

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 255

POST-SECONDARY EDUCATION AUTHORIZATION PROGRAM

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SUBCHAPTER 1

GENERAL PROVISIONS

**§16-255-1 Objective.** The objective of this chapter is to clarify and implement the requirements of chapter 305J, HRS. [Eff 07/31/17] (Auth: HRS §305J-5) (Imp: HRS §305J-5)

**§16-255-2 Definitions.** As used in this chapter, unless the context otherwise requires:

"Institution" means a private college or university, seminary, or religious training institution.

"Physical presence" shall have the same meaning in section 305J-2, HRS; provided that "physical presence" is not triggered, solely, by any of the following:

- (1) Courses offered at a distance, offered online, through the United States mail or similar delivery service, and that do not require the physical meeting of a student with instructional staff;
- (2) Academic offerings among accredited institutions which are participating in consortia agreements approved by each of the participating institutions;
- (3) Advertising to students within the State, whether through print, billboard, direct mail, Internet, radio, television or other medium. However, an institution that is seeking authorization to operate in the State shall not market or advertise prospective Hawaii-based programs in the State until and unless the institution has notified the department and provided copies of any marketing materials or advertisements to the department;
- (4) Recruiting (e.g., hosting or attending recruitment fairs);
- (5) An educational experience arranged for an individual student, such as a clinical, practicum, residency, or internship; provided that:
  - (A) The institution has obtained, if applicable, the professional and licensure approvals necessary to conduct the learning opportunity;
  - (B) No more than ten students from an institution are physically present simultaneously at a single field site; and
  - (C) There is no multiyear contract between the institution and the field site;
- (6) An educational field experience arranged for a group of students who are participating in campus-based programs in another state;
- (7) An offering in the nature of a short course or seminar that takes place in the State, if instruction for the short course or seminar is no more than twenty classroom hours;
- (8) A portion of a full-term course for which no more than two meetings, totaling less than six hours, takes place in a setting where the instructor and students physically meet together;
- (9) Distance course offerings by an accredited institution on a U.S. military installation, that is limited to active and reserve military personnel and their dependents;
- (10) Operation of a server, router, or similar electronic service device when such a device is not housed in a facility that otherwise would

constitute a physical presence; provided that the presence of a server or similar pass-through switching device in the State does not by itself constitute the offering of a course or program in the State;

- (11) Having faculty, adjunct faculty, mentors, tutors, recruiters, or other personnel residing in the State; provided that the presence of instructional faculty in the State, when those faculty offer entirely online or other distance-education instruction and never meet their students in person for educational purposes while in the State, does not establish a presence of the institution in the State;
- (12) Requiring a student to take a proctored examination at a location or with an entity in the State prescribed by an institution; or
- (13) Having a contractual arrangement in the State.

"Private college or university" shall have the same meaning in section 305J-2, HRS.

"Teach-out plan" means a written agreement between accredited institutions that provides for the equitable treatment of students if one of these institutions stops offering an educational program before all students enrolled in that program complete the program. [Eff 07/31/17] (Auth: HRS §305J-5) (Imp: HRS §305J-2)

**§16-255-3 Religious exemption.** The chapter shall not apply to schools and educational programs conducted by religious entities that are owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation and that award only religious degrees or certificates. These schools shall:

- (1) Limit the educational programs to the principles of the church or denomination with which it is affiliated and grant degrees or diplomas only in areas of study that contain on their face, in the written description of the title of the degree or diploma being conferred, a reference to the theological or religious aspect of the degree's subject area; and
- (2) Not offer or award degrees in: any area of physical science or medicine; or degrees appropriate only for academic institutions, such as, but not limited to, Bachelor of Arts or Bachelor of Science, Master of Arts or Master of Science, Doctor of Philosophy, or other degrees typically offered by academic institutions, regardless of curriculum or course content, unless the degree title includes the religious field of study (e.g., "Bachelor of Arts in Religious Studies"); or degrees associated with specific professional fields or endeavors not clearly and directly related to

religious studies or occupations. [Eff 07/31/17] (Auth: HRS §305J-5) (Imp: HRS §305J-3)

## SUBCHAPTER 2

### RESPONSIBILITIES OF INSTITUTIONS

**§16-255-4 Authorization.** In addition to the requirements of chapter 305-J, HRS, an institution shall:

- (1) Seek and maintain authorization to operate in the State;
- (2) Provide information and respond to inquiries from the department including, but not limited to, data that is directly related to student enrollment and degree completion and, if applicable, student financial aid and educator preparation programs;
- (3) Notify the department of any material or substantive changes within thirty calendar days including, but not limited to the following types of changes:
  - (A) Ownership;
  - (B) Campus locations;
  - (C) Accreditation status, including reaffirmation or loss of accreditation, approval of a request for change, a campus evaluation visit, a focused visit, or approval of additional locations;
  - (D) Substantive changes regarding operations and programs;
  - (E) Official contact person for authorization purposes;
  - (F) Official contact person for the public regarding complaints;
  - (G) Any disciplinary or legal decision issued against the institution in another jurisdiction;
  - (H) U.S. Department of Education eligibility for Title IV Student Financial Aid; or
  - (I) Approval from any other state authorization agency.
- (4) Notify the department immediately if its accrediting body is no longer recognized by the U.S. Department of Education;
- (5) Provide bona fide instruction in accordance with the standards and criteria set by the institution's accrediting body or in accordance with the requirements set forth for seminaries and religious training institutions;
- (6) Timely submit all applicable fees;
- (7) Provide information to prospective and enrolled students regarding its authorization status; provided that an authorized institution shall

not use the department as a perceived endorsement of the institution;

- (8) Notify the department in writing at least one year prior to ceasing its operations;
- (9) If applicable, annually recalculate the amount of the surety bond based on a reasonable estimate of the maximum prepaid, unearned tuition, and fees received by the institution for the applicable period or term; and
- (10) Have an affirmative duty to cooperate with requests from the department for information regarding any investigation or inspection. [Eff 07/31/17] (Auth: HRS §305J-5) (Imp: HRS §§305J-5, 305J-8)

**§16-255-5 Complaints process.** An institution shall:

- (1) Establish and sustain a complaint procedure that includes clearly understood and published processes for a student to lodge a complaint within the institution, to the department, and to the institution's accrediting agency, if applicable. Information on the complaint procedure shall be reasonably accessible and at a minimum, shall be found in each institution's official catalog and website;
- (2) Establish and maintain processes within the institution for responding appropriately to complaints and for documenting their resolution;
- (3) Establish and maintain a process for reporting formal complaints and their resolution to the department, including procedures that ensure that an institution's complaint resolution process has been exhausted before the complaint is elevated to the department; and
- (4) Establish and maintain a process for working with the department on resolving complaints that have been lodged and not resolved with the institution. [Eff 07/31/17] (Auth: HRS §305J-5) (Imp: HRS §§305J-5, 305J-17)

SUBCHAPTER 3

CLOSURE OF INSTITUTIONS

**§16-255-6 Deposit of records upon discontinuance.** (a) Upon discontinuance, an institution shall deposit student transcripts and all other requested educational records with the department in an electronic format as prescribed by the department.

(b) Student transcripts shall be deposited in either pdf files, which are the actual searchable and printable student transcripts, or tab delimited text files.

(c) Student transcripts include without limitation:

(1) Academic grades;

(2) Dates of attendance;

(3) Name of program and degree;

(4) Credit hours;

(5) Date of course completion or graduation; and

(6) Any other information reasonably requested by the department.

(d) Data provided for the issuing of transcripts shall go back twenty-five years from the date the institution ceased operations. [Eff 07/31/17] (Auth: HRS §305J-5) (Imp: HRS §§305J-5, 305J-13)

**§16-255-7 Procedure to close or cease operations.** The institution shall provide written notification to the department in accordance with the requirements of chapter 305J, HRS, before closing or ceasing operations. Written notification shall include:

(1) Date of closure and last date of instruction;

(2) Reason for the closure;

(3) Contact person after the institution closes (name, address, phone number, email address);

(4) Institution's communications to students informing them of the pending closure, student rights and options, and information concerning Federal Student Financial Aid Programs when an institution closes;

(5) An electronic spreadsheet containing the names, addresses, phone numbers, and home email addresses of students who are enrolled at the time of the closure and if refunds are due, the amount and date when they will receive the refunds;

(6) The total number of students enrolled, including students on leave of absence, whose education and training program will not be fully

completed by the date of the institution's closure and the names of the programs in which they are enrolled;

- (7) A copy of any teach-out or transfer plan or agreement;
- (8) A statement from the owner or owner's designee affirming that all recruitment efforts, program marketing, advertisement (regardless of type, i.e., newspaper, website, television broadcast, etc.), solicitation and enrollment of new students has ceased;
- (9) The expected deposit date of the electronic student records to the department or to the third party contracted by the department; and
- (10) Documentation that the institution has completed the formal closure process with its accrediting body, including information regarding the new institutional custodian of records, and information that it has been cleared to close by the accrediting body. [Eff 07/31/17] (Auth: HRS §305J-5) (Imp: HRS §§305J-5, 305J-13, 305J-15)

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Chapter 16-255, Hawaii Administrative Rules, on the Summary Page dated April 21, 2017, was adopted on April 21, 2017, following a public hearing held on April 20, 2017, after public notice was given in the Star Advertiser on March 17, 2017.

The adoption of chapter 16-255 shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Catherine P. Awakuni Colón  
Catherine P. Awakuni Colón, Director  
Department of Commerce and  
Consumer Affairs

APPROVED:

/s/ David Y. Ige  
David Y. Ige  
Governor  
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Dated: 07/11/17

APPROVED AS TO FORM:

James C. Paige  
Deputy Attorney General

07/20/17  
Filed



DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Adoption of Chapter 16-255  
Hawaii Administrative Rules

April 21, 2017

SUMMARY

Chapter 16-255, Hawaii Administrative Rules, entitled "Post-Secondary Education Authorization Program", is adopted.