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December 18, 2014

MEMORANDUM

TO: Legislative Education Study Committee

FR: Travis Dulany

**RE: STAFF BRIEF: ADMINISTRATIVE RULEMAKING: TRIBAL COLLEGE
DUAL CREDIT PROGRAM**

INTRODUCTION

On November 13, 2014, the Higher Education Department (HED) published its final adopted rule relating to the state's tribal college dual credit program in the *New Mexico Register*. Although the department made some typographical changes, the final rule is substantively identical to the proposed rule, further explained below. A copy of the final adopted rule can be found in the **Attachment**.

OVERVIEW

In the September 15, 2014 publication of the *New Mexico Register*, HED issued a Notice of Public Hearing for a proposed rule regarding the tribal college dual credit program. The hearing took place on October 15, 2014 at 9:00 a.m. at HED's Santa Fe office (2048 Galisteo St., Santa Fe, New Mexico). A Legislative Education Study Committee staff member was the only person in attendance at the public hearing.

Scope

The new rule applies to dual credit programs at Diné College, the Institute of American Indian Art (IAIA), Navajo Technical University (NTU), and Southwest Indian Polytechnic Institute

(SIPI). The *Definitions* section of the rule also includes “...any other post-secondary educational institutions that are tribally, federally or congressionally chartered in the state of New Mexico and accredited by the north central association of colleges and schools.”

Objective

Section 5.55.2.6 states the purpose of the regulation, which is to:

- provide high school students the opportunity to enroll in college-level academic or career-technical courses offered by the four tribal postsecondary educational institutions in the state;
- permit those students to simultaneously earn credit toward high school graduation and a postsecondary degree or certificate; and
- provide for reimbursement of dual credit tuition and fees for the four tribal colleges.

Reimbursement of Tuition and Fees

The rule provides for the following reimbursement process for tuition and fees assessed for dual credit students:

- if sufficient appropriations are received by the department, tribal colleges are to be fully reimbursed for all dual credit tuition and fees;
- the date of reimbursements “is dependent upon receiving accurate and timely data from each tribal college in order to accurately calculate the amount due to each college”; and
- if such data are received in a timely manner, the reimbursements for the fall semester will be distributed “on or about” March 31 of each year, and for the spring semester reimbursements will be made “on or about” August 31 of each year.

“Inadequate Appropriation” is defined as “a legislative financial allocation that does not fully compensate all of the tribal colleges for the dual credit tuition and fees.” In such cases:

- HED will offer the presidents of the tribal colleges, or their designees, the opportunity to select another method of reimbursement;
- “the department will honor a fair and equitable alternative method of distribution of the reimbursement only if the method is agreed upon by all tribal colleges pursuant to a Memorandum of Agreement”;
- “if the tribal colleges cannot arrive agree [sic] unanimously upon a fair and equitable distribution of an inadequate appropriation for dual credit tuition and fees, the department will develop a formula that fairly distributes the appropriation”; and
- the department’s formula will be distributed to the colleges for review and comment before any distribution [of the appropriation] is made; however, the department’s determination of a distribution method is the final determination.

Eligible Courses

The following courses are not eligible for dual credit at tribal colleges under the rule:

- courses taken for audit;
- remedial courses;
- developmental courses; and
- physical education activity courses.

Further, dual credit courses:

- may be taken as electives or core courses, except physical education activity courses;
- must meet Public Education Department (PED) standards and benchmarks;
- must meet the rigor for postsecondary institution credit and be congruent with the postsecondary institution's academic standards;
- offered in a high school setting must conform to college academic standards;
- must have the same course requirements for all students, regardless of whether the student is a high school student or a regular college student; and
- that are part of the "general education common core" for postsecondary institutions are eligible for transfer among New Mexico postsecondary educational institutions pursuant to state statute.

In identifying and delivering dual credit courses, local educational agencies (LEAs), along with postsecondary educational institutions, must determine a list of academic and career-technical courses eligible for dual credit. HED will inform and assist tribal colleges in identifying the dual credit courses. The courses may take place within the LEAs, at postsecondary educational institutions, and off-campus centers as determined by the LEA in collaboration with the postsecondary institution. The courses may be delivered during or outside of regular LEA hours. Distance learning courses – online or correspondence courses, for example – may be offered, however, "all dual credit course rules apply."

Finally, with regard to semesters in which dual credit may be taken, caps for dual credit, and the nature of high school credit earned:

- eligible students may enroll in dual credit year-round;
- there is no limit on the number of credits a student may earn through dual credit in an academic term, though the student must meet eligibility requirements; and
- successful completion of three credit hours of postsecondary instruction will result in the awarding of one high school unit, unless otherwise approved by the cabinet secretaries of HED or PED.

BACKGROUND

New Mexico's dual credit program allows high school students to take courses offered through a postsecondary educational institution and earn credit at the high school level and the college level simultaneously. Statute governing the program provides that the:

- school district, charter school, state-supported school, or Bureau of Indian Education (BIE) high school is to pay the cost of the required textbooks and other courses supplies for the postsecondary course for which the student is enrolled;
- public postsecondary educational institution or tribal college that participates in a dual credit program must waive all general fees for dual credit courses; and
- HED shall revise procedures in the higher education funding formula to address enrollments in dual credit courses to encourage institutions to waive tuition for high school students taking those courses.

Legislation that included tribal colleges and federal BIE high schools in the state’s dual credit program was enacted in 2010 (Laws 2010, Chapter 36). HED repealed its rules regarding dual credit in May 2010, replacing them with a cross-reference to PED regulations. PED subsequently revised department rules to:

- expand the definition of “district” to “Local Education Agency” to include BIE high schools; and
- include “tribal colleges” in the formal definition of postsecondary institution.

Although the 2010 legislation and rule changes expanded the opportunities for participation in the dual credit program, they also created the need for new administrative procedures, particularly with regard to tuition reimbursement. Statutorily and constitutionally established, state-supported higher education institutions receive reimbursement for their dual credit students through the higher education funding formula; however, because tribal colleges are not funded through the funding formula, a different method for reimbursing tribal colleges that waive tuition for dual credit students was necessary.

During the 2012 regular legislative session, legislation was enacted to create the Tribal College Dual Credit Program Fund (Laws 2012, Chapter 44), which was “to be used only to compensate tribal colleges for the tuition and fees waived” to allow high school students to attend tribal colleges pursuant to the dual credit program. Although the fund was created, no appropriation was made to the fund for FY 13.

For FY 14, the *General Appropriation Act of 2013* included \$100,000 to the Policy Development and Institutional Financial Oversight program at HED “to implement the tribal college dual credit program.” According to Legislative Finance Committee staff, HED’s FY 15 budget includes \$200,000 for tribal college dual credit program reimbursement. Additionally, the *General Appropriations Act of 2014* contains a General Fund appropriation of \$857,000 for dual credit instructional materials, from which BIE high schools are eligible to receive reimbursement.

During the 2014 legislative session, HED reported that Diné College, NTU, and IAIA offer dual credit programs. According to representatives at SIPI, the institute is planning to offer dual credit courses beginning with the spring 2015 semester.

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TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 55 PUBLIC POST-SECONDARY EDUCATION GENERAL PROVISIONS
PART 2 TRIBAL COLLEGE DUAL CREDIT PROGRAM

5.55.2.1 ISSUING AGENCY: New Mexico Higher Education Department
[5.55.2.1 NMAC - N, 11/13/2014]

5.55.2.2 SCOPE: This rule applies to dual credit programs at Diné College, the Institute of American Indian Art, Navajo Technical University and Southwest Indian Polytechnic Institute.
[5.55.2.2 NMAC - N, 11/13/2014]

5.55.2.3 STATUTORY AUTHORITY: Section 9-25-8; 21-1-1.2 NMSA 1978.
[5.55.2.3 NMAC - N, 11/13/2014]

5.55.2.4 DURATION: Permanent.
[5.55.2.4 NMAC - N, 11/13/2014]

5.55.2.5 EFFECTIVE DATE: November 13, 2014, unless a later date is cited at the end of a section.
[5.55.2.5 NMAC - N, 11/13/2014]

5.55.2.6 OBJECTIVE: The purposes of the tribal college dual credit program are:

- A.** to provide high school students the opportunity to enroll in college-level academic or career-technical courses offered by the four tribal post-secondary institutions;
- B.** to permit those enrolled students to simultaneously earn credit toward high school graduation and a post-secondary degree or certificate; and
- C.** to provide for reimbursement of dual credit tuition and fees for the four tribal colleges.

[5.55.2.6 NMAC - N, 11/13/2014]

5.55.2.7 DEFINITIONS:

- A.** **“Appropriation”** means the legislative financial allocation granted to reimburse the tribal colleges for dual credit tuition and fees.
- B.** **“Classification of instructional program (CIP)”** is a coding system that contains titles and descriptions of instructional programs.
- C.** **“Dual Credit Council”** is an advisory group consisting of staff of the higher education department and the public education department that issues recommendations to the cabinet secretaries of the public education and higher education departments regarding dual credit issues.
- D.** **“Dual Credit Program”** means a program offered by the tribal colleges and secondary schools that permits high school students to enroll in college-level courses offered by the tribal colleges that may be academic or career-technical, but not remedial or developmental. Dual credit students will simultaneously earn credit toward high school graduation and a postsecondary degree or certificate.
- E.** **“Department”** means the New Mexico higher education department.
- F.** **“Inadequate Appropriation”** means a legislative financial allocation that does not fully compensate all of the tribal colleges for the dual credit tuition and fees.
- G.** **“Local Educational Agency (LEA)”** is a public school district, a state-chartered school or a bureau of Indian education-funded high school.
- H.** **“Tribal College”** means diné college, the institute of American Indian arts, the Navajo technical university, southwest Indian polytechnic institute and any other post-secondary educational institutions that are tribally, federally or congressionally chartered in the state of New Mexico and accredited by the north central association of colleges and schools.

[5.55.2.7 NMAC - N, 11/13/2014]

5.55.2.8 REIMBURSEMENT OF TUITION AND FEES:

- A.** If sufficient appropriations are received, the tribal colleges will be fully reimbursed for all dual credit tuition and fees. The date of reimbursements is dependent upon receiving accurate and timely data from each tribal college in order to accurately calculate the amount due to each college. If final and accurate data is received in a timely manner, the reimbursements for fall semester will be distributed on or about March 31 of each year. If final and accurate data is received in a timely manner, the reimbursements for the spring semester will be made on or about August 31 of each year.
- B.** If the legislative appropriation is inadequate to fully reimburse each of the tribal colleges for the full amount of

the tuition and fees expended to provide dual credit, the department will offer the presidents of the tribal colleges or their designees the opportunity to select another method of reimbursement.

C. In the event of an inadequate appropriation, the department will honor a fair and equitable alternative method of distribution of the reimbursement only if the method is agreed upon by all the tribal colleges pursuant to a memorandum of agreement.

D. If the tribal colleges cannot agree unanimously upon a fair and equitable distribution of an inadequate appropriation for dual credit tuition and fees, the department will develop a formula that fairly distributes the appropriation. The department's formula will be distributed to the colleges for review and comment before any distribution is made. However, in the event of disagreement, the department's determination of a distribution method is the final determination.

[5.55.2.8 NMAC - N, 11/13/2014]

5.55.2.9 ELIGIBLE COURSES:

A. Types of courses:

(1) College courses that are academic or career-technical may simultaneously earn credit toward high school graduation and a postsecondary degree or certificate and shall be eligible for dual credit. Remedial, developmental and physical education activity courses are not eligible for dual credit.

(2) Courses taken for audit are not eligible for dual credit.

(3) Dual credit courses may be taken as electives or core courses (except physical education activity course) high school credits.

(4) Dual credit courses must meet the public education department standards and benchmarks.

(5) College courses eligible for dual credit shall meet the rigor for postsecondary institution credit and be congruent with the postsecondary institution's academic standards.

(6) Dual credit courses offered in high school settings shall conform to college academic standards.

(7) Course requirements for high school students enrolled in dual credit courses shall be equal to those of regular college students.

(8) Dual credit courses that are part of the general education common core for postsecondary institutions are eligible for transfer among New Mexico postsecondary institutions pursuant to Subsection D of 21-1B-3 NMSA 1978.

B. Identifying courses:

(1) The LEA in collaboration with the postsecondary institution shall determine a list of academic and career technical courses eligible for dual credit.

(2) The department shall inform and assist the tribal colleges in identifying the dual credit courses and the data needed to adequately assist the LEAs, the tribal colleges and the department in correctly assessing appropriate dual credit courses and credits.

C. Course delivery:

(1) Dual credit courses may be offered at LEAs, postsecondary institutions, and off-campus centers as determined by the LEA in collaboration with the postsecondary institution offering the courses.

(2) Dual credit courses may be delivered during or outside of regular LEA hours.

(3) Postsecondary institutions may offer dual credit courses via distance learning (ITV, online, hybrid, correspondence) as this option becomes available and cost-effective. All dual credit course rules apply.

D. Semesters dual credit may be taken; caps for dual credit; nature of high school credit earned:

(1) Eligible students may enroll in dual credit courses year-round.

(2) There is no state limit to the number of credits a student may earn through dual credit in an academic term; however, the student must meet eligibility requirements.

(3) Unless otherwise approved by the cabinet secretaries of the higher education and public education departments, successful completion of three credit hours of postsecondary instruction shall result in the awarding of one high school unit for said completed postsecondary course. If the LEA and postsecondary institution determine that a different ratio is warranted for a particular dual credit course comparable to LEA core courses in order to meet public education department standards and benchmarks, they may appeal to the council, which may recommend a different ratio to the cabinet secretaries of the public education and higher education departments. The joint decision of the public education and higher education department cabinet secretaries shall be final.

[5.55.2.9 NMAC - N, 11/13/2014]

HISTORY OF 5.55.2 NMAC: [RESERVED]