

TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 100 PRIVATE INSTITUTIONS OF HIGHER EDUCATION
PART 8 CLOSURE OR SUBSTANTIAL CHANGE TO LOCATION UNDER THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT

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

5.100.8.2 SCOPE: Provisions of 5.100.8 NMAC apply to all private post-secondary institutions operating within the state of New Mexico.
[5.100.8.2 NMAC - N, 12/26/2017; A, 12/11/2018]

5.100.8.3 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 for closures of private post-secondary educational institutions operating in New Mexico.
[5.100.8.3 NMAC - N, 12/26/2017; A, 12/11/2018]

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

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

5.100.8.6 OBJECTIVE: No private post-secondary institution shall cease operation within New Mexico or make a substantial change to location without providing notice to the department and complying with the provisions set out in this rule. Institutions operating with a physical presence in New Mexico and 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, 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.
[5.100.8.6 NMAC - N, 12/26/2017; A, 12/11/2018]

5.100.8.7 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. “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's New Mexico facility.

E. “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, Paragraph (1) of Subsection A of 5.100.6.6 NMAC, or Paragraph (1) of Subsection A of 5.100.7.6 NMAC.

F. “Post-secondary educational institution” or “institution” or “post-secondary institution” means a private 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.

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 that is beyond the proximity a student is normally required to travel for educational offerings.

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

5.100.8.8 NOTICE:

A. A post-secondary institution operating with a physical presence in the state of New Mexico shall provide formal written notice of closure to the department immediately upon gaining actual knowledge of the institution's intent to close but in no case less than 90 days prior to closure.

B. A post-secondary institution operating with a physical presence in the state of New Mexico 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 in no case less than 90 days prior to moving operations.

C. A post-secondary institution operating with a physical presence in the state of New Mexico has a mandatory obligation to report a closure of any other branch, satellite, or main campus associated with the institution immediately upon gaining actual knowledge of the institution's intent to close but in no case less than 90 days prior to closure.

D. A post-secondary institution has a mandatory obligation to report the closure of any other subsidiary institution or campus associated through the same parent company or organization immediately upon gaining actual knowledge of the institution's intent to close but in no case less than 90 days prior to closure.

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

5.100.8.9 PLAN:

A. A post-secondary institution operating with a physical presence in New Mexico that intends to cease operations, cease program offerings that contain enrolled students, or make a substantial change to location must present a plan to the department.

B. Post-secondary institutions that are required to seek approval of such a plan by an accrediting body must submit the plan to the department within seven days of receiving approval by the accrediting body.

C. Post-secondary institutions that are not required to seek approval of a plan by an accrediting body must submit a plan to the department as soon as practical but in no case 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.

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

5.100.8.10 TEACH-OUT AGREEMENT OR PLAN:

A. A post-secondary institution operating with a physical presence in the state of New Mexico that has served notice of closure, intent to cease program offerings that contain enrolled students or intent to make a substantial change to location shall provide to the department a teach-out plan or agreement.

B. A post-secondary institution that is closing, ceasing a program offering that contains enrolled students, or has a substantial change to location shall enter into a teach-out agreement with at least one other provider of post-secondary education 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. A post-secondary institution that has a substantial change to location may be required to present evidence that the institution has made efforts to enter into a teach-out agreement with an institution within a reasonable proximity.

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

E. Licensed post-secondary institution operating under 5.100.7 NMAC must comply with the teach-out plan or agreement provided to the department in its application for licensure unless a change in the teach-out plan or agreement has occurred. If the teach-out agreement submitted to the department in the licensure application has changed, the institution shall seek additional teach-out agreements with at least one institution operating in the state of New Mexico or provide a teach-out plan that allows students to complete their program of study at the institution within a timeframe accepted by the department.

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

G. 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.

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

5.100.8.11 RECORDS MAINTENANCE:

A. A post-secondary institution operating with a physical presence in the state of New Mexico upon submitting intent to close 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 a post-secondary 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 as a condition of state authorization pursuant to 5.100.6 NMAC or 5.100.7 NMAC. For institutions granted express exemption by the department pursuant to Section 21-23-4 NMSA 1978 and 5.100.5 NMAC, the manager must file to the designated custodian of records the original or legible true copies of student records. The institution must maintain 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 the Post-Secondary Educational Institution Act, must file to a designated custodian of records, the original or legible true copies of student records to include, The institution must maintain 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, and any other authorizing agencies laws, regulations and rules, 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 record.

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.

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

5.100.8.12 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 5.100.8 NMAC. The post-secondary 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.

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

History of 5.100.8 NMAC - [RESERVED]