

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

**5.100.6.1 ISSUING AGENCY:** New Mexico Higher Education Department.  
[5.100.6.1 NMAC - N, 12/26/2017]

**5.100.6.2 SCOPE:** Provisions of 5.100.6 NMAC apply to all private post-secondary institutions that meet the standards set by the department to obtain state authorization under the registration status of the post-secondary educational institution act within the state of New Mexico.  
[5.100.6.2 NMAC - N, 12/26/2017]

**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]

**5.100.6.4 DURATION:** Permanent.  
[5.100.6.4 NMAC - N, 12/26/2017]

**5.100.6.5 EFFECTIVE DATE:** December 26, 2017 unless a later date is cited at the end of a section.  
[5.100.6.5 NMAC - N, 12/26/2017]

**5.100.6.6 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 criteria, as determined by the department, will be registered with the state. A college or university that has successfully registered with the 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.** 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 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 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.** “**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.** “**Department**” means the New Mexico higher education department or its designated employee.

**E.** “**Enrollment agreement**” means an agreement, instrument or note executed before a person begins coursework that creates a binding obligation between the person and the post-secondary educational institution.

**F.** “**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.

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

**H.** “**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 to offer a formal educational curriculum within New Mexico.

**I.** “**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.

**J.** “**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.

**K.** “**Physical presence**” means the ongoing occupation of a physical location in the state, 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.

**L.** “**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 from a physical site in New Mexico, through distance education, correspondence or in person.

**M.** “**Private post-secondary educational institution**” means a non-publicly funded post-secondary educational institution that offers post-secondary education for a fee to members of the general public.

**N.** “**Prospective student**” means a person who demonstrates interest in signing an enrollment agreement with a post-secondary educational institution.

**O. “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.

**P. “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 and offer a formal educational curriculum within New Mexico.

**Q. “State authorization”** means a private post-secondary educational institution has been deemed by the department to satisfactorily meet criteria, as determined by the department, for registration or licensure under the Post-Secondary Educational Institution Act. All degree-granting institutions seeking state authorization through application for registration or licensure shall be accredited or be seeking appropriate external accreditation. State authorization 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; A, 12/29/2020]

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

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

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

(1) it has the same ownership, financial management or control as that of the primary New Mexico campus;

(2) it operates under the regional accreditation of the primary New Mexico campus;

(3) it is not considered a separate institution for the purpose of accreditation;

(4) the primary New Mexico campus has previously operated as a state authorized and accredited institution in New Mexico; and

(5) it is a secondary physical presence by the same institution in New Mexico.

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

**D.** A regionally accredited college or university registering with the department shall adopt the student complaint procedure, as defined by the department, for the resolution of student complaints. State authorization through registration granted by the department is valid for the same period as its grant of regional accreditation from its accrediting agency, not to exceed 10 years.

[5.100.6.8 NMAC - N, 12/26/2017]

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

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

**B.** The application criteria, all of which are defined in Sections 10 through 17 of 5.100.6 NMAC, shall include the following:

(1) curriculum requirements;

(2) enrollment agreement;

(3) proof of financial stability;

(4) materials and information;

(5) student complaint procedure;

(6) cooperation;

(7) records maintenance and retention policy;

(8) surety bond.

[5.100.6.9 NMAC - N, 12/26/2017]

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

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

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

**C.** Institutions proposing to change or add programs must formally notify the department. If the change or addition of the program requires the accreditor's approval, the institution must provide written proof of the approval. If the change or addition does not require approval by the accreditor, the institution shall provide proof that the accreditor was notified of the change or addition. Upon receipt of the approval or proof of notification to the accreditor, the department will provide a formal acknowledgment of the change or added program. The institution may begin to advertise the program based on the department's letter of acknowledgement.

**D.** Accreditation for new degree-granting institutions: New degree-granting institutions who have applied for regional accreditation must submit a written accreditation plan. If the institution fails to comply with the plan as provided to the department, the department may require the institution to seek state authorization under licensure as a non-accredited institution. The written accreditation plan shall include at minimum:

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

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

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

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

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

(6) any additional information which the department may request.

[5.100.6.10 NMAC - N, 12/26/2017]

**5.100.6.11 ENROLLMENT AGREEMENT:** Before a student begins coursework 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. A copy of the blank agreement or contract shall be submitted to the department. 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 in which the student is enrolling and the applicable catalog date or version reference;

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

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

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

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

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

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

[5.100.6.11 NMAC - N, 12/26/2017]

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

to, obligations to enrolled students. In determining financial stability of the institution the department shall review the following requirements:

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

**B.** Financial statement analysis: The department shall consider an institution's financial history when reviewing an application for registration. In the case where an institution submits an audit report and management letter provided by a certified public accountant, the department shall normally accept the report as accurate and rely on the auditor's professional responsibility to evaluate and to make known their professional opinion.

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

(1) bank statements, investor agreements, any other financial donations or gifts used to develop the institution;

(2) the institution's projected income statement certified as accurate by the institution. The income statement must include details of projected salaries and benefits of employees, rent, utilities, insurance, any financial obligations made by the institution, and any other operating costs; and

(3) any additional information which the department may request.

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

(1) An institution with seven hundred fifty thousand dollars (\$750,000) or more in gross annual tuition revenue and all federal Title IV financial aid institutions shall submit, on a schedule set by the department, an audit report and management letter prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act, Sections 61-28B-1 et seq. NMSA 1978. If the institution has been required to obtain a financial responsibility composite score as computed using the latest version of the United States department of education index score formula it shall provide the score to the department. The financial responsibility composite score must be 1.5 or above as computed using the latest version of the United States department of education index score formula. The composite score must be calculated by the United States department of education, a recognized accreditor, or a certified public accountant contracted at the expense of the institution.

(2) An institution with gross annual tuition revenue of two hundred fifty thousand dollars (\$250,000) or more but less than seven hundred forty nine thousand nine hundred ninety-nine dollars (\$749,999) shall submit, on a schedule set by the department, either an audit report and management letter prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act, Sections 61-28B-1 et seq. NMSA 1978 or a review of financial statements prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act. If the institution has been required to obtain a financial responsibility composite score as computed using the latest version of the United States department of education index score formula it shall provide the score to the department. The financial responsibility composite score must be 1.5 or above as computed using the latest version of the United States department of education index score formula. The composite score must be calculated by the United States department of education, a recognized accreditor, or a certified public accountant contracted at the expense of the institution.

(3) An institution with gross annual tuition revenue of less than two hundred forty nine thousand nine hundred ninety-nine dollars (\$249,999) shall submit on a schedule set by the department either an audit report and management letter prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act, Sections 61-28B-1 et seq. NMSA 1978, 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. If the institution has been required to obtain a financial responsibility composite score as computed using the latest version of the United States department of education index score formula it shall provide the score to the department. The financial responsibility composite score must be 1.5 or above as computed using the latest version of the United

States department of education index score formula. The composite score must be calculated by the United States department of education, a recognized accreditor, or a certified public accountant contracted at the expense of the institution.

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

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

[5.100.6.12 NMAC - N, 12/26/2017]

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

- A.** Representation of accreditation and state authorization status:
- (1) 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.
  - (2) An institution not accredited by a U.S. department of education recognized accreditor shall clearly state that the institution is not accredited.
  - (3) An institution registered by the department may not use terms such as "accredited," "endorsed," or "recommended" in reference to its approval by the department.

**B.** 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 and maintain records of the institution's effort for at least five years after the students enroll at the institution. An institution shall publish and make available to all students a catalog or other materials that clearly describe:

- (1) admission policies and procedures that provide criteria and methods used to assess and admit or deny admission;
- (2) admission methods and criteria used to assess student ability to complete program requirement;
- (3) programs offered, the program completion requirements of each program offered, and descriptions of all courses offered;
- (4) requirements and costs for those occupations that require professional or trade licensure and for which the institution is offering preparation;
- (5) tuition, fees, books and supplies, including cost for rental or purchase of equipment or materials required of all students;
- (6) room, board and transportation expenses incurred by a student;
- (7) reasonable costs associated with a program of study abroad approved for credit by a student's home institution, if applicable;
- (8) expenses related to a student's disability, including special services, personal assistance, transportation, equipment and supplies;
- (9) refund policies, consistent with the requirements in Subsection C of 5.100.7.10 NMAC;
- (10) types of financial aid available to students and the procedure for applying for such aid;
- (11) the institution's policy regarding program or course cancellations;

- (12) rules and regulations pertaining to academic progress;
- (13) rules and regulations pertaining to student conduct;
- (14) the procedure to be followed in the instance that a student decides to withdraw from the institution prior to completing a program;
- (15) 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
- (16) the institution's policy regarding release of transcripts.

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

- (1) Advertisements and promotional literature shall not contain promises of job placement or employment, either explicitly or implicitly, but may refer to an institution's services to assist students in obtaining employment.
- (2) Advertisements shall clearly indicate by their content and location in media that the institution is offering education or training and may not either explicitly or implicitly suggest that the institution is offering employment.
- (3) An institution advertising salary ranges or averages for its graduates must have on file and available to inspection by students, the department, or their representatives current and accurate data that includes New Mexico employers and that validates such claims.
- (4) An institution shall not advertise the transferability of its courses or programs to another institution unless it has signed transfer or articulation agreements with that institution.
- (5) An institution shall not include in its advertising or promotional materials any photograph or other illustration of facilities unless those facilities serve predominantly as sites of instruction or related activities provided by the institution, either in New Mexico or in other states. Photographs or other illustrations must accurately depict the size and condition of any facilities or equipment illustrated.
- (6) No person shall for a fee solicit enrollment at an institution who is not employed by and under supervision of the institution. The institution shall be responsible for the representations of its employees.
- (7) Prospective students shall not be solicited by any representative of an institution on the sites of any government agency such as motor vehicle registration offices, unemployment offices, or public assistance offices. However, leaflets or other promotional material may be made available at such sites.
- (8) Prospective students shall not be solicited by any representative of an institution on the site of any public school, except at the invitation of school personnel. No institution shall offer or provide financial inducement to any public school in return for permission to solicit students.
- (9) No institution shall solicit the enrollment of any student who is currently attending another institution in New Mexico by using any inducement of greater financial assistance in meeting the costs of education.
- (10) On all materials, an institution shall use the full name in which it is registered and list any other names in which the institution holds other government registrations. Permutations of its name, e.g., initials, or shortened name or nicknames, cannot be employed without prior written permission of the department.
- (11) On all materials, the name of an institution shall not be misleading.

[5.100.6.13 NMAC - N, 12/26/2017; A, 12/29/2020]

**5.100.6.14 STUDENT COMPLAINT PROCEDURE:** An institution shall provide proof of an adopted complaint procedure that complies with the minimum requirements set by the department. Institutions shall retain records that make available the student complaint received and record of the institution's processing the complaint (that comports with the institution's policies and procedures for handling grievances or complaints) as required by law. The institution shall have and make available to all students, the adopted complaint procedure that describes, in detail, how students or other parties may register a complaint or grievance, how the institution will investigate the complaint, and how the institution will attempt to resolve the complaint. Such policies shall at a minimum include the following components:

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



- B.** a time frame within which the institution will investigate the complaint and respond to the complainant;
  - C.** assurance of the involvement of a person who will serve as an impartial representative of the institution but not be directly involved in the area of the complaint;
  - D.** assurance that no adverse action will be taken against the complainant for registering the complaint; and
  - E.** identification of the department as the agency to be contacted in cases where a complaint cannot be resolved and include the mailing address, website and phone number for the department.
- [5.100.6.14 NMAC - N, 12/26/2017; A, 2/11/2025]

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

- A.** a copy of the notification of good standing and ability to do business in New Mexico issued by the New Mexico secretary of state's office;
- B.** a copy of the New Mexico taxation and revenue department registration;
- C.** as applicable, a copy of the national council of state authorization reciprocity agreements (NC-SARA) welcome letter;
- D.** as applicable, a list and copy of authorizations granted by other jurisdictions; and
- E.** as applicable, a list and copy of authorizations granted by other New Mexico boards, commission or agencies.

[5.100.6.15 NMAC - N, 12/26/2017]

**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 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.

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

**C.** Each institution shall report the percentage of all student transcripts since inception of the institution that are not digitalized at the time of application. If there are non-digitalized transcripts, the institution shall submit a plan to the department which describes how the institution will digitalize all student transcripts within a twelve-month period.

**D.** Each institution shall provide information regarding the custodian of records and the process for obtaining transcript records through the custodian at the time of application.

**E.** If the department determines the plan for processing transcripts is not satisfactory, the institution shall:

- (1) hire a professional digital credential firm to manage its student transcripts; or
- (2) submit all of the student transcripts within a twelve-month period to the department in a specified format and agree the department shall become custodian of record upon receipt of the transcripts.

**F.** If the department becomes the custodian of record for an institution, it will be at no cost to the institution.

**G.** If the department becomes the custodian of record for an institution that is in operation, the institution shall periodically submit updated transcripts to the department in a specified format. The submission schedule shall be based on end dates of programs offered by the institution.

**H.** The department may contract with a professional digital credential firm to service the transcripts.

[5.100.6.16 NMAC - N, 12/26/2017; A, 12/11/2018; A, 10/24/2023]

**5.100.6.17 SURETY BOND:**

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

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

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

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

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

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

[5.100.6.17 NMAC - N, 12/26/2017]

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

**A.** Upon receipt of a student complaint, the department shall determine whether the complaint meets initial criteria to permit use of the department's complaint procedure. The following initial complaint criteria must be satisfied:

(1) A student must file a complaint with the department within three years of the student's last date of enrollment.

(2) The complaint must be made to the department in writing utilizing the designated complaint form published by the department. The student may include supporting documentation or evidence related to the complaint. The department may request additional documentation from the student, as needed, to conduct an initial assessment.

(3) The complaint must detail and provide evidence that the student has exhausted all complaint procedures at the institution.

(4) The complaint must contain a question of fact or question regarding potential violation of or deviation from policy, regulation, or law.

**B.** If the department determines the complaint meets the initial complaint criteria, it shall serve as an intermediary in attempting to facilitate a resolution or to obtain information from the institution to eliminate questions of fact or possible violations or deviations from policy, regulation or law raised by the complaint. Satisfaction of initial complaint criteria, in no way means the department has assigned greater weight to the student's allegations. If the department finds that the subject matter of the complaint falls within the investigatory purview of another entity, it may forward the complaint and cease further review (for example the office for civil rights).

(1) Acting as an intermediary, the department shall request a response from the institution addressing the student's complaint. The complaint and any documentation provided by the student shall be sent to the institution with a request for a written response. The institution shall have 10 days to forward its response to the department. The institution may request additional response time, if inquiry into the complaint requires greater than 10 days. The institution may provide any supporting documentation or evidence to address questions or concerns raised by the complaint with the response.

(2) After considering the institution's response and any documentation or evidence supplied by the institution, the department may conduct further inquiry of the parties or may continue to serve as an intermediary for possible compromise between the parties. The department may seek additional clarifying information or supporting documentation from either party and may request additional response from either party.

(3) If the institution accepts the desired outcome proposed by the student in the complaint, the department shall inform the student. If the institution proposes an alternate desired outcome, the department shall convey such information to the student and the student shall indicate acceptance or denial of the alternate proposed outcome, or create a different proposed outcome, to allow for compromise. If at any point, the student and

the institution reach an agreed upon outcome, the department may help facilitate fulfillment of the outcome, as necessary.

(4) If the parties are unable to reach a mutually agreeable outcome, the department may, but is not obligated to, convene a meeting between the parties. Such meetings, if held, shall be informal and for the purpose of clarifying the facts surrounding the complaint and to facilitate the parties reaching a resolution or compromise, if possible. If a meeting is convened, the department shall give written notice to the institution and to the student, regarding the time, date, and place of the meeting.

C. The department may help facilitate a compromised resolution between the parties. However, the department shall not impose an outcome and shall not act as an adjudicatory entity. If the department has received evidence to support potential violation of or a deviation from policy, regulation, or law through the department's inquiry, the department may refer the complaint to either law enforcement, the United States department of education, the institution's accreditor, or any other applicable oversight entities for further investigation, as applicable to the type of potential violation or deviation. If the department determines, at any time, that questions raised by the complaint are alleviated or the complaint relates to grades or student conduct violations, it shall cease further inquiry into the complaint and inform the student that the complaint will be closed with no further action by the department.

[5.100.6.18 NMAC - N, 12/26/2017; A, 2/11/2025]

#### **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 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]

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

A. Registered colleges or universities shall annually submit a standard reporting form on a deadline set by the department and make available to the prospective student.

B. The department shall promulgate a standard form for annual reporting including but not limited to:

- (1) curriculum and enrollment information;
- (2) financial information;
- (3) completion rates for both full-time and part-time students;
- (4) withdrawal rates of students;
- (5) satisfaction of students and employers;
- (6) median combined loan debt for federal loans, institutional loans and private loans certified by the institution, for all students who completed the most recently completed award year;
- (7) placement rates;
- (8) median earnings at ten years after entering the institution of former students of the institution who received federal financial aid, if available;
- (9) all publication material requested by the department; and
- (10) certification of compliance with current New Mexico Administrative Code or statutes applicable to post-secondary educational institutions.

C. An institution renewing application with the department must submit required reporting and maintain records of the institution's efforts to provide the information of this section to prospective student for at least five years after the student enrolls at the institution.

[5.100.6.20 NMAC - N, 12/26/2017; A, 12/29/2020]

#### **5.100.6.21 PENALTY:**

A. A post-secondary institution that does not have state authorization or have not been granted express exemption by the department, and meets the definition of physical presence in New Mexico, shall be notified by certified mail that they shall cease immediately to offer such until they obtain a state authorization or exemption from the department; the department shall initiate appropriate legal action if institutions fail to comply;

whoever violates any provision of Sections 21-23-1 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.

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

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

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

[5.100.6.21 NMAC - N, 12/26/2017]

#### **5.100.6.22 REVOCATION OF REGISTRATION:**

**A.** The department may revoke an institution's registration 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 registration 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 registration or approval was granted; and
- (3) the institution has failed to advise the department about significant factors which serve as a basis for registration, 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 registration;
- (g) the institution has failed to renew registration in a timely manner; or
- (h) the institution has failed to comply with one or more standards of registration

established by the department or with applicable law.

**B.** Prior to revoking registration, 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 registration should not be revoked.

**C.** At its discretion, the department, or its designee, may institute a probationary period of continued registration for the institution during which time the institution must demonstrate 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 registration should not be revoked, as provided by Subsection B of 5.100.6.22 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.

[5.100.7.17 NMAC - N, 12/26/2017]

**5.100.6.23 DENIAL OF REGISTRATION:** An applicant that fails to satisfactorily meet the requirements in Sections 10 through 17 of 5.100.6 NMAC or fails to adequately address the specific criteria set forth in Sections 10 through 17 of 5.100.6 NMAC shall be subject to denial of registration. If the department contemplates denial of registration 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.

[5.100.7.18 NMAC - N, 12/26/2017]

**History of 5.100.6 NMAC - [RESERVED]**