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October 13, 2014

MEMORANDUM

TO: Legislative Education Study Committee

FR: Travis Dulany

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

Introduction

Throughout the 2014 interim, Legislative Education Study Committee 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.

Conflicting Language

The September 30, 2014 issue of the *New Mexico Register* includes an adopted amendment (see **Attachment**) correcting conflicting language, further explained below.

Prior to the most recent publication of the *New Mexico Register*, Subsection C of the "Objective" section of the rule (5.7.20.6 NMAC) stated that for students with disabilities, "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 conflicted with Subsection B, Paragraph (2)(c) in the "Student Eligibility" section of the rule (5.7.20.8 NMAC), which stated 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, Higher Education Department staff indicated that this was likely a drafting error, and the department subsequently filed the 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.

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.

This is an amendment to 5.7.20 NMAC, Section 8, effective 09/30/2014.

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 ~~six~~ 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, 8/15/2014; A, 9/30/2014]