



TO: Roger Breed, Ed.D.
Commissioner of Education

FROM: Sharon Katt, Administrator Adult Program Services

SUBJECT: Approve Rule 44 (92 NAC 44), Private Postsecondary Career Schools Tuition Recovery Cash Fund.

Proposed Board Action:

It is recommended that the State Board of Education approve the revisions of Rule 44 (92 NAC 44), Private Postsecondary Career Schools Tuition Recovery Cash Fund.

Background Information:

The hearing was held on November 15, 2012 to hear testimony concerning the proposed revisions to Rule 44. No one outside of NDE appeared to testify at the hearing. Testimony in support of the revisions to Rule 44 was presented by Brad Dirksen, Program Director, Private Postsecondary Career Schools. Rule 44 Hearing Summary is attached.

The following changes, if approved, will become effective on the effective date of this chapter:

The Private Postsecondary Career Schools Advisory Council met on September 4, 2012 and unanimously recommended the approve the proposed changes.

The Private Postsecondary Career Schools Tuition Recovery Cash Fund Advisory Committee met on August 29, 2012 and unanimously recommended the approve the proposed changes.

Estimated Cost:

\$1,000 for filing of public notice and printing copies of rule once adopted.

Supporting Documentation Included:

Rule 42 Hearing Summary, Rule 42

For Additional Information on this item:

Call Brad Dirksen (402) 471-4825 or e-mail brad.dirksen@nebraska.gov



Roger D. Breed, Ed.D., Commissioner
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TO: State Board of Education

FROM: Scott Summers, Legal Counsel III, Commissioner's Appointed Staff Person to Conduct a Rule Hearing on Title 92, Nebraska Administrative Code, Chapter 44, *Private Postsecondary Career Schools Tuition Recovery Cash Fund* 

DATE: November 15, 2012

RE: Summary of rule-making hearing on Proposed Revisions to 92 NAC 44

On October 10, 2012, the State Board of Education approved a hearing draft and authorized the Commissioner to set a hearing date and location as well as designate a staff person to conduct a hearing on the adoption of proposed revisions to Title 92, Nebraska Administrative Code, Chapter 44. By a memorandum dated October 10, 2012, the Commissioner appointed me to conduct the hearing on this Rule on November 15, 2012, commencing at 10:00 a.m. After the proper legal notice was published, the hearing was held at the Nebraska State Office Building, Nebraska Department of Education, 301 Centennial Mall South, Conference Room A, Sixth Floor, Lincoln, Nebraska. Pursuant to State Board of Education Policy B9, what follows is a written summary of the hearing testimony.

An audio recording of the hearing is available if any members of the Board wish to hear the tape.

SUMMARY OF TESTIMONY ON THE PROPOSED REVISIONS TO 92 NAC 44
Private Postsecondary Career Schools Tuition Recovery Cash Fund

Scott Summers, staff attorney and the hearing official, called the hearing to order, read into the record the name of the newspaper in which a legal notice of the hearing was published and the date the notice appeared, outlined the procedures for the hearing and introduced **Brad Dirksen, Director, Private Postsecondary Career Schools and Veterans Education, Nebraska Department of Education.**

Mr. Dirksen introduced and explained the proposed revisions to Title 92, Nebraska Administrative Code, Chapter 44 and offered his written testimony summarizing the proposed revisions. A copy of Mr. Dirksen's testimony is attached to this memo.

No other oral or written testimony was received.

**Hearing Testimony
November 15, 2012**

My name is Brad Dirksen. I am the Program Director of the Private Postsecondary Career Schools and Veterans Education section at the Nebraska Department of Education. All of the following proposed rule changes were unanimously approved by the Private Postsecondary Career Schools Advisory Council at the September 4, 2012 meeting.

Rule 41:

- “Distance Learning” definition (92 NAC 41 002.12) – broadened definition to read:

 002.12 Distance Learning means a teaching and learning situation in which (i) the instructor and the learner are geographically separated; ~~and~~or, (ii) instruction or materials are delivered or exchanged by mail, electronic devices, ~~and~~or other means.
- Update Rule to match statute (92 NAC 41 003.01D, 003.01G, 003.01I, 003.01J, 003.01K, 003.01L, and 011)
- Fee Revision: restructured fees which help maintain equity to both small and large private postsecondary institutions and establish sufficient fees to cover the total cost of administering the PPCS Act.

Rule 42:

- “Distance Learning” definition (92 NAC 002.14) matching Rule 41 above.
- Update rule to match Statute (003.01H, 003.01I, 003.01J, 003.01K, and 003.02, 005.02B5)
- Fee Revision: restructured fees which help maintain equity to both small and large private postsecondary institutions and establish sufficient fees to cover the total cost of administering the PPCS Act.

Rule 44:

- “Act” and “Short-term training” definition added – definitions consistent with Statute and Rule 41
- Update rule to match Statute (92 NAC 44 003.05, 003.07, 003.08, 004.01, and 005.06)

TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION
CHAPTER 44 - PRIVATE POSTSECONDARY CAREER SCHOOLS TUITION RECOVERY
CASH FUND

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TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION
CHAPTER 44 - PRIVATE POSTSECONDARY CAREER SCHOOLS TUITION RECOVERY
CASH FUND

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.

002.042 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.

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

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

002.045 Board shall mean the State Board of Education.

002.056 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 post-secondary career school.

002.067 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.

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

002.089 Commissioner shall mean the Commissioner of Education.

002.0910 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.

002.4011 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.

002.4112 Department shall mean the State Department of Education.

002.4213 Fund shall mean the Tuition Recovery Cash Fund.

002.4314 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.

002.4415 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.

002.4516 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.

002.4617 Program shall mean the complete body of prescribed subjects or studies for the purpose of training, preparing, or improving the person for an occupation.

002.18 Short-term training means 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.

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002.1719 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.

002.1820 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.

002.1921 Tuition shall mean money charged for instruction.

002.2022 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.

002.2123 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;

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 Private colleges and universities which award baccalaureate or higher degrees and which maintain and operate educational programs for which credit is given. 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 Private Postsecondary Career School 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 which are licensed and regulated by agencies of this state other than the Department as of September 2, 1977 except that such schools or organization shall not be exempt from the provisions of the Act with respect to agents' permits and the Tuition Recovery Cash Fund. Thus, such schools are not exempt from this chapter. 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 The Board shall appoint an advisory committee comprised of the Commissioner or his/her representative, the State Treasurer or his/her representative, and three administrators of private postsecondary career schools with the advice of the Nebraska Council of Private Postsecondary Career Schools.

005.01A Initial terms for each school administrator shall be staggered - one for 3 years, one for 2 years, and one for 1 year, respectively. Subsequently, the terms for each school administrator shall be for 3 years. Each school administrator is eligible for reappointment, but cannot serve more than two consecutive terms.

005.01B The advisory committee shall advise the Board on the administration of the Tuition Recovery Cash Fund.

005.01C The advisory committee shall establish the time, place, and procedures for its meetings.

005.01D The advisory committee shall review all claims submitted against the Fund and shall make recommendations regarding each claim.

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005.01E The advisory committee shall file an annual report with the Board which shall include recommendations concerning the operations of the fund.

005.02 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.

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

005.03A 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 007 of this rule.

005.03B The fund shall be administered by the Board with advice from the advisory committee.

005.04 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.

005.04A Payment shall be forwarded to the Nebraska Department of Education.

005.04B 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 shall be withheld from the public pursuant to Section 84-712.05.

005.05 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.

005.05A 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.

005.05B A new school shall maintain the surety bonds required in Section 85-1639 for five years.

005.06 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 005.05B of this chapter](#).

005.07 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.

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 advisory committee may investigate and shall review the claim and make written recommendations regarding the claim to the Commissioner. In arriving at its recommendations, the committee may, at its discretion, request that a claimant submit additional documentation, explanation, and/or appear before the committee.

006.05 Following receipt of the recommendations of the advisory committee, the Commissioner shall review the claim and recommendations of the advisory committee and shall make final written recommendations to the Board regarding the claim. Attached to the final recommendations shall be a copy of the advisory committee's recommendations. A copy of the Commissioner's final written recommendations shall be mailed to the claimant, certified mail, return receipt requested.

006.06 If the claimant disagrees with the Commissioner's final 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).

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

006.08 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;

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).

