primarily of technical or vocational study; and
 - c. Associate of arts or associate of science degrees must be based upon the institution's certification that the recipient is prepared both for immediate employment in a specified career field and transfer to another institution for more advanced study; associate of arts and associate of science degree programs will normally consist of approximately equal numbers of technical or vocational and general education courses.
2. Baccalaureate degree programs:
 - a. Baccalaureate degree programs must be comparable in quality to those offered by institutions operating in New Mexico that are accredited by agencies recognized by the United States department of education as authorities regarding the quality of such degree programs; award of degrees must be based upon the institution's certification that the recipient has met standards of performance and competency comparable to the standards of institutions so accredited; and

b. At a minimum, issuance of a baccalaureate degree shall require 120 credit hour or the equivalent; the degree program must include 30 credit hours of general education core requirements.

3. Master's degree programs:

a. Master's degree programs must be comparable in quality to those offered by institutions operating in New Mexico that are accredited by agencies recognized by the United States department of education as authorities regarding the quality of such degree programs; award of degrees must be based upon the institution's certification that the recipient has met standards of performance and competency comparable to the standards of institutions so accredited; and

b. At a minimum, issuance of a master's degree shall require 30 credit hours of academic credit or the equivalent beyond a baccalaureate degree.

4. Doctoral Degree programs:

a. At a minimum, issuance of a doctoral degree shall require 90 credit hours of academic credit or the equivalent beyond a baccalaureate degree or 60 credit hours or the equivalent beyond the master's degree and shall require successful completion and defense of a major independent project, involving original research or application of knowledge. The research component shall provide no more than 30 percent of the degree credit requirement;

b. Research or project committees composed of no fewer than three qualified readers shall review the project at various stages of development; documentation shall be provided to support this requirement. The final version of the research or project shall be accompanied by the original signature of each committee member; and

c. The institution shall maintain a copy of the final report of the research or project and make it available upon request.

5. Honorary degree or certificate: Licensed, private degree-granting institutions may issue honorary degrees or certificates. An honorary degree or certificate shall identify in its title or name that it is an honorary degree or certificate and shall bear such on its face.

6. Credit for life experience: If an institution offers academic credit for life experience or employment related experience, the institution must have and adhere to the following requirements:

a. applicable life experience shall be limited to work experience, military experience or a combination of the two;

b. no more than 30 percent of the credit in a student's degree program may be awarded for life or work experience;

c. the institution shall utilize the methodologies outlined by the council for adult and experimental learning (CAEL) for evaluating life experience or shall have in place a comparable plan which describes procedures and requirements for the assessment of experiential learning;

d. the institution shall maintain documentation for at least three years of all materials used to assess and award credit for experiential learning;

e. the institution shall clearly indicate on the student degree plan the course(s) for which the experiential learning is being substituted;

f. the institution shall evaluate extra-institutional learning only in subject areas in which it has or can arrange for faculty expertise or where it can rely on nationally validated examinations or other procedures for establishing credit equivalencies; and

g. no life experience credit shall be awarded toward the doctorate degree beyond master's level study.

K. Accreditation for degree-granting institutions:

1. Accredited institutions shall be governed by their accrediting agencies in establishing degree and program standards. Accredited institution shall submit:

a. formal documentation from the accreditor listing all approved campuses, degrees and programs; and

b. written notification of any changes related to accreditation.

2. Accredited institutions proposing to change or add degree programs shall submit approval by the accreditor to the department. The department may review proposed changes on a set schedule defined by the department and charge an administrative fee for the processing of such requests. Upon final review, the department will provide a formal acknowledgment of the approved new degrees and programs. The complete list of programs offered by an institution will be listed on the license issued to the institution.

L. Accreditation for new degree-granting institutions or degree-granting institution seeking accreditation: New degree-granting institutions making application with the department will be required to obtain

accreditation within two years with an accrediting agency recognized by the U.S. department of education. Non-accredited degree-granting institutions must submit a written accreditation plan, which shall include:

1. the U.S. department of education recognized accrediting agency with which the applicant intends to apply for institutional accreditation;
2. the planned timeline for application with and approval by the U.S. department of education recognized accrediting agency;
3. any contracts already made with the U.S. department of education recognized accrediting agency, including supporting documents;
4. certification that the institution will complete the accreditation process within the planned timeline provided;
5. submit all documents as required for non-accredited non-degree granting institutions; and
6. any additional information which the department may request.

M. Non-accredited non-degree granting institutions: Applications for non-accredited non-degree granting institutions shall be evaluated by a department review committee described in Section 5.100.7.11 NMAC. A new non-accredited non-degree granting institutions applying for licensure will be approved to offer no more than six degree programs during the first two years of operation. Non-accredited non-degree granting institutions shall submit the following for review:

1. Administration of the institution: The department will consider educational background, relevant work experience, and record of accomplishment in previous educational work settings.
2. Institution curriculum requirements. For each program and course of instruction offered by an institution, the institution shall submit:
 - a. program outline, syllabus and curriculum materials that accurately describe the objectives, content, and methods of the program or course;
 - b. objectives, content, and methods of each program and course of instruction which demonstrate curriculum quality;
 - c. details of equipment and facilities utilized by a program which shall be sufficient for the number of students using them, and shall be applicable to the objectives set for the program; and
 - d. a report that demonstrates that each program is designed to provide training for an occupation that is recognized in New Mexico and that the training provided is sufficient in length and quality to prepare students for immediate employment in the occupation(s) or prepare students to complete licensing assessments.
3. Faculty qualifications: The institution must demonstrate the following:
 - a. each member of the teaching faculty has an educational background, including licensure or occupational or credential, and experience applicable to teaching assignments;
 - b. faculty degrees, licensure, certification, and credentials are in the appropriate field of instruction unless the institution demonstrates to the satisfaction of the department and review committee, on an individual basis, that alternative qualifications are sufficient;
 - c. faculty hold degrees in the field of instruction from an accredited institution at a minimum of one degree level higher than the level of instruction, and in no case less than a baccalaureate unless the institution demonstrates to the satisfaction of the department that alternative qualifications are sufficient;
 - d. that no more than twenty percent (20%) of the faculty of an institution may be employed under alternative qualifications;
 - e. for each proposed degree offering, the institution employs at least one faculty member with the applicable training who shall have the responsibility for providing oversight of the instructional program; and
 - f. faculty are sufficient in number to provide instruction and attention to the work of students of the institution.
4. Student outcomes: New institutions submitting first time application shall provide a plan for tracking program completion rates, withdrawal rates and satisfaction of students, and employers. Institutions renewing application with the department must submit required reporting for program completion rates, withdrawal rates, and satisfaction of students and employers.
5. Non-accredited non-degree institutions proposing to change existing programs or add new degree programs to their curriculum shall submit application on a form acceptable to the department, for review committee approval prior to enrolling students to the proposed program.

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

O. Surety Bond: Each institution licensed 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 licensed 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 licensed institution closes, the department may draw upon the bond to pay costs associated with preservation of student records. The bond must also meet the following criteria:

a. 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;

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

2. 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 licensure.

3. 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.

P. 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 institution's 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:

1. Insurance: Institutions licensed 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.

2. Financial statement analysis: The department shall consider an institution's financial history when reviewing an application for licensure. 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.

3. 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:

a. bank statements, investor agreements, any other financial donations or gifts used to develop the institution;

b. 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

c. any additional information which the department may request.

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

a. 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 (Section §61-28B-1 et seq. NMSA 1978 as amended).

b. 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 (Section § 61-28B-1 et seq. NMSA 1978 as amended) or a review of financial statements prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act.

c. 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 (61-28B-1 et seq. NMSA 1978 as amended), 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.

5. 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 regarding 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

a. the institution may be authorized for operation;
b. the institution may be placed on probationary status and required to submit a management plan of action; and
c. 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.

Q. Procedure for resolution of student complaints: 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:

1. 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;
2. a time frame within which the institution will investigate the complaint and respond to the complainant;
3. 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;
4. assurance that no adverse action will be taken against the complainant for registering the complaint; and
5. identification of the higher education department as the agency to be contacted in cases where a complaint cannot be resolved.

R. Student Services: The institution shall certify that it will provide the following:

1. Financial aid counseling: Institutions offering financial aid to students shall provide adequate personnel qualified to administer the financial aid programs according to the regulations of all cognizant agencies;
2. Academic counseling and progress: Institutions shall provide adequate counseling for students regarding their academic progress. An institution shall have a clear policy and procedure for assessing the progress of students toward their program objectives and to inform student of progress. Students shall receive warning when their academic status is at risk and shall be given clear information about their academic status and whatever actions are needed to maintain satisfactory progress. The institution shall have a policy for terminating enrollment in manner that minimizes the financial cost to the student, when the student fails to meet the standards for academic progress. Records of the institution, including individual student records, shall reflect consistent application of such policy and procedure. The institution's catalog and other publications shall clearly inform

students about the institution's standards for academic progress and any academic counseling and support services available to students.

3. Employment counseling and placement: Institutions shall provide services that assist students in locating and qualifying for employment opportunities. Employment counseling and placement services must be provided at no additional charge to students. No institution shall be expected to provide employment counseling and placement services beyond providing academic and financial aid transcripts for more than one year following a student's receipt of a diploma, certificate, or degree, except by such policy of the institution. An institution offering placement services for its students and graduates shall maintain records listing, for each student who has been assisted, each placement conference held with the student and each placement contact made in behalf of the student.

S. Records standards and access:

1. Transcript standards: An institution shall prepare for students a transcript of record. A sample transcript shall be submitted and include at minimum the following:

a. designation of the program(s) of study for which the student has been enrolled;
b. each course completed by the student and the grade or other indication of performance assigned; and
c. a dated statement of completion of the program and award of any certificate, diploma, or degree earned by the student.

2. The method by which students and graduates may obtain transcripts and financial aid documents and applicable fees shall be described clearly in the institution's catalog or in other documents provided to students. All documents with reference to the method for obtaining transcripts and financial aid documents and fees must be submitted to the department for review.

3. The institution shall certify that an official student file will be kept for each student and include at a minimum the following:

- a.** admission application and enrollment agreement;
- b.** official transcripts indicating qualification for admission;
- c.** when applicable actual test and scores from an ability-to-benefit assessment;
- d.** grades received (up-dated transcript);
- e.** all obligations incurred and all funds paid by the student to the institution;
- f.** student attendance information;
- g.** academic counseling and employment counseling records; and
- h.** financial aid records.

T. Academic support resources: The institution shall provide or otherwise assist students in gaining access to learning resources needed for completion of their programs, including library materials, laboratories, facilities, equipment and materials, and relevant experiences needed to meet program requirements. No institution shall absolve itself from this requirement solely by referring students to the resources of other private or public institutions or facilities, except by written agreement with such institutions or facilities. The institution will certify that

- 1.** students have access to learning resources;
- 2.** that resources are adequate to support the programs;
- 3.** students are adequately informed about learning resources available to them and how to access such resources and services;
- 4.** training is made available for accessing learning resources;
- 5.** resources are delivered within a reasonable period of time;
- 6.** the facilities have satisfactorily met all applicable health and fire inspections; and
- 7.** compliance with regulations pursuant to the American with Disabilities Act (ADA).

U. Admission policy: Each institution shall adopt an admission policy that includes the following standards:

1. No student shall begin a certificate or diploma program who has not received a high school diploma or the equivalent or who has not demonstrated ability to benefit from the program through a process of assessment that meets standards of the U.S. department of education or the department or who is participating in a concurrent enrollment program with a secondary school.

2. Institutions enrolling students who are of compulsory school age or who are concurrently attending an elementary or secondary school shall have in their possession a signature or other written acknowledgement by elementary or secondary officials and by the student's parent or guardian.

3. Institutions using an ability-to-benefit admission option shall provide the department with a clear and detailed statement describing their ability-to-benefit assessment programs (including cut off scores and validity data for any test used) and shall be able to demonstrate that ability-to-benefit assessment is performed in a consistent and valid manner.

4. No student shall be admitted to an associate degree or baccalaureate degree program who has not received a high school diploma or the equivalent.

5. No student shall be admitted to a graduate degree program who has not received a baccalaureate degree from an institution accredited by an agency recognized by the U.S. department of education, or received a baccalaureate degree from a non-accredited institution licensed by the department or by the cognizant state agency in another state, or qualified in an alternative manner approved by the department.

V. 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:

1. 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.

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

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

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

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

W. Ownership and Administration: The institution shall provide the department with information about ownership, owners, and managers. An institution shall notify the department in writing within ten (10) working days whenever the institution changes ownership, whenever there is a change in control of the institution, or whenever changes are made to managers. No institution will be licensed in the state of New Mexico without completion certifications required by the department. Any changes or events that may trigger any certification to be untrue, must be immediately reported to the department, and shall be reported in no less than ten (10) working days.

1. The institution shall provide a list of principal owners and provide a list of managers.

2. The institution shall certify that no owner of the institution has:

a. been convicted of or has pled no contest or guilty to a crime involving abuse of public funds;

b. been convicted of or has pled no contest or guilty to a crime of dishonesty or felony within the last five (5) years;

c. controlled or managed an institution that has ceased operation during the past five (5) years without providing for the completion of programs by its students; and

d. filed bankruptcy associated with the operation of an educational institution during the past five (5) years.

3. The institution shall certify that no manager of the institution has:

a. been convicted of or has pled no contest or guilty to a crime involving abuse of public funds;

b. been convicted of or has pled no contest or guilty to a crime of dishonesty or felony within the last five (5) years;

c. controlled or managed an institution that has ceased operation during the past five (5) years without providing for the completion of programs by its students; and

d. filed bankruptcy associated with the operation of an educational institution during the past five (5) years.

4. The institution shall certify it:

a. has not filed bankruptcy during the past five years;

b. is not under the ownership of any person who has filed bankruptcy associated with the operation of an educational institution during the past five (5) years;

c. is not managed by any person who has filed bankruptcy associated with the operation of an educational institution during the past five (5) years;

d. has not been found to be operating illegally in another state for a least five (5) years.

5.100.7.11 REVIEW COMMITTEE:

A. The purpose of the review committee is to assist the department in assuring that non-accredited institutions maintain high quality programs and operations. The committee will review applications of licensure for non-accredited institutions seeking state authorization. The committee shall also conduct programmatic review and approval for non-accredited institutions. The committee will make a final recommendation to the department for authorization or program approval. The review committee will evaluate the following criteria:

1. adequacy of the administration of the institution;
2. adequacy of the curriculum and program requirements of the institution and of its programs;
3. adequacy of qualifications and performance of the teaching faculty of the institution; and
4. the institution's effectiveness as reflected in student outcomes such as program completion rates, withdrawal rates, and satisfaction of students and employers.

B. The review committee membership shall

1. be composed of an odd number of members appointed by the department and serving at the pleasure of the department;
2. be representatives of education providers and consumers, including owners and operators of career schools and nonregionally accredited colleges and universities. Private post-secondary institutions shall be consulted in selection of their representatives; however, appointment and service shall be at the discretion of the department;
3. have no less than two members representing the public interest. They shall be representative of the general public with particular interest in post-secondary education. Appointment and service shall be at the discretion of the department;
4. have committee members who serve two year staggered terms or until their successors are appointed. A member may be reappointed for successive terms;
5. not have more than one representative from any one institution among the members of the committee; and
6. not allow a representative of an institution that is designated in another state as an institution offering fraudulent or substandard education.

C. Operation and work of the review committee shall be coordinated by staff of the department. The review committee

1. shall organize itself as it deems appropriate, at a minimum designating a chairperson to collaborate with department staff in arranging meetings, other operations, and reports of the committee;
2. shall assist in reviewing applications, upon the request of the department. When assisting staff of the department in reviewing private post-secondary institutions, members of the committee must recuse themselves in actions in which they have a conflict of interest with their own institution or a direct competitor or that would otherwise have the appearance of impropriety. For example, a member representing a private post-secondary institution shall avoid participation in a review of or visit to an institution that is a direct competitor for students, defined as an institution offering a similar program of instruction within the same community;
3. shall convene at minimum twice a year to conduct review;
4. shall report to the department at least once each year regarding the status of private post-secondary education in the state of New Mexico and any recommendations for improving the quality and operation of private post-secondary institutions;
5. shall be reimbursed for travel expenses associated with convening and conducting review; and
6. may form ad hoc work groups composed of any persons it deems appropriate, to help fulfill its responsibilities.

5.100.7.12 COMPLAINT TO THE DEPARTMENT:

A. A student 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 licensure 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 whether the parties can come to a resolution or compromise.

D. In the event that the institution refuses to respond or refuses 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;

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.

5.100.7.13 APPLICABLE FEES

A. The department will assess application, administrative, and licensing fees, 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 licensure.

C. The department shall assess a licensing fee upon determination that the institution has met all satisfactory conditions for licensure.

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.

5.100.7.14 REPORTING:

A. Licensed 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, 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.

C. An institution must comply with reporting requirements in order to be eligible for annual license renewal.

D. Institutions renewing application with the department must submit required reporting for program completion rates, withdrawal rates, and satisfaction of students and employers.

5.100.7.15 SITE VISITS AND RECORDS INSPECTION: The department may conduct a site visit at any time to evaluate institutional compliance with all applicable laws and regulations. The department may request documents or access to files to evaluate compliance. The department may request inspection of the institution's records, which must follow the records management plan set out by the institution as required in Subsection D of 5.100.7.10 NMAC and comply with the retention schedule set by the department. Records that must be maintained and available for inspection are as follows:

A. official student transcripts;

B. records related to development of courses including, but not limited to, outlines and syllabi; and

C. records related to student enrollment, original version of enrollment agreements, student class registration and withdrawals,

D. list of current students;

E. list of dropped or withdrawn students;

F. list of students that have graduated;

G. catalogs of the institution plus any additional documentation that defines student policies. The institution shall maintain an archive of catalog versions for the period of time applicable to enrollment agreements for current students;

H. records related to marketing and recruitment, including but not limited to, samples of advertising including online pages;

I. records related to examination and testing including, but not limited to, grade results;

J. records related to academic programs, including, but not limited to, analyses of academic program completion rates, student transfer rates, or employment rates for graduates of the institution and membership and minutes for academic committees;

K. records related to higher education programs;

L. documentation of accrediting reports and self-study reports submitted to accrediting bodies for institutions accredited or seeking accreditation;

M. records related to faculty and staff qualifications, including, but not limited to, the results of periodic student and peer or supervisor assessment of teaching, original official transcripts of record sent directly to the hiring institution from institutions issuing the faculty member a degree and applicable license or certification demonstrating the educational qualifications of the faculty member, documentation of applicable experience for faculty members with alternative qualifications, and a separate file available for review containing documentation regarding all complaints lodged against the faculty member;

N. records related to student evaluations, discipline, assessments and attendance;

O. student complaint files;

P. evidence of the institution's valid insurance policies and surety bond or alternative surety;

Q. records related to scholarships, loans, grants and other financial aid; and

R. records related to financial stability.

5.100.7.16 PENALTY

A. 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 offering instruction or enrolling new students 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 Section 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 private 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 licensed 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 5.100.7 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.

5.100.7.17 REVOCATION OF A LICENSE:

A. The department may revoke an institution's license to operate or approval to offer a specific degree program(s) at any time, upon finding that

- 1.** any statement made in the institution's application for licensure is untrue;
- 2.** the institution has failed to maintain the faculty, facilities, equipment, or other necessary support for its program(s) of study on the basis of which the license or approval was granted; and
- 3.** the institution has failed to advise the department about significant factors which serve as a basis for licensure, such as:

a. financial difficulties sufficient to threaten program quality;

b. significant staff changes in a short period of time;

c. change of ownership and management;

d. outcomes of audits by other state agencies;

e. loss or lowering of accreditation status;

f. any other factor that could alter basis for licensure;

g. the institution has failed to renew annual license in a timely manner; or

h. the institution has failed to comply with one or more standards of licensure

established by the department or with applicable law.

B. Prior to revoking a license, the department, or its designee, shall give the institution notice of ten work days and shall provide an opportunity for the institution to demonstrate why the license should not be revoked.

C. At its discretion, the department, or its designee, may institute a probationary period of continued licensure for the institution during which time the institution must demonstrate its resolution of deficiencies to the satisfaction of the department. Under no circumstance shall this probationary period exceed one year.

D. If the institution fails to sufficiently demonstrate that its licensure should not be revoked, as provided by Subsection B of 5.100.7.17 NMAC, the department shall commence proceedings pursuant to and in accordance with the Uniform Licensing Act, Sections 61-1-1 through 61-1-34 NMSA 1978.

5.100.7.18 DENIAL OF A LICENSE: An applicant that fails to satisfy the requirements of Section 5.100.7.10 NMAC or fails to adequately address the specific criteria set forth in Section 5.100.7.10 NMAC shall be subject to denial of licensure. If the department contemplates denial of licensure to any applicant, the department shall commence proceedings pursuant to and in accordance with the Uniform Licensing Act, Sections 61-1-1 through 61-1-34 NMSA 1978.

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