

**NEBRASKA DEPARTMENT
OF EDUCATION**

RULE 44

**PRIVATE POSTSECONDARY CAREER SCHOOLS TUITION RECOVERY
CASH FUND**

**TITLE 92, NEBRASKA ADMINISTRATIVE CODE,
CHAPTER 44**

**EFFECTIVE DATE
JUNE 30, 2013
(REVISED)**

**State of Nebraska
Department of Education
301 Centennial Mall South
Lincoln, Nebraska 68509**



TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION
CHAPTER 44 - PRIVATE POSTSECONDARY CAREER SCHOOLS TUITION RECOVERY
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001 General Information

001.01 Statutory Authority. This chapter is adopted pursuant to Section 85-1601 et. seq. of the Revised Statutes of Nebraska (R.R.S.).

001.02 Scope of this Chapter. This chapter provides the procedures for the administration of the Tuition Recovery Cash Fund.

001.03 Related Chapters. Chapter 41 of Title 92 of the Nebraska Administrative Code (92 NAC 41) provides the procedures for the authorization to operate, and accreditation, of private postsecondary career schools in Nebraska, and granting of authority to award associate degrees. Chapter 42 of Title 92 of the Nebraska Administrative Code (92 NAC 42) provides the procedures for granting permits for agents for private postsecondary career schools. The procedures for hearings arising under this chapter, 92 NAC 41 or 92 NAC 42, are contained in 92 NAC 43 and 92 NAC 61. Copies of these related regulations are available from the Nebraska Department of Education.

002 Definitions. As used in this chapter:

002.01 Act shall mean the Private Postsecondary Career School Act.

002.02 Assessment shall mean the amount a private postsecondary career school is required to pay into the Tuition Recovery Cash Fund based on one-tenth of one percent (.001) of the assessment year's gross tuition revenue.

002.03 Assessment Year shall mean the school's most recently completed fiscal year as of October 31 of each year.

002.04 Authorization to Operate shall mean approval by the Department or other state agency to operate a private postsecondary career school in this state.

002.05 Board shall mean the State Board of Education.

002.06 Claim shall mean a written request filed with the Board by a claimant who alleges to be injured by the termination of operation of a private postsecondary career school.

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002.07 Claimant shall mean an individual who has paid tuition and fees to a private postsecondary career school for classes which were not available due to termination of operation of the school and for which unearned tuition and fees were not refunded. It does not include students who cease to be enrolled in classes which continued to be offered by a school after the student ceases to be enrolled in them.

002.08 Class shall mean any class, course, or program of occupational training, instruction, or study.

002.09 Commissioner shall mean the Commissioner of Education.

002.10 Course of Study or Instruction shall mean a program of study, training, or instruction consisting of a series of lessons or classes which are coordinated as a curriculum or program of instruction to prepare or qualify individuals or improve or upgrade the skills needed for employment, career opportunities, or any specific occupation.

002.11 Delivery Mode shall mean classroom instruction, home study, or both which is delivered in any of the following manners: resident, independent study, practical training, correspondence, or distance learning technology.

002.12 Department shall mean the State Department of Education.

002.13 Fund shall mean the Tuition Recovery Cash Fund.

002.14 Fee shall mean a fixed charge for but not limited to, registration fee, lab fees and the cost of materials, or equipment, if they are portrayed as fees by the school.

002.15 Gross Tuition Revenue shall mean the total tuition and fees received during the assessment year less tuition and fees refunds, and unearned tuition and fees.

002.16 Private Postsecondary Career School shall mean any organization or business enterprise authorized to operate in the state which is not specifically exempt under the Private Postsecondary Career Schools Act, Sections 85-1601 et. seq., which offers courses or subjects for which tuition is charged, and at the place of business of which a course of instruction is available through classroom instruction, home study, or both to a person for the purpose of training, preparing, or improving the person for an occupation even though the organization's or business enterprise's principal efforts may not be exclusively educational in nature.

002.17 Program shall mean the complete body of prescribed subjects or studies for the purpose of training, preparing, or improving the person for an occupation.

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002.18 Short-term training shall mean classes, courses, or programs of instruction or study that are offered for the purpose of training, preparing, or improving a person for an occupation when (a) the total hours of instruction required for completion is sixteen clock hours or less and (b) no final course grade is given to persons enrolled.

002.19 Teach-Out Program shall mean training provided by another school to complete classes which were not available due to termination of operation of the school.

002.20 Termination of Operation shall mean the act of a private postsecondary career school ceasing to offer all of its educational courses or programs to the public.

002.21 Tuition shall mean money charged for instruction.

002.22 Tuition Recovery Cash Fund shall mean a fund established from the assessment of private postsecondary career schools for use in settling claims made by a claimant due to termination of operation of a private postsecondary career school.

002.23 Unearned Tuition and Fees shall mean money paid by an individual to a school for classes which will be held in a future attendance period and for classes which are no longer available due to termination of operation of the school.

003 The Following Education and Schools are Exempted from the provisions of the Private Postsecondary Career Schools Act and from the provisions of this chapter.

003.01 Schools exclusively offering instruction at any or all levels from preschool through the twelfth grade;

003.02 Education sponsored by a bona fide trade, business, professional, or fraternal organization which is offered solely for that organization's membership or offered without charge;

003.03 Education solely avocational or recreational in nature as determined by the Department;

003.04 Educational programs offered by a charitable institution, organization, or agency as long as such education or training is not advertised or promoted as leading toward occupational objectives;

003.05 Public postsecondary schools established, operated, and governed by this state or its political subdivisions;

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003.06 Schools or organizations which offer education or instruction and which are licensed and regulated solely by an agency of the federal government with respect to curriculum and qualifications of instructional staff;

003.07 Any postsecondary institution offering or proposing to offer courses or programs leading to a baccalaureate, graduate, or professional degree, but whose offerings may include associate degree programs, diplomas, and other certificates based on the award of college credit, including any such institutions that were regulated prior to May 5, 2011, as private postsecondary career schools pursuant to the Act; and

003.08 Entities exclusively offering short-term training.

004 Schools exempt from the Act, except for provisions with respect to Agents' Permits and the Tuition Recovery Cash Fund:

004.01 Schools or organizations offering education or instruction that is not part of a degree program leading to an associate, a baccalaureate, a graduate, or a professional degree which are licensed and regulated by agencies of this state other than the Department are exempt from the Act, except that such schools or organizations shall not be exempt from the provision of the Act with respect to agents' permits and the Tuition Recovery Cash Fund. Such schools are, thus, not exempt from this chapter.

005 Procedures for the Administration of the Fund

005.01 Each private postsecondary career school authorized to operate in the state shall pay into the fund in each assessment year an amount equal to one-tenth of one percent (.001) of the school's gross tuition revenue for the assessment year.

005.02 All payments made into the fund shall be maintained by the State Treasurer.

005.02A The assets of the fund may not be expended for any purpose other than to pay bona fide claims made against the fund except as provided in section 008 of this rule.

005.02B The fund shall be administered by the Board with advice from the Commissioner.

005.03 Payment into the fund shall be made in the form of a company or cashier's check or money order made payable to the "Nebraska Department of Education" and received no later than the date the school's renewal application for authorization to operate is due under 92 NAC 41. For schools not authorized to operate by the Commissioner, the payment into the fund is due no later than 6 months after the end of the school's fiscal year.

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005.03A Payment shall be forwarded to the Nebraska Department of Education.

005.03B The school director shall certify on forms provided by the Department that the school maintains for five years a verifiable set of records which document the reported gross tuition revenue collected and shall make such records available to the Department on request. Any such records made available to the Department may be withheld from the public to the extent allowed by Section 84-712.05.

005.04 A new school authorized to operate by the Department or by any other state agency after the effective date of this rule, shall not be assessed in its first fiscal year.

005.04A A new school shall be assessed each assessment year following its first fiscal year for four years or until the fund reaches the minimum level, whichever comes last.

005.04B A new school shall maintain the surety bonds required in Section 85-1639 for five years.

005.05 Schools already in operation on the effective date of this rule shall continue to maintain and service the bond requirements of Section 85-1639 until the fund reaches the minimum amount of \$150,000.00 at which time the bonding requirement shall be discontinued for schools not subject to section 005.04B of this Chapter.

005.06 Schools whether located inside or outside this state are not exempt from the agents' bond requirement of Section 85-1640 even when the fund reaches the minimum amount of \$150,000.00.

006 Filing of Claims. A claim may be filed only if it arises out of the termination of operation by a private postsecondary career school on or after the effective date of this regulation. Claims by students who ceased to be enrolled in classes which continued to be offered by a school after the student ceased enrollment are not eligible claims. Claims may be filed on forms prescribed by the Department with the Board within one (1) year after termination of operation of a school. Claims filed after one (1) year shall not be considered.

006.01 Claims shall be in writing on forms provided by the Department and must be forwarded to the Nebraska Department of Education, Private Postsecondary Career Schools, and Veterans Education Section.

006.02 Claims shall be accompanied by documents such as receipts, canceled checks, or executed enrollment agreements which verify payment of tuition and fees.

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006.03 Where appropriate documentation is not provided and the availability of documentation is beyond the control of the claimant, the validity of the claim may be determined based on the available evidence.

006.04 Following receipt of the claim by the Department, the Commissioner or his or her designee(s) may investigate and shall review the claim and the Commissioner shall make written recommendations regarding the claim to the Board. In arriving at the recommendations, the Commissioner or his or her designee(s) may request that a claimant submit additional documentation, explanation, and/or meet with the Commissioner or his or her designee(s). A copy of the Commissioner's written recommendations to the Board shall be mailed to the claimant, certified mail, return receipt requested.

006.05 If the claimant disagrees with the Commissioner's written recommendations, he or she may request a hearing on the recommendations by filing a request with the Board within fifteen days following receipt of the written recommendations pursuant to 92 NAC 61 (Rule 61).

006.06 If no hearing is requested, the Board may act on the recommendation of the Commissioner without further notice to the claimant.

006.07 Refunds, if any, shall be made, first, to any lender issuing student financial aid on behalf of the claimant or the guarantor of such aid, and second, to the claimant. In the event there was no financial aid involved, refunds shall be made to the claimant.

007 Disbursement of Fund. The purpose of the fund is to reimburse tuition and fees due individuals from schools authorized to operate in the state when the school terminates operation. In the event a private postsecondary career school authorized to operate in the state goes into bankruptcy, or for any other reason terminates operation without completing its educational obligations, or reimbursing its individuals for unearned tuition and fees, the Board may authorize the reimbursement to the claimant or lender the unearned tuition and fees paid to that school in accordance with section 006.01.

007.01 Claims against the fund may be paid in whole or in part, based upon the extent to which the class objectives were met for each claimant, and taking into account considerations including but not limited to:

007.01A Acceptance by the claimant of "teach-out" program;

007.01B Amounts available and likely to become available to the fund for payment of claims;

007.01C Total amount and number of claims presented or reasonably likely to be presented in the future;

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007.01D Total amount and number of claims caused by the termination of operation of a school;

007.01E Amounts paid out from the fund on claims in the past;

007.01F The total amount of monies paid to the school by identified or prospective claimants.

007.01G When the school holds a surety bond, the claimant first shall file a claim against the surety bond holder or against the holder of such other security agreement which the school has filed with the Department under 92 NAC 41.

008 When the fund exceeds the maximum of \$300,000.00, funds in excess of the maximum level shall be used as directed by the State Board of Education to provide grants or scholarships for students attending private postsecondary career schools.

009 "Teach-Out" Programs. A claimant may accept a "teach-out" program in lieu of a refund of tuition and fees.

009.01 Any school may submit to the Department on forms provided by the Department a "teach-out" program to be offered to a claimant.

009.02 The Department shall forward the offered "teach-out" program to the claimant.

009.03 A claimant may accept the "teach-out" program in lieu of a refund of tuition and fees by completing the forms and returning them to the Department.

009.04 Acceptance of a "teach-out" program by a claimant shall constitute a release by the claimant of all his or her claim for a refund from the fund.

010 Penalty. The authorization to operate of any private postsecondary career school which fails to comply with the provisions of this rule shall be subject to revocation pursuant to 92 NAC 43 (Rule 43).