

TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 100 PRIVATE INSTITUTIONS OF HIGHER EDUCATION
PART 8 CLOSURE OR SUBSTANTIAL CHANGE TO LOCATION UNDER THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT

5.100.8.1 ISSUING AGENCY: New Mexico Higher Education Department.

5.100.8.2 SCOPE: Provisions of Part 8 of Chapter 100 apply to all post-secondary institutions operating within the state of New Mexico.

5.100.8.3 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 for closures of post-secondary educational institutions operating in New Mexico.

5.100.8.4 DURATION: Permanent

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

5.100.8.6 OBJECTIVES AND GENERAL PRINCIPLES:

A. No post-secondary institution shall cease operation within New Mexico or make a substantial change to location without providing notice to the department and complying with the provisions set out in this rule.

5.100.8.7 DEFINITIONS:

A. “**Custodian of Records**” is an entity with which the institution has arranged for the perpetual care, maintenance and accessibility of all records, transcripts, reports and evaluations of all students receiving credit from the institution during the period of its existence. The entity must be in compliance with the Family Educational Rights and Privacy Act and documentation of such compliance shall be submitted to the department.

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

C. “**Manager**” 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 an institution's New Mexico facility.

D. “**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.

E. “**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.

F. “**Substantial change to location**” means a relocation of the institution's physical site that is beyond the proximity a student is normally required to travel for educational offerings.

5.100.8.8 NOTICE:

A. A post-secondary institution operating with a physical presence in the state of New Mexico shall provide formal written notice of closure to the department immediately upon gaining actual knowledge of the institution's intent to close but in no case less than 90 days prior to closure.

B. A post-secondary institution operating with a physical presence in the state of New Mexico shall provide formal written notice of substantial change to location to the department immediately upon gaining actual knowledge of the institution's intent to change location but in no case less than 90 days prior to moving operations.

C. A post-secondary institution operating with a physical presence in the state of New Mexico has an obligation to report a closure of any other branch, satellite, or main campus associated with the institution immediately upon gaining actual knowledge of the institution's intent to close but in no case less than 90 days prior to closure

D. A post-secondary institution has an obligation to report the closure of any other subsidiary institution or campus associated through the same parent company or organization immediately upon gaining actual knowledge of the institution's intent to close but in no case less than 90 days prior to closure.

5.100.8.9 PLAN FOR CLOSURE OR SUBSTANTIAL CHANGE TO LOCATION:

- A.** A post-secondary institution operating with a physical presence in New Mexico that intends to cease operations or makes a substantial change to location must present a plan to the department.
- B.** Post-secondary institutions that are required to seek approval of a plan by an accrediting body must submit the plan to the department within seven (7) days of receiving approval by the accrediting body.
- C.** Post-secondary institutions that are not required to seek approval of a plan by an accrediting body must submit a plan to the department as soon as practical but in no case less than 90 days prior to closure or substantial change to location.
- D.** The plan must include provision for teach-out agreements, completion of programs by enrolled students, records maintenance, and identification and location of a responsible agent for the school for a period of at least one year following closure as detailed in the sections below.

5.100.8.10 TEACH-OUT AGREEMENTS:

- A.** A post-secondary institution operating with a physical presence in the state of New Mexico that has served notice of closure or substantial change to location to the department shall provide to the department a teach-out agreement.
- B.** A post-secondary institution that is closing or has a substantial change to location shall enter into a teach-out agreement with at least one other private or public institution operating in the state.
- C.** A post-secondary institution that has a substantial change to location may be required to present evidence that the institution has made efforts to enter into a teach-out agreement with an institution within a reasonable proximity.
- D.** Teach-out agreements shall be arranged at no additional cost to the students beyond that originally agreed to by the student.
- E.** Licensed post-secondary institution operating under 5.100.7 NMAC must comply with the teach-out plan provided to the department in its application for licensure unless a substantial change in the teach-out agreement has occurred. If a substantial change in the agreement submitted to the department in the licensure application has occurred, the institution shall seek additional teach-out agreements with at least one institution operating in the state of New Mexico.
- F.** The department may determine that a teach-out agreement is not feasible after consideration of evidence submitted to the department. The department may find that teach-out arrangements are not feasible for students in one or more programs offered by the institution, in which case the institution shall refund all tuition and fees paid by the students in question for the current period of enrollment and shall provide appropriate transcripts and evaluations to assist students in transferring their work to another institution.

5.100.8.11 RECORDS MAINTENANCE:

- A.** A post-secondary institution operating with a physical presence in the state of New Mexico upon submitting intent to close must ensure that records are in compliance with the functional records retention and disposition schedule in Section 1.21.2 NMAC, and any other authorizing agencies laws, regulations and rules. If another authorizing agency of the institution requires a longer period of retention than that of Section 1.21.2 NMAC, the longest retention period shall prevail.
- B.** If a post-secondary institution discontinues its operation, the manager shall file with the appropriate custodian of records, the original or legible true copies of all educational records required by the agency. A written detailed description for how records will be maintained following the closure shall be provided to the department and a copy of all digital files as a backup to any other records provided to the custodian of records. The written document must include, but is not limited to the following:
 - 1.** certification that the post-secondary institution is in compliance with the functional records retention and disposition schedule in Section 1.21.2 NMAC, and any other authorizing agencies laws, regulations and rules;
 - 2.** designation of a custodian of records;
 - 3.** physical address of hard copy files;
 - 4.** physical address of digital files; and
 - 5.** process for obtaining transcripts from the custodian of record.
- C.** The department must be notified on an annual basis of any update related to the custodian of records or upon any change to the custodian of record.
- D.** The department must be provided a copy of any contractual arrangements made for the perpetual care, maintenance and accessibility of all records.

D. In the event that the post-secondary institution does not comply with the records maintenance provisions cited above, the department may seek a court order to protect and if necessary take possession of the records. The institution's surety bond may be drawn on to cover costs associated with the department's efforts in securing records.

5.100.8.12 FINAL EXECUTION REPORT: Before any post-secondary institution terminates its services or sells, transfers or disposes of substantially all of its assets, it shall submit to the department a summary of all actions taken pursuant to the requirements set forth in all applicable Sections of 5.100.8.9 NMAC. The post-secondary institution must also submit certification that it has met all rules of the department pertaining to the termination of operations by post-secondary educational institutions.

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