

TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 5 POST-SECONDARY EDUCATIONAL PROGRAMS
PART 5 CLOSURE AND STUDENT COMPLAINT PROCEDURES FOR PUBLIC
INSTITUTIONS

5.5.5.1 ISSUING AGENCY: State of New Mexico Higher Education Department
[5.5.5.1 NMAC - Rp, 5.5.5.1 NMAC, 12/11/2018]

5.5.5.2 SCOPE: Provisions of 5.5.5 NMAC apply to all public higher education institutions operating within and receiving financial support from the state of New Mexico.
[5.5.5.2 NMAC - Rp, 5.5.5.2 NMAC, 12/11/2018]

5.5.5.3 STATUTORY AUTHORITY: Section 9-25-8 NMSA 1978, Section 21-1-26 NMSA 1978, Section 21-2-5 NMSA 1978, and Section 21-1B-5.1 NMSA 1978.
[5.5.5.3 NMAC - Rp, 5.5.5.3 NMAC, 12/11/2018]

5.5.5.4 DURATION: Permanent
[5.5.5.4 NMAC - Rp, 5.5.5.4 NMAC, 12/11/2018]

5.5.5.5 EFFECTIVE DATE: December 11, 2018, unless a later date is cited at the end of a section.
[5.5.5.5 NMAC - Rp, 5.5.5.5 NMAC, 12/11/2018]

5.5.5.6 OBJECTIVE:

A. The purpose of 5.5.5 NMAC is to create a process for administration of student complaint resolution for public post-secondary institutions and to establish procedures for student program completion and student record maintenance and retention in the event an institution closes, ceases program offerings that contain enrolled students, or substantially relocates.

B. No public post-secondary institution located in New Mexico operating within and receiving financial support from the state shall close, cease program offerings that contain enrolled students, or substantially relocate without proper notice and complying with the provisions set out in 5.5.5 NMAC. A public post-secondary institution that closes shall provide for the perpetual care and maintenance of student records and ensure students have access to transcripts in perpetuity.

C. Pursuant to Federal regulation Section 600.9 of 34 C.F.R. (as amended in 2010), for a public post-secondary institution (established by name as an educational institution by a state through a charter, statute, constitutional provision, or other action) to be eligible for state authorization, the institution must be legally authorized by a state that has a process to review and appropriately act on complaints concerning the institution including enforcing applicable state laws.

D. 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.

[5.5.5.6 NMAC - Rp, 5.5.5.6 NMAC, 12/11/2018]

5.5.5.7 DEFINITIONS:

A **“Accrediting body”** means an accreditor or accrediting agency that has issued an accreditation status to the institution.

B. **“Custodian of records”** means an entity with which the institution has arranged for the perpetual care, maintenance and accessibility of all records and transcripts for 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 (FERPA) and be capable of servicing student record requests. Documentation evidencing such compliance shall be submitted to the department

C. **“Department”** means the New Mexico higher education department.

D. “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.

E. “Post-Secondary Institution” or “Institution” means a public post-secondary higher education institution operating within and receiving financial support from the state of New Mexico.

F. “Program” means any certificate or degree program or for purposes of closure, a college, school or department within an institution.

G. “Substantially relocating” or “substantially relocates” or “substantial relocation” means a relocation of the institution’s physical site that is beyond the proximity a student is normally required to travel for educational offerings.

[5.5.5.7 NMAC - Rp, 5.5.5.7 NMAC, 12/11/2018]

5.5.5.8 NOTICE:

A. An institution shall provide formal written notice of closure to the department, enrolled students, and the legislature immediately upon gaining actual knowledge of the institution’s intent to close, but no less than 90 days prior to closure.

B. An institution shall provide formal written notice of intent to substantially relocate to the department, enrolled students, and the legislature immediately upon gaining actual knowledge of the institution’s intent to substantially relocate, but no less than 90 days prior to moving operations.

C. An institution that seeks to close any other campuses (branch, satellite, or main) associated with the institution’s accreditation shall provide formal written notice to the department, enrolled students and the legislature immediately upon gaining actual knowledge of the institution’s intent to close, but no less than 90 days prior to closure.

D. An institution shall provide formal written notice of intent to cease program offerings that contain enrolled students, to the enrolled students and the department immediately upon gaining actual knowledge of the institution’s intent to cease the program offerings, but no less than 90 days prior to ceasing offerings. If an institution is unable to comply with the 90 day notice period to cease program offerings that contain enrolled students, the institution must notify the department. The department may grant approval for a deviation from the required 90 day notice period if the institution presents evidence and articulable facts and circumstances that demonstrate the institution’s inability to comply with the 90 day notice period.

[5.5.5.8 NMAC - Rp, 5.5.5.8 NMAC, 12/11/2018]

5.5.5.9 PLAN:

A. An institution that intends to close, cease program offerings that contain enrolled students, or substantially relocate shall present a plan to the department.

B. An institution that is required to seek approval from an accrediting body of a plan to close, cease program offerings that contain enrolled students, or substantially relocate, must submit a copy of the approved plan to the department within seven days of receiving approval by the accrediting body.

C. An institution that is not required to seek approval of a plan by an accrediting body must submit a plan to the department as soon as practical, but no less than 90 days prior to closure, ceasing a program offering that contains enrolled students, or making substantial change to location.

D. The plan must include provisions for teach-out agreements, completion of programs by enrolled students, perpetual care and maintenance of student records, and identification and location of a responsible agent for the institution for a period of at least one year following closure.

[5.5.5.9 NMAC - N, 12/11/2018]

5.5.5.10 TEACH-OUT AGREEMENT OR PLAN:

A. An institution that seeks to close, cease program offerings that contain enrolled students, or substantially relocate, shall enter into a teach-out agreement with another institution offering similar programs for provision of the remaining program requirements of enrolled students or provide a teach-out plan that allows students to complete their program of study at the closing institution.

B. An institution that has served notice to close, cease program offerings that contain enrolled students, or substantially relocate, shall provide to the department a copy of the approved teach-out agreement or plan. If an institution enters into a teach-out plan that allows students to complete their program of study at the closing institution, the timeframe to complete the plan must be accepted by the department.

C. Enrolled students impacted by teach-out agreements or plans must be notified of the agreement or plan when it is finalized. Teach-out agreements or plans shall be made available and arranged at no additional cost to the student beyond that originally agreed to by the student.

D. The department may determine that a teach-out agreement or plan 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.

E. An institution that seeks to relocate may be exempt from entering into a teach-out agreement or plan if the institution can demonstrate to the department that students will not be substantially burdened by the change in location. The institution will be required to complete a form published by the department demonstrating possible impact to students.

[5.5.5.10 NMAC - N, 12/11/2018]

5.5.5.11 RECORDS MAINTENANCE:

A. Prior to closure, an institution must ensure that records are 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. If an institution discontinues its operation, the manager shall file with the designated custodian of records, the original or legible true copies of all educational records required to be maintained pursuant to law, the United States department of education, the accrediting body of the institution, and at a minimum, the student's enrollment agreement, student transcript, record indicating program completion (either certificate, diploma, degree, or other like proof of completion) and student financial aid records. A written detailed description for how records will be maintained following the closure shall be provided to the department in a plan for the perpetual care and maintenance of records. The written plan 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 1.21.2 NMAC, the records retention schedule set by the department, records retention requirements of any other authorizing agency, or laws, regulations, and rules of any other authorizing jurisdiction or territory related to records retention, whichever is longest in time;

(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 or other records from the custodian of record.

C. The department must be notified of any update related to the custodian of records or upon any change to the custodian of records.

D. The department must be provided a copy of any contractual arrangements made for the perpetual care, maintenance and accessibility of all records. The department may request any additional records or information to help students gain access to transcripts in perpetuity.

E. In the event that the institution does not comply with the records maintenance provisions within 5.5.5 NMAC, the department may seek a court order to protect and if necessary take possession of the records.

F. Students must be made aware of the process to request student records from the custodian of records. The process must be provided in writing to the student and made available on the institution's website.

[5.5.5.11 NMAC - N, 12/11/2018]

5.5.5.12 FINAL EXECUTION REPORT: Before any post-secondary institution closes it shall submit to the department a summary of all actions taken pursuant to the requirements set forth in all applicable Sections of 5.5.5 NMAC. The institution must also submit certification that it has met all rules of the department pertaining to the termination of operations by institutions.

[5.5.5.12 NMAC - N, 12/11/2018]

5.5.5.13 STUDENT COMPLAINTS:

A. An institution shall adopt student complaint procedures which allow students to seek resolution to complaints or grievances. Institutions shall retain records that make available the student complaint received and record of its processing the complaint (that comports with the institution's policies and procedures for handling

grievances or complaints) for a minimum of three years. The institution shall have and make available to all students, the adopted complaint procedure that describes in detail, how students 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 with complaints or grievances against an institution first seek to resolve their complaint or grievance directly with the institution;
- (2) a timeframe within which the institution will investigate and respond to the complainant;
- (3) assurance that the representative of the institution investigating or addressing the complaint will serve as an impartial representative and is not directly involved in the subject matter to which the complaint is related;
- (4) assurance that no adverse action will be taken against the complainant for registering the complaint; and
- (5) 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.

B. The initial responsibility for the investigation and resolution of complaints resides with the institution. A student not satisfied with the outcome of a complaint or the institution's handling of the complaint process may submit the complaint to the department. The department shall not engage in any complaint resolution procedures unless a student has exhausted all complaint procedures set by the institution or can demonstrate the institution's refusal to utilize its complaint resolution procedures. If the student can demonstrate all complaint procedures of the institution have been exhausted and the student is not satisfied with the outcome, the department may help facilitate resolution where possible, if the complaint contains a question of fact or potentially involves a violation of or a deviation from policy, regulation, or law.

C. Complaints regarding student grades or student conduct violations shall be governed entirely by institutional policy and shall not be reviewed by the department. Complaints containing allegations of fraud, abuse, or consumer protection violations, rising to the level of violation of state or federal law, as demonstrated through substantial evidence (evidence of such weight and quality that it is sufficient to persuade a reasonable person to support the allegation asserted), shall be reported to law enforcement, the United States department of education, and the institution's accreditor, or any other applicable oversight entities.

D. 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 two years of their last date of enrollment or incident about which the complaint is made, whichever is latest in time.
- (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.

E. 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 its 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.

F. 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 its 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.

[5.5.5.13 NMAC - N, 12/11/2018]

History of 5.5.5 NMAC:

5.5.5 NMAC - Closure of Public Institutions, filed 7/15/2015 was repealed and replaced by 5.5.5 NMAC - Closure and Student Complaint Procedures for Public Institutions, effective 21/11/2018.