

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

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

5.100.5.2 SCOPE: Provisions of 5.100.5 NMAC apply to all post-secondary institutions that meet the standards set by the department to obtain exempt status from the post-secondary educational institution act within the state of New Mexico.
[5.100.5.2 NMAC - N, 12/26/2017]

5.100.5.3 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, Section 21-23-1 et seq. NMSA 1978 authorizes the New Mexico higher education department ("department") to establish standards to exempt post-secondary educational institutions from the act while operating in New Mexico.
[5.100.5.3 NMAC - N, 12/26/2017; A, 12/11/2018]

5.100.5.4 DURATION: Permanent
[5.100.5.4 NMAC - N, 12/26/2017]

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

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.

(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]

5.100.5.7 DEFINITIONS:

A. "Accreditation" means a verified accreditation status with an accrediting agency recognized by the United States department of education that accredits institutions, as a means of assuring quality instruction.

B. "Avocation or recreation" means an activity taken up in addition to one's regular work or profession, usually for enjoyment; a hobby.

C. “**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.

D. “**Charter**” means a formal document by which a sovereign authority or a government grants rights, powers, and privileges to a person, business, or the people.

E. “**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.

F. “**Continuing education**” means 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 considered a program of training for employment. Typically, a student only enrolls for one course rather than a sequence of courses. The continuing education units must meet the criteria set out by the professional organization or authority requiring the continuing education.

G. “**Department**” means the New Mexico higher education department or its designated employee.

H. “**Degree**” means any title, designation, mark, abbreviation, appellation, or series of letters or words, including “associate”, “bachelor's”, “master's”, “doctor's” and their equivalents, which are generally taken to signify satisfactory completion of the requirements of a program of study designed to be comparable to those provided by institutions accredited by agencies recognized by the United States department of education.

I. “**Degree-granting**” means a post-secondary educational institution that offers instruction resulting in a credential as defined by “degree.”

J. “**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.

K. “**Instruction provided by employer**” means only a brief course of instruction designed to teach specific skills that may be applicable in a work setting or as professional development but are not sufficient in themselves to result in a credential.

L. “**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;

M. “**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 5.100.5.6 NMAC.

N. “**Post-secondary educational institution**” or “**Institution**” or “**post-secondary institution**” means 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.

O. “**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.

P. “**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 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.

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

5.100.5.8 GENERAL STANDARD FOR OBTAINING EXEMPTION STATUS BY THE DEPARTMENT:

A. The department shall provide an application form and assess an administrative fee to provide a formal exemption status. The department has the sole discretion to determine whether an institution meets the criteria for exemption status pursuant to Section 21-23-4 NMSA 1978 and 5.100.5 NMAC. If the department determines that an institution does not meet the criteria for exemption, the department may require the institution to apply for state authorization.

B. The exemption status will be valid for a term of five years from the date that the department makes the final determination.

C. As a condition of exemption, all post-secondary educational institutions shall agree to comply with Section 21-23-15 NMSA 1978 and 5.100.8 NMAC in the event of institutional closure.

D. An exempt institution shall provide the department with immediate written notification of any changes or events that may trigger the whole or part of the claim for exemption application 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.
[5.100.5.8 NMAC - N, 12/26/2017; A, 12/11/2018]

5.100.5.9 PENALTY: A post-secondary institution that does not have state authorization or has 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 it shall cease immediately to operate until it obtains 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.
[5.100.5.9 NMAC - N, 12/26/2017]

History of 5.100.5 NMAC - [RESERVED]