

TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 99 DISTANCE EDUCATION
PART 1 PUBLIC AND PRIVATE POST-SECONDARY INSTITUTIONS OPERATING UNDER
THE INTERSTATE DISTANCE EDUCATION ACT

5.99.1.1 ISSUING AGENCY: New Mexico Higher Education Department.
[5.99.1.1 NMAC - Rp. 5.99.1.1 NMAC, 12/11/2018]

5.99.1.2 SCOPE: Provisions of 5.99.1 NMAC apply to public post-secondary institutions and private post-secondary institutions offering distance education to any student within New Mexico and the provision of distance education by participating New Mexico post-secondary educational institutions to students in other states.
[5.99.1.2 NMAC - Rp. 5.99.1.2 NMAC, 12/11/2018]

5.99.1.3 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 ("the 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.
[5.99.1.3 NMAC - Rp. 5.99.1.3 NMAC, 12/11/2018]

5.99.1.4 DURATION: Permanent.
[5.99.1.4 NMAC - Rp. 5.99.1.4 NMAC, 12/11/2018]

5.99.1.5 EFFECTIVE DATE: December 11, 2018, unless a later date is cited at the end of a section.
[5.99.1.5 NMAC - Rp. 5.99.1.5 NMAC, 12/11/2018]

5.99.1.6 OBJECTIVE:

A. Unless expressly exempt pursuant to 5.99.1.10 NMAC, an institution shall obtain distance education authorization from the department if the institution either:

(1) has a physical presence in New Mexico and engages in distance education with students located outside New Mexico; or

(2) engages in distance education from a location originating outside New Mexico with a student located in New Mexico.

B. Institutions with a physical presence in New Mexico engaging in distance education may be subject to:

(1) distance education authorization pursuant to the Interstate Distance Education Act and 5.99.1 NMAC, unless exempted pursuant to 5.99.1.10 NMAC;

(2) state authorization for private institutions pursuant to the Post-secondary Educational Institution Act and 5.100.6 NMAC or 5.100.7 NMAC, unless expressly exempted by law and 5.100.5 NMAC; and

(3) authorization required by laws and regulations of any other state or territory in which a student is located and engaging in distance education with the institution.

C. Post-secondary educational institutions must be accredited in order to apply for distance education authorization under the act.

D. Distance education authorization does not serve as an endorsement of a particular institution, but certifies that an institution has met the minimum criteria set by the department to operate in New Mexico under the Interstate Distance Education Act. An institution authorized by the department may not use terms such as "accredited," "endorsed," or "recommended" when referring to authorization by the department.

E. Post-secondary educational institutions that do not have distance education authorization or do not meet the criteria for exemption, and are offering distance education from New Mexico or to students in New Mexico, shall be notified by certified mail that they shall cease immediately to offer such education until obtaining distance education authorization or are found to be exempted by the department; the department shall initiate appropriate legal action if institutions fail to comply; whoever violates any provision of the act may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation.
[5.99.1.6 NMAC - Rp. 5.99.1.6 NMAC, 12/11/2018]

5.99.1.7 DEFINITIONS:

- A.** “**Accreditation**” means a verified accreditation status with an accrediting agency recognized by the United States department of education.
- B.** “**Department**” means the New Mexico higher education department.
- C.** “**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.
- D.** “**Distance education authorization**” or “**DEA**” means a post-secondary institution that has been deemed by the department to satisfactorily meet criteria, as set by the department, to provide distance education, under the Interstate Distance Education Act.
- E.** “**Educational activity**” means distance education 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).
- F.** “**Exempt**” or “**exemption**” means an institution that meets criteria in 5.99.1.10 NMAC to be exempt from obtaining distance education authorization and has completed all documentation required by the department.
- G.** “**Experiential learning activity**” means application of previously studied skills through practica, student teaching, clinical placements, research, internships, or other similar placements by a student receiving supervised field experience at an experiential learning site.
- H.** “**Experiential learning site**” means a clinical, practicum, internship, student teaching or other similar site location where a student participates in a supervised field experience.
- I.** “**Higher education**” means education or training beyond secondary education.
- J.** “**Home state**” means a state or territory where the institution holds its legal domicile and accreditation. To operate under the act an institution must have a single home state.
- K.** “**Non-New Mexico home state SARA institutions**” means an institution which holds its legal domicile and accreditation in a state or territory in the United States and outside of New Mexico and is an approved member institution of SARA.
- L.** “**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 5.99.1.8 NMAC.
- M.** “**Post-secondary educational institution**” or “**institution**” means public post-secondary educational institutions and private post-secondary educational institutions.
- N.** “**Portal entity**” means the state agency or other state body designated by each SARA member state to serve as the interstate point of contact for SARA questions, complaints and other communications. In New Mexico, the portal entity is the department.
- O.** “**Private post-secondary educational institution**” means a post-secondary educational institution not primarily funded by public funds.
- P.** “**Public post-secondary educational institution**” means a post-secondary educational institution primarily funded by public funds.
- Q.** “**SARA Manual**” means a manual which codifies existing SARA policy and includes procedures for use by states and institutions to regulate SARA. A current version of the manual will be maintained on the NC-SARA website.
- R.** “**State authorization reciprocity agreement**” or “**SARA**” means an agreement, developed by the national council for state authorization reciprocity agreements (NC-SARA) that provides uniform standards and parameters for the interstate provision of post-secondary distance education courses and programs.
- S.** “**State portal agent**” means the portal entity employee responsible for SARA duties.
- T.** “**Student location**” or “**students located**” means the physical location in which the student engages in distance education. The student’s legal state of residence will not be a criterion for determining the student’s physical location for purposes of the act.
- U.** “**Supervised field experience**” means a form of distance education which enables instruction from an experiential learning site, through an agreement with an institution pursuant to 5.99.1.11 NMAC. To be considered supervised field experience, the student location must be in a different state or territory than that of the institution.

[5.99.1.7 NMAC - Rp. 5.99.1.7 NMAC, 12/11/2018; A, 12/29/2020]

5.99.1.8 PHYSICAL PRESENCE IN NEW MEXICO: 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 students to engage in educational activity;
- 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.

[5.99.1.8 NMAC - Rp. 5.99.1.8 NMAC, 12/11/2018]

5.99.1.9 ACTIVITY THAT DOES NOT ESTABLISH A PHYSICAL PRESENCE: 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 as defined in 5.99.1.11 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.

[5.99.1.9 NMAC - Rp. 5.99.1.9 NMAC, 12/11/2018]

5.99.1.10 INSTITUTIONS EXEMPT FROM DISTANCE EDUCATION AUTHORIZATION: An institution may be granted an exemption from obtaining distance education authorization, if the institution meets the criteria for exemption, set by the department. An institution seeking an exemption shall complete a DEA exemption form, published by the department. An institution shall meet one or more of the following criteria to be eligible for DEA exemption:

- A. the institution is authorized to operate as a member institution under SARA;
- B. the institution has a physical presence in New Mexico exclusively offering distance education to students located only in New Mexico;
- C. the department has entered into a reciprocal agreement pursuant to Subsection B of Section 21-23B-3 NMSA 1978.
- D. the institution offers distance education courses on a military base or vessel, if enrollment in such courses is limited to active and reserve military personnel and their spouse or dependents;
- E. the institution has contractual arrangements in New Mexico for course offerings through consortium agreements (for example an agreement between two or more institutions to partner and provide program offerings) and has previously notified the department of the agreement;

F. the institution is only offering distance education courses as a means of continuing education units and the units meet the criteria set out by the professional organization or authority requiring the continuing education; or

G. the institution is offering supervised field experience pursuant to the parameters established in 5.99.1.11 NMAC.

H. the institution is a chartered, nonprofit religious institution whose sole purpose is to train students in non-degree or degree granting religious or non-secular courses to prepare them to assume a vocational objective relating primarily to religion.

[5.99.1.10 NMAC - Rp. 5.99.1.10 NMAC, 12/11/2018; A, 12/29/2020]

5.99.1.11 SUPERVISED FIELD EXPERIENCE: Supervised field experience is a form of distance education which enables instruction from an experiential learning site. The experiential learning site will facilitate student participation in experiential learning activity which requires application of previously studied skills through practica, student teaching, clinical placements, research, internships, or other similar placements. The institution and the experiential learning site must enter into an agreement to facilitate experiential learning activity for students through use of supervisors, mentors, faculty members or other qualified professionals employed by the experiential learning site.

A. A student may participate in a supervised field experience, without the institution obtaining DEA if the institution certifies the following:

(1) the supervised field experience is part of a program of study offered by the enrolling institution;

(2) the experiential learning site has entered into an agreement with the institution which specifies:

(a) the student will receive oversight by a supervisor, mentor, faculty member or other qualified professional, located at the experiential learning site; and

(b) the supervisor, mentor, faculty member or other qualified professional has a direct or indirect reporting responsibility to the institution where the student is enrolled;

(3) no greater than 10 students from an individual academic program will be placed simultaneously at an experiential learning site during a full-term (quarter or semester);

(4) approval requirements have been satisfied by the applicable professional licensing agency or board, if the supervised field experience requires licensure or certification for practice; and

(5) support services and complaint resolution procedures will be made available to the student, while the student participates in the supervised field experience.

B. The department may allow an institution to maintain an exemption from DEA and increase maximum student placements beyond those in Paragraph (3) of Subsection A of 5.99.1.11 NMAC if the experiential learning site contains more than one division, department, or unit, and the institution seeks to place students within different divisions, departments, or units. If an institution seeks to place more than 10 students at an experiential learning site that contains more than one division, department, or unit, and maintain eligibility for DEA exemption, the institution shall file a request with the department detailing the basis of the increase in maximum student placements. For the department to consider an increase in maximum student placements beyond those in Paragraph (3) of Subsection A of 5.99.1.11 NMAC, it will evaluate the demonstrated ability of the institution and the experiential learning site to provide adequate learning opportunity and resources to the student. In making its determination, factors considered by the department shall include, but are not limited to, the following:

(1) the size of the facility or location of the experiential learning site;

(2) the number of distinct divisions, departments, or units to which students will be placed within the experiential learning site;

(3) whether the divisions, departments, or units engage in distinct specializations or disciplines;

(4) whether the number of supervisors, mentors, faculty member or other qualified professionals available is adequate to provide oversight and fulfill the terms of the agreement between the institution and the experiential learning site, entered into pursuant to Paragraph (2) of Subsection A of 5.99.1.11 NMAC; and

(5) overall demand for student placements by all institutions seeking to establish agreements with the experiential learning site.

C. An institution that seeks to place more students at an experiential learning site than permitted pursuant to Paragraph (3) of Subsection A of 5.99.1.11 NMAC and does not obtain express approval by the department pursuant to Section B of 5.99.1.11 NMAC must obtain DEA pursuant to 5.99.1.12 NMAC.

[5.99.1.11 NMAC - Rp. 5.99.1.11 NMAC, 12/11/2018]

5.99.1.12 DISTANCE EDUCATION AUTHORIZATION APPLICATION REQUIREMENTS:

Institutions operating under the act shall apply for distance education authorization unless exempt pursuant to 5.99.1.10 NMAC. The department shall promulgate forms and require the institution to meet criteria as applicable to each of the following sectors:

- A.** Public post-secondary educational institutions must submit to department:
 - (1) a complete distance education authorization application set out by the department;
 - (2) certification of compliance with the interregional guidelines for the evaluation of distance education programs adopted by the council of regional accrediting commission;
 - (3) certification of compliance with the western interstate commission for higher education principles outlined in 5.99.1.20 NMAC;
 - (4) a surety bond or alternate form of surety in the amount of twenty percent of the gross New Mexico distance education tuition and fees revenue;
 - (5) current accreditation;
 - (6) proof that the public post-secondary educational institution has adopted a complaint procedure that complies with the department's requirements in 5.99.1.15 NMAC;
 - (7) certification that the public post-secondary educational institution has adopted a plan for records maintenance and retention that complies with the department's requirements in 5.99.1.21 NMAC; and
 - (8) a fully executed participation agreement with the department.
- B.** Private post-secondary educational institutions must submit to the department:
 - (1) a complete distance education authorization application set out by the department;
 - (2) certification of compliance with the interregional guidelines for the evaluation of distance education programs adopted by the council of regional accrediting commission;
 - (3) certification of compliance with the western interstate commission for higher education principles outlined in 5.99.1.20 NMAC;
 - (4) a surety bond or alternate form of surety in the amount of twenty percent of the gross New Mexico distance education tuition and fees revenue, in no case shall the bond be less than five thousand dollars (\$5,000);
 - (5) current accreditation;
 - (6) financial responsibility composite score of 1.5 or above as assigned by the United States department of education in the private post-secondary educational institution's most recent fiscal report;
 - (7) proof that the private post-secondary educational institution has adopted a complaint procedure that complies with the department's requirements in 5.99.1.15 NMAC;
 - (8) certification that the private post-secondary educational institution has adopted a plan for records maintenance and retention that complies with the department's requirements in 5.99.1.21 NMAC;
 - (9) a fully executed participation agreement with the department; and
 - (10) for profit institutions with anticipated New Mexico student gross tuition revenues of one hundred thousand dollars (\$100,000) or more shall submit a letter of good standing from the office of the secretary of state of New Mexico and proof of registration with the New Mexico taxation and revenue department.

[5.99.1.12 NMAC - Rp. 5.99.1.12 NMAC, 12/11/2018; A, 12/29/2020]

5.99.1.13 REPORTING FOR DISTANCE EDUCATION AUTHORIZED INSTITUTIONS:

A. Institutions granted DEA shall comply with department reporting procedures and submit institutional information and data on an annual basis using standard forms. Institutions granted DEA must comply with all reporting deadlines to be eligible for renewal or to remain in good standing.

B. The department shall promulgate a standard form for annual reporting to include curriculum, enrollment, demographic, or other institutional information and data.

[5.99.1.13 NMAC - Rp. 5.99.1.13 NMAC, 12/11/2018]

5.99.1.14 APPLICABLE DISTANCE EDUCATION AUTHORIZATION FEES AND SURETY BOND:

A. The department may assess application, administrative, or reporting fees and publish a fee schedule.

B. The department shall assess fees for providing services associated with application review and making determinations of eligibility for DEA.

C. The department shall assess a fee upon determination that the institution has satisfactorily met all conditions for DEA.

D. The department shall assess an administrative fee for filing annual reporting; any costs associated with specialized review, program changes, and institution or administrative changes shall be assessed to the institution.

E. Each institution holding DEA shall maintain in force a surety bond or alternate form of surety accepted by the department.

(1) The surety bond shall:

(a) be payable to the department;

(b) be in an amount set at twenty percent of the institution's projected or actual gross annual New Mexico distance education tuition and fee revenue;

(c) include the name, office address and phone number of the issuing company representative; and

(d) allow for the department to draw in order to indemnify any student damaged as a result of fraud or misrepresentation, as a result of the institution ceasing operation prior to its students having completed the programs for which they have contracted, or to pay costs associated with preservation of student records.

(2) Alternate forms of surety: An institution may request a waiver from the bond requirement by providing a request to utilize an alternate form of surety. The request must detail the reasons the institution is seeking approval to utilize an alternate form of surety and provide detail regarding the type of surety. The department may accept or reject a request for alternate surety. The alternate form of surety shall:

(a) be payable to the department;

(b) be in an amount set at twenty percent of the institution's projected or actual gross annual New Mexico distance education tuition and fee revenue;

(c) be in the form of a cash deposit escrow account, irrevocable letter or credit, or similar alternate form of surety;

(d) include the name, office address and phone number of the issuing surety representative; and

(e) allow for the department to draw in order to indemnify any student damaged as a result of fraud or misrepresentation, as a result of the institution ceasing operation prior to its students having completed the programs for which they have contracted, or to pay costs associated with preservation of student records.

F. If an institution seeks to cancel a surety bond or an alternate form of surety, written notice must be delivered to the department. The institution may not cancel the surety bond or alternate form of surety until it has been provided with written release from the department. If the institution seeks to maintain or renew DEA, it shall provide the department with a like surety or acceptable alternative.

[5.99.1.14 NMAC - Rp. 5.99.1.14 NMAC, 12/11/2018]

5.99.1.15 COMPLAINTS UNDER DEA:

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 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 higher education 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, 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, if the parties cannot reach a compromised agreement, the department shall impose an outcome by weighing the assertions of the parties after careful consideration of all documents and evidence. The department may sanction a DEA institution pursuant to 5.99.1.22 NMAC if the department determines the institution:

(1) failed to resolve a complaint or comply with the department's efforts to facilitate resolution or conduct inquiry; or

(2) violated provisions of the DEA participation agreement.

G. If the department, through its inquiry, has received evidence to support potential violation of or a deviation from policy, regulation, or law 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.

[5.99.1.15 NMAC - Rp. 5.99.1.15 NMAC, 12/11/2018]

5.99.1.16 SARA INSTITUTIONS:

A. Non-New Mexico SARA member institutions providing distance education to students located in New Mexico shall be governed by rules set forth by the national council for state authorization reciprocity agreements, the SARA manual, and the applicable regional compact.

B. If a non-New Mexico SARA member institution seeks to place students at experiential learning sites in New Mexico to complete supervised learning experience, the institution must comply with SARA manual regarding maximum placements for an individual academic program at one clinical or practicum site. If the institution seeks to exceed placement limitations in the SARA manual for an individual academic program at one clinical or practicum site, the institution must notify and seek permission from the department. Non-New Mexico SARA member institutions that place students in supervised learning experiences within New Mexico and exceed the maximum number of placements without department approval or do not adhere to rules for placements set out pursuant to the SARA manual, placements may be subject to objection by the department. The department will follow procedures for objection pursuant to the SARA manual. If a non-New Mexico SARA member institution seeks to place students from an individual academic program simultaneously at one clinical or practicum site within New Mexico in excess of the amount permitted pursuant to the SARA rules, the department will consider the demonstrated ability of the non-New Mexico SARA member institutions and the clinical or practicum site to provide adequate learning opportunity and resources to the student. In making its determination, factors the department may consider include, but are not limited to:

(1) the size of the facility or location of the experiential learning site;

(2) the number of distinct divisions, departments, or units to which students will be placed within the experiential learning site;

(3) whether the divisions, departments, or units engage in distinct specializations or disciplines;

(4) whether the number of supervisors, mentors, faculty member or other qualified professionals available to provide oversight to fulfill the terms of any agreement between the institution and the clinical or practicum site;

(5) overall demand for student placements by all institutions seeking to establish agreements with the clinical or practicum site.

C. New Mexico home state SARA member institutions providing distance education from New Mexico shall be governed by rules set forth by the national council for state authorization reciprocity agreements, the SARA manual, and the western interstate commission on higher education compact. Application fees for New Mexico home state SARA member institutions shall be assessed by the department pursuant to Section 5.99.1.18 NMAC.

[5.99.1.16 NMAC - Rp. 5.99.1.16 NMAC, 12/11/2018; A, 12/29/2020]

5.99.1.17 REPORTING FOR SARA INSTITUTIONS: SARA member institutions shall comply with the reporting requirements set out by the national council for state authorization reciprocity agreement.

[5.99.1.17 NMAC - Rp. 5.99.1.17 NMAC, 12/11/2018]

5.99.1.18 APPLICABLE SARA FEES, SURETY BOND AND INITIAL APPLICATION APPEAL PROCESS: Acting in the capacity of the state portal entity, the department will assess a non-refundable application fee for SARA home state applicants and publish a fee schedule. New Mexico home state institutions shall pay the state application fee prior to application or renewal application review by the portal entity. The designated New Mexico state portal agent will conduct the review of initial and renewal applications. If the state portal agent determines an initial or renewal application should not be approved, the state portal agent shall review the determination with the portal entity's general counsel prior to providing the applicant institution a written reason for denial. A denial shall not be issued unless the general counsel concurs with the determination. If the applicant institution believes an eligibility provision has been misinterpreted or misapplied the institution may appeal the denial of its initial application within 30 calendar days to the portal entity's cabinet secretary. The appeal must be submitted in writing. The cabinet secretary's determination will be final and will be communicated in writing to the applicant institution within 30 days of receipt of appeal. If an institution is approved by the portal entity to become a SARA member institution, the institution shall pay fees set out by the national council for state authorization reciprocity agreements. The department may require institutions to obtain a surety bond in the amount of twenty percent of the gross or projected distance education tuition and fees revenue from students enrolled pursuant to SARA as a condition of SARA membership approval.

[5.99.1.18 NMAC - Rp. 5.99.1.18 NMAC, 12/11/2018; A, 12/29/2020]

5.99.1.19 COMPLAINTS UNDER SARA:

A. SARA member institutions offering distance education to a student enrolled under SARA, shall be subject to the complaint procedures set out in 5.99.1.19 NMAC and the SARA manual. New Mexico home state SARA member institutions shall adopt complaint procedures for SARA students to allow SARA students to seek resolution to complaints or grievances. The SARA member institution shall have and make available to all enrolled SARA students, the adopted complaint procedure that describes in detail, how SARA students may register a complaint or grievance, how the SARA member institution will investigate the complaint, and how the SARA member 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, pursuant to the SARA manual;
- (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 department as the New Mexico portal entity to be contacted in cases related to complaints resulting from distance education courses or activities offered by New Mexico home state SARA member institutions to students in other SARA states or territories and include the mailing address, website, and phone number for the department and the same contact information for other SARA portal entities.

B. New Mexico home state SARA member institutions shall retain records that make available the student complaint received and record of processing the complaint (that comports with the institution's policies and procedures for handling grievances or complaints) for a minimum of three years.

C. The initial responsibility for the investigation and resolution of complaints resides with the SARA member 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 for review. The department shall not engage in any complaint resolution procedures unless a student has exhausted all complaint procedures set by the SARA member institution or can demonstrate the SARA member institution's refusal to utilize its complaint resolution procedures. If the student can demonstrate all complaint procedures of the SARA member institution have been exhausted and the student is not satisfied with the outcome, the department shall administer complaint procedures set out in the SARA manual.

D. 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, the institution's accreditor, or any other applicable oversight entities.

E. Upon receipt of a student complaint, the department shall determine whether the complaint meets initial criteria to permit use of the department's and SARA's complaint procedures. The following initial complaint criteria must be satisfied:

- (1) A student must file a complaint with the department within the timeframe set in the SARA manual.
- (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 raise an issue that can be addressed pursuant to the SARA manual.
- (5) The department is the appropriate portal entity to handle the complaint pursuant to SARA guidelines.

F. If the department determines the complaint meets the initial complaint criteria, it shall administer the SARA complaint procedures set out in 5.99.1.19 NMAC and the SARA manual. 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).

G. In conducting investigation of the complaint, the department may request a response from the SARA member institution addressing the student's complaint. The complaint and any documentation provided by the student shall be sent to the SARA member institution with a request for a written response. The SARA member institution shall respond to any inquiry issued by the department. The SARA member institution may provide any supporting documentation or evidence to address questions or concerns raised by the complaint with its response. After considering the SARA member institution's response and any documentation or evidence supplied by the institution, the department may conduct further inquiry 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 responses from either party. 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.

H. 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 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.

[5.99.1.19 NMAC - Rp. 5.99.1.19 NMAC, 12/11/2018]

5.99.1.20 WESTERN INTERSTATE COMMISSION FOR HIGHER EDUCATION PRINCIPLES:

Principles of good practice for quality distance education is an essential component of the department's agenda for higher education in New Mexico. The department endorses the principles of good practice established by the western interstate commission for higher education (WICHE). It is expected that all distance education courses and programs meet the following principles:

- A.** each program of study results in learning outcomes appropriate to the rigor and breadth of the degree or certificate awarded;
- B.** an electronically offered degree or certificate program is coherent and complete;
- C.** the program provides for appropriate real-time or delayed interaction between faculty and students and among students;
- D.** qualified faculty provide appropriate oversight of the program electronically offered;
- E.** the program is consistent with the institution's role and mission;
- F.** review and approval processes ensure the appropriateness of the technology being used to meet the program's objectives;

- G. the program provides faculty support services specifically related to teaching via an electronic system;
- H. the program provides training for faculty who teach via the use of technology;
- I. the program ensures that appropriate learning resources are available to students;
- J. the program provides students with clear, complete, and timely information on the curriculum, course and degree requirements, nature of faculty/student interaction, assumptions about technological competence and skills, technical equipment requirements, availability of academic support services and financial aid resources, and costs and payment policies;
- K. enrolled students have reasonable and adequate access to the range of student services appropriate to support their learning;
- L. accepted students have the background, knowledge and technical skills needed to undertake the program;
- M. advertising, recruiting, and admissions materials clearly and accurately represent the program and the services available;
- N. policies for faculty evaluation include appropriate consideration of teaching and scholarly activities related to electronically offered programs;
- O. the institution demonstrates a commitment to ongoing support, both financial and technical, and to continuation of the program for a period sufficient to enable students to complete a degree or certificate;
- P. the institution evaluates the program's educational effectiveness, including assessments of student learning outcomes, student retention, and student and faculty satisfaction; students have access to such program evaluation data; and
- Q. the institution provides for assessment and documentation of student achievement in each course and at completion of the program.

[5.99.1.20 NMAC - Rp. 5.99.1.20 NMAC, 12/11/2018]

5.99.1.21 STUDENT RECORDS:

- A. An institution providing distance education under DEA or that is offering distance education pursuant to 5.99.1.10 NMAC shall maintain a plan for records maintenance and retention which may be inspected by the department. The plan shall consist of a records maintenance and disposal schedule that is 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. The plan must include a description of how records will be maintained in the event of closure, including, but is not limited to, designation of a custodian of records, digitization, and a process for obtaining transcripts from the custodian of records.
- B. The institution must maintain at a minimum, the student's enrollment agreement, student transcript, or record indicating program completion (either certificate, diploma, degree, or other like proof of completion), and student financial aid records.

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

5.99.1.22 MONITORING, SANCTIONS, AND CLOSURE:

- A. Any institution operating pursuant to the act shall be subject to Section 21-23B-5 NMSA 1978.
- B. An institution found in violation of the act may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation.
- C. An institution that does not submit an application for renewal within deadlines set by the department may have a lapse in DEA.
- D. The department shall provide notification for public viewing on the department's website if a distance education authorized institution has been sanctioned or penalized by their accreditor or the U.S. department of education or has a lapse in DEA.
- E. An institution engaging in distance education with students located in New Mexico or post-secondary educational institution located in New Mexico engaging in distance education with a student located outside of New Mexico, shall not cease provision of distance education, close, or make a substantial change to location (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) without providing notice to the department and complying with the provisions set out in 5.99.2 NMAC.

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

History of 5.99.1 NMAC:

5.99.1 NMAC - Public And Private Post-Secondary Institutions Operating Under The Interstate Distance Education Act, filed 12/16/2017, was repealed and replaced by 5.99.1 NMAC - Public And Private Post-Secondary Institutions Operating Under The Interstate Distance Education Act, effective 12/11/2018.