

NEW MEXICO

FINAL GRADING ANALYSIS

OVERALL SCORE: **391.5/700 POINTS (55.9%)**
 LETTER GRADE: **F**

I. OVERSIGHT BODY: **29.5/100 POINTS**

A. IS THERE A STATUTORILY CREATED OVERSIGHT BODY THAT IS PUBLICLY ACCOUNTABLE?

27.5/60 POINTS

Element	Points	Points Awarded
1. Oversight body is a multi-member board, commission, or panel created by statute	10	0
2. Oversight body was statutorily created specifically to oversee private postsecondary institutions	10	5
3. Multi-member board, commission, or panel is the ultimate decision maker (as opposed to a single person, like the head of a department or director)	10	0
4. Oversight body can engage in rulemaking	10	10
5. Oversight body's meetings must be open to the public	5	2.5
6. Oversight body's meetings must allow public comment	5	0
7. Oversight body can initiate investigations	5	5
9. Oversight body can impose penalties for violations	5	5
Total Points	60	27.5

Explanation:

The New Mexico Higher Education Department (NMHED) is a cabinet agency and is charged with licensing and oversight of all postsecondary educational institutions in New Mexico. (N.M. Stat. Ann. § 21-23-5; 5.100.2.1 NMAC.) Because it is not a public board, Department meetings are not subject to New Mexico's Open Meetings Act. (1978 NMSA §10-15-1 *et seq.*) Further, decisions related to investigations, imposition of penalties, and other decisions are not discussed in a public forum. However, any hearings held on student complaints are open and all rules must be adopted at public hearings, so the state receives partial credit for this element. New Mexico law gives the NMHED authority to create an advisory board specifically to provide guidance on issues related to private postsecondary educational institutions. Therefore, New Mexico receives partial credit for creating a body specifically related to overseeing private postsecondary institutions, even though the advisory committee is not a public board and is advisory only in nature. (5.100.4.1 NMAC *et seq.*) NMHED has regulatory oversight over all career schools and degree-granting schools, both public and private.

B. STATUTE-SPECIFIED MEMBERSHIP

1. TO WHAT EXTENT ARE LIMITATIONS PLACED ON FOR-PROFIT MEMBERSHIP ON THE OVERSIGHT BODY?

0/25 POINTS

Explicit prohibition on for-profit majority, plus no possibility of a majority of the quorum	Explicit prohibition on for-profit majority	Discouraged	No prohibition specified, but not discouraged	For-profit majority mandated
25 Points	20 Points	10 Points	0 Points	-5 points

Explanation:

There is no public board or commission in New Mexico and the state does not put in place any statutory or regulatory provisions that would limit for-profit influence at NMHED. The advisory committee appointed by the NMHED to act in an advisory capacity is entirely comprised, by mandate, of representatives of private, postsecondary institutions. (5.100.4.8 NMAC.) New Mexico law neither requires nor discourages a majority of those members from representing for-profit interests.

2. IS THE OVERSIGHT BODY MANDATED TO INCLUDE AT LEAST ONE CONSUMER ADVOCATE?

2/10 POINTS

Yes	No
10 Points	0 2 Points

Explanation:

Although the advisory committee is not the ultimate decision maker, partial credit is awarded because New Mexico law requires that at least two members of it “shall represent public interests.” (5.100.4.8 NMAC.)

3. ARE THE MEMBERS APPOINTED BY A PUBLICLY ACCOUNTABLE OFFICIAL OR ELECTED IN A GENERAL ELECTION?

0/5 POINTS

All	Majority	Half	Minority	None
5 Points	3 Points	2.5 Points	1 Point	0 Points

Explanation:

The NMHED does not have a publicly appointed membership and members of the advisory committee are appointed by the NMHED. (5.100.4.8 NMAC.)

II. STATE OVERSIGHT—EFFICACY: **68/100 POINTS**

A. DOES THE STATE REQUIRE ONSITE REVIEW OF PRIVATE POSTSECONDARY INSTITUTIONS?

3/10 POINTS

Mandatory onsite reviews			Discretionary	None
Every 2 years or less	Every 3-5 years	Over 5 years	Discretion to conduct onsite reviews	No onsite review specified
10 Points	8 Points	5 Points	3 Points	0 Points

Explanation:

The Department is statutorily charged with evaluating each individual institution in order to determine the school’s compliance with the standards New Mexico has set forth. The evaluation may take the form of a physical visit to the school or school offices or may be a desk audit if a physical visit is not feasible. (5.100.2.10(D) NMAC.) There are four types of onsite visits: the initial visit, the regular visit, the triggered visit, and the required special site visit. Regular visits must occur on an appropriate schedule (typically on a bi-annual basis) determined by the Department.

B. DOES THE STATE REQUIRE UNANNOUNCED INSPECTIONS FOR ONSITE REVIEWS?

0/5 POINTS

Required unannounced visits	Discretion to do unannounced visits	No indication
5 Points	3 Points	0 Points

Explanation:

New Mexico does not mandate any of the four types of site visits to be unannounced.

C. DOES THE STATE REQUIRE REGULAR REVIEWS OF PRIVATE POSTSECONDARY APPROVAL TO OPERATE?

20/20 POINTS

Mandatory			Discretionary	None
Every 2 years or less	Every 3-5 years	Over 5 years	Discretion to conduct reviews	No review specified
20 Points	15 Points	10 Points	5 Points	0 Points

Explanation:

New Mexico law requires institutions to apply for licensure, registration, or exemption annually. New Mexico reviews private postsecondary educational institutions upon application for licensure or registration. (N.M. Stat. Ann. § 21-23-6.2.)

D. DO THE CRITERIA FOR RENEWAL OF AUTHORIZATION MANDATE A REVIEW OF FACTORS ESSENTIAL TO ACADEMIC AND ETHICAL INTEGRITY?

15/20 POINTS

8 of 8	7 of 8	6 of 8	5 of 8	4 of 8	3 of 8	2 of 8	1 of 8	0 of 8
20 Points	17.5 Points	15 Points	12.5 Points	10 Points	7.5 Points	5 Points	2.5 Points	0 Points

Element	
Admission requirements	M
Graduation requirements	
Placement rate	M
Completion rate (or graduation rate)	M
Advertising practices	M
Cohort default rate	
Accreditation status	M
Financial aid policies	M

M=Mandatory D=Discretionary

Explanation:

New Mexico law requires private postsecondary educational institutions to include a copy of the institutional catalog and any additional documents that define specified policies for purposes of state review. The state requires institutional catalogs and documents submitted to define student policies in effect at the institution and relevant to the department regulations for licensure; policies that must be included in this submission include admission policies, policies for award of financial aid, policies for payment of tuition and fees and for refunds of tuition and fees when a student withdraws, and complaint policies for students and other citizens with grievances against the institution. New Mexico requires private postsecondary educational institutions to submit a copy of data the school prepared to meet federal integrated postsecondary education data system reporting requirements, which includes data related to tuition and fees, number and types of degrees and certificates conferred, number of students enrolled, number of employees, financial statistics, graduation rates, and student financial aid. (5.100.2.9 NMAC; 5.100.2.10 NMAC.)



Notable Provision: New Mexico requires private postsecondary institutions to maintain a program of periodically assessing the satisfaction of its graduates and to make available to the Department all reports of these assessments prepared during the past five years. The state allows institutions to submit to the Department additional measures of institutional success such as the results of surveys of employers of recent graduates. (5.100.2.26 NMAC.)

Also, New Mexico has in place additional requirements for degree-granting private postsecondary educational institutions. One such requirement is that all baccalaureate and graduate degree programs at an institution licensed by the Department must be reviewed and approved periodically by teaching faculty of the institution. (5.100.2.27(15) NMAC.)

E. DOES THE STATE'S OVERSIGHT DISTINGUISH BETWEEN FOR-PROFIT AND NONPROFIT EDUCATIONAL INSTITUTIONS?

5/15 POINTS

Yes, strongly distinguished	Yes, moderately distinguished	Yes, slightly distinguished	Not distinguished
15 Points	10 Points	5 Points	0 Points

Explanation:

New Mexico law exempts nonprofit institutions whose sole purpose is to train students in religious disciplines to prepare them to assume a vocational objective relating primarily to religion. (5.100.2.8 NMAC; N.M. Stat. Ann. § 21-23-4.) In all other instances, nonprofits and for-profit institutions are held to the same standards.

F. DOES THE STATE REQUIRE INCREASED OVERSIGHT/SCRUTINY OF PRIVATE POSTSECONDARY INSTITUTIONS BASED ON POOR PERFORMANCE?

5/10 POINTS

Yes, mandatory	Yes, mandatory but limited	Yes, discretionary	Yes, discretionary but limited	No
10 Points	7.5 Points	5 Points	2.5 Points	0 Points

Explanation:

New Mexico requires NMHED to review an institution's effectiveness, as reflected in student outcomes such as program completion rates, withdrawal rates, and indices of satisfaction from students, employers, and other knowledgeable sources as a condition of licensure. (5.100.2.28(D)(8) NMAC.) Where NMHED finds deficiencies in an institution's compliance with required standards, New Mexico provides the department with discretion to institute a probationary period of continued licensure for the institution during which time the institution must demonstrate its resolution of deficiencies to the satisfaction of the department. (5.100.2.30(C) NMAC.) Given these two provisions, it is possible for NMHED to increase oversight of an institution by instituting a probationary period of continued licensure if the institution produces poor student outcomes. Finally, NMHED also has the power to revoke licenses.

G. DOES STATE LAW INCLUDE ANY SPECIAL PROTECTIONS FOR VETERANS WHO ATTEND PRIVATE POSTSECONDARY INSTITUTIONS?

20/20 POINTS

Yes	No
20 Points	0 Points

Explanation:

The New Mexico Postsecondary Educational Institution Act does not include any special protections for veterans who attend private postsecondary educational institutions. However, the State Authorizing Agency of the Department of Veterans Services has the power to refuse to allow veteran's financial aid benefits to schools.

III. STATE OVERSIGHT—SCOPE AND INCLUSION:

75/100 POINTS

A. ARE EXEMPTIONS TO STATE OVERSIGHT COVERAGE LIMITED?

75/100 POINTS

No exemptions	Few exemptions	Moderate exemptions	Broad exemptions
100 Points	75 Points	50 Points	0 Points

Explanation:

New Mexico law allows exemptions if an institution meets specific criteria such as offering a course of instruction provided by an employer of its own employees for training purposes, institutions that exclusively offer education that is solely avocational or recreational in nature, 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, chartered, nonprofit religious institutions whose sole purpose is to train students in religious disciplines to prepare them to assume a vocational objective relating primarily to religion, an institution funded in full or in part by an Indian tribe or pueblo in New Mexico or an occupational trade or professional school operating pursuant to any New Mexico occupational licensing law. (N.M. Stat. Ann. § 21-23-4; N.M. Code R. § 5.100.2.8.)

IV. DISCLOSURE REQUIREMENTS: 15/100 POINTS

A. ARE INSTITUTIONS REQUIRED TO DISCLOSE INSTITUTIONAL PERFORMANCE MEASURES TO POTENTIAL STUDENTS?

0/20 POINTS

Yes, mandatory	Yes, discretionary	None
Fact sheet or equivalent required to be given to students	Fact sheet or equivalent given to students upon request	No fact sheet required
20 Points	10 Points	0 Points

Explanation:

New Mexico law does not, however, require institutions to disclose performance information to potential students prior to their signing an enrollment agreement. New Mexico law does require schools to provide potential students with information about admission policies and requirements of the institution; programs offered, the program completion requirements of each, and descriptions of all courses offered; requirements for those occupations that require licensure and for which the institution is offering preparation; tuition and tuition refund policies, consistent with requirements stated elsewhere in these regulations; types of financial aid available to students and the procedure for applying for such aid; the institution's policy regarding program or course cancellations; rules and regulations pertaining to academic progress and to student conduct; the procedure to be followed in the instance that a student decides to withdraw from the institution prior to completing a program; and the institution's policy regarding student complaints and the resources available to students for resolving differences with the institution. This information must be provided to students prior to signing an enrollment agreement. (5.100.2.21 NMAC.)

B. WHICH INSTITUTIONAL PERFORMANCE DISCLOSURES ARE REQUIRED TO BE GIVEN TO STUDENTS PRIOR TO ENROLLMENT?

0/60 POINTS

Disclosures	Mandatory	Discretionary	Not specified
Cohort default rate (CDR)	10 Points	5 Points	0 Points
Graduation / completion rates	10 Points	5 Points	0 Points
Placement rates	10 Points	5 Points	0 Points
Wage information	10 Points	5 Points	0 Points
License exam passage rates	10 Points	5 Points	0 Points
Methods & sources used to calculate	10 Points	5 Points	0 Points

Explanation:

New Mexico law does not require institutions to disclose performance information to potential students prior to their signing an enrollment agreement.

C. DOES THE STATE REQUIRE SCHOOLS TO INCLUDE ELEMENTS ESSENTIAL TO STUDENT PROTECTION PRIOR TO ENROLLMENT OR IN THE ENROLLMENT CONTRACT?

15/20 POINTS

Element Description	Mandatory	Discretionary	Not specified
Total cost of program	5 Points	2.5 Points	0 Points
Refund information	5 Points	2.5 Points	0 Points
Transferability of credits	5 Points	2.5 Points	0 Points
Length of program	5 Points	2.5 Points	0 Points

V. REGULATION OF RECRUITING PRACTICES:

100/100 POINTS

A. HAS THE STATE PUT INTO LAW A LIST OF PROHIBITED ACTS REGARDING ADVERTISING AND RECRUITING?

100/100

Yes, strong regulation	Yes, moderate regulation	Yes, weak regulation	No list of prohibited acts
100 Points	75 Points	50 Points	0 Points

PROHIBITED ACTS

Included in list of prohibited acts	
Misleading representations using the word “college” or “university”	X
Misleading institution affiliations (re: military, public institution, businesses)	X
Promise of employment	X

Compensation for enrollment	X
Compensation or “bounty” to recruiters	
Deception	X
Misrepresentation	X
Misleading representations re: accreditation	X

1-3=Weak; 3.5-6=Moderate; 6.5-8=Strong

Explanation:

New Mexico law prohibits private postsecondary institutions from using the words college or university unless the institution meets the traditional standards for using those terms, *i.e.*, offering associate’s degrees and being geared towards earning such degree for college, and both bachelor’s degrees and graduate degrees for universities. (5.100.2.11 NMAC.) New Mexico law prohibits private postsecondary institutions from using advertisements or promotional materials that are false, deceptive, inaccurate, or misleading. (5.100.2.18(A) NMAC.) This prohibition would encompass misrepresentations as well. State law also prohibits institutions from making misleading representations with regard to accreditation. (5.100.2.18(F) NMAC.) There are several provisions in place to prevent institutions from misrepresenting facilities, affiliations or endorsements. (5.100.2.18(D),(E),(G),(I) NMAC.) Finally, New Mexico law prohibits the provision of a fee to an individual to solicit enrollment at an institution where the individual is not employed by and under supervision of the institution (5.100.2.18(H) NMAC), providing that an institution shall not permit the payment of cash or other nonmonetary incentives, such as but not limited to travel or gift certificates, to any prospective student as an inducement to enroll or visit the institution. (F.A.C. R. 6E-2.004.)



Notable Provision: New Mexico prohibits representatives of private postsecondary educational institutions from soliciting prospective students on the sites of any government agency such as motor vehicle registration offices, unemployment offices, or public assistance offices. (5.100.2.18(I) NMAC.) This is a commendable prohibition and is not included on the above list. However, leaflets or other promotional material may be made available at such sites. (5.100.2.18(I) NMAC.)

VI. COMPLAINT PROCESS AND RELIEF FOR STUDENTS:

69/100 POINTS

A. DOES THE STATE REQUIRE A BOND OR FUND AS A CONDITION OF AUTHORIZATION?

15/20 POINTS

Yes	No
20 15 Points	0 Points

Explanation:

Although New Mexico law requires schools to post a surety bond, it also allows institutions, as an alternative, to establish and maintain a cash deposit escrow account, irrevocable letter of credit or alternative payable to the department in an amount set by the Department and subject to rules promulgated by the Department. (N.M. Stat. Ann. § 21-23-7.1.) For that reason, the state loses 5 points. Institutions must furnish proof of satisfactory insurance, and update that information each year.

B. DOES THE STATE REQUIRE A REFUND OF TUITION IF A STUDENT ENROLLS AS THE RESULT OF MISREPRESENTATION?

10/20 POINTS

Yes, full refund	Yes, partial refund	No refund required
20 Points	10 Points	0 Points

Explanation:

New Mexico law provides some relief to students damaged as the result of fraud or misrepresentation. The state requires schools to post a surety bond, in part to indemnify any student damaged as a result of fraud or misrepresentation by a licensed institution. (N.M. Stat. Ann. § 21-23- 7.1(A); 5.100.2.32(B) NMAC.) However, the law does not specify that students who enroll as the result of misrepresentation are entitled to a full refund.

C. DOES THE STATE REQUIRE INSTITUTIONS TO REFUND TUITION IN THE EVENT OF INSOLVENCY?

15/20 POINTS

Yes, full refund	Yes, partial refund	Yes, refund in limited circumstances	No refund required
20 Points	15 Points	10 Points	0 Points

Explanation:

New Mexico law provides some relief to students damaged as the result of as a result of the institution ceasing operation prior to its students having completed the programs for which they have contracted. The state requires schools to post a surety bond, in part to indemnify any student damaged as a result of as a result of a licensed institution ceasing operation prior to its students having completed the programs for which they have contracted. (N.M. Stat. Ann. § 21-23-7.1(A); 5.100.2.32(B) NMAC.) However, the law does not specify that students who enroll as the result of misrepresentation are entitled to a full refund.

D. DOES THE STATE ALLOW STUDENTS AMPLE TIME TO MAKE A COMPLAINT?

10/10 POINTS

2 years or more (or no deadline)	Up to 1 year	Less than 1 year	Not applicable
10 Points	5 Points	1 Points	0 Points

Explanation:

A student must file a complaint with the Department within three years of his/her last date of enrollment. (5.100.2.25 (C) NMAC.)

E. DOES THE STATE REQUIRE INSTITUTIONS TO DISCLOSE INFORMATION ABOUT FILING A COMPLAINT WITH THE STATE OVERSIGHT BODY?

12.5/20 POINTS

Medium	Yes	Discretionary	No
Catalog	10 Points	5 Points	0 Points
Website	5 Points	2.5 Points	0 Points
Enrollment contract	5 Points	2.5 Points	0 Points

Explanation:

New Mexico law requires institutions to disclose information about complaint procedures, including how to file a complaint with the state oversight body, in the institutional catalog. (5.100.2.21(A)(9) NMAC.) New Mexico receives points for providing schools discretion to provide this information on their websites because it is common for institutions to provide access to catalogs or information similar to that provided in the catalog on the institution's website.

F. IS THE COMPLAINT PROCESS READILY ACCESSIBLE AND AVAILABLE ON THE STATE OVERSIGHT BODY'S WEBSITE?

6.5/10 POINTS

Yes, with address	Yes, with phone #	Yes, with email address	Yes, with electronic form	No
2 Points	2 Points	3 Points	3 1.5 Points	0 Points

Explanation:

NMHED maintains a page on its website that contains information about filing complaints, along with a link to an electronic form. However, because the form cannot be submitted online (it must be printed and faxed or mailed to the NMHED), the state loses 1.5 points.

VII. ENFORCEMENT: 35/100 POINTS

A. IS THERE LOSS OF STATE AID FOR SCHOOLS THAT REPEATEDLY PRODUCE SUBSTANDARD GRADUATION RATES, JOB PLACEMENT RATES, AND/OR COHORT DEFAULT RATES?

15/30 POINTS

Yes, required	Yes, required but limited	Yes, discretionary	Yes, discretionary but limited	No
30 Points	20 Points	15 Points	5 Points	0 Points

Explanation:

There is a possibility that a private postsecondary educational institution in New Mexico could lose state aid for repeatedly producing substandard graduation rates, or job placement rates. New Mexico law requires NMHED to review an institution's effectiveness, as reflected in student outcomes such as program completion rates, withdrawal rates, and indices of satisfaction from students, employers, and other knowledgeable sources as a condition of licensure. (5.100.2.28(D)(8) NMAC.) For example, NMHED may revoke an institution's license to operate or approval to offer a specific degree program at any time, upon finding that the institution has failed to comply with one or more standards of licensure established by the Department or with applicable law. (5.100.2.30(A)(5) NMAC.) Where NMHED finds deficiencies in an institution's compliance with required standards, New Mexico law provides the

Department with discretion to institute a probationary period of continued licensure for the institution during which time the institution must demonstrate its resolution of deficiencies to the satisfaction of the Department. (5.100.2.30(C) NMAC.) If an institution fails to sufficiently demonstrate that its licensure should not be revoked, NMHED shall commence proceedings to revoke the institution's license, which would result in the loss of state aid.

B. DOES STATE LAW EXPLICITLY AUTHORIZE A PRIVATE RIGHT OF ACTION FOR STUDENTS AGAINST INSTITUTIONS WHO HAVE VIOLATED THE LAWS AND REGULATIONS IN PLACE TO GOVERN THEM?

0/30 POINTS

Yes	Limited circumstances	No
30 Points	15 Points	0 Points

Explanation:

New Mexico law does not explicitly authorize a private right of action for students against institutions who have violated the laws and regulations in place to govern them.

C. DOES STATE LAW EXPLICITLY ALLOW ATTORNEY FEE AWARDS FOR STUDENTS WHO PREVAIL IN LITIGATION AGAINST PRIVATE FORPROFIT POSTSECONDARY INSTITUTIONS?

0/20 POINTS

Yes	Limited	No
20 Points	15 Points	0 Points

Explanation:

New Mexico does not explicitly allow attorney fee awards for students who prevail in litigation against institutions who have violated the laws and regulations in place to govern them.

D. DOES STATE LAW EXPLICITLY AUTHORIZE ATTORNEY GENERAL INVOLVEMENT?

20/20 POINTS

Yes	Limited circumstances	No
20 Points	10 Points	0 Points

Explanation:

New Mexico law explicitly provides for Attorney General involvement. (5.100.2.13(R)(3) NMAC.) The AG's office represents NMHED in court against institutions.

BONUS POINTS

New Mexico does not receive any bonus points.



ILLUMINATING INFORMATION



RECIPROCITY AGREEMENTS

New Mexico is a member of the State Authorization Reciprocity Agreements (SARA).

LITIGATION, INVESTIGATIONS, AND ACTIONS INVOLVING PRIVATE FOR-PROFIT EDUCATIONAL INSTITUTIONS IN NEW MEXICO

For information about pending and recent federal and state government investigations and actions regarding for-profit colleges see David Halperin's compilation at <http://www.republicreport.org/2014/law-enforcement-for-profit-colleges/#sthash.1vc4HmPw.dpuf>.