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September 22, 2014

**MEMORANDUM**

**TO:** Legislative Education Study Committee

**FR:** Travis Dulany

**RE: STAFF BRIEF: EMERGENCY ADMINISTRATIVE RULEMAKING:  
LEGISLATIVE LOTTERY SCHOLARSHIP**

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***Introduction***

Throughout the 2014 interim, Legislative Education Study Committee (LESC) staff have provided periodic updates regarding administrative rulemaking for the Legislative Lottery Tuition Scholarship. This staff brief provides an update on the most recent changes to the New Mexico Administrative Code regarding the scholarship.

***Eligibility***

During the August 2014 meeting of the LESL, staff testified that adopted rule published in the August 15, 2014 issue of the *New Mexico Register* still required eligible students to obtain a New Mexico Diploma of Excellence in order to receive the Legislative Lottery Scholarship, despite the Higher Education Department's (HED) earlier indications that this language would be changed in order to accommodate those students who have completed a high school curriculum without meeting the requirements for a Diploma of Excellence.

As the committee will recall, recently implemented graduation requirements specify that New Mexico secondary students must demonstrate competence on a standards-based assessment or by means of a portfolio of standards-based indicators in order to receive a New Mexico Diploma of Excellence. If a student exits from the school system at the end of grade 12 without

having demonstrated competence, the student receives an appropriate state certificate indicating the number of credits earned and the grade completed. For those students who have met all course requirements in state law, this credential has been referred to as a “certificate of completion.”

### ***Emergency Amendment***

On August 18, 2014, HED officials notified higher education institutions that the department has filed “an emergency amendment to the [New Mexico Administrative Code] which has removed the contentious ‘diploma of excellence’ and has been substituted with ‘completed high school.’” The department further states, “Any (recent) high school completer (or student who obtained a high school equivalency credential) should be given consideration for the scholarship.”

The emergency amendment to the rule adds language that defines a “qualified student” as one who “completed high school, graduated from a public or accredited private New Mexico high school or who received a high school equivalency credential while maintaining residency in New Mexico...” Other portions of the rule were also amended to reflect this change.

Additional changes in the emergency amendment:

- replace the term “financial aid director” with “lead financial aid officer”; and
- add wording to clarify that postsecondary educational institutions must collect social security numbers of participating students only “as appropriate.”

The emergency amendment went into effect on August 15, 2014 and was included in the August 29, 2014 issue of the *New Mexico Register* (see **Attachment 1**).

### ***Conflicting Language***

For students with disabilities, Subsection C of the “Objective” section of the rule (5.7.20.6 NMAC) states, “In no case shall ‘full-time’ mean fewer than six credit hours per semester and in no case shall eligibility extend beyond 14 consecutive semesters at a four-year institution and *seven* consecutive semesters at a two-year institution” (emphasis added). This conflicts with Subsection B, Paragraph (2)(c) in the “Student Eligibility” section of the rule (5.7.20.8 NMAC), which states that “in no case shall eligibility extend beyond 14 consecutive semesters at a four year institution and *six* consecutive semesters at a two year institution” (emphasis added).

After being made aware of the conflicting language, HED staff indicated that this was likely a drafting error and that the department would be filing an amendment to specify that the correct maximum number of semesters a student with disabilities can receive the scholarship at a two-year institution is seven semesters.

The September 15, 2014 issue of the *New Mexico Register* includes a proposed amendment to the rule correcting this drafting error (see **Attachment 2**).

### ***Related Background***

Created by legislation enacted in 1996, the Legislative Lottery Scholarship is a renewable award granted to qualified students beginning in their second semester at a public postsecondary institution in New Mexico. The scholarship covers the cost of tuition only. Students are responsible for additional educational expenses such as student fees, course materials, and housing.

Under the newly enacted *Legislative Lottery Tuition Scholarship Act*, a student must:

- maintain residency in New Mexico;
- have graduated from a public or accredited private New Mexico high school or have obtained a New Mexico High School Equivalency Credential while maintaining New Mexico residency;
- enroll full-time (in at least 15 credit hours, or 12 credit hours for legacy students and community college students) at an eligible New Mexico postsecondary educational institution immediately upon graduation; and
- attain and maintain a grade point average of at least 2.5.

State law also provides for specific accommodations with regard to:

- students with disabilities; and
- individuals who either immediately enlist in, or have recently departed from, the US Armed Forces.

**ATTACHMENT 1****New Mexico Register / Volume XXV, Number 16 / August 29, 2014**

This is an emergency amendment to 5.7.20 NMAC, Sections 6 - 9 and 11, effective 8/15/14.

**5.7.20.6 OBJECTIVE:**

**A.** The objective of 5.7.20 NMAC is to provide a level of financial support to qualified New Mexico students who ~~[have obtained a New Mexico diploma of excellence from a New Mexico high school or a New Mexico high school equivalency credential and]~~ are enrolled full-time at an eligible New Mexico public college or university. This level of financial support is intended to help defray the cost of tuition at the public post-secondary educational institution where the student is enrolled.

**B.** A further purpose of 5.7.20 NMAC is to encourage New Mexico high school students who pursue a post-secondary education in New Mexico to complete a first four-year degree within a maximum of eight semesters or two-year degree within a maximum of four semesters (the number of semesters is so determined as the initial award is not made until the second semester of college enrollment).

**C.** As it applies to students with disabilities who may require special accommodations, the department, in consultation with the student and the office at the public post-secondary educational institution that serves students with disabilities, shall review both the definition of "full-time" and the maximum number of consecutive semesters of eligibility and adjust either or both as deemed reasonable and appropriate, based on the student's disability needs. In no case shall "full-time" mean fewer than six credit hours per semester and in no case shall eligibility extend beyond 14 consecutive semesters at a four-year institution and seven consecutive semesters at a two-year institution.

[5.7.20.6 NMAC - Rp, 5.7.20.6 NMAC, 08/15/2014; A/E, 8/15/14]

**5.7.20.7 DEFINITIONS:**

**A.** "**Academic year**" means any consecutive period of two semesters (or three semesters for accelerated programs), three quarters or other comparable units commencing with the fall term each year.

**B.** "**Accelerated program**" means one in which a summer semester is a program requirement and not a student choice; a cohort that requires sequence of courses taken in summer semester.

**C.** "**Consortium**" means a written agreement between a home institution and one or more host institutions for consideration of combined enrollment for eligibility:

(1) home institution is the institution where the student is enrolled in a degree or certificate seeking program and is receiving lottery scholarship funds;

(2) host institution is the secondary institution where the student is taking part of their program requirements.

**D.** "**Department**" means the New Mexico higher education department (NMHED).

**E.** "**Full-time**" means 15 or more credit hours each program semester of the regular academic year at a research institution or comprehensive institution; or 12 or more credit hours for each program semester at community colleges; or through a consortium agreement between the home and host institutions, or for legacy students in any program semester. For students enrolled through a consortium agreement the minimum credit hour eligibility requirement shall be based on the student's home institution.

**F.** "**GPA**" means grade point average.

**G.** "**Immediately upon graduation**" means enrollment anytime within the first academic semester following high school completion.

**H.** "**Legacy student**" means a full time resident student who has received three or more program awards by the end of fiscal year 2014.

**I.** "**Legislative lottery scholarship**" means a scholarship awarded from proceeds of the New Mexico lottery tuition fund, to defray all or part of the cost of tuition.

**J.** "**Non-enrollment**" means a student is not enrolled in a public post-secondary educational institution.

**K.** "**Probation**" means a period of time that a student fails to meet continuing eligibility for exceptional mitigating circumstances as determined by the ~~[financial aid director]~~ lead financial aid officer at the institution; as described in Subsection C of 5.7.20.8 NMAC.

**L.** "**Public post-secondary educational institution**" means a research or comprehensive institution, as defined in Article XII, Section 11 of the New Mexico constitution, and branch community colleges or community college or technical and vocational institute as defined by Section 21-13, 14, and 16 NMSA 1978.

**M.** "**Qualified student**" means a full-time student who completed high school, graduated from a public or accredited private New Mexico high school or who received a high school equivalency credential while maintaining residency in New Mexico and who either:

(1) immediately upon completion of high school, graduation or receipt of a credential was accepted for entrance to and attended a public post-secondary educational institution; or

(2) within 120 days of completion of a high school curriculum or receipt of a high school equivalency credential began service in the United States armed forces and within one year of completion of honorable service or medical discharge from the service, attended a public post-secondary educational institution; and

(3) successfully completed the first semester at a public post-secondary educational institution with a grade point average of 2.5 or higher on a 4.0 scale during the first semester of full time enrollment.

**N. "Summer semester"** means a semester equal to fall and spring semester in duration and intensity that is required as part of an accelerated program.

**O. "Tuition scholarship"** means the scholarship that provides tuition assistance per semester for qualified students.

[5.7.20.7 NMAC - Rp, 5.7.20.7 NMAC, 08/15/2014; A/E, 8/15/14]

### 5.7.20.8 STUDENT ELIGIBILITY:

**A.** A scholarship may be awarded to a student in their second semester who has met first semester eligibility requirements as follows:

(1) has established New Mexico residency as defined in 5.7.18.9 NMAC or is eligible for a nondiscrimination waiver as defined in Subsection K of 5.7.18.10 NMAC;

(2) has ~~received a New Mexico diploma of excellence from a New Mexico high school or a New Mexico high school equivalency credential~~ been determined to be a qualified student pursuant to Section M of 5.7.20.7 NMAC;

(3) has met the requirements in Section E of 5.7.20.7 NMAC ~~[and Section M of 5.7.20.7 NMAC];~~

(4) has met requirements in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC or students with exceptional mitigating circumstances as determined by the institution's ~~[financial aid director]~~ lead financial aid officer; students who are incapable of meeting the requirements specified in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC due to a documented exceptional mitigating circumstance do not forfeit eligibility for the legislative lottery scholarship; however, the following requirements shall apply:

(a) the student shall provide documents certifying the nature of the student's exceptional mitigating circumstance to the institution's ~~[financial aid director]~~ lead financial aid officer at the post-secondary educational institution at which the student is enrolling or will enroll; the institution's financial aid director shall exercise professional judgment to determine whether the exceptional mitigating circumstance is beyond the student's control and precludes the student from meeting the requirements specified in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC;

(b) if, in the professional judgment of the institution's ~~[financial aid director]~~ lead financial aid officer, the student's exceptional mitigating circumstance is recognized as a valid reason for the student's inability to meet the requirements specified in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC the student's initial eligibility for the legislative lottery scholarship shall be suspended or deferred unless and until such time that the student is capable of meeting the requirements of Paragraph (4) of Subsection A of 5.7.20.8 NMAC;

(5) has not been awarded a New Mexico scholars' scholarships or other state scholarships which are designated for 100% tuition; and

(6) students with disabilities shall obtain a referral from the student services division of the post-secondary educational institution where the student is enrolled that oversees students with special needs' requests to reduce the credit hours to be considered full semester for scholarship eligibility; referrals and any sufficient documentation shall be received within 30 days of the start of the student's first semester;

(7) students are encouraged, but are not required, to complete a free application for student aid (FAFSA) for lottery scholarship eligibility.

**B. Continuing eligibility.** Upon satisfaction of the qualifying semester eligibility requirements, the scholarship will be awarded to the student beginning with their second semester of enrollment. A student's continuing eligibility shall be determined on a semester basis.

(1) A legislative lottery scholarship award may be re-awarded to a student who:

(a) maintains a minimum of a 2.5 cumulative GPA; a student has the right to request use of the student's cumulative GPA earned at all New Mexico institutions; and

(b) maintains full time enrollment as provided in Subsection E of 5.7.20.7 NMAC; when a qualified student transfers after completion of the first semester from a two year institution to a four year institution for enrollment during the second or subsequent semester, a student will have met eligibility requirements, but said student must enroll in 15 credit hours upon transfer to maintain eligibility;

(i) receipt of a transfer transcript for sufficient documentation for eligibility;

(ii) student transfers shall defer to the receiving institution to determine eligibility.

(2) Students with disabilities may be re-awarded the legislative scholarship under the following conditions:

(a) a referral is obtained for each semester in which a reduction in credit hours is requested;

(b) maintains a minimum of a 2.5 cumulative GPA; and

(c) in no case shall eligibility extend beyond 14 consecutive semesters at a four year institution and six consecutive semesters at a two year institution.

(3) An eligible student that transfers shall continue to be eligible at the receiving institution after receipt of the student's transfer transcript containing eligibility confirmation.

**C. Probation.** Students who have been determined eligible and subsequently have exceptional mitigating circumstances as determined by the institution's ~~[financial aid director]~~ lead financial aid officer may be placed on a probationary

status under the following conditions:

- (1) the student shall provide documents certifying the nature of their exceptional mitigating circumstance to the ~~[financial aid director]~~ lead financial aid officer at the post-secondary institution at which the student is enrolling or will enroll;
- (2) the ~~[financial aid director]~~ lead financial aid officer shall exercise professional judgment to determine whether the exceptional mitigating circumstance is beyond the student's control and precludes the student from meeting the requirements specified in Paragraph (4) ~~[(5)]~~ of Subsection A of 5.7.20.8 NMAC;
- (3) the student shall maintain enrollment at the public post-secondary educational institution where eligibility was lost, if applicable;
- (4) under no circumstances shall the student receive program awards in excess of those prescribed in Subsections A and B of 5.7.20.9 NMAC less the regular semester(s) of probation.  
[5.7.20.8 NMAC -Rp, 5.7.20.8 NMAC, 08/15/2014; A/E, 8/15/14]

#### **5.7.20.9 DURATION OF SCHOLARSHIP:**

- A. Upon qualification, the student's initial scholarship shall begin with the second semester of enrollment at a post-secondary educational institution. Thereafter, each scholarship is for a period of one semester subject to revocation for failure to maintain eligibility. The scholarship may be renewed on a semester basis until the award recipient has received three semesters of awards at a community college or seven semesters at a research and comprehensive institution of scholarship awards, or until the student graduates with a bachelor's degree from an eligible institution, whichever is sooner.
- B. An award recipient may use the award at an eligible two-year post-secondary educational institution until the student receives three semesters of scholarship awards or an associate's degree and can continue to use the award at an eligible New Mexico four-year post-secondary educational institution if the student transfers to a four-year post-secondary educational institution without a break in attendance or the semester following receipt of the associate's degree. In no case shall a student receive more than seven semesters of the award with the exception of legacy students or students with disabilities.
- C. A student may transfer from a four-year post-secondary educational institution to a two-year post-secondary educational institution, but in no case shall a student receive more than three semesters of awards at the two-year institution (including those awarded at the prior post-secondary educational institution) or until the student graduates with an associate's degree, whichever is sooner.
- D. A student who has been previously eligible may request a leave of absence for cooperative education, military obligations, participation in a study abroad program through the home institution, or other exceptional mitigating circumstances.
- E. The student's institutional ~~[financial aid director]~~ lead financial aid officer may approve a leave of absence for a period of up to one year if in the ~~[director's]~~ lead financial aid officer's professional judgment the student has provided sufficient documentation to justify the leave of absence. Subsequent requests for an additional leave of absence by a student may be considered by the institution's financial aid director in increments not to exceed one year.
- F. The ~~[financial aid director]~~ lead financial aid officer shall, in turn, ensure that the student does not receive program awards in excess of those prescribed in Subsections A and B of 5.7.20.9 NMAC and shall exclude the semesters of "non-enrollment" from the determination of eligible award semesters.
- G. If a student becomes ineligible for a different state scholarship that is designated for 100% tuition, but satisfies the first semester eligibility requirements and thereafter is eligible for the legislative lottery scholarship, the student may begin receiving the legislative lottery scholarship for the remaining number of semesters of enrollment, not to exceed those prescribed in Subsections A and B of 5.7.20.9 NMAC.  
[5.7.20.9 NMAC -Rp, 5.7.20.9 NMAC, 08/15/2014; A/E, 8/15/14]

#### **5.7.20.11 ADMINISTRATION OF THE LEGISLATIVE LOTTERY SCHOLARSHIP:**

- A. Eligible post-secondary educational institutions shall:
  - (1) notify students of their possible eligibility, during their first regular semester of enrollment including transfer students who had the legislative lottery scholarship at previous institutions;
  - (2) designate their institution's ~~[financial aid director]~~ lead financial aid officer to be responsible for determining initial and continuing student eligibility for the legislative lottery scholarship under the terms of these rules and regulations;
  - (3) maintain a listing of each participating student to include but not be limited to:
    - (a) social security number as appropriate;
    - (b) cumulative GPA and completed enrollment hours in prior semesters;
    - (c) proof of initial and continuing enrollment;
    - (d) award semester; and
    - (e) other data fields deemed important by the department;
  - (4) draw-down files should be submitted to the department for eligible students as defined in Section 5.7.20.10 NMAC per semester; all fiscal year draw-downs shall be for eligible students enrolled during the same fiscal year;
  - (5) for students that satisfied the first semester eligibility requirements and seek continuing eligibility consideration, use professional judgment to determine that exceptional mitigating circumstances beyond the students control, for which documentation exists in the student's file; the institutions shall defer to their institutional satisfactory academic progress policy when considering circumstances which include, but are not limited to, consideration for falling below the cumulative GPA

requirement or successfully maintain full time enrollment as defined in Section E of 5.7.20.7NMAC;

(6) provide to the department by April 15 each year the projected enrollment and tuition rates for the following academic year for their appropriate institution as follows: comprehensive, research institution in their second through eighth semester including qualified students in their fifth through eighth semesters who transferred from a community college; projected enrollment at each community college at each community college in their second through fourth semesters;

(7) publish the probation policy as defined in Subsection C of 5.7.20.8 NMAC;

(8) encourage consortium agreements, as defined in the code of federal regulations, 34 CFR 6685, in order to facilitate the enrollment of students and to facilitate the student's participation in this program;

(9) ensure that all available state scholarships including merit based 3% scholarship and New Mexico scholars are awarded before granting legislative lottery scholarships; the intent of this provision is that tuition costs shall be paid first for those students eligible for merit-based aid packages funded by 3% scholarships; in those instances when tuition is not fully covered by the merit-based aid package, said student is eligible for the tuition cost differential to be funded by the legislative lottery scholarship program; nothing in this section requires a public postsecondary educational institution to award a scholarship inconsistent with the criteria established or such scholarship; refer to Subsection G of 5.7.20.9 NMAC for additional provisions;

**B. The department shall:**

(1) determine a uniform percentage of the average of in-state tuition costs by sector by which to calculate tuition scholarships; all eligible institutions will be notified prior to June 1 annually;

(2) conduct audits to ascertain compliance with rules and regulations, if, during the audit process, evidence indicates that a student should not have received a legislative lottery scholarship, the department will provide guidance to the institutions for appropriate action;

(3) make available to the legislative finance committee and department of finance and administration, by November 1, the following information:

(a) the status of the fund;

(b) tuition scholarship program participation data aggregated for each public postsecondary education

institution to show:

(i) the number of qualified students and legacy students who received tuition scholarships and in the prior twelve month period;

(ii) the total number of students, including qualified students and legacy students, enrolled in the prior twelve-month period;

(iii) the amount of tuition scholarships funded by semester and the amount of tuition costs that were not offset by the tuition scholarship by semester; and

(iv) the number of qualified students and legacy students who graduated with a degree and, for each qualified student, the number of consecutive semesters and nonconsecutive semesters attended prior to graduation.

[5.7.20.11 NMAC -Rp, 5.7.20.11 NMAC, 08/15/2014; A/E, 8/15/14]

**TITLE 5 POST-SECONDARY EDUCATION**  
**CHAPTER 7 TUITION AND FINANCIAL AID**  
**PART 20 LEGISLATIVE LOTTERY SCHOLARSHIP PROGRAM**

**5.7.20.1 ISSUING AGENCY:** State of New Mexico Higher Education Department.  
 [5.7.20.1 NMAC - Rp, 5.7.20.1 NMAC, 08/15/2014]

**5.7.20.2 SCOPE:** Provisions of 5.7.20 NMAC apply to all state public post-secondary institutions in the state of New Mexico.  
 [5.7.20.2 NMAC - Rp, 5.7.20.2 NMAC, 08/15/2014]

**5.7.20.3 STATUTORY AUTHORITY:** Sections 6-24-23, NMSA 1978.  
 [5.7.20.3 NMAC - Rp, 5.7.20.3 NMAC, 08/15/2014]

**5.7.20.4 DURATION:** Permanent.  
 [5.7.20.4 NMAC - Rp, 5.7.20.4 NMAC, 08/15/2014]

**5.7.20.5 EFFECTIVE DATE:** August 15, 2014, unless a later date is cited at the end of a section.  
 [5.7.20.5 NMAC - Rp, 5.7.20.5 NMAC, 08/15/2014]

**5.7.20.6 OBJECTIVE:**

**A.** The objective of 5.7.20 NMAC is to provide a level of financial support to qualified New Mexico students who are enrolled full-time at an eligible New Mexico public college or university. This level of financial support is intended to help defray the cost of tuition at the public post-secondary educational institution where the student is enrolled.

**B.** A further purpose of 5.7.20 NMAC is to encourage New Mexico high school students who pursue a post-secondary education in New Mexico to complete a first four-year degree within a maximum of eight semesters or two-year degree within a maximum of four semesters (the number of semesters is so determined as the initial award is not made until the second semester of college enrollment).

**C.** As it applies to students with disabilities who may require special accommodations, the department, in consultation with the student and the office at the public post-secondary educational institution that serves students with disabilities, shall review both the definition of “full-time” and the maximum number of consecutive semesters of eligibility and adjust either or both as deemed reasonable and appropriate, based on the student’s disability needs. In no case shall “full-time” mean fewer than six credit hours per semester and in no case shall eligibility extend beyond 14 consecutive semesters at a four-year institution and seven consecutive semesters at a two-year institution.

[5.7.20.6 NMAC - Rp, 5.7.20.6 NMAC, 08/15/2014; A/E, 8/15/14]

**5.7.20.7 DEFINITIONS:**

**A.** “**Academic year**” means any consecutive period of two semesters (or three semesters for accelerated programs), three quarters or other comparable units commencing with the fall term each year.

**B.** “**Accelerated program**” means one in which a summer semester is a program requirement and not a student choice; a cohort that requires sequence of courses taken in summer semester.

**C.** “**Consortium**” means a written agreement between a home institution and one or more host institutions for consideration of combined enrollment for eligibility:

(1) home institution is the institution where the student is enrolled in a degree or certificate seeking program and is receiving lottery scholarship funds;

(2) host institution is the secondary institution where the student is taking part of their program requirements.

**D.** “**Department**” means the New Mexico higher education department (NMHED).

**E.** “**Full-time**” means 15 or more credit hours each program semester of the regular academic year at a research institution or comprehensive institution; or 12 or more credit hours for each program semester at community colleges; or through a consortium agreement between the home and host institutions, or for legacy students in any program semester. For students enrolled through a consortium agreement the minimum credit hour eligibility requirement shall be based on the student’s home institution.

**F.** “**GPA**” means grade point average.



**G. “Immediately upon graduation”** means enrollment anytime within the first academic semester following high school completion.

**H. “Legacy student”** means a full time resident student who has received three or more program awards by the end of fiscal year 2014.

**I. “Legislative lottery scholarship”** means a scholarship awarded from proceeds of the New Mexico lottery tuition fund, to defray all or part of the cost of tuition.

**J. “Non-enrollment”** means a student is not enrolled in a public post-secondary educational institution.

**K. “Probation”** means a period of time that a student fails to meet continuing eligibility for exceptional mitigating circumstances as determined by the lead financial aid officer at the institution; as described in Subsection C of 5.7.20.8 NMAC.

**L. “Public post-secondary educational institution”** means a research or comprehensive institution, as defined in Article XII, Section 11 of the New Mexico constitution, and branch community colleges or community college or technical and vocational institute as defined by Section 21-13, 14, and 16 NMSA 1978.

**M. “Qualified student”** means a full-time student who completed high school, graduated from a public or accredited private New Mexico high school or who received a high school equivalency credential while maintaining residency in New Mexico and who either:

(1) immediately upon completion of high school, graduation or receipt of a credential was accepted for entrance to and attended a public post-secondary educational institution; or

(2) within 120 days of completion of a high school curriculum or receipt of a high school equivalency credential began service in the United States armed forces and within one year of completion of honorable service or medical discharge from the service, attended a public post-secondary educational institution; and

(3) successfully completed the first semester at a public post-secondary educational institution with a grade point average of 2.5 or higher on a 4.0 scale during the first semester of full time enrollment.

**N. “Summer semester”** means a semester equal to fall and spring semester in duration and intensity that is required as part of an accelerated program.

**O. “Tuition scholarship”** means the scholarship that provides tuition assistance per semester for qualified students.

[5.7.20.7 NMAC - Rp, 5.7.20.7 NMAC, 08/15/2014; A/E, 8/15/14]

#### **5.7.20.8 STUDENT ELIGIBILITY:**

**A.** A scholarship may be awarded to a student in their second semester who has met first semester eligibility requirements as follows:

(1) has established New Mexico residency as defined in 5.7.18.9 NMAC or is eligible for a nondiscrimination waiver as defined in Subsection K of 5.7.18.10 NMAC;

(2) has been determined to be a qualified student pursuant to Section M of 5.7.20.7 NMAC;

(3) has met the requirements in Section E of 5.7.20.7 NMAC;

(4) has met requirements in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC or students with exceptional mitigating circumstances as determined by the institution’s lead financial aid officer; students who are incapable of meeting the requirements specified in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC due to a documented exceptional mitigating circumstance do not forfeit eligibility for the legislative lottery scholarship; however, the following requirements shall apply:

(a) the student shall provide documents certifying the nature of the students exceptional mitigating circumstance to the institution’s lead financial aid officer at the post-secondary educational institution at which the student is enrolling or will enroll; the institution’s lead financial aid officer shall exercise professional judgment to determine whether the exceptional mitigating circumstance is beyond the student's control and precludes the student from meeting the requirements specified in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC;

(b) if, in the professional judgment of the institution’s lead financial aid officer, the student's exceptional mitigating circumstance is recognized as a valid reason for the student's inability to meet the requirements specified in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC the student's initial eligibility for the legislative lottery scholarship shall be suspended or deferred unless and until such time that the student is capable of meeting the requirements of Paragraph (4) of Subsection A of 5.7.20.8 NMAC;

(5) has not been awarded a New Mexico scholars’ scholarships or other state scholarships which are designated for 100% tuition; and

(6) students with disabilities shall obtain a referral from the student services division of the post-secondary educational institution where the student is enrolled that oversees students with special needs' requests to reduce the credit hours to be considered full semester for scholarship eligibility; referrals and any sufficient documentation shall be received within 30 days of the start of the student's first semester;

(7) students are encouraged, but are not required, to complete a free application for student aid (FAFSA) for lottery scholarship eligibility.

**B. Continuing eligibility.** Upon satisfaction of the qualifying semester eligibility requirements, the scholarship will be awarded to the student beginning with their second semester of enrollment. A student's continuing eligibility shall be determined on a semester basis.

(1) A legislative lottery scholarship award may be re-awarded to a student who:

(a) maintains a minimum of a 2.5 cumulative GPA; a student has the right to request use of the student's cumulative GPA earned at all New Mexico institutions; and

(b) maintains full time enrollment as provided in Subsection E of 5.7.20.7 NMAC; when a qualified student transfers after completion of the first semester from a two year institution to a four year institution for enrollment during the second or subsequent semester, a student will have met eligibility requirements, but said student must enroll in 15 credit hours upon transfer to maintain eligibility;

(i) receipt of a transfer transcript for sufficient documentation for eligibility;

(ii) student transfers shall defer to the receiving institution to determine eligibility.

(2) Students with disabilities may be re-awarded the legislative scholarship under the following conditions:

(a) a referral is obtained for each semester in which a reduction in credit hours is requested;

(b) maintains a minimum of a 2.5 cumulative GPA; and

(c) in no case shall eligibility extend beyond 14 consecutive semesters at a four year institution and seven consecutive semesters at a two year institution.

(3) An eligible student that transfers shall continue to be eligible at the receiving institution after receipt of the student's transfer transcript containing eligibility confirmation.

**C. Probation.** Students who have been determined eligible and subsequently have exceptional mitigating circumstances as determined by the institution's lead financial aid officer may be placed on a probationary status under the following conditions:

(1) the student shall provide documents certifying the nature of their exceptional mitigating circumstance to the lead financial aid officer at the post-secondary institution at which the student is enrolling or will enroll;

(2) the lead financial aid officer shall exercise professional judgment to determine whether the exceptional mitigating circumstance is beyond the student's control and precludes the student from meeting the requirements specified in Paragraph (4) of Subsection A of 5.7.20.8 NMAC;

(3) the student shall maintain enrollment at the public post-secondary educational institution where eligibility was lost, if applicable;

(4) under no circumstances shall the student receive program awards in excess of those prescribed in Subsections A and B of 5.7.20.9 NMAC less the regular semester(s) of probation.

[5.7.20.8 NMAC -Rp, 5.7.20.8 NMAC, 08/15/2014; A/E, 8/15/14; A, XX/XX/14]

#### **5.7.20.9 DURATION OF SCHOLARSHIP:**

**A.** Upon qualification, the student's initial scholarship shall begin with the second semester of enrollment at a post-secondary educational institution. Thereafter, each scholarship is for a period of one semester subject to revocation for failure to maintain eligibility. The scholarship may be renewed on a semester basis until the award recipient has received three semesters of awards at a community college or seven semesters at a research and comprehensive institution of scholarship awards, or until the student graduates with a bachelor's degree from an eligible institution, whichever is sooner.

**B.** An award recipient may use the award at an eligible two-year post-secondary educational institution until the student receives three semesters of scholarship awards or an associate's degree and can continue to use the award at an eligible New Mexico four-year post-secondary educational institution if the student transfers to a four-year post-secondary educational institution without a break in attendance or the semester following receipt

of the associate's degree. In no case shall a student receive more than seven semesters of the award with the exception of legacy students or students with disabilities.

**C.** A student may transfer from a four-year post-secondary educational institution to a two-year post-secondary educational institution, but in no case shall a student receive more than three semesters of awards at the two-year institution (including those awarded at the prior post-secondary educational institution) or until the student graduates with an associate's degree, whichever is sooner.

**D.** A student who has been previously eligible may request a leave of absence for cooperative education, military obligations, participation in a study abroad program through the home institution, or other exceptional mitigating circumstances.

**E.** The student's institutional lead financial aid officer may approve a leave of absence for a period of up to one year if in the lead financial aid officer's professional judgment the student has provided sufficient documentation to justify the leave of absence. Subsequent requests for an additional leave of absence by a student may be considered by the institution's lead financial aid officer in increments not to exceed one year.

**F.** The lead financial aid officer shall, in turn, ensure that the student does not receive program awards in excess of those prescribed in Subsections A and B of 5.7.20.9 NMAC and shall exclude the semesters of "non-enrollment" from the determination of eligible award semesters.

**G.** If a student becomes ineligible for a different state scholarship that is designated for 100% tuition, but satisfies the first semester eligibility requirements and thereafter is eligible for the legislative lottery scholarship, the student may begin receiving the legislative lottery scholarship for the remaining number of semesters of enrollment, not to exceed those prescribed in Subsections A and B of 5.7.20.9 NMAC.

[5.7.20.9 NMAC -Rp, 5.7.20.9 NMAC, 08/15/2014; A/E, 8/15/14]

#### **5.7.20.10 AMOUNT OF SCHOLARSHIP:**

**A.** To the extent that funds are made available from the fund, the board of regents or governing bodies of public postsecondary educational institutions shall award tuition scholarship in department approved amounts to qualified students and legacy students.

**B.** The method the department will use for calculating the tuition scholarship is as follows:

(1) estimate the total amount available in the lottery tuition fund, based on past lottery fund transfers, current year balances, and additional funds made available through legislation;

(2) estimate the number of lottery scholarship recipients for each institution, based on department endorsed institutional projections;

(3) calculate the un-weighted average tuition for each sector (research, comprehensive, and community college) in accordance with 2014 Bill Text NM S.B. 347;

(4) calculate the total amount needed to pay full average tuition to all estimated recipients;

(5) compute the uniform percentage of the sector average tuition rates that can be paid that keeps the fund solvent and ensures that the fund will not be overspent;

(6) determine the maximum award per recipient for each institution (uniform percentage times average sector tuition for the sector of each institution);

(7) notify institutions.

**C.** In no case shall a student receive scholarship awards exceeding the total amount of tuition charged.

[5.7.20.10 NMAC -Rp, 5.7.20.10 NMAC, 08/15/2014]

#### **5.7.20.11 ADMINISTRATION OF THE LEGISLATIVE LOTTERY SCHOLARSHIP:**

**A.** Eligible post-secondary educational institutions shall:

(1) notify students of their possible eligibility, during their first regular semester of enrollment including transfer students who had the legislative lottery scholarship at previous institutions;

(2) designate their institution's lead financial aid officer to be responsible for determining initial and continuing student eligibility for the legislative lottery scholarship under the terms of these rules and regulations;

(3) maintain a listing of each participating student to include but not be limited to:

(a) social security number as appropriate;

(b) cumulative GPA and completed enrollment hours in prior semesters;

(c) proof of initial and continuing enrollment;

(d) award semester; and

(e) other data fields deemed important by the department;

(4) draw-down files should be submitted to the department for eligible students as defined in Section 5.7.20.10 NMAC per semester; all fiscal year draw-downs shall be for eligible students enrolled during the same fiscal year;

(5) for students that satisfied the first semester eligibility requirements and seek continuing eligibility consideration, use professional judgment to determine that exceptional mitigating circumstances beyond the students control, for which documentation exists in the student's file; the institutions shall defer to their institutional satisfactory academic progress policy when considering circumstances which include, but are not limited to, consideration for falling below the cumulative GPA requirement or successfully maintain full time enrollment as defined in Section E of 5.7.20.7 NMAC;

(6) provide to the department by April 15 each year the projected enrollment and tuition rates for the following academic year for their appropriate institution as follows: comprehensive, research institution in their second through eighth semester including qualified students in their fifth through eighth semesters who transferred from a community college; projected enrollment at each community college at each community college in their second through fourth semesters;

(7) publish the probation policy as defined in Subsection C of 5.7.20.8 NMAC;

(8) encourage consortium agreements, as defined in the code of federal regulations, 34 CFR 6685, in order to facilitate the enrollment of students and to facilitate the student's participation in this program;

(9) ensure that all available state scholarships including merit based 3% scholarship and New Mexico scholars are awarded before granting legislative lottery scholarships; the intent of this provision is that tuition costs shall be paid first for those students eligible for merit-based aid packages funded by 3% scholarships; in those instances when tuition is not fully covered by the merit-based aid package, said student is eligible for the tuition cost differential to be funded by the legislative lottery scholarship program; nothing in this section requires a public postsecondary educational institution to award a scholarship inconsistent with the criteria established or such scholarship; refer to Subsection G of 5.7.20.9 NMAC for additional provisions;

**B. The department shall:**

(1) determine a uniform percentage of the average of in-state tuition costs by sector by which to calculate tuition scholarships; all eligible institutions will be notified prior to June 1 annually;

(2) conduct audits to ascertain compliance with rules and regulations, if, during the audit process, evidence indicates that a student should not have received a legislative lottery scholarship, the department will provide guidance to the institutions for appropriate action;

(3) make available to the legislative finance committee and department of finance and administration, by November 1, the following information:

(a) the status of the fund;

(b) tuition scholarship program participation data aggregated for each public postsecondary education institution to show:

(i) the number of qualified students and legacy students who received tuition scholarships and in the prior twelve month period;

(ii) the total number of students, including qualified students and legacy students, enrolled in the prior twelve-month period;

(iii) the amount of tuition scholarships funded by semester and the amount of tuition costs that were not offset by the tuition scholarship by semester; and

(iv) the number of qualified students and legacy students who graduated with a degree and, for each qualified student, the number of consecutive semesters and nonconsecutive semesters attended prior to graduation.

[5.7.20.11 NMAC -Rp, 5.7.20.11 NMAC, 08/15/2014; A/E, 8/15/14]

**5.7.20.12 TERMINATION OF SCHOLARSHIPS:** A scholarship is terminated upon noncompliance by the award recipient with the legislative lottery scholarship rules, regulations or procedures as promulgated by the department.

[5.7.20.12 NMAC -Rp, 5.7.20.12 NMAC, 08/15/2014]

**HISTORY OF 5.7.20 NMAC:**

History of Repealed Material:

5.7.20 NMAC, Legislative Lottery Scholarship Program, filed 8/1/2000, Repealed 08/15/2014.