

**This is an amendment to 5.100.5 NMAC Section 6 effective 10/24/2023.**

**5.100.5.6 OBJECTIVE:**

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

- (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.
- (g) operating on a military base in New Mexico and offering educational programs to active military personnel, military reserve personnel, military veterans, and civilians employed full-time on the military base and the spouses and dependents of active military personnel, military reserve personnel, military veterans, and civilians employed full-time on the military base.

(3) The Post-Secondary Educational Institution Act does not apply to or affect:

- (a) a post-secondary educational institution that is established by name as an educational institution by the state through a charter, constitutional provision or other action and is supported in whole or in part by state or local taxation;

(b) an occupational, trade or professional school operating pursuant to any New Mexico occupational licensing law;

(c) a course of instruction provided by an employer to its own employees for training purposes;

(d) institutions that exclusively offer education that is solely avocational or recreational in nature;

(e) a course of instruction or study sponsored by a recognized fraternal, trade, business or professional organization or labor union for the instruction of its members;

(f) chartered, nonprofit religious non-degree and degree granting institutions whose sole purpose is to train students in religious disciplines to prepare them to assume a vocational objective relating primarily to religion;

(g) institutions that exclusively offer instruction at any level from preschool through the twelfth grade;

(h) an institution funded in full or in part by an Indian tribe or pueblo in the state of New Mexico; or

(i) an organization that provides 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 a program of training in employment.

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

**C.** Post-secondary educational institutions that do not have state authorization or have not been granted express exemption by the department, and meet the definition of physical presence in New Mexico, shall be notified by certified mail that they shall cease immediately to offer instruction until they obtain a state authorization or exemption from the department; the department shall initiate appropriate legal action if post-secondary educational institutions fail to comply; whoever violates any provision of Sections 21-23-1 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.

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

**E.** Non-accredited private post-secondary educational institutions that offer a degree program shall not be granted exemption unless they meet the criteria for exemption pursuant to Section 21-23-4 NMSA 1978. [5.100.5.6 NMAC - N, 12/26/2017; A, 12/11/2018; A, 8/10/2021; A, 10/24/2023]