

TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 99 DISTANCE EDUCATION
PART 2 CLOSURE OF A DISTANCE EDUCATION INSTITUTION

5.99.2.1 ISSUING AGENCY: New Mexico Higher Education Department.
[5.99.2.1 NMAC - N, 12/11/2018]

5.99.2.2 SCOPE: Provisions of 5.99.2 NMAC apply to public and private post-secondary institutions offering distance education to any student within New Mexico and the provision of distance education by New Mexico post-secondary educational institutions to students in other states.
[5.99.2.2 NMAC - N, 12/11/2018]

5.99.2.3 STATUTORY AUTHORITY: Section 9-25-1 et seq. NMSA 1978, Section 21-1-26 NMSA 1978 and Section 21-23B-1 et seq. NMSA 1978. The Interstate Distance Education Act, Sections 21-23B-1 through 21-23B-6 NMSA 1978 authorizes the New Mexico higher education department to adopt rules and regulations for the receipt of distance education by students in New Mexico and the provision of distance education by New Mexico participating post-secondary educational institutions to students located outside New Mexico.
[5.99.2.3 NMAC - N, 12/11/2018]

5.99.2.4 DURATION: Permanent
[5.99.2.4 NMAC - N, 12/11/2018]

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

5.99.2.6 OBJECTIVE: No post-secondary educational institution engaging in distance education with students located in New Mexico or post-secondary educational institutions located in New Mexico engaging in distance education with a student located outside of New Mexico operating pursuant to 5.99.1 NMAC, shall cease provision of distance education, close, or make a substantial change to location without providing notice to the department and complying with the provisions set out in 5.99.2 NMAC.
[5.99.2.6 NMAC - N, 12/11/2018]

5.99.2.7 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 or its designated employee.

D. “Distance education” means instruction offered online or through correspondence or interactive video or other means enabling a student to receive instruction from a higher education provider. Instruction may be either synchronous (instruction in which a group of students engage in learning at the same time), asynchronous (instruction that does not occur in the same place or at the same time), or experiential learning activity, as defined in 5.99.1 NMAC.

E. “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.

F. “Post-secondary educational institution” or “institution” means public post-secondary educational institutions and private post-secondary educational institutions operating pursuant to 5.99.1 NMAC.

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

H. “Substantial change to location” means a relocation of the institution’s physical site which impacts the institution’s ability to offer distance education or affects the institution’s ability to continue to meet the criteria for distance education authorization.

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

5.99.2.8 NOTICE:

- A.** An institution shall provide formal written notice of closure to the department 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 substantial change to location to the department immediately upon gaining actual knowledge of the institution's intent to change location, but no less than 90 days prior to moving operations.
- C.** An institution operating pursuant to 5.99.1 NMAC has a mandatory obligation to report a closure of any other branch, satellite, main campus or parent company or organization associated with the institution's accreditation 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 distance education 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.

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

5.99.2.9 PLAN:

- A.** An institution operating pursuant to 5.99.1 NMAC that intends to cease provision of distance education, close, or make a substantial change to location must present a plan to the department.
- B.** An institution that is required to seek approval of such a plan by an accrediting body, 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, cessation of distance education program offerings, or 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.

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

5.99.2.10 TEACH-OUT AGREEMENT OR PLAN:

- A.** An institution operating pursuant to 5.99.1 NMAC that has served notice of closure, substantial change to location, or intent to cease program offerings that contain enrolled students shall provide to the department a teach-out agreement or plan.
- B.** An institution that is closing, has a substantial change to location, or intends to cease program offerings that contain enrolled students 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 within a timeframe 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 students 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.

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

5.99.2.11 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 5.99.1 NMAC. For institutions authorized pursuant to or exempt from 5.99.1 NMAC the manager must file to the designated custodian of records the original or legible true copies of student records to include, 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. Any institution that closes and has not operated lawfully pursuant to 5.99.1 NMAC, must file to a designated custodian of records, the original or legible true copies of student records to include, 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 and may be subject to penalty for operating without state authorization or exemption. 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 post-secondary institution does not comply with the records maintenance provisions cited above, the department may seek a court order to protect and if necessary take possession of the records. The institution's surety bond may be drawn on to cover costs associated with the department's efforts in securing records.

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. [5.99.2.11 NMAC - N, 12/11/2018]

5.99.2.12 FINAL EXECUTION REPORT: Before any post-secondary institution terminates its services or sells, transfers or disposes of substantially all of its assets, it shall submit to the department a summary of all actions taken pursuant to the requirements set forth in all applicable Sections of 5.99.2 NMAC. The institution must also submit certification that it has met all rules of the department pertaining to the termination of operations by post-secondary educational institutions. [5.99.2.12 NMAC - N, 12/11/2018]

History of 5.99.2 NMAC - [RESERVED]