

**TOPIC:                   DEGREE AUTHORIZATION ACT: RELAY GRADUATE  
SCHOOL OF EDUCATION - REQUEST FOR PROVISIONAL  
AUTHORIZATION**

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## **I.     SUMMARY**

Relay Graduate School of Education (Relay GSE) has applied for provisional authorization to operate as an authorized private, degree-granting institution in Colorado pursuant to the Degree Authorization Act. This discussion item provides the Colorado Commission on Higher Education with the background information preceding the recommendation for provisional authorization.

## **II.   BACKGROUND**

The Colorado Commission on Higher Education (CCHE) has statutory responsibility for administration of Title 23, Article 2 of the Colorado Revised Statutes, commonly referred to as the Degree Authorization Act, which outlines the terms by which certain types of institutions<sup>1</sup> may offer degrees or degree credits. Persons or organizations that violate the provisions of the statute are subject to legal penalties.

All private colleges and universities, out-of-state public colleges and universities, and seminaries and bible colleges are required to register with the Colorado Department of Higher Education and meet criteria in CCHE Policy Section I Part J, Degree Authorization Act, in order to have authorization to offer degrees within Colorado. Authorization by CCHE must be received by the institution prior to: offering any program of instruction, academic credits, or degrees; opening a place of business; soliciting students or enrollees; or, offering educational support services.

Relay GSE is a non-profit institution of higher education offering graduate degrees in education that holds regional accreditation through the Middle States Commission on Higher Education, as well as specialized accreditation at its other sites from the National Council for Accreditation of Teacher Education through 2020. “Chartered in 2011 by New York State, Relay GSE is a standalone graduate school of education with teacher certification and master’s degree programs designed specifically to respond to today’s demand for effective teachers in low-income communities” (Relay GSE application history).

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<sup>1</sup> Includes (1) properly accredited private colleges and universities; (2) out-of-state, public institutions; (3) postsecondary seminaries and bible colleges; and (4) private occupational schools authorized by the Division of Private Occupational Schools.

Relay GSE proposes to establish a campus in Colorado to offer a Master of Arts in Teaching (MAT) degree via a hybrid instruction model (60 percent in-person and 40 percent online) that includes six licensure areas: elementary, secondary (English, Math, Science, Social Studies), and special education. Relay GSE has campuses that are similar in nature to the proposed Colorado campus in Illinois, Texas, New Jersey, Louisiana, Tennessee, and Delaware. Relay GSE plans to open a campus in Philadelphia, Pennsylvania pending state authorization.

## **II. STAFF ANALYSIS**

Relay GSE is a private, not-for-profit postsecondary institution based in New York applying for provisional authorization to open a campus in Colorado. The institution is accredited by the Middle States Commission on Higher Education, a U.S. Department of Education recognized regional accrediting agency.

As required by the Degree Authorization Act (DAA), Relay GSE submitted initial documentation concerning its organization, programs, and finances along with the application fee. As part of the standing process for reviewing such applications, the Department of Higher Education (DHE) staff empanelled an evaluation team to review Relay GSE's application. Staff provided the team with statutory references, DAA rules and regulations, Relay GSE's application materials and supporting documents, and charged the team with assessing if Relay GSE meets the CCHE's policy and statutory requirements. Staff also charged the team with assessing if Relay GSE has the potential to get its new Colorado campus accredited by Middle States Commission on Higher Education. Contained within the application is a letter of support from Tom Boasberg, Superintendent of Denver Public Schools.

Relay GSE intends to offer a Master of Arts in Teaching out of its Colorado campus once it attains approvals by the Colorado Commission on Higher Education, the Colorado Department of Education, and its accrediting agency. Middle States Commission on Higher Education has provided official acknowledgement of Relay GSE's intent to establish a campus in Colorado (Attachment G).

The Degree Authorization Act requires private colleges and universities to file evidence of surety in the amount of \$5,000 in the first year of operation in Colorado. The amount will continue to be \$5,000 until such time that the maximum prepaid, unearned tuition and fees exceeds this amount. Relay GSE shall recalculate the amount of the surety annually to ensure that it has the financial ability to provide students with indemnification and alternative enrollment in the event of an unexpected closure, as required by Colorado law. Relay GSE has secured the required surety in the form of a bond and documentation is on file.

Under the Degree Authorization Act, an institution that has received provisional authorization by the CCHE will not be eligible for full authorization until the institution's accrediting agency conducts an on-site accreditation visit resulting in the accreditation of the Colorado site. Provisional Authorization is awarded to institutions that have been evaluated by the DHE staff

under CCHE procedures and authorized by the CCHE to enroll students, offer instruction, graduate students, and award degrees under the condition that the institution is continuously seeking and is making satisfactory progress toward accreditation at the Colorado location.

Attachment A is the initial report provided by the evaluation team. Current procedure allows the institution to respond to the team's concerns, correct any inaccurate statements, and most importantly address the institutional recommendations, which are defined as binding items, in the evaluators' report. During the review process, the evaluation team members noted changes they believe are necessary to bring the institution into compliance with the Degree Authorization Act. Attachment B is Relay GSE's response to the first report. Attachment C includes the evaluators' comments from the institution's response to the report. Attachments D and E are responses from Relay GSE addressing the outstanding concerns expressed by the evaluation team. Attachment F is the final document with comments from the evaluators.

While the evaluation team does not provide an unqualified and full recommendation for authorization, staff has reviewed each report, responses, and all other application materials and determined that Relay GSE meets the minimum standards for provisional authorization under the Degree Authorization Act. Several of the concerns raised by the evaluation team are beyond the scope of the CCHE's jurisdiction by statute.

It is important to note that the evaluators refer to Relay GSE's program as an "alternative teacher education program at the master's level," this is an inaccurate statement. Relay GSE's program is a traditional educator preparation program and does not meet the definition of "alternative" as defined by the Colorado State Board of Education.

Relay GSE's ultimate goal is to become an approved educator preparation program through the Colorado Department of Education and through the Colorado Department of Higher Education's authorized educator preparation program for licensure. To do this, Relay GSE's next step is to apply for approval from the Colorado Department of Education through the State Board of Education for licensure approval. Once Relay GSE gets through that process it must apply for approval as an Approved Educator Preparation program under CCHE approved policy, Section I, Part P and will come back to the CCHE for approval under that statute (§23-1-121, C.R.S.) and policy.

#### **IV. STAFF RECOMMENDATION**

**This item is for discussion only; staff will make a recommendation at the October 2015 CCHE meeting.**

#### **V. STATUTORY AUTHORITY**

**C.R.S. §23-2-103.3 Authorization to operate in Colorado – renewal**

(1) (a) To operate in Colorado, a private college or university shall apply for and receive authorization from the commission. A private college or university shall obtain a separate authorization for each campus, branch, or site that is separately accredited. A private, nonprofit college or university shall submit with its application verification of nonprofit status, including a copy of the institution's tax-exempt certificate issued by the Colorado department of revenue.

(b) After receiving an application, the department shall review the application to determine whether the private college or university is institutionally accredited by a regional or national accrediting body recognized by the United States department of education. The department shall not recommend and the commission shall not approve an application from a private college or university that, in the two years preceding submission of the application, has had its accreditation suspended or withdrawn or has been prohibited from operating in another state or that has substantially the same owners, governing board, or principal officers as a private college or university that, in the two years preceding submission of the application, has had its accreditation suspended or withdrawn or has been prohibited from operating in another state.

(2) To operate in Colorado, a private college or university shall be institutionally accredited on the basis of an on-site review by a regional or national accrediting body recognized by the United States department of education; except that a private college or university may operate for an initial period without accreditation if the commission determines, in accordance with standards established by the commission, that the private college or university is likely to become accredited in a reasonable period of time or is making progress toward accreditation in accordance with the accrediting body's policies. The commission may grant a provisional authorization to a private college or university to operate for an initial period without accreditation. The private college or university shall annually renew its provisional authorization and report annually to the commission concerning the institution's progress in obtaining accreditation.

(3) A private college or university shall immediately notify the department of any material information related to an action by the institution's accrediting body concerning the institution's accreditation status, including but not limited to reaffirmation or loss of accreditation, approval of a request for change, a campus evaluation visit, a focused visit, or approval of additional locations. In addition, the institution shall immediately notify the department if the institution's accrediting body is no longer recognized by the United States department of education.

(4) To operate in Colorado, a seminary or religious training institution shall apply for and receive authorization from the department and establish that it qualifies as a bona fide religious institution and as an institution of postsecondary education, as defined by rules promulgated by the commission. A seminary or religious training institution that meets the criteria and rules established by this subsection (4) is exempt from the provisions of subsections (1), (2), and (3) of this section. A bona fide religious institution and an institution of postsecondary education that applies for authorization pursuant to this subsection (4) shall pay the fee established according to section 23-2-104.5.

(5) A private college or university that has authorization from the commission pursuant to this section and maintains its accreditation shall apply to the department for reauthorization in accordance with the schedule for reaccreditation by its accrediting body or every three years, whichever is longer. A seminary or religious training institution shall apply for reauthorization every three years. A private college or university or seminary or religious training institution that seeks reauthorization shall submit an application in accordance with the procedures and policies adopted by the commission and shall pay the reauthorization fee established by the commission pursuant to section 23-2-104.5.

(6) Nothing in this section shall preclude a seminary or religious training institution from seeking accreditation.

(7) (a) By January 1, 2013, the commission shall adopt procedures by which a private college or university or seminary or religious training institution may renew its authorization to operate in Colorado. To renew its authorization to operate in Colorado, a private college or university or seminary or religious training institution shall demonstrate that it continues to meet the minimum operating standards specified in this section and section 23-2-103.8, if applicable.

(b) (I) A private college or university that has had its accreditation reaffirmed without sanction, is in compliance with section 23-2-103.8, and is not subject to investigation pursuant to section 23-2-103.4 is presumed qualified for renewal of authorization, and the department shall recommend renewal for a period of three years or the length of the institution's accreditation, if applicable, whichever is longer.

(II) A seminary or religious training institution that continues to meet the minimum operating standards specified in this section is presumed qualified for renewal of authorization, and the department shall recommend that the commission renew the institution's authorization for three additional years.

(c) If a private college or university or seminary or religious training institution cannot demonstrate that it meets the minimum operating standards specified in this section or section 23-2-103.8, if applicable, the department shall recommend that the commission deny the institution's application for renewal of the authorization. If, within six months after receiving the notice of denial of the application for renewal, the institution corrects the action or condition that resulted in denial of the application for renewal, the institution may reapply for renewal of the authorization. If the institution does not correct the action or condition within the six-month period, it may submit a new application for authorization after correcting the action or condition.

(d) If a private college or university is under a sanction from its accrediting body at the time it files an application for renewal of authorization to operate in Colorado, the department may recommend that the commission renew the institution's authorization or that the commission grant a probationary renewal of the institution's authorization. If an institution receives a

probationary renewal of its authorization, the institution shall reapply for renewal of its authorization annually until the accrediting body lifts the sanction, and the institution shall annually report to the commission concerning the institution's progress in removing the sanction.

(e) If the department recommends that the commission grant a probationary renewal of authorization or deny an application for renewal of authorization, the commission shall notify the private college or university or seminary or religious training institution concerning the recommendation, and the department and the commission shall proceed in accordance with the provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

**C.R.S. §23-2-103.8 (5) Financial integrity – surety**

(1) A private college or university is exempt from the provisions of this section if:

(a) The private college or university is a party to a performance contract with the commission under section 23-5-129; or

(b) The private college or university:

(I) Has been accredited for at least twenty years by an accrediting agency that is recognized by the United States department of education;

(II) Has operated continuously in this state for at least twenty years; and

(III) Has not at any time filed for bankruptcy protection pursuant to title 11 of the United States code.

(2) (a) If a private college or university is not exempt from the requirements of this section pursuant to subsection (1) of this section, the commission shall determine the financial integrity of the private college or university by confirming that the institution meets or does not meet the criteria specified in paragraph (b) or (c) of this subsection (2). The private college or university shall present as part of the application for authorization verifiable evidence that the institution meets the criteria specified in paragraph (b) or (c) of this subsection (2).

(b) (I) A private college or university may demonstrate financial integrity by meeting the following criteria:

(A) The institution has been accredited for at least ten years by an accrediting agency that is recognized by the United States department of education;

(B) The institution has operated continuously in this state for at least ten years;

(C) During its existence, the institution has not filed for bankruptcy protection pursuant to title 11 of the United States code;

(D) The institution maintains a composite score of at least 1.5 on its equity, primary reserve, and net income ratios, as required in 34 CFR 668.172; and

(E) The institution meets or exceeds the pro rata refund policies required by the federal department of education in 34 CFR 668 or, if the institution does not participate in federal financial aid programs, the institution's refund and termination procedures comply with the requirements of the institution's accrediting body.

(II) Notwithstanding any provision of subparagraph (I) of this paragraph (b) to the contrary, a private college or university is not required to meet the criteria specified in sub-subparagraphs (A) and (B) of subparagraph (I) of this paragraph (b) if the institution is part of a group of private colleges and universities that are owned and operated by a common owner, so long as all of the other institutions in the group meet the criteria specified in sub-subparagraphs (A) and (B) of subparagraph (I) of this paragraph (b).

(c) A private college or university may demonstrate financial integrity by meeting the following criteria:

(I) The institution has received and maintains full accreditation without sanction from an accrediting agency that is recognized by the United States department of education, which accrediting agency requires the institution to maintain surety or an escrow account or has affirmatively waived or otherwise removed the requirement for the institution;

(II) The institution has been continuously authorized by the commission for at least five years;

(III) The institution owns and operates a permanent instructional facility in the state;

(IV) The institution annually provides to the commission audited financial statements for the most recent fiscal year that demonstrate that the institution maintains positive equity and profitability;

(V) The institution maintains a composite score of at least 1.5 on its equity, primary reserve, and net income ratios, as required in 34 CFR 668.172; and

(VI) The institution meets or exceeds the pro rata refund policies required by the federal department of education in 34 CFR 668 or, if the institution does not participate in federal financial aid programs, the institution's refund and termination procedures comply with the requirements of the institution's accrediting body.

(3) (a) Each private college or university that is not exempt from the requirements of this section pursuant to subsection (1) of this section and cannot demonstrate financial integrity as provided in subsection (2) of this section, as determined by the commission, shall file evidence of surety in

the amount calculated pursuant to subsection (5) of this section prior to receiving authorization to operate in Colorado. The surety may be in the form of a savings account, deposit, or certificate of deposit that meets the requirements of section 11-35-101, C.R.S., or an alternative method approved by the commission, or one bond as set forth in this section covering the applying institution. The commission may disapprove an institution's surety if the commission finds the surety is not sufficient to provide students with the indemnification and alternative enrollment required by this section.

(b) If a private college or university files a bond, the bond shall be executed by the institution as principal and by a surety company authorized to do business in this state. The bond shall be continuous unless the surety is released as set forth in this section.

(4) The surety shall be conditioned to provide indemnification to any student or enrollee, or to any parent or legal guardian of a student or enrollee, that the commission finds to have suffered loss of tuition or any fees as a result of any act or practice that is a violation of this article and to provide alternate enrollment as provided in subsection (7) of this section for students enrolled in an institution that ceases operation.

(5) The amount of the surety that a private college or university submits pursuant to subsection (3) of this section is the greater of five thousand dollars or an amount equal to a reasonable estimate of the maximum prepaid, unearned tuition and fees of the institution for the period or term during the applicable academic year for which programs of instruction are offered including, but not limited to, programs offered on a semester, quarter, monthly, or class basis; except that the institution shall use the period or term of greatest duration and expense in determining this amount if the institution's academic year consists of one or more periods or terms. Following the initial filing of the surety with the department, the private college or university shall recalculate the amount of the surety annually based on a reasonable estimate of the maximum prepaid, unearned tuition and fees received by the institution for the applicable period or term.

(6) (a) A student or enrollee, or a parent or guardian of the student or enrollee, who claims loss of tuition or fees may file a claim with the commission if the claim results from an act or practice that violates a provision of this article. The claims that are filed with the commission are public records and are subject to the provisions of article 72 of title 24, C.R.S.; except that the department shall not make the claims records public if the release would violate a federal privacy law.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (6), the commission shall not consider a claim that is filed more than two years after the date the student discontinues his or her enrollment with the institution.

(7) (a) If a private college or university ceases operation, the commission may make demand on the surety of the institution upon the demand for a refund by a student or the implementation of

alternate enrollment for the students enrolled in the institution, and the holder of the surety or, if the surety is a bond, the principal on the bond shall pay the claim due in a timely manner. To the extent practicable, the commission shall use the amount of the surety to provide alternate enrollment for students of the institution that ceases operation through a contract with another authorized private college or university, a community college, an area vocational school, or any other arrangement that is acceptable to the department. The alternate enrollment provided to a student shall replace the original enrollment agreement, if any, between the student and the private college or university; except that the student shall make the tuition and fee payments as required by the original enrollment agreement, if any.

(b) A student who is enrolled in a private college or university that ceases operation and who declines the alternate enrollment required to be offered pursuant to paragraph (a) of this subsection (7) may file a claim with the commission for the student's prorated share of the prepaid, unearned tuition and fees that the student paid, subject to the limitations of paragraph (c) of this subsection (7). The commission shall not make a subsequent payment to a student unless the student submits proof of satisfaction of any prior debt to a financial institution in accordance with the commission's rules concerning the administration of this section.

(c) If the amount of the surety is less than the total prepaid, unearned tuition and fees that have been paid by students at the time the private college or university ceases operation, the department shall prorate the amount of the surety among the students.

(d) The provisions of this subsection (7) are applicable only to those students enrolled in the private college or university at the time it ceases operation, and, once an institution ceases operation, no new students shall be enrolled therein.

(e) The commission is the trustee for all prepaid, unearned tuition and fees, student loans, Pell grants, and other student financial aid assistance if an authorized private college or university ceases operation.

(f) The commission shall determine whether offering alternate enrollment for students enrolled in an authorized private college or university that ceases operation is practicable without federal government designation of the commission as trustee for student loans, Pell grants, and other student financial aid assistance pursuant to paragraph (e) of this subsection (7).

(8) For claims made pursuant to this section that do not involve a private college or university that ceases operation, the commission shall conduct a hearing to determine whether there is loss of tuition or fees, and, if the commission finds that a claim is valid and due the claimant, the commission shall make demand upon the surety. If the holder of the surety or, if the surety is a bond, the principal on the bond fails or refuses to pay the claim due, the commission shall commence an action on the surety in a court of competent jurisdiction; except that the commission shall not file an action more than six years after the date of the violation that gives rise to the right to file a claim pursuant to this section.

(9) The authorization for a private college or university is suspended by operation of law when the institution is no longer covered by surety as required by this section. The department shall give written notice to the institution at the last-known address, at least forty-five days before the release of the surety, to the effect that the institution's authorization is suspended by operation of law until the institution files evidence of surety in like amount as the surety being released.

(10) The principal on a bond filed under the provisions of this section is released from the bond after the principal serves written notice thereof to the commission at least sixty days before the release. The release does not discharge or otherwise affect a claim filed by a student or enrollee or his or her parent or legal guardian for loss of tuition or fees that occurred while the bond was in effect or that occurred under any note or contract executed during any period of time when the bond was in effect, except when another bond is filed in a like amount and provides indemnification for any such loss.

(11) Each private college or university that files a surety pursuant to subsection (3) of this section shall provide annual verification of continued coverage by surety as required by this section in a report to the commission due by January 1 of each year. The commission may disapprove a surety if it finds that the surety is not adequate to provide students with the indemnification and alternate enrollment required by this section.

(12) If a private college or university that is exempt from the provisions of this section or that demonstrates financial integrity pursuant to subsection (2) of this section ceases to operate in this state, the state attorney general may file a claim against the institution on behalf of students enrolled in the institution at the time it ceases operation to recover any amount of unearned, prepaid tuition that may be owed to the students.

(13) A seminary or religious training institution is not subject to the requirements of this section.

### **ATTACHMENTS**

Attachment A – Evaluators' initial report

Attachment B – Relay GSE's initial response

Attachment C – Evaluators' response

Attachment D – Relay GSE's response

Attachment E – Relay GSE's response

Attachment F – Evaluators' final recommendation

Attachment G – Middle States Commission on Higher Education acknowledgement letter