CHAPTER 44
PRIVATE POST-SECONDARY INSTITUTIONS


2009 NOTE: P.L. 28-045:10 (June 6, 2005) changed the name of the Department of Education to the Guam Public School System. P.L. 30-050:2 (July 14, 2009) reverted the name of the Guam Public School System to the Department of Education. References to Guam Public School System have been changed to Department of Education pursuant to P.L. 30-050:3.

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§ 44101. Legislative Findings and Intent.

I Liheslaturan Guahan finds that there are several private post-secondary institutions that have been established on the island. I Liheslatura recognizes that educational credential serves several purposes to which employers rely upon in judging such person’s qualifications for employment and for educators to assess the adequacy of such person’s preparation for the pursuit of further education. An important tool in the process of providing a substantial and adequate education has been removed by a previous legislature. It is, further found that the need for educational services is so great that it cannot be met by tax-supported institutions alone. The contribution of educational institutions is needed for the growth of our island as a progressive community. This can be best achieved by protecting the integrity of degrees and diplomas issued by educational institutions on our island through an evaluation of minimum education requirements.

It is the intent of I Liheslatura to encourage privately supported education, as well as to protect the integrity of degrees and diplomas conferred by privately- and publicly-supported education institutions. I
Liheslatura further intends to prohibit the granting of false or misleading educational credentials and to prohibit misleading literature, advertising, solicitation, or representations by private post-secondary institutions or their agents.

§ 44102. Definitions.

As used in this Chapter, the following terms apply:

(a) Accreditation means accredited status awarded to an institution by an accrediting agency or association that is recognized by the United States Department of Education and that has standards comparable to the minimum standards required to operate an educational institution at that level in this Territory.

(b) Agent means any person who, at a place away from the principal school premises or site of instruction, whose primary task is to serve as a paid recruiter, while owning an interest in, employed by or representing for remuneration or other consideration a private post-secondary educational institution offers or attempts to secure enrollment of any person within the Territory of Guam and accepts application fees or admission fees for education in an institution.

(c) Avocational means a course or program the objective of which is not occupational, but is only for personal enrichment or enjoyment. To be classified as avocational, a program must:

(1) Prior to enrollment, provide to each enrollee, and maintain a record copy of, a written statement that includes the following or substantially similar language: “This program is not designed or intended to qualify its participants and graduates for employment. It is solely for the avocation, personal enrichment, and enjoyment of its participants.”

(2) Not make any other verbal or written statement that negates the required written statement by stating or implying that people who enroll in or complete the program have a more substantial likelihood of obtaining employment in the field to which the training pertains than people who do not.

(d) Council means the Council on Post-secondary Institution Certification established by § 44104 of this Chapter.

(e) Degree means any academic degree or honorary degree or title
of any designation, mark, appellation, series of letters or words such as, but not limited to, associate, bachelor, master, doctor or fellow which signified, purports or is generally taken to signify satisfactory completion of the requirements of an academic, educational, technological or professional program of study beyond the secondary school level or is an honorary title conferred for recognition of some meritorious achievement.

(f) Diploma means any diploma, certificate, transcript, document or other writing which indicates enrollment in or completion of a course of study other than a degree.

(g) Education or education services includes, but is not limited to, any class, course or program of training, instruction or study.

(h) In-service, continuing education, or professional development means training provided by:

(1) A trade or professional association or a group of employers in the same or related business who offer training and provide only professional development programs to bona fide employees or contractors of an employer who is a member of the association or employers who qualify for membership;

(2) A labor union or group of labor unions that offer training to and trains only those persons who are dues-paying members of the participating labor union;

(3) An independent contractor engaged by the labor union or group of labor unions, by written contract, to provide the training on its behalf exclusively to those who are selected by the labor union or group of labor unions that engaged the contractor and who are dues-paying members of that union; or

(4) A person or entity offering only continuing education programs to persons who engage in an occupation or profession whose practitioners are subject to licensure, certification, or registration by a state agency that recognizes the programs for continuing education purposes and provides a written statement of the recognition.

(i) Out-of-territory college/university or out-of-territory school means any private post-secondary educational institution where the place of instruction, the legal place of residence, or the place of
evaluation of instruction or work by correspondence or distance education is not within the legal boundaries of this Territory.

(j) To offer includes, in addition to its usual meanings, advertising, publicizing, soliciting or encouraging any person, directly or indirectly, in any form, to perform the act described.

(k) To operate an educational institution, or like term, means to establish, keep, or maintain any facility or location in this Territory where, from or through which services are offered or educational degrees or diplomas are offered or granted.

(l) Private Post-secondary Institution or institution means any nonpublic post-secondary non-collegiate educational institution, association, corporation, person, partnership, or organization of any type from the United States or from abroad which:

(1) Offers to provide or provides any complete, or substantially complete, post-secondary program of instruction through the student’s personal attendance; in the presence of an instructor; in a classroom, clinical, or other practicum setting; or through correspondence or other distance education;

(2) Represents, directly or by implication, that the instruction will qualify the student for employment in an occupation for which a degree is not required in order to practice in this Territory;

(3) Receives remuneration from the student or any other source based on the enrollment of a student or the number of students enrolled; or

(4) Offers to award or awards a diploma, regardless of whether it conducts instruction or receives remuneration.

§ 44103. Exemptions.

The following education and educational institutions are exempted from the provisions of this Chapter:

(a) Education solely vocational or recreational in nature, as determined by the Council;

(b) A nonprofit institution owned, controlled and operated and maintained by a bona fide church or religious denomination, if such
education is limited to instructions in the principles of that church or denomination or to courses offered for the purpose of training the adherents of such church or denomination in the care of the sick in accordance with its religious tenets and the diploma or degree is limited to evidence of completion of that education, and the meritorious recognition upon which any honorary degree is conferred is limited to the principles of that church or denomination.

(c) Post-secondary education institutions established, operated and governed by the government of Guam.

(d) Education sponsored by a bona fide trade, business, professional or fraternal organization which is recognized by the Council as being solely for that organization’s membership and offered at no charge for the persons taking the course.

(e) Institutions exclusively offering instruction at any or all levels from preschool through twelfth (12th) grade.

(f) Any post-secondary educational course or program of study offered by an institution of higher education at a United States military post or reservation when that course or program is open only to military personnel, their dependents, or civilians employed by that military post or reservation.

(g) Tutorial instruction delivered and designed to supplement regular classes for students enrolled in any public or private school or to prepare an individual for an examination for professional practice or higher education.


(a) Establishment, Powers and Duties. There is within the government of Guam the Council on Post-secondary Institution Certification that shall authorize the granting of diplomas and degrees by any private, nonpublic post-secondary institution operating on Guam. The Council shall exercise independently all powers, duties, and functions prescribed by law. The Council shall function in matters concerning independent post-secondary institutions in consumer protection, program improvement, and certification for private post-secondary institutions prescribed in this Chapter. The Council shall:

(1) Establish minimum criteria including quality of education, ethical and business practices, health and safety and fiscal
responsibility, which applicants for authorization to offer or operate education services or grant degrees or diplomas as a post-secondary education institution or for an agent’s certification, shall meet before such authorization or certification may be issued, and to continue such authorization or certification in effect. Criteria to be developed hereunder shall be such as will effectuate the purposes of this Chapter, but will not unreasonably hinder legitimate education innovation.

(2) Establish rules for the approval of modified or additional programs, degrees, and locations.

(3) Receive, investigate, and act upon applications for authorization or approval to operate educational institution and application for agent’s permit.

(4) Inform private post-secondary institutions operating in the Territory of Guam of laws adopted by I Liheslaturan Guåhan, and rules and regulations adopted by the Council and of their responsibility to follow those laws and rules and regulations.

(5) Establish procedures for receiving and responding to complaints from students, faculty, and others concerning institutions or programs under the purview of the Council, and keep records of such complaints in order to determine the frequency and nature of complaints with respect to specific institutions of higher education.

(6) Establish procedures and criterion for application by means of certification.

(7) Establish procedures for conducting periodical assessments on each certified institution to determine if such is in compliance with this Chapter. The Council may extend an annual or provisional certification if a good faith effort has been made by the institution. The Council shall determine what constitutes compliance or a good faith effort and may adopt rules to administer this provision.

(8) Develop minimum standards by which to evaluate institutions for certification. These standards must include, at least the institution’s name, financial stability, purpose, administrative
organization, admission and recruitment, education programs and curricula, retention, completion, career placement, faculty, learning resources, student personnel services, physical plant and facilities, publications, and disclosure statements about the status of the institution with respect to professional certification and licensure. The Council may adopt rules to ensure that institutions certified under this Chapter meet these standards in ways that are appropriate to achieve the stated intent of this Chapter, including provisions for nontraditional or distance education programs and delivery.

(9) Establish rules to ensure the protection of students, including rules establishing fair consumer practices pursuant to §44106 of this Chapter.

(10) Establish rules to protect students from the detriment caused by certified institutions that cease operation without providing for proper completion of student training or for the appropriate refund of student fees. Rules may be established to exercise control over student records upon closure of a certified institution if the institution does not provide an orderly closure.

(11) Recognize an institution based on the institution’s highest educational offering and shall adopt rules for certification that include reporting requirements for each level of certification.

(12) Serve as a central body for collecting and distributing current information regarding institutions certified by the Council.

(13) Make rules for its own governance.

All rules, regulations, and fees established by the Council as necessary to implement the provisions of this Chapter shall be subject to Chapter 9 of Title 5 of the Guam Code Annotated (the Administrative Adjudication Law). The Council in its entirety is subject to all laws applicable on Guam to include, Chapters 8 and 10 of Title 5 of the Guam Code Annotated (the Open Government Law and the Freedom of Information Act Law, respectively).

(b) The Council may:
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(1) appoint standing or special committees to assist it in carrying out its responsibilities. Committees may include members who are not Council members or representatives of certified post-secondary institutions.

(2) sue or be sued.

(3) advise I Maga’lahen and I Liheslatura on issues relating to private post-secondary education;

(4) assist private post-secondary institutions in formulating articulation agreements with public and other independent institutions.

(5) establish fees for the following:
   (i) Application for Certification.
   (ii) Application for Renewal of Certification.
   (iii) Late fees for an institution’s failure to timely submit required materials.

(6) Take such legal action as it deems necessary to cause the owners, directors, or administrators of private post-secondary institutions to refrain from offering any part or all of such educational programs which the Council shall have found to be inadequate.

(7) Refer matters it deems appropriate to the Office of the Attorney General for investigation and prosecution.

(c) Membership. The Council shall consist of seven (7) members who are bona fide residents of the Territory of Guam. The membership shall consist of:

(1) The President of the University of Guam, or his appointed designee;

(2) The President of the Guam Community College, or his appointed designee;

(3) The Superintendent of the Department of Education, or his appointed designee;

(4) The Director of the Department of Labor, or his appointed designee;

(5) A Chairman appointed by I Maga’lahen Guåhan, with the
advice and consent of I Liheslaturan Guåhan; and

(6) Two (2) at-large members appointed by I Maga’laheh Guåhan, with the advice and consent of I Liheslaturan Guåhan, with backgrounds in education and business, respectively, who are not affiliated with any institution of higher education.

(i) Members appointed by I Maga’laheh shall serve for a term of three (3) years and until their successors are appointed and confirmed. Such members shall not be required to submit courtesy resignations should there be a change in administration. Should a vacancy occur before the expiration of a term, I Maga’laheh shall appoint a successor to serve the unexpired portion of the term. Designees appointed by the President of the University of Guam, the President of the Guam Community College, the Superintendent of the Department of Education, and/or the Director of the Department of Labor shall serve a term as designated by their appointing authority.

(ii) Members appointed by I Maga’lahi shall receive a stipend of Fifty Dollars ($50) per official meeting.

(d) Meetings. The Council shall determine the time and place of Council meetings which shall not be fewer than four (4) times in each calendar year. Five (5) members shall constitute a quorum and all actions, with the exception of those regarding the operating procedures of the Council, shall be adopted according to the affirmative vote of the majority of Members present and shall be in writing.

(e) Administrative Support. The Council shall be administratively supported by the Staff of the Guam Commission for Educator Certification, whose administrative office shall hereby be called, “the Guam Certification Office”.

(f) Fees. The Council shall retain all fees collected and use such fees for its operations. Fifty percent (50%) of its fees collected shall be used for the administrative function of the Guam Certification Office.

(g) Website. The Council shall maintain a website that shall contain rules, regulations, and fees as established and adopted by the Council pursuant to this Chapter. The website shall also contain, but not limited to, the following:

(1) procedure and application for certification;
(2) list of applications received by the Council;

(3) list of rejected applications;

(4) list of all actions taken by the Council;

§ 44105. Private Post-secondary Institutions: Certification.

(a) Each private post-secondary institution operating within the Territory of Guam must obtain certification from the Council.

(b) Each certified institution is solely responsible for notifying the Council in writing of the institution’s current mailing address and the location of the institution. A certified institution’s failure to notify the Council of a change of address constitutes a violation of this paragraph, and may be disciplined by the Council. Notwithstanding any other provision of law, service by regular mail to the last known address of record with the Council constitutes adequate and sufficient notice for any official communication to and by the Council.

(c) Provisional certification shall be granted to an applicant for initial certification for a period not to exceed one (1) year when the Council determines that the applicant is in substantial compliance with the standards for certification. A provisional certification granted for initial certification may be extended for up to one (1) additional year. A certified institution that has undergone a substantive change, as defined by rule, must be granted a provisional certificate for a period of time determined by the Council, after which period the institution may apply for a different status. A provisional certificate may include conditions required by the Council, and all conditions must be met before the institution may receive a different certification status.

(d) The Council shall ensure through an investigative process that applicants for certification meet the standards as defined in rule. When the investigative process is not completed within the time set out in rule and the Council has reason to believe that the applicant does not meet certification standards, the Council may issue a ninety- (90-) day certification delay, which shall be in writing and sufficient to notify the applicant of the reason for the delay.

(e) All materials submitted by an institution in its application for approval or in response to a request by the Council for pertinent information shall be subject to Chapter 10 of Title 5 of the Guam Code Annotated (the Freedom of Information Act) and shall be available for public inspection in
accordance with the provisions of Guam law.


(a) An institution may not conduct a program unless specific authority is granted in its certification.

(b) A certificate granted by the Council is not transferable to another institution or to another agent, and an institution’s certificate does not transfer when the institution’s ownership changes without the approval of the Council.

(c) Should a change in ownership or control of a certified institution take place, notification must be made to the Council prior to the change. The Council shall adopt procedures for interim executive approval of a change of ownership or control if the next scheduled meeting of the Council occurs after the scheduled date of the change of ownership or control.

(d) A private post-secondary institution or any person acting on behalf of such an institution may not publish any advertisement soliciting students or offering credential before the institution is duly certified by the Council or while the institution is under an injunction against operating, soliciting students, or offering and educational credential.

(e) The Council shall have the power to inspect, in a lawful manner at all reasonable hours, any applicant for certification or certified private post-secondary institution.

(f) A certified private post-secondary institution that seeks to expand or modify its programs or degrees to be conferred or to add new locations must seek prior approval from the Council.

(g) The Council may not grant or renew a certificate unless the institution seeking the action provides the Council with a sworn statement of compliance with rules regarding fair consumer practices.


At least thirty (30) days prior to closing an institution, its owners, directors, or administrators shall notify the Council in writing of the closure of the institution. An owner, director, or administrator who violates this provision, or who fails to organize the orderly closure of the institution commits a misdemeanor of the second degree. The Council may exercise control over student records upon closure of a certified institution if the
institution does not provide an orderly closure.

The Council may require the institution to convey all student records to the Council office or another location designated by the Council and shall make copies of records available to bankruptcy trustees upon request and to the student or those designated by the student. Confidentiality of the records shall be maintained to the extent required by law. The Council may seek civil penalties not to exceed Ten Thousand Dollars ($10,000) from any owner, director, or administrator of an institution who knowingly destroys, abandons, or fails to convey or provide for the safekeeping of institutional and student records.


Every institution that is under the jurisdiction of the Council or is exempt from the jurisdiction or purview of the Council pursuant to §44103 of this Chapter and that either directly or indirectly solicit for enrollment of any student shall:

(a) disclose to each prospective student a statement of the purpose of such institution, its educational programs and curricula, a description of its physical facilities, its status regarding certification, its fee schedule and policies regarding retaining student fees if a student withdraws, and a statement regarding the transferability of credits to and from other institutions. Every institution, private and public, shall make the required disclosures in writing at least one (1) week prior to enrollment or collection of any tuition from the prospective student. The required disclosures may be made in the institution's current catalog;

(b) use a reliable method to assess, before accepting a student into a program, the student's ability to complete successfully the course of study for which he or she has applied;

(c) inform each student accurately about financial assistance and obligations for repayment of loans; describe any employment placement services provided and the limitations thereof; and refrain from promising or implying guaranteed placement, market availability, or salary amounts;

(d) provide to prospective and enrolled students accurate information regarding the relationship of its programs to state certification requirements for practicing related occupations and
professions in Guam;

(e) ensure that all advertisements are accurate and not misleading;

(f) publish and follow an equitable prorated refund policy for all students, and follow both the federal refund guidelines for students receiving federal financial assistance and the minimum refund guidelines set by Council rule;

(g) follow the requirements of Guam and federal laws that require annual reporting with respect to crime statistics and physical plant safety and make those reports available to the public; and

(h) publish and follow procedures for handling student complaints, disciplinary actions, and appeals.

In addition, institutions that are required to be certified by the Council shall disclose to prospective students that additional information regarding the institution may be obtained by contacting the Council on Post-secondary Institution Certification.

§ 44107. Violations and Penalties.

(a) Each of the following acts constitutes a misdemeanor in the second degree:

(1) Operating a private post-secondary institution without a valid, active certificate issued pursuant to this Chapter.

(2) Obtaining or attempting to obtain a certificate to operate an institution by fraudulent misrepresentation.

(3) Using or attempting to use a certificate that has been suspended or revoked.

(4) Falsifying or attempting to falsify or destroying or attempting to destroy school or other business records relating to the operation of the school with the intent to defraud.

(b) Each of the following acts constitutes a misdemeanor in the third degree:

(1) Knowingly concealing information relating to violations of this Chapter.

(2) Willfully making any false oath or affirmation when required to make an oath or affirmation pursuant to this Chapter.
(c) Each degree, diploma, certificate, program, or course of study offered or conferred in violation of this Chapter shall constitute a separate offense.

(d) A student injured by a violation of this Chapter may bring an action against the owner, director, or administrator of a certified private post-secondary institution for actual damages. A court may, in its discretion, award reasonable attorney’s fees to the prevailing plaintiff.

§ 44108. Severability.

If any provision of this Law or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provisions or applications of this Law which can be given effect without the invalid provisions or application, and to this end the provisions of this Law are severable.