

This is an amendment to 5.100.6 NMAC, Sections 3, 6, 7, 16 and 19 effective 12/11/2018.

**5.100.6.3** **STATUTORY AUTHORITY:** Section 9-25-1 et seq. NMSA 1978, Section 21-1-26 NMSA 1978 and Section 21-23-1 et seq. NMSA 1978. 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. [5.100.6.3 NMAC - N, 12/26/2017; A, 12/11/2018]

**5.100.6.6** **[OBJECTIVES AND GENERAL PRINCIPLES] OBJECTIVE:**

**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.

**(1)** Engaging in one or more of the following activities constitutes a physical presence in New Mexico:

- (a) ongoing occupation of a physical location in the state;
- (b) maintenance of an administrative office to support the provision of higher education instruction;
- (c) establishing a physical location for instruction which is synchronous (instruction in which a group of students engage in learning at the same time) or asynchronous (instruction that does not occur in the same place or at the same time);
- (d) requiring students to physically meet in a location for instructional purposes more than twice per full-term (quarter or semester) course for a total of more than six hours;
- (e) establishing an administrative office;
- (f) providing student support services to enrolled students, from a physical site operated by or on behalf of the institution in the state;
- (g) obtaining office space for instructional or non-instructional staff;
- (h) maintaining a mailing address or phone exchange in New Mexico;
- (i) holding proctored exams on behalf of the institution in New Mexico more than twice per full-term (quarter or semester); or
- (j) facilitating student participation in off-campus field trips in New Mexico for academic purposes in excess of 20 classroom hours in one six-month period or in which the institution establishes a residential or instructional facility in New Mexico.

**(2)** The following is a non-exhaustive list of activities, which if conducted by the institution, will not trigger a physical presence in New Mexico:

- (a) advertising to students whether through print, billboard, direct mail, internet, radio, television or other medium;
- (b) maintaining a server, router or similar electronic service device housed in a facility that otherwise would not constitute physical presence (the presence of a server or similar pass-through switching device does not by itself constitute the offering of a course or program in the state);
- (c) having faculty, adjunct faculty, mentors, tutors, recruiters or other academic personnel residing in New Mexico and working from their homes or another private, non-institutional site, provided that such staff is not engaged in activities that would otherwise constitute physical presence;
- (d) using recruiters in New Mexico if the recruiter has registered as an agent pursuant to Section 21-24-1 through Section 21-21-9 NMSA 1978;
- (e) independent off-campus study or research by students including, independent fieldwork for a thesis or dissertation, by individual students not engaged in a supervised field experience under 5.99.1 NMAC and with no supervision or control by the student’s institution; or
- (f) facilitating student participation in off-campus field trips in New Mexico for academic purposes, so long as the field trip does not exceed more than 20 classroom hours in one six-month period, or the establishment of a residential or instructional facility by the institution in New Mexico.

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

C. A private college or university that is regionally accredited or seeking regional accreditation with a physical presence in the state, deemed by the department to satisfactorily 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]~~ department shall be considered to hold state authorization.

D. An institution shall provide the department with immediate written notification of any changes or events that may trigger the whole or part of the application or the certifications to be untrue. In no case shall a change be made without an acknowledgement from the department. An institution shall provide the department with notification in no less than 90 days prior to the proposed changes going in effect.

E. The department is statutorily charged with evaluating each individual institution in order to determine the institution's compliance with the standards outlined in this regulation. This evaluation may take the form of a physical visit to the institution or administrative office or may be a desk audit if a physical visit is not feasible. It is the responsibility of the institution to maintain full compliance with the Post-Secondary Educational Institution Act, Sections 21-23-1 through 21-23-15 NMSA 1978 and all applicable rules at all times. The following three types of site visits may be conducted by the department as means to determine the institution's compliance with the standards outlined in the regulation:

(1) Regular site visit: The department shall determine an appropriate schedule on which to re-evaluate each individual registered institution and the specific programs offered by that institution in order to determine continued compliance with this rule. Department staff will give prior notification of at least two weeks of the date and time of the visit. A short exit interview will be held at the conclusion of the visit. This exit interview may include a discussion of findings and a final written site visit report will be sent to the institution for review and comment. The outcome of the regular site visit may be continued registration.

(2) Required special site visit: The department may request a required special site visit as a requirement for initial registration, or for registration renewal. At the conclusion of a required special site visit, the exit interview may include a discussion of any findings.

(3) Triggered site visit: any occurrence listed below trigger a site visit to the institution in order to evaluate compliance with standard within this regulation. The exit interview may include a discussion of any findings. The outcome of a triggered site visit may include a recommendation for a penalty, as outlined in 5.100.6.21 NMAC:

(a) an institution involuntarily loses its accreditation status;  
(b) the department is notified of an institution's non-compliance with federal financial aid program regulations or the outcome of an audit from another state agency;  
(c) the institution fails to renew its surety bond, or appropriate alternative in a timely manner;  
(d) an institution is experiencing financial difficulties sufficient to threaten program quality;  
(e) an institution has significant staff turnover;  
(f) an institution fails to immediately notify the department of a change in ownership/management; or  
(g) the department becomes aware of any other factor that could alter basis for registration.

F. ~~[Post-secondary educational institutions]~~ Regionally accredited private colleges or universities 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 state authorization or exemption from the department; the department shall initiate appropriate legal action if ~~[post-secondary educational institutions fail]~~ an institution fails to comply; whoever violates any provision of Sections 21-23-1 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.

G. 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.

H. Registered institutions concurrently offering distance education pursuant to 5.99.1 NMAC as a SARA institution, through distance education authorization, or through any other method detailed in Section 5.99.1.10 NMAC:

(1) shall be subject to complaint procedures detailed in 5.99.1 NMAC, as related only to students enrolled exclusively as distance education students; and

(2) shall be subject to 5.99.2 NMAC, if the institution seeks to close, cease program offerings that contain enrolled students, or substantially relocate as defined in 5.99.2 NMAC, as related only to students enrolled exclusively as distance education students.  
[5.100.6.6 NMAC - N, 12/26/2017; A, 12/11/2018]

#### **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]~~ Post-Secondary Educational Institution Act.

**E. “Institution”** means a regionally accredited college or university.

~~[E]~~ **F. “License”, “Licensed”, or “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]~~ to offer a formal educational curriculum within New Mexico~~[-]~~.

~~[F]~~ **G. “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 private post-secondary educational institution.

~~[G]~~ **H. “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.

~~[H]~~ **I. “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, or engaging in one or more of the activities detailed in Paragraph 1 of Subsection A of 5.100.6.6 NMAC.

~~[I]~~ **J. “Post-secondary educational institution” or “post-secondary 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.

~~[J]~~ **K. “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.

~~[K]~~ **L. “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]~~ and offer a formal educational curriculum within New Mexico.

~~[L]~~ **M. “State Authorization”** means a private post-secondary educational institution has been deemed by the department to satisfactorily meet ~~[satisfactory]~~ criteria, as determined by the department, for registration or licensure under the ~~[post-secondary educational institution act]~~ 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. State authorization ~~[is not an endorsement of the institution by the department]~~ does not serve as an endorsement of a particular institution, but confirms that an institution has met the minimum criteria set by the department to operate in New Mexico.

[5.100.6.7 NMAC - N, 12/26/2017; A, 12/11/2018]

#### **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]~~ is in compliance with the functional records retention and disposition schedule in 1.21.2 NMAC, the records retention schedule set by the department, regulations of any other authorizing agency, or laws, regulations, and rules of any other authorizing

jurisdiction or territory, whichever is longest in time. If another authorizing agency of the institution requires a longer period of retention than that of 1.21.2 NMAC, the longest retention period shall prevail. 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 a 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.

[5.100.6.16 NMAC - N, 12/26/2017; A, 12/11/2018]

**5.100.6.19 APPLICABLE FEES:**

**A.** The department shall assess application and administrative fees for registration, pursuant to Section 21-23-6.3 NMSA 1978, and publish a fee schedule.

**B.** The department shall assess an administrative fee for providing the services associated with application review and determination of eligibility for registration.

**C.** The department shall assess an application fee upon determination that the institution has satisfactorily met all ~~[satisfactory]~~ conditions for registration.

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

[5.100.6.19 NMAC - N, 12/26/2017; A, 12/11/2018]