

SHEEO State Authorization Inventory

New Mexico

Please note: For purposes of this survey, the terms “authorize” and “authorization” are used generically to include approve, certify, license, regulate, recognize, empower, or similar actions relative to the operation, provision, or availability of postsecondary education in your state.

1. Agency and Contact Information

- a. Agency Name: **New Mexico Higher Education Department**
- Description:
The New Mexico Higher Education Department has authority to approve and license private degree-granting institutions and certain proprietary (career) schools operating in the state, including for-profit/proprietary vocational-technical education. Regionally accredited institutions chartered in other states and operating branches or otherwise offering instruction within the state may seek exemption from regulation through application.
 - Contact Information:
Stephanie A. Ellis
Private & Proprietary Schools Administrator
New Mexico Higher Education Department
505-476-8442
stephanie.ellis@state.nm.us
 - Please state who institutions should contact if they have questions about your agency’s authority, policies, or application process?
Questions about policies and application process:
Stephanie A. Ellis
Private & Proprietary Schools Administrator
New Mexico Higher Education Department
505-476-8442
stephanie.ellis@state.nm.us

Questions about agency’s authority:
Samantha Fenrow
Chief Legal Counsel
505-476-8402
Samantha.Fenrow@state.nm.us

b. Links:

Home Page: <http://www.hed.state.nm.us/>

NM Laws:

- Post-Secondary Educational Institution Act, NMSA 1978, Sections 21-23-1 through 21-23-15.
- Out-of-State Proprietary Schools, NMSA 1978, Sections 21-24-1 through 21-24-9.
- Nonproprietary Out-of-State Institutions, NMSA 1978, Sections 21-25-1 through 21-25-5.

State Rules: www.nmcpr.state.nm.us/nmac/title05/title05.htm

c. According to our records, the following agencies also have responsibility for authorization in the state.

None.

d. If the division of responsibility among these agencies is not clear, please explain.

The aforementioned departments or boards have jurisdiction over the respective programs and institutions offering such programs. At times, an institution may be under both, the oversight of NMHED and a board. If the institution is offering programs not falling under the jurisdiction of the particular board or department, responsible for the institution's oversight, then the oversight responsibility falls to NMHED.

2. Types of Educational Providers Authorized

a. Please indicate the types of institutions that your agency authorizes, using the list below. Please answer "yes" or "no" to each item. Feel free to provide a short explanation of any ambiguity, including any necessary clarification of "in-state," "out of state," or other terminology.

- Yes Public, in-state degree granting institutions
- Yes Public, out-of-state degree granting institutions
- Yes Private, in-state, not-for-profit degree granting institutions
- Yes Private, out-of-state, not-for-profit degree granting institutions
- Yes Private, in-state, for-profit degree granting institutions
- Yes Private, out-of-state, for-profit degree granting institutions
- N/A Public, in-state, non-degree granting institutions
- No Public, out-of-state, non-degree granting institutions
- Yes Non degree, not-for profit institutions
- Yes Non degree, for-profit institutions
- Yes Religious institutions
- No Tribally-controlled institutions

Clarifying comments:

- b. Is an institution required to obtain approval from more than one agency to be authorized in your state (excluding purely programmatic approvals)? If so, please explain.

If an institution is under the jurisdiction of another state entity but would also fall under the jurisdiction of NMHED, the institution would have to seek exemption from licensing requirements.

- c. Is accreditation required for an institution to be authorized in your state?

Yes.

- If yes, please explain:
New degree-granting institutions are required to obtain accreditation within three (3) years from licensure,
- If yes, what type of accreditation is required? Please, check all that apply as appropriate.

Regional
 National
 Programmatic/specialized

Clarifying comments:

The institution needs to obtain accreditation with the distance education and training council (DETC) or another accrediting agency recognized by the U.S. Department of Education and NMHED.

- d. Does your agency authorize specific academic programs offered by institutions or only institutions themselves?

Both.

- e. Do programs in certain subject areas require the separate approval by another state entity; for example, a professional licensing agency?

Yes. New Mexico Regulations Department:

Barber & Cosmetology Board
www.rld.state.nm.us/BarbersCosmetologists/index.html

Board of Acupuncture & Oriental Medicine
www.rld.state.nm.us/acupuncture/index.html

New Mexico Massage Board
<http://www.rld.state.nm.us/Massage/index.html>

Private Investigations Advisory Board
<http://www.rld.state.nm.us/PrivateInvestigations/index.html>

Public Education Department – Educator Program Approval
<http://www.ped.state.nm.us/Licensure/2010/informalLicensure.html>

New Mexico Department of Health
EMS Program Approval: <http://nmems.org/index.shtml>
CNA Program Approval: <http://dhi.health.state.nm.us/nar/nar.php>

New Mexico Board of Nursing
www.bon.state.nm.us/

3. Exemptions

- a. Are certain institutions or programs exempt by law or policy from your state authorization requirements?

Yes.

- If yes, please describe which institutions or programs the exemption applies to and how it works? If available, please provide any pertinent web links.

www.hed.state.nm.us/Exemption.aspx

An institution, organization, or other entity wishing to qualify for exemption from the Act shall provide the department with evidence of its qualification on one or more of the bases stated above and shall provide sufficient description of the nature of its organization and educational program(s) for the department to make a determination. Upon making a determination that an institution, organization, or other entity is qualified for exemption from the act, the department will issue a letter designating the entity's status as "exempt from regulation."

See 5.100.2.8 NMAC for details.

The Out-of-State Proprietary School Act specifies several bases for exemption from its provisions. The department recognizes additional bases for exemption, derived from legislation governing institutions operating within the state. Any institution, organization, or other entity wishing to qualify for exemption from the act must present to the department the information necessary for the department to determine eligibility for exemption.

See 5.100.3.8 NMAC for details.

- If yes, how does the institution or program claim an exemption? For example, is the exemption automatic as long as it meets specified criteria, does the institution or program notify the agency and the exemption is granted, is there an application process, etc.?
See link above for exemption application.
- b. If an institution or program is exempt from state authorization, are there any other state requirements that an institution would need to fulfill in order to operate in your state (e.g., providing contact information, list of programs, etc.)?
Each institution holding exempt status shall report to the department, in a form acceptable to the department and as requested by the department: (1) an update on institutional and program changes; and (2) statistical data about programs and enrollments annually.
- c. Does your state constitution or do your state laws provide any exemptions for religious institutions?
Yes. Allowable exemption: a nonprofit institution whose sole purpose is to train students in religious disciplines to prepare them to assume a vocational objective relating primarily to religion.
- Are all religious institutions exempt (please describe)?
No, they are not exempt, if they offer programs such as BBA, MBA, etc.
 - Are religious institutions that award only religious degrees or certificates exempt (please describe)?
Yes.
 - Are certain religious institutions exempt that meet other criteria (please describe)?
No.

4. Authorization of Distance Education

- a. Does your agency require purely (100%) distance education programs, including online or correspondence study programs that enroll residents of your state, to be authorized without regard to physical presence?
Out-of-state institutions (including online institutions) which do not have a "presence" in New Mexico, but actively recruit students within New Mexico to attend their institution out-of-state must apply for *registration*. In addition, agents actively recruiting for such an institution must be authorized by the New Mexico Higher Education Department.

- b. If not, does your agency determine whether an institution must be authorized based on a physical presence or “operating” standard?

No. Any institution with a presence in New Mexico falls under *licensure* requirements.

5. Physical Presence Policy – Common “Triggers”

- a. If your agency uses a physical presence standard, how does your agency define physical presence? If available, please provide a link to that policy or a citation to the relevant regulation giving that standard.

“Presence” in the state is defined as offering courses, programs or degrees on site or from a geographical site in New Mexico or maintaining an administrative, corporate or other address in the state.

- b. Please specify whether any of the following activities would constitute a physical presence or signify “operating” in your state, assuming that the named activity is the institution’s sole activity in your state. **Please answer “yes” or “no” to each question. In addition you may provide a short explanation of any ambiguity.**

- Permitting a student to complete an internship, externship, field experience, or clinical practicum organized by the institution?

Yes.

- Does this apply only to distance education students or more generally?

Applies to all out-of-state institutions.

- Permitting a student to complete an internship, externship, field experience, or clinical practicum found by the student acting independently?

Yes.

- Does this apply only to distance education students or more generally?

Applies to all out-of-state institutions.

- Employing full-time faculty in the state to provide instruction via distance education programs to students in the state?

No.

- What about adjunct faculty?

No.

- Employing full-time faculty in the state to provide instruction via distance education programs solely to students outside of the state?
No.
- What about adjunct faculty?
No.
- Having a contract/agreement between the institution and in-state institutions or in-state entities to provide services for students (i.e. library, gym, computer centers, etc.)?
Yes.
- Organized, consistent, on-the-ground recruiting of students in the state by employees or agents of the institution?
No, but requires registration and authorization of the agents.
- What if the agent is only recruiting students in the state on an occasional basis (i.e. at job fairs)?
No.
- Advertising in local media sources that are largely viewed by residents of the state?
Yes.
- Advertising in national media sources that can be accessed by residents of the state?
No.
- Having computer servers or other equipment located in the state?
Yes.
- Hosting short term, face-to-face, seminars or conferences in the state where students meet in person?
Yes.
- Employing mentors, tutors, or preceptors in the state to aid students, who are residents of the state, on an individual basis?
Yes.
- Requiring a student to take a proctored exam at a location or with an entity in the state prescribed by the institution?
No.
- Requiring a student to take a proctored exam with an entity in the state chosen by the student but approved by the institution?
No.

- Other [please explain]
- c. Of the activities or conditions listed above that alone would not constitute a physical presence, are there any that if combined would create a physical presence?
No.

6. Application Process

- a. Please provide a short description of the application process to obtain state authorization. If available, please provide web links to the specific references to all applicable state laws, regulations, manuals, forms, or other pertinent documents.
Detailed information and application forms can be obtained under *License, Registration, and Exemption* at: www.hed.state.nm.us/Applications.aspx
- b. Generally, how long does it take to approve applications (assuming that the agency has received all required information from the institution)? Please provide a typical range if appropriate.
It depends on the type of application.
- c. What is the authorization duration?
One fiscal year for licensure ending June 30 and until August 31 for registrations.
- d. What does an institution need to do to maintain authorization?
Submit annual renewal application for licensure or registration. Exempt institutions must submit an annual update and demographic data report.
- e. What kinds of information or data must an institution report to your agency as a condition for continued authorization? How frequently is this reported or updated? Is this information published or shared publicly?
Part of the annual renewal application is a demographic data report. Requested information includes student enrollment data, program information, number of graduates, and student placement. This information will be used for statistical data and the department's annual reporting as well as in the evaluation of an institution's compliance.
- f. Can an institution lose its authorized status? If so, how?
Yes, by not complying with state regulations, a license or registration can be revoked.
- g. Can a multi-institutional system or college corporation apply to your agency for authorization on behalf of all of its component institutions? If so, please describe the process.
No.

- h. Would multi-institution public systems be treated the same as multi-location for-profit institutions?

Yes.

- i. What distinctive features in your authorization process would be useful for applicants to know (e.g., certain times during the year that you process applications for authorization, sharing of applications or information about proposed programs with institutions or other stakeholders in your state for comment)?

Renewal and reporting due dates occur between June and August. Initial applications can be submitted at any time.

- j. Is your agency currently planning to amend its application process by the end of 2011?

No.

- If yes, please provide a brief description of the anticipated change.
- If yes, when does the agency expect the change to be fully implemented?

7. Fees Associated with Authorization

- a. Is there an application fee to initiate the authorization process? If so, what is the fee or fee schedule? Please provide a web link if available.

Yes. Please see the attachment "Fee Schedule" at the end of this survey or at: <http://www.hed.state.nm.us/uploads/FileLinks/d205a4a0fbf94c47933b274573c36c85/Fee%20Schedule%2007-2009.pdf>

- b. Are there any other costs associated with the state authorization process (e.g. site visits, hiring a reviewer, surety bond, tuition recovery fund, agent licensing, etc.)? Site visit, surety bond, agent licensing (for registrations only).

- c. What are the costs, if any, to renew authorization?

Please see the attachment "Fee Schedule" at the end of this survey or at: <http://www.hed.state.nm.us/uploads/FileLinks/d205a4a0fbf94c47933b274573c36c85/Fee%20Schedule%2007-2009.pdf>

- d. What costs are associated with receiving a waiver or exemption to authorization? Exemption application requires a \$500.00 one-time fee.

8. Interstate Reciprocity

- a. Do your state regulations explicitly allow or prohibit interstate reciprocal agreements about authorization? If so, please describe.
No, New Mexico currently has not addressed the issue of reciprocal agreements pertaining to authorization. The interstate reciprocal agreements New Mexico has only pertain to tuition and residency matters.
- b. What is the process, if any, to obtain a reciprocal agreement with your state?
Not applicable – see above.
- c. Are there any reciprocal agreements currently in place or under consideration? If so, please list those agreements.
Not applicable – see above.
- d. If interstate reciprocal agreements are not addressed in your regulations, would your agency consider establishing such agreements? Please elaborate.
Not applicable – see above.

9. Consumer Protection and Student Complaints

- a. Does your agency have a process for handling complaints about postsecondary institutions or programs?
Yes.
 - o If yes, please describe the process or provide a web link to the material that describes the complaint process.
Link available at: www.hed.state.nm.us/Complaint_3.aspx
 - o If yes, does this complaint process extend to institutions not authorized by the agency that may enroll residents of the state (such as explicitly distance education programs with no physical presence or exempt institutions)?
Yes.
 - o If available, please provide a web link to the complaint form.
See web link above.

- Who is the contact person for receiving complaints? Please include name, title, address, phone, and email if available.

Carlotta Abeyta
Executive Assistant to the Cabinet Secretary
New Mexico Higher Education Department
2048 Galisteo Street
Santa Fe, New Mexico 87505-2100
(505) 476-8404 Office
(505) 476-8454 Facsimile

- b. If your agency has no formal process for handling complaints related to postsecondary institutions, what state agency would handle a complaint?
Not applicable.

10. Enforcement

- a. If your agency finds that an institution or program is operating in your state without authorization, what is the resulting warning or enforcement action?
Institutions that are not licensed, but meet the definition of presence in New Mexico, whether offering degrees, course credits, certificates or diplomas shall be notified by certified mail that they shall cease immediately to offer such until they obtain a license or exemption from NMHED; NMHED shall initiate appropriate legal action if institutions fail to comply; whoever violates any provision of Chapter 21-23-10 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. Can an institution or program appeal a warning or enforcement action? If yes, please describe the process or provide web links to the regulations/policies.

LICENSED INSTIUTIONS (with NM presence):

The NMHED has jurisdiction to hear or to designate a hearing officer and to take adverse licensure action against an institution pursuant to the following authorities: the Post-Secondary Educational Institution Act (Chapter 21, Article 23 NMSA 1978); the Private Post-Secondary Institutions Operating Under The Post-Secondary Educational Institution Act, NMAC 5.100.2; and the Uniform Licensing Act, §61-1-1 through §61-1-31 NMSA 1978.

Pursuant to §5.100.2.29, of the Private Post-Secondary Institutions Operating Under The Post-Secondary Educational Institution Act, “An applicant that fails to satisfy the requirements of Section 5.100.2.28 NMAC and/or fails to adequately address the specific criteria set forth in Subsection D of 5.100.2.28 NMAC shall be subject to denial of licensure. If the department contemplates denial of licensure to any applicant, the department shall commence proceedings pursuant to an in accordance with the Uniform Licensing Act, Sections 61-1-1 through 61-1-31 NMSA 1978.” The Uniform Licensing Act provides, at §61-1-3, that

licensees or applicants shall be afforded notice and an opportunity to be heard before an agency that has authority to take any action which would result in adverse licensure action including but not limited to suspension, revocation or denial of a license.

In accordance with NMSA 1978, §61-1-4(D)(3), the NMHED will or may take the contemplated action unless within twenty (20) days after service of this NCA the institution deposits in the mail a certified return receipt requested letter addressed to the Cabinet Secretary and containing a request for an administrative hearing.

The institution is advised that, pursuant to NMSA 1978, §61-1-4 (E), if it does not mail a request for a hearing within the time and in the manner required by §61-1-4 (D)(3), the NMHED may take the action contemplated; such action shall be final and not subject to judicial review.

REGISTERED INSTITUTIONS (without NM presence):

Pursuant to the Out-of-State Proprietary School Act (Section 21-24-8, NMSA, 1978), “Any final determination of the NMHED (commission) respecting the issuance, denial or revocation of a registration may be appealed to the district court pursuant to the provisions of Section 39-3-1.1, NMSA 1978.”

NMAC 5.100.3.16 states, “Parties not satisfied with a decision by the department regarding eligibility for exemption from the act, issuance, denial, or revocation of registration, or denial or revocation of agent eligibility, or related decisions of the department may be appealed to the district court of Santa Fe, New Mexico.

11. Legislative or Regulatory Changes

- a. Is your agency or state legislature planning to amend its regulations or alter its physical presence policy by the end of 2011?

No.

- If yes, please provide a brief description of the anticipated change.
- If yes, when does the agency expect the change to be fully implemented?

- b. Is your agency or state legislature making changes in your state regulations or statutes so that institutions with locations in your state would be considered legally authorized in accordance with the federal institutional eligibility regulations?

Yes, likely during the 2013 session.

- If yes, please provide a brief description of the anticipated change.
To be determined.

- If yes, when does the agency expect the change to be fully implemented?
To be determined.
- c. Is your agency or state legislature making any other changes in your state regulations or statutes with regard to state authorization?
To be determined.
 - If yes, please provide a brief description of the anticipated change.
 - If yes, when does the agency expect the change to be fully implemented?

12. Is there anything else about the authorization process in your state that we and others ought to know about?

Attachment: Fee Schedule

Private Postsecondary Institution Fee Schedule

Effective Date 7/1/2009

FEE TYPE NON-REFUNDABLE FEE AMOUNTS

Licensed Schools (In-State Presence)

Initial Licensure Degree Granting \$4,000

Non Degree Granting \$1,000

Licensure Renewal

1. Less than \$50,000 annual gross tuition revenue \$500

2. \$50,000/\$249,999 annual gross tuition revenue \$1,000

3. \$250,000/\$499,999 annual gross tuition revenue \$2,000

4. \$500,000/\$999,999 annual gross tuition revenue \$3,000

5. Greater than \$1,000,000 annual gross tuition revenue \$5,000

Site Visit \$250

Late Fee 20 day grace period, then \$100 each month

Registered Schools (Out-of-State)

Initial Registration \$ 1,000

Registration Renewal \$ 1,000

Agent Fee \$200

Late Fee 20 day grace period, then \$100 each month

Exempt Schools

Initial Registration \$500

Program Approval

New Degree Program \$1,500

New Certificate Program \$750

School Administrative Change

Change of Ownership Degree Granting \$1,000

Change of Ownership Career School \$200

Change of Name \$100

Change of Location \$100

Illegal Activity

Illegal Operation May be assessed up to \$500 per day per violation

Transcripts

Student Transcript for Closed School \$ 10, \$3 per each additional transcript

All fees are non-refundable.