

MONTANA BOARD OF REGENTS OF HIGHER EDUCATION
Policy and Procedures Manual

SUBJECT: ACADEMIC AFFAIRS ~~(new)~~ (existing) ~~(removed)~~
Policy 221 – Authorization to Operate Postsecondary Institution in the State of Montana
Adopted: May 17, 2001; Revised: May 23, 2014; Revised November 20, 2020

I. Board Policy

- ~~A. **Authorization Required.** Pursuant to § 20-25-107, MCA, no person, corporation, association, or institution shall issue any degree or such similar literary honors as are usually granted by universities or colleges without the prior approval of the regents of the adequacy of the course of study. ~~In order to~~ ~~to~~ establish an authorization system that meets the minimum level of state oversight required by U.S. Department of Education regulations, the board of regents does not recognize any educational accrediting associations for purposes of § 20-25-107(2), MCA.~~

~~[Authorization is required both to establish a physical presence in Montana and to offer distance education to students in Montana. An institution shall not conduct, provide, offer, or sell a degree or similar literary honor unless authorized. In addition, an institution shall not solicit students or advertise in Montana unless authorized.](#)~~

- ~~B. **Scope of Coverage.** The phrase "degree or such similar literary honors as are usually granted by universities and colleges" as used in § 20-25-107 MCA means, certificates of applied science, associate degrees, baccalaureate and bachelor's degrees, master's degrees, doctoral degrees and any degree which the grantor purports to be similar or equivalent regardless of how it is denominated.~~

- ~~C. **Exemptions from Coverage.** § 20-25-107, MCA does not apply to (1) religious institutions that are owned, controlled, operated and maintained by a religious organization lawfully operating as a non-profit religious corporation and that award only religious degrees or certificates; (2) schools of barbering, cosmetology, electrology, esthetics and manicuring, which are regulated under Title 37, Chapter 31, MCA; and (3) flight schools possessing a valid certificate issued by the Federal Aviation Administration.~~

- ~~D. **Authorization for Public Institutions.** Public Institutions seeking authorization to operate in Montana must establish, in the manner provided for by the Office of the Commissioner of Higher Education, that they are accredited by one of the following accrediting agencies:~~

- ~~• New England Association of Schools and Colleges~~
- ~~• Middle States Association of Colleges and Schools~~
- ~~• North Central Association of Colleges and Schools~~
- ~~• Northwest Commission on Colleges and Universities~~
- ~~• Southern Association of Colleges and Schools~~
- ~~• Western Association of Schools and Colleges~~
- ~~• Any accrediting agency approved by the Council on Higher Education Accreditation.~~
- ~~• Any accrediting agency approved by the U.S. Department of Education.~~

~~The board of regents reserves the right to withdraw recognition of any of the above listed accrediting agencies at its discretion.~~

~~Schools formally accepted as candidates for accreditation by any of the above agencies shall be treated as accredited for as long as they remain in that status.~~

- ~~E. **Authorization for Private Institutions.** Private Institutions seeking authorization to operate in Montana must meet the following requirements, in the manner provided for by the Office of the Commissioner of Higher Education:~~

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~~1. Accreditation by one of the following accrediting agencies:~~

- ~~• New England Association of Schools and Colleges~~
- ~~• Middle States Association of Colleges and Schools~~
- ~~• North Central Association of Colleges and Schools~~
- ~~• Northwest Commission on Colleges and Universities~~
- ~~• Southern Association of Colleges and Schools~~
- ~~• Western Association of Schools and Colleges~~
- ~~• Any accrediting agency approved by the Council on Higher Education Accreditation.~~
- ~~• Any accrediting agency approved by the U.S. Department of Education.~~

~~The board of regents reserves the right to withdraw recognition of any of the above listed accrediting agencies at its discretion.~~

~~Schools formally accepted as candidates for accreditation by any of the above agencies shall be treated as accredited for as long as they remain in that status.~~

~~2. Demonstration of Financial Integrity. An institution will be deemed to demonstrate financial integrity if:~~

- ~~a. The institution has (i) been accredited for at least twenty years by an accrediting agency that is recognized by the U.S. Department of Education; (ii) operated continuously in this state for at least twenty years; and (iii) never filed for bankruptcy protection pursuant to Title 11 of the United States Code;~~
- ~~b. The institution maintains a Financial Responsibility Composite Score of at least 1.0, determined by the U.S. Department of Education pursuant to 20 U.S.C. § 1099c; OR~~
- ~~c. If the institution cannot establish financial integrity by way of subsection 2.a. or 2.b. above, it must submit a good and sufficient surety bond in an amount to be determined by the Office of the Commissioner of Higher Education. The bond shall be executed by the institution as principal and by a surety company qualified and authorized to do business in this state. The bond shall be conditioned to provide indemnification to any student or enrollee or his or her parent or guardian, determined to have suffered loss of tuition or any fees as a result of any act or practice of the institution.~~

~~F. Accreditation for Newly Established Institutions. A newly established institution actively seeking accreditation from one of the above listed agencies can establish that it meets the accreditation requirement provided it enters into a formal affiliation agreement with an institution (“affiliated institution”) that is accredited by one of the above listed agencies. Such agreement must include, at a minimum, the following provisions:~~

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- ~~• The affiliate institution is responsible for awarding credits and degrees; and~~
 - ~~• The affiliate institution is responsible for maintaining transcripts.~~

~~Until such institution obtains its own independent accreditation by one of the above listed accrediting agencies, it must remain a party to a valid and binding agreement with an affiliated institution in order to be in compliance with § 20-25-107, MCA and this policy.~~

~~G. Additional Requirement for Institutions Seeking Approval to Participate in the State Authorization Reciprocity Agreement. Any institution seeking approval to participate in the National State Authorization Reciprocity Agreement through application to the Board of Regents~~

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~~agrees to abide by the terms and conditions of the Application and Approval Form for Institution Participation in SARA.~~

II. Procedures

A. Manner of Authorization.

1. The following types of institutions are authorized:
 - a. Units of the Montana University System;
 - b. Duly established Montana community colleges supervised and coordinated by the board of regents;
 - c. Native American colleges established by a federally recognized Indian tribe and operating on land within the limits of any Indian reservation under the jurisdiction of the United States Government that is within the limits of Montana;
 - d. Canadian public colleges and universities that are granted the right to operate within their respective provinces through statutes effected by the individual provincial legislatures;
 - e. Institutions domiciled in a state other than Montana and participating in the State Authorization Reciprocity Agreement (SARA), provided an institution's activities in Montana:
 - i. do not constitute a physical presence under this policy or SARA policy; and
 - ii. do not otherwise require Montana authorization under SARA policy.
 - f. Institutions granted direct authorization under the procedures described in section II.C. of this policy. Institutions not authorized through other means in this section should seek direct authorization or exemption.
2. If an institution is domiciled in a state other than Montana and that state is a member of SARA, the institution must participate in SARA to be authorized. Institutions must adhere to all standards, policies, and fees established by SARA and NC-SARA for participation, including reporting requirements, quality standards, and consumer protection measures.

B. Exemptions from Coverage. Exemption from authorization is not automatic. If an institution is eligible for an exemption, the institution must still apply for and receive written approval of the exemption from the Commissioner of Higher Education to remain in compliance with this policy.

Section 20-25-107, MCA, does not apply to:

1. Any postsecondary school whose primary purpose is to provide religious or theological education. To qualify for this exemption, the institution may confer only certificates or degrees relating to religion and theology (e.g., Bachelor of Education in a specific religion, Master of Divinity, Doctor of Theology). Secular degrees may not be awarded in any discipline, including religion, religious education, and biblical studies (i.e., Associate of Arts, Bachelor of Arts, Doctor of Philosophy);
2. Schools of barbering, cosmetology, electrology, esthetics and manicuring, which are regulated under Title 37, Chapter 31, MCA; and
3. Flight schools with a valid certificate issued by the Federal Aviation Administration.

C. Direct Authorization.

1. **Applicability.** Direct authorization under this section is required for:
 - a. Any institution maintaining a physical presence in Montana not otherwise authorized in section A;
 - b. SARA-participating institutions whose Montana activities exceed the scope of SARA coverage or constitute physical presence under this policy;

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- c. Any institution domiciled in a state that is not a member of SARA; and
- d. Any private postsecondary institution domiciled in Montana.

2. Procedure and requirements for direct authorization. A post-secondary institution seeking direct authorization must satisfy the following requirements:

- a. The institution holds current, valid institutional accreditation in good standing from a U.S. Department of Education-recognized accrediting agency;
- b. The institution is authorized or exempt from authorization in the state where it is domiciled;
- c. The institution maintains an established, clearly articulated, and accessible process for the resolution of student complaints;
- d. The institution has adequate disaster recovery plans;
- e. The institution maintains a federal financial responsibility composite score minimum of 1.5. This requirement applies to all institutions, including those that do not participate in student financial aid programs under Title IV of the Higher Education Act of 1965;
 - i. The institution must provide the most recent federal financial responsibility composite score documentation, whether provided in written form by the U.S. Department of Education or calculated by an independent auditor using the methodology prescribed by the U.S. Department of Education; and
 - ii. For institutions owned or controlled by another entity (“parent entity”), the relevant composite score will be the composite score of the parent entity, consistent with federal regulations;
- f. The institution submits a completed application on forms provided by the Office of the Commissioner of Higher Education (OCHE), accompanied by any applicable non-refundable application fee as may be prescribed by the Commissioner of Higher Education; and
- g. In the application, the institution demonstrates the adequacy of its curriculum, staffing, facilities, learning resources, and financial integrity by providing evidence in a manner prescribed by the Commissioner of Higher Education.

Staff from OCHE may conduct site visits as part of the authorization review and may require additional documentation as necessary to evaluate an application.

If an institution is denied direct authorization, the institution may appeal that denial to the Commissioner in writing, following the procedures set out in Section G.

3. Renewal of direct authorization. Institutions seeking renewal of their direct authorization shall apply annually by October 1.

- a. At a minimum, the renewal application will require an institution to report on: enrollment; completion and graduation rates; student complaints received from Montana students and their resolution outcomes; the institution’s current federal financial responsibility composite score; any adverse action; and any material changes in program offerings and institutional ownership, governance, location, or financial condition.
- b. OCHE may request further information it deems necessary to assess an institution’s renewal application.
- c. Failure to submit a timely renewal application may result in lapse of authorization, subject to the enforcement provisions of Section H.

4. Surety Bond Requirements.

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- a. All institutions holding direct authorization under Section C must submit a good and sufficient surety bond on forms provided by OCHE, executed by the institution as principal and by a surety company qualified and authorized to do business in Montana. An irrevocable standby letter of credit from a federally insured financial institution may be accepted in lieu of a surety bond.
- b. The required bond amount shall be at least 10 percent of the institution’s gross Montana tuition revenue from the prior fiscal year, unless the prior year’s tuition revenue exceeds \$1,500,000, in which case the required minimum bond will be \$150,000. Institutions with prior revenue below \$100,000 will have a minimum bond requirement of \$10,000. If no prior Montana revenue exists or financial records of such are inadequate, a \$25,000 minimum bond will be required. s

<u>Gross Montana Tuition Revenue</u>	<u>Required Minimum Bond %</u>	<u>Required Minimum Bond Amount</u>
<u>Up to \$100,000</u>	<u>Not applicable</u>	<u>\$10,000</u>
<u>\$100,000-\$1,500,000</u>	<u>10%</u>	<u>\$10,000-\$150,000</u>
<u>Over \$1,500,000</u>	<u>Not applicable</u>	<u>\$150,000</u>
<u>New institution (no prior Montana revenue)</u>	<u>Not applicable</u>	<u>\$25,000</u>

- c. The bond shall be conditioned to provide indemnification to any student or enrollee, or such student’s parent or guardian, determined to have suffered loss of tuition or fees as a result of any act or practice of the institution that constitutes a violation of § 20-25-107, MCA, this policy, or the terms of the institution’s authorization. The board may also draw on the security to cover costs associated with securing and maintaining student academic records.
- d. If OCHE determines that a higher level of bonding is warranted for consumer protection purposes based on the institution’s financial condition, enrollment growth, complaint history, or other risk factors, it may require a bond in an amount exceeding the formula amount.
- e. An institution shall not operate for more than ninety (90) days without a surety bond or letter of credit in the required amount. Failure to maintain a bond shall result in conditional authorization, subject to the enforcement provisions of Section H.

D. Responsibilities of Authorized Institutions

1. **Student Consumer Protections.** Institutions that are participants of SARA must adhere to all student consumer protection measures set out in SARA policy. All other authorized institutions shall:
 - a. Provide truthful and non-misleading information in all marketing, recruitment, catalogs, websites, and enrollment materials;
 - b. Maintain, on a publicly accessible web page or within their institutional catalog provided to students, the following information:
 - i. Contact information for the institution’s point of contact regarding the internal complaint process;

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- ii. [Contact information for OCHE and a hyperlink to OCHE's website describing the complaint process;](#)
 - iii. [Contact information for and hyperlink to the institution's institutional accreditor;](#)
[and](#)
 - iv. [Required professional licensure disclosures for programs designed or advertised to lead to professional licensure or certification, including whether the program meets educational requirements for licensure in Montana and other relevant jurisdictions; and](#)
 - c. [Maintain and publish clear refund policies that, at minimum, provide for fair and reasonable pro-rata refunds of unearned tuition and fees in the event of early withdrawal or institutional closure.](#)
2. **Timely notification.** [Authorized institutions must notify OCHE within thirty \(30\) days of any of the following:](#)
- a. [any adverse action by an accrediting agency, the U.S. Department of Education, or any state authorizing agency;](#)
 - b. [any filing for bankruptcy protection;](#)
 - c. [a U.S. Department of Education composite financial responsibility score of less than 1.5; and](#)
 - d. [any change of institutional ownership or control.](#)

H. Student Appeal

~~Pursuant to the U.S. Department of Education's Program Integrity Rule (34 CFR Part 600.9), the office of the commissioner of higher education shall establish a complaint process to oversee the referral and/or resolution of program integrity complaints related to an authorized institution. Such program integrity complaints may include alleged violations of consumer protections laws, alleged violations relating to institution licensure, and/or alleged violations of accreditation requirements. Such complaints will not be reviewed by the office of the commissioner of higher education unless they have first proceeded through the authorized institution's internal complaint process.~~

I. Institutional Appeal of State Authorization Reciprocity Agreement Determination

~~In the event that an institution is notified by the office of the commissioner of higher education of its intent to remove the institution from participation in SARA, or if the institution is denied initial participation in SARA, the institution may appeal the denial of participation to the office of the commissioner of higher education. The appeal will be reviewed by the commissioner. During any such appeal the institution's status as SARA participating (or non-participating) remains unchanged.~~

~~Institutions who choose to appeal must do so on the following grounds:~~

- ~~1. The Office of the Commissioner of Higher Education staff review of the institution's application did not follow procedures as outlined in the SARA Manual; and/or~~
- ~~2. The Office of the Commissioner of Higher Education staff review of the institution's application made a mistake in determining that the institution does not meet the eligibility criteria to participate in SARA, as outlined in the NC-SARA Manual.~~

~~For each ground listed above believed to be the reason for the appeal, the institution appealing should submit a written explanation, including documentation that supports the appeal. The documentation should be submitted with the official appeal.~~

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Procedure for Appeal

- ~~1. The institution must provide notice to the office of the commissioner of higher education of the intent to appeal within ten (10) business days after receiving notice of their removal from SARA or denial of initial application. This notice must be in writing.~~
- ~~2. Within ten (10) business days after submitting their notice of the institution's intent to appeal, institutions must submit the official appeal in writing. The official appeal must identify which of the above grounds is the reason for the appeal and must include the submission of all supporting documentation.~~
- ~~3. Upon receiving the official appeal and supporting documentation, the commissioner will strive to make a determination on the appeal within twenty (20) business days of the receipt of the official appeal. The commissioner's decision on the appeal is final.~~

~~J. **Duly Authorized Members of the State Authorization Reciprocity Agreement.** With the exception of institutions that meet the definition of physical presence set forth in section 5 of the *State Authorization Reciprocity Agreements: Policies and Standards*, institutions domiciled in states other than Montana that are duly authorized members in good standing of SARA are exempt from meeting the requirements of this policy.~~

KE. Procedures Applicable to Closure of Institution.

- 1. Notification.** In the event an institution ~~closes and ceases~~ plans to discontinue all its operations in Montana, the chief administrative officer is required to provide timely notification, in writing, to ~~the Office of the Commissioner of Higher Education~~ OCHE and currently enrolled or recruited students of its intentions. Such notification must be provided at least ninety (90) days before the planned closure date, or as soon as practicable in the case of an unplanned closure. The written notification to ~~the Office of the Commissioner of Higher Education~~ OCHE must include:
 - Name, mailing address, email address and telephone number of the chief administrative officer (or designee), valid for post-closure communications;
 - The date on which the institution will **officially** close;
 - A written plan for access to and preservation of permanent records;
 - What actions the institution plans to take in regards to its students;
 - A report of the status of all students currently enrolled and those students on leave of absence whose education and training program will not be fully completed by the date of the institution's closure;
 - A written statement from the chief administrative officer affirming that all recruitment efforts, program marketing, advertisement, solicitation and enrollment of new students has ceased;
 - A copy of all documents provided by the institution's accrediting agency related to the closure; and
 - The institution's teach-out plan, including identification of any teach-out agreements with other institutions and copies of any signed teach-out agreements.
- 2. Student Notification.** In addition to the notice to OCHE, the closing institution must provide individual written notice to each currently enrolled student and each student on approved leave of absence. The notification must be provided at least ninety (90) days before the planned

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closure date, or as soon as practicable in the case of an unplanned closure. Such notice must include:

- the planned closure date;
- the student's options for completing their program of study, including teach-out arrangements; information about the student's right to obtain transcripts;
- information about the student's right to request a refund of prepaid tuition and fees, including any applicable claim against the institution's surety bond; and
- contact information for OCHE.

2. **3. Transcripts.**

a. Institutions domiciled in the State of Montana. Those institutions physically domiciled in Montana must provide to ~~the Office of the Commissioner of Higher Education~~ OCHE all student transcripts in its possession. ~~The Office of the Commissioner of Higher Education~~ OCHE shall maintain all such records for a period of twenty years from receipt.

- b. Institutions domiciled in states other than Montana. Those institutions physically domiciled in states other than Montana must provide to ~~the Office of the Commissioner of Higher Education~~ OCHE all student transcripts in its possession that relate to residents of the State of Montana. ~~The Office of the Commissioner of Higher Education~~ OCHE shall maintain all such records for a period of twenty years from receipt.

4. **Financial Obligations Upon Closure.** Upon closure, the institution's surety bond shall remain in effect for at least one (1) year following the date of closure, during which period claims may be filed. OCHE shall publicize the claims process and the deadline for filing claims.

F. Student Complaint Process.

1. Pursuant to 34 CFR § 600.9, OCHE shall maintain a complaint process for the review, referral, and resolution of complaints concerning authorized institutions. Such complaints may include alleged violations of consumer protection laws, alleged violations relating to institutional authorization, alleged violations of accreditation requirements, and complaints regarding the quality or delivery of educational services.
2. All authorized institutions must establish, publish, and maintain accessible internal complaint or grievance procedures. Students must be informed of these procedures at the time of enrollment. Complaints will not be reviewed by OCHE unless the complainant has first attempted resolution through the institution's internal complaint process or the institution has failed to respond to the complaint within a reasonable period. A student must submit a complaint within two years of the last date of attendance at the institution, unless an institution has ceased all operations in Montana, in which case the complaint must be made within one year of the institution ceasing operations in Montana.
3. OCHE shall:
 - a. Publish complaint submission procedures and contact information on its website;
 - b. Acknowledge receipt of complaints within five (5) business days;
 - c. Investigate or refer complaints and endeavor to reach resolution within ninety (90) days of receipt or such longer period as the complexity of the matter requires; and
 - d. Maintain records of all complaints received, their disposition, and resolution outcomes.
4. Complaints concerning institutions authorized through SARA participation shall be handled in accordance with the SARA complaint process as set forth in the SARA Policy Manual, with the OCHE serving as the SARA portal agency for Montana.

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G. Institutional Appeal of Denial of Direct Authorization

- a. Within thirty (30) days of the denial of an institution's application for direct authorization, the institution may appeal in writing to the Commissioner of Higher Education. Institutions who choose to appeal must do so on the following grounds:
 - i. OCHE's staff review of the institution's application did not follow the procedures outlined in this policy; and/or
 - ii. OCHE's staff made a mistake in determining that the institution does not meet the eligibility criteria to be authorized in Montana.
 - iii. For each ground listed above believed to be the reason for the appeal, the institution appealing should submit a written explanation and any supporting documentation.
- b. Upon receiving the appeal and supporting documentation, the Commissioner will issue a decision. The Commissioner's decision on the appeal is final.

H. Contingency Upon SARA Dissolution or Montana Withdrawal. In the event that SARA ceases to exist or Montana withdraws from SARA, institutions previously authorized solely through SARA participation shall have twelve (12) months from the effective date of such dissolution or withdrawal to obtain direct authorization. During that transition period, such institutions shall be treated as conditionally authorized.

I. Enforcement.

1. OCHE may take any of the following enforcement actions against an authorized institution, in order of escalation:
 - a. Issuance of a warning letter identifying the violation and requiring corrective action within a specified timeframe;
 - b. Imposition of conditional authorization, with specific conditions and timelines for remediation;
 - c. Suspension of authorization to enroll new Montana students;
 - d. Revocation of authorization, subject to teach-out obligations; and
 - e. Referral to the Montana Attorney General for enforcement of § 20-25-107, MCA.
2. Before imposing conditional authorization, suspension, or revocation, OCHE shall provide the institution with written notice of the proposed action and the reasons therefore. The institution shall have an opportunity to respond in writing.
3. An institution subject to a final enforcement action under this section may appeal to the Commissioner, following the procedures set forth in Section G.

LJ. This policy supplements, rather than displaces, board policy 320.3 ("Recognition; Canadian Public Institutions"). For campuses and programs of the Montana university system and the Montana community colleges, the provisions of board policy 320.2 ("Accreditation; Montana university system units and community colleges") are applicable.

K. Institutions authorized prior to [date of passage] may continue to serve already enrolled Montana students through the conclusion of their program of study. Such institutions may not enroll new Montana students until they successfully obtain authorization or exemption under this policy.

III. Definitions

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1. “Adverse action” means a warning or sanction issued by the institution’s accrediting agency, the U.S. Department of Education, a professional licensing board, or a state regulatory entity; a judgment against an institution that includes a finding of a consumer protection violation or that may impact ongoing operations; or any action, decision, or finding that impacts the institution’s financial solvency.
2. The phrase “degree or such similar literary honors as are usually granted by universities and colleges” as used in § 20-25-107, MCA, means, certificates of applied science, associate degrees, baccalaureate and bachelor’s degrees, master’s degrees, doctoral degrees, and any degree which the grantor purports to be similar or equivalent regardless of how it is denominated.
3. “Distance education” means instruction offered by any means where the student and faculty member are in separate physical locations. It includes, but is not limited to, online, interactive video, and correspondence courses or programs.
4. “Gross Montana tuition revenue” means the total tuition and required fees collected from students located in Montana during the institution’s most recently completed fiscal year.
5. “Physical presence” means a presence established by:
 - a. Maintaining a physical location in Montana where students receive instruction or providing instruction to students at a designated location and time in the state;
 - b. Maintaining an administrative office in Montana for students receiving in-person instruction or distance education;
 - c. Maintaining a mailing address in Montana and a local telephone number;
 - d. Providing office space in Montana for instructional or non-instructional staff; or
 - e. Providing student support services at a physical location in Montana, whether operated by or on behalf of an institution.
6. “SARA” means the National State Authorization Reciprocity Agreement, as administered by the National Council for State Authorization Reciprocity Agreements (NC-SARA) and the applicable regional compact.

History:

Item 110-105-R0301, Accreditation (New), approved by the Board of Regents on May 17, 2001 as revised by Item 118-104-R0103, approved by the Board of Regents on April 2, 2003; editorial change made April 8, 2004, to change the name “Northwest Association of Schools and Colleges” to “Northwest Commission on Colleges and Universities.” Item 150-104-R0311, revised March 4, 2011 for Policy Clarification. Item 161-103-R1113 revised and changed Policy from 320.1 (Accreditation, in Academic Affairs) to 221 (in Governance and Organization, November 22, 2013. Item 163-117-R0514, revised May 23, 2014. Revised November 20, 2020 via Item 191-101-R1120.