

NEBRASKA ADMINISTRATIVE CODE

TITLE 281 – COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION

CHAPTER 7 – RULES AND REGULATIONS FOR THE
POSTSECONDARY INSTITUTION ACT

Adopted January 25, 2018

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TITLE 281 – COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION

CHAPTER 7 – RULES AND REGULATIONS FOR THE POSTSECONDARY INSTITUTION ACT

001. AUTHORIZATION TO OPERATE

001.01. Any postsecondary institution intending to operate in the State of Nebraska by establishing a physical presence in this state must receive an authorization to operate from the Commission.

001.02. Unless otherwise specified in an interstate reciprocity agreement, the provisions of this chapter shall not apply to:

001.02(A). Any institution or organization which offers education or instruction and which is licensed and regulated solely by an agency of the federal government with respect to curriculum and qualifications of instructional staff;

001.02(B). Any private postsecondary career school as defined in the Private Postsecondary Career School Act, except for purposes of interstate reciprocity agreements for the provision of postsecondary distance education across state boundaries entered into and administered pursuant to subsections (5) and (6) of section 85-2405;

001.02(C). Institutions solely offering a short course or seminar if instruction for the short course or seminar takes no more than twenty classroom hours and the institution offers no more than two courses as defined by the commission in a calendar year;

001.02(D). Institutions offering courses or programs on a military installation solely for military personnel or civilians employed on such installation;

001.02(E). An educational experience arranged for an individual student, such as a clinical, practicum, residency, or internship;

001.02(F). Institutions offering courses exclusively online or through the United States mail or similar delivery service which do not require the physical meeting of a student with instructional staff; or

001.02(G). Institutions offering a course or program that requires students to physically meet in one location for instructional purposes not more than once during the course term.

001.03. The following institutions shall be deemed to have an authorization to operate on a continuing basis:

001.03(A). All out-of-state public postsecondary institutions with a physical presence that for at least twenty academic years have continuously offered one or more four-year

undergraduate programs in Nebraska in compliance with state and federal law;

001.03(B). All private postsecondary institutions with a physical presence that for at least twenty academic years, under the same ownership, have continuously offered one or more four-year undergraduate programs in Nebraska in compliance with state and federal law; and

001.03(C). All Nebraska public postsecondary institutions.

001.04. An institution with a recurrent authorization to operate may request authorization to operate on a continuing basis if it has, for at least twenty academic years under the same ownership, continuously offered one or more graduate or four-year undergraduate programs with a physical presence in Nebraska in compliance with state and federal law. The request shall take the form of a letter to the commission. The commission will review the request, which shall include any further information as required by the commission.

002 STATUTORY AUTHORITY. This rule is adopted pursuant to authority vested in the Coordinating Commission for Postsecondary Education in Neb. Rev. Stat. §§ 85-1411, 85-2405, and 85-2406.

003. DEFINITIONS.

003.01. Authorization to operate means either an authorization to operate on a continuing basis or a recurrent authorization to operate.

003.02. Authorization to operate on a continuing basis means approval by the Commission to operate a postsecondary institution in this state without a renewal requirement.

003.03. Change of ownership means a change in the person, entity or governing body that has an ownership interest in an institution.

003.03(A). Change in ownership includes, but is not limited to, the following transactions:

003.03(A)(i). The sale or transfer to, or acquisition by, a new owner of all, or a substantial portion, of the institution's assets;

003.03(A)(ii). Stock transactions including Initial Public Offerings of stock as well as transactions wherein an individual, entity, or group acquires and controls 50 percent or more of the total outstanding shares of stock of the institution, or an individual, entity or group increases or decreases ownership or control of shares to greater or less than 50 percent of the total outstanding shares of the stock of the institution;

003.03(A)(iii). Change in corporate form, including, but not limited to, change from Sole Proprietorship to Partnership or Corporation, Limited Partnership to Corporation, Limited Liability Corporation to a Corporation, Not-for-Profit Corporation controlled by members to one controlled by a Board of Directors;

003.03(A)(iv). Any of the transactions in items 1 through 3 above involving a parent

corporation that owns 90 percent or more of the institution and controls the institution, or in any intermediate subsidiary of a parent corporation where that subsidiary has a controlling relationship to the institution and where the transaction may reasonably affect the control of the institution as determined by the commission or by the U.S. Department of Education.

003.03(B). Change in ownership does not include:

003.03(B)(i). A transfer of ownership or stock that occurs as a result of the retirement or death of an owner or stockholder if transfer is to a member of the owner's family who has been directly and constantly involved in the management of the institution for a minimum of two years preceding the transfer. For purposes of this section, a member of the owner's family is a parent, sibling, spouse, child or grandchild; spouse's parent or sibling; or sibling's or child's spouse.

003.03(B)(ii). The merger or consolidation of an institution with another institution holding a current authorization to operate from the commission.

003.04. Commission means the Coordinating Commission for Postsecondary Education.

003.05. Executive director means the executive director of the commission or his or her designee.

003.06. For-profit postsecondary institution means any private postsecondary institution that is not exempt for federal tax purposes under section 501 (c) (3) of the Internal Revenue Code as defined in Neb. Rev. Stat. § 49-801.01.

003.07. Interstate reciprocity agreement means an arrangement among member states, districts, and/or territories that establishes comparable national or regional standards for offering postsecondary distance education courses and programs in member states.

The commission shall enter into such an agreement after consultation with the state department of education if such an agreement would include private postsecondary career schools and with postsecondary institutions upon which the agreement may have an impact.

003.08. Level of authorization to operate means the type of institutional offerings. The three levels shall be:

003.08(A). establish an administrative office,

003.08(B). offer less than a complete program, or

003.08(C). offer one or more complete programs.

003.08(C)(i). The commission shall specify the academic degree level at which the institution is authorized by the commission to award credentials. These levels shall be less than associate, associate, baccalaureate, master's, and doctorate, and may be limited by the commission to certain programs or academic disciplines as defined by

program title and/or CIP code (Classification of Instructional Programs from the U.S. Department of Education).

003.09. Nebraska public postsecondary institution means any public institution established, operated, and governed by this state or any of its political subdivisions.

003.10. New campus means a facility

003.10A. that meets the following criteria:

003.10(A)(i). Students can complete at least one full program (certificate, diploma, degree) at the location,

003.10(A)(ii). The facility is either owned by an institution or under lease for a period of at least 5 years, and

003.10(A)(iii). The location has its own faculty, administrative head, academic resources, and student services; or

003.10(B). that is deemed to be a new or branch campus by the institution's accrediting body.

003.11. Out-of-state public postsecondary institution means any public institution in Nebraska that is established, operated, and governed by another state or any of its political subdivisions and that provides postsecondary education.

003.12. Physical presence means:

003.12(A). Offering a course for college credit or a degree program in this state that leads to an associate, baccalaureate, graduate, or professional degree, including:

003.12(A)(i). Establishing a physical location in this state where a student may receive synchronous or asynchronous instruction; or

003.12(A)(ii). Offering a course or program that requires students to physically meet in one location for instructional purposes more than once during the course term; or

003.12(B). Establishing an administrative office in this state, including:

003.12(B)(i). Maintaining an administrative office in this state for purposes of enrolling students, providing information to students about the institution, or providing student support services;

003.12(B)(ii). Providing office space to staff, whether instructional or non- instructional staff; or

003.12(B)(iii). Establishing a mailing address in this state.

003.13. Postsecondary institution means any institution with a physical presence in Nebraska that provides postsecondary education and is exempt from the Private Postsecondary Career School Act.

003.14. Private postsecondary institution means any Nebraska or out-of-state nonpublic postsecondary institution, including any for-profit postsecondary institution or nonprofit Institution.

003.15. Recurrent authorization to operate means approval by the commission to operate a postsecondary institution in this state, including establishing a new campus or an administrative office, until a renewal of such authorization is required.

003.15(A). Modification of a recurrent authorization to operate means approval by the commission of an institution holding a recurrent authorization to operate that seeks to conduct activities outside the scope of its existing authorization, including, but not limited to, establishing a new campus and offering programs at a different level of authorization.

003.15(B). Renewal of a recurrent authorization to operate means approval by the commission of an institution previously authorized to operate at the time such authorization expires.

004. APPLICATION

004.01. Prior to establishing a physical presence in the state, any out-of-state public postsecondary institution or private postsecondary institution shall apply to the commission for a recurrent authorization to operate in the state.

004.02. After receiving a recurrent authorization to operate in the state, any institution seeking to conduct activities outside the scope of its existing authorization must apply for a modification of the recurrent authorization to operate.

004.03. After receiving a recurrent authorization to operate in the state, all institutions shall apply to the commission to renew their recurrent authorization to operate on a schedule specified by the commission, but at least 90 days prior to the expiration of the authorization. If an institution has satisfied the conditions identified in 001.04, it may request authorization to operate on a continuing basis rather than renewal.

004.04. Any Nebraska public postsecondary institution, any private postsecondary institution that has its principal place of business in Nebraska, and any private postsecondary career school that has its principal place of business in Nebraska that wishes to participate in an interstate reciprocity agreement for providing postsecondary distance education shall apply to the commission for approval to participate in the agreement.

005. APPLICATION PROCEDURE.

005.01. Any institution seeking a recurrent authorization to operate, a modification of a recurrent authorization to operate, a renewal of a recurrent authorization to operate, or participation in an interstate reciprocity agreement shall complete the application form and pay the application fee. Copies of the application forms for a recurrent authorization to operate and modification or renewal of a recurrent authorization to operate shall be posted on the Commission's website. Application to participate in an interstate reciprocity agreement shall be developed by the commission in accordance with the specifications of the interstate reciprocity agreement. The applicant will provide all information requested as a part of the application procedure before the application will be reviewed by the commission.

005.02. A non-refundable fee for costs to review and evaluate applications shall be submitted with each application. Fees shall be set every two years at a regularly scheduled meeting of the commission and posted on the commission website. Re-submission of an application following its withdrawal by institutions seeking authorization or participation in an interstate reciprocity agreement requires an additional fee.

006. MINIMUM STANDARDS FOR AUTHORIZATION TO OPERATE. An institution seeking a recurrent authorization to operate, a modification of a recurrent authorization to operate, or a renewal of a recurrent authorization to operate must demonstrate:

006.01. The financial soundness of the institution and its capability to fulfill its proposed commitments and sustain its operations.

006.02. The quality and adequacy of teaching faculty, library services, and support services.

006.03. The quality of the programs offered, including courses, programs of instruction, degrees, any necessary clinical placements, and the institution's ability to generate and sustain enrollment.

006.04. The specific locations where programs will be offered or planned locations and a demonstration that facilities are adequate at the locations for the programs to be offered.

006.05. Assurances regarding transfer of credits earned in the program to the main campus of such institution and clear and accurate representations about the transferability of credits to other institutions located in Nebraska and elsewhere.

006.06. Whether such institution and, when appropriate, the program, are fully accredited, or seeking accreditation, by an accrediting body recognized by the U.S. Department of Education.

006.07. The institution's policies and procedures related to students, including, but not limited to, recruiting and admissions practices, loan procedures, and tuition and fee policies.

006.08. The tuition refund policy for an institution that does not participate in federal financial aid programs described in Title IV of the federal Higher Education Act of 1965, 20

U.S.C. 1001 et seq., as such act existed on January 1, 2011.

006.09. Any other standards deemed necessary by the commission.

007. MINIMUM STANDARDS FOR PARTICIPATION IN AN INTERSTATE RECIPROcity AGREEMENT. An institution seeking to participate in an interstate reciprocity agreement must demonstrate compliance with all specifications of the agreement as identified by the member states, districts, and/or territories, including:

007.01. The financial soundness of the institution.

007.02. Whether such institution is accredited by an accrediting body recognized by the U.S. Department of Education.

007.03. Other requirements specified in the interstate reciprocity agreement.

008. PUBLIC HEARING – NEW CAMPUS. Upon receipt of a complete application for a recurrent authorization to operate or modification of a recurrent authorization to operate that includes a request to establish a new campus, the commission shall set a time and a place for a public hearing. The hearing shall be scheduled following a completed review of the application, including any further information submitted by the applicant as required by the commission and any investigation of the applicant as the commission may deem necessary or appropriate, and shall be conducted according to the Administrative Procedure Act. A representative of the institution shall be present during the public hearing and provide information as requested.

009. COMMISSION ACTION.

009.01. The commission shall either approve or deny all applications and requests. Such action shall take place during a regularly scheduled commission meeting, except for approval of participation in an interstate reciprocity agreement which shall be made by the executive director on behalf of the commission. If the application for participation in an interstate reciprocity agreement is made by a private postsecondary career school, the executive director shall consult with the state department of education prior to acting on the application.

009.02. The recurrent authorization to operate shall be for a period of no more than five years. The commission may set terms or conditions on the authorization. Approval of participation in an interstate reciprocity agreement shall be for the period of time determined by the member states, districts, and/or territories and specified in the agreement.

009.03. A recurrent authorization to operate or an authorization to operate on a continuing basis shall be granted to the owner or governing body of an institution and shall be non-transferrable. Should ownership of an institution change, the new owner shall have 30 days from the date of the transfer of ownership to apply to the commission for a recurrent authorization to operate.

009.04. All contacts with the commission will be made through the Executive Director or his/her designee. The Executive Director or his/her designee shall notify the applicant in writing of the action by the commission.

010. REPORTING

010.01. Each institution holding a recurrent authorization to operate shall provide a report in a form prescribed by the commission annually from the date of the recurrent authorization. The reports shall include the number of students enrolled and the number of students graduated for each program offered by the institution in Nebraska. The report shall also include other information specified by the commission in the recurrent authorization to operate.

010.02. Each institution participating in an interstate reciprocity agreement shall report to the commission any information or data specified in the agreement in the time frame designated in the agreement.

011. ACTIVITIES REQUIRING COMMISSION NOTIFICATION.

011.01. An institution authorized to operate shall provide notification in writing to the commission at least 30 days prior to initiating the following activities:

011.01(A). Changing address or location.

001.01(B). Opening a new instructional site.

011.02. An institution holding a recurrent authorization to operate shall provide notification in writing to the commission at least 30 days prior to initiating these additional activities:

011.02(A). Offering new programs within the scope of the institution's existing authorization.

011.02(B). Changing the administrative head of the Nebraska campus or location.

012. VIOLATION OF THE POSTSECONDARY INSTITUTION ACT.

012.01. Any postsecondary institution with a recurrent authorization to operate which ceases to meet any of the requirements of the Postsecondary Institution Act, any rules or regulations adopted and promulgated under the act, or any terms or conditions specified by the commission for authorization to operate under the act, shall be subject to the hearing process and commission review pursuant to section 85-2414.

012.02. Any person claiming damage or loss as a result of any act or practice by a postsecondary institution which is a violation of the Postsecondary Institution Act, of the rules and regulations adopted and promulgated under the act, or of standards established pursuant to section 85-2406, may, upon exhausting institutional complaint processes, file a complaint with the commission against such institution pursuant to section 85-2418.

012.03. Any person claiming damage or loss as a result of any act or practice by a Nebraska public postsecondary institution or a private postsecondary institution that has its principal place of business in Nebraska and is participating in an interstate reciprocity agreement that is a violation of any rules, regulations, or conditions specified for participation

in the interstate reciprocity agreement may, upon exhausting institutional complaint processes, file a complaint with the commission against such institution pursuant to section 85-2418 and procedures identified in the interstate reciprocity agreement. The commission shall document all complaints and actions taken and follow any additional procedures required under the interstate reciprocity agreement.

012.04. Any person claiming damage or loss as a result of any act or practice by a private postsecondary career school that has its principal place of business in Nebraska and is participating in an interstate reciprocity agreement that is a violation of any rules, regulations, or conditions specified for participation in the interstate reciprocity agreement may file a complaint with the state board of education pursuant to section 85-1635 and procedures identified in the interstate reciprocity agreement.

013. RIGHT TO APPEAL. Any person aggrieved or adversely affected by any final action of the commission or action taken by the executive director on behalf of the commission may appeal such action. The appeal shall be in accordance with the Administrative Procedure Act.

014. RELATED CHAPTER. Chapter 8 of Title 281 of the Nebraska Administrative Code provides the procedures for the administration of the Guaranty Recovery Cash Fund. Copies of these related regulations are available from the Coordinating Commission for Postsecondary Education or can be found on the Commission's website.