

HIGHER EDUCATION

SECRETARY OF HIGHER EDUCATION

Performance Quality Standard for Career-Oriented Programs of Study

Proposed New Rules: N.J.A.C. 9A:7

Authorized By: Dr. Brian K. Bridges, Secretary of Higher Education, Office of the Secretary of Higher Education.

Authority: P.L. 2022, c. 76 (N.J.S.A. 18A:3B-45.1).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2023-097.

Please submit written comments on the notice of proposal by December 1, 2023, through mail or email to:

Eric Taylor, Esq.

Director, Office of Licensure

Office of the Secretary of Higher Education

1 John Fitch Plaza, 10th Floor

PO Box 542

Trenton, NJ 08625-0542

Email: eric.taylor@oshe.nj.gov

For comments submitted through email, please name the subject heading “NJAC 9A:7 - PQS proposal.”

The agency proposal follows:

Summary

Pursuant to P.L. 2022, c. 76 (N.J.S.A. 18A:3B-45.1), the Secretary of Higher Education (Secretary) must establish a performance quality standard for career-oriented programs of study offered by institutions of higher education and degree-granting proprietary institutions. Effective July 29, 2022, N.J.S.A. 18A:3B-45.1 authorizes the Secretary to suspend or terminate a program if it does not meet the standard. Accordingly, the following rules are proposed to effectuate the provisions at P.L. 2022, c. 76 (N.J.S.A. 18A:3B-45.1).

N.J.A.C. 9A:7-1.1 sets forth the purpose and scope of the performance quality standard rules promulgated by the Secretary, specifically for career-oriented programs of study offered by institutions of higher education and degree-granting propriety institutions in New Jersey.

N.J.A.C. 9A:7-1.2 defines key terms, as used in the chapter, to implement P.L. 2022, c. 76. Standard Occupational Classification (SOC) is a defined term incorporating by reference, as amended and supplemented, the 2018 SOC. The SOC is a Federal statistical standard used by Federal agencies to classify workers into occupational categories.

N.J.A.C. 9A:7-2.1 establishes an annual notification process and procedure for institutions of higher education and degree-granting proprietary institutions to report career-oriented programs of study. Utilizing a template provided by the Office of Secretary of Higher Education (OSHE), and submitting according to an established deadline, institutions of higher education, and degree-granting proprietary institutions, as specified, are to provide, at a minimum: a list of all career-oriented programs of study offered by the institution; identification of the specific occupation(s) and/or license(s) for which students are prepared, and tuition and fee information. The Secretary may also require the submission of supplemental information in order to verify the accuracy of information contained within the annual notification and reporting.

N.J.A.C. 9A:7-3.1 establishes the assessment practices of the performance quality standard to be conducted annually by the Secretary using a schedule that takes into consideration the academic calendar of each institution. Such assessment will include identifying whether each career-oriented program of study meets the acceptable performance quality standard.

N.J.A.C. 9A:7-3.2 specifies communication of the results of the performance quality standard assessment and subsequent expectations for institutions that do not meet the acceptable performance quality standard.

N.J.A.C. 9A:7-4.1 sets forth the procedures for institutions when a career-oriented program of study is suspended for not meeting the acceptable performance quality standard. Institutions will be notified within 10 business days of the Secretary's determination that a career-oriented program of study is suspended. Within 30 days of receiving the notice, the institution will be subject to completing an OSHE-generated template that will require the submission of a one-year action plan, timeline for implementation of action plan, and description of any human/fiscal resource adjustments that will be made during the action plan period. The action plan must include the following action items for the institution to complete: disclose on certain official publications that the career-oriented program of study is suspended, plan to notify current and potential students that the program is suspended, provide the citation for the standard rules on official publications related to the career-oriented program of study, including personal notifications to current and potential students, and submit a program teach-out plan.

N.J.A.C. 9A:7-4.2 sets forth the procedures for institutions when a career-oriented program of study is terminated for continuing to not meet the acceptable performance quality standard. Upon completion of the action plan, if a career-oriented program of study continues to not meet the acceptable level of performance, the Secretary will order the institution of higher education or

degree-granting proprietary institution to terminate the career-oriented program of study. Within 15 days of receiving the termination order, the institution must complete the following actions: cease and desist promotion or advertisement of any career-oriented program of study that is terminated, disclose on certain official publications for five years that the program is terminated for not meeting the standard, utilize an OSHE-generated template to individually notify current and accepted students in the program, including program applicants, that the program of study is terminated, provide the citation for the performance quality standard rules on all official publications related to the career-oriented program of study, including personal notifications to current and potential students, and provide any student enrolled or registered in the terminated program the option to complete the program through a program teach-out plan. A career-oriented program of study that is terminated cannot be offered by the institution for five years beginning on the date the Secretary orders the termination of the program.

N.J.A.C. 9A:7-5.1 provides notice of the contested case hearing process.

As the Secretary has provided a 60-day comment period on this notice of proposed new rules, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rules establish minimally acceptable quality standards, reporting procedures, and accountability for institutions of higher education and degree-granting proprietary institutions that provide career-oriented programs of study. The proposed new rules ensure that institutions maintain programs that are effective in providing the knowledge and skills that lead to fulfilling careers. Additionally, they protect New Jersey students by requiring institutions to report program information to the Secretary who determines whether institutions have met acceptable

performance quality standards. The rules further establish an accountability structure for institutional compliance, including program suspension and termination, if necessary, should institutions fail to maintain acceptable performance quality. In these cases, the rules provide for the required development of teach-out plans to ensure that affected students are treated equitably as they complete their education.

Economic Impact

The proposed new rules establish a performance quality standard that holds institutions of higher education and degree-granting proprietary institutions accountable for the tuition and fees charged to students registered in their career-oriented programs of study in relation to the earnings a student may expect to receive in that career. A direct economic impact for students is they are more likely to see a return on their investment into postsecondary education within 10 years of completing their career-oriented program of study at institutions meeting the acceptable performance quality standard. A potential indirect economic impact for institutions that fail to meet the acceptable performance quality standard may result from the need to suspend and/or terminate programs; however, this is balanced by the impact made when resources are reallocated to career-oriented programs that do meet the standard. The performance quality standard and the accountability process established to enforce it protect the time and resources students devote to their programs of study and ensures that students may join the workforce, pursue their professional goals, and contribute to the economic well-being of the State of New Jersey.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules are not being proposed in order to implement, comply with, or participate in any program established pursuant

to Federal law or pursuant to a State law that incorporates or refers to Federal law, standards, or requirements.

Jobs Impact

The Secretary does not anticipate that the proposed new rules will have a direct impact on the creation or loss of jobs.

Agriculture Industry Impact

The Secretary does not anticipate that the proposed new rules would have an impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed new rules affect some proprietary and private nonprofit institutions in the State with fewer than 100 full-time employees. These are small businesses, as defined at N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. Currently, between 10 to 15 colleges in the State that meet this definition will be affected by the proposed new rules. The proposed rules require such schools to meet minimally acceptable performance quality standards about the academic degree programs they offer that provide occupation-specific knowledge and technical skill proficiency that culminates in the attainment of a license for a specific occupation; and/or are publicized and/or represented by the institution as preparing students for at least one specific occupation. In order to determine compliance, these institutions are required to submit an annual report. Institutions are likely to incur either no costs or marginal costs in order to comply with the reporting requirement, as most institutions compile, or have readily available, the information requested as a matter of standard operating procedure. No professional services need be employed

to comply with the proposed new rules. The institutions meeting the definition of small businesses are held to the same standards as other colleges offering similar instruction. The standards cannot be lessened for small businesses without seriously diluting the quality of academic degree programs that provide occupation-specific knowledge and technical skill proficiency that will culminate in the attainment of a license for a specific occupation, and/or prepare students for at least one specific occupation. Therefore, no differing standards based on business size are offered.

Housing Affordability Impact Analysis

The Secretary does not anticipate that the proposed new rules will have an impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the proposed new rules would evoke a change in the average costs associated with housing, as the rules implement P.L. 2022, c. 76.

Smart Growth Development Impact Analysis

The Secretary does not anticipate that the proposed new rules would evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan, as the rules implement P.L. 2022, c. 76.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed new rules will have no impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State. Accordingly, no further analysis is required.

Full text of the proposed new rules follows:

CHAPTER 7

PERFORMANCE QUALITY STANDARD FOR CAREER-ORIENTED PROGRAMS OF STUDY OFFERED BY INSTITUTIONS OF HIGHER EDUCATION AND DEGREE- GRANTING PROPRIETARY INSTITUTIONS

SUBCHAPTER 1. GENERAL STANDARDS

9A:7-1.1 Purpose and scope

(a) This chapter implements P.L. 2022, c. 76, which requires the Office of the Secretary of Higher Education (OSHE) to establish a performance quality standard for career-oriented programs of study offered by institutions of higher education and degree-granting proprietary institutions.

(b) This chapter applies to all institutions of higher education and degree-granting proprietary institutions in New Jersey.

9A:7-1.2 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Acceptable Performance Quality Standard” means a tuition-and-fees-to-earnings ratio that is less than, or equal to, 10 percent of the average earnings of New Jersey workers employed in the specific occupation for which the career-oriented program of study prepares students.

“Average earnings” means the amount indicated for the 25th percentile of the average annual salary for an occupation according to the most recent New Jersey Department of Labor and Workforce Development *Occupational Employment and Wage Estimates for All Industries Combined* available at

https://www.nj.gov/labor/labormarketinformation/assets/PDFs/employ/oeswageweb/PDFs/nj_all.pdf.

“Career-oriented program of study” means a program that provides occupation-specific knowledge and technical skill proficiency that culminates in the attainment of a license for a specific occupation or is represented by the institution as preparing students for employment in a specific occupation. Career-oriented program of study shall not include a program dedicated primarily to the education or training of ministers, priests, rabbis, or other professional persons in the field of religion.

“Classification of Instructional Programs” or “CIP” means the numeric code developed to classify major areas of study by the National Center for Education Statistics, incorporated herein by reference, as amended and supplemented. The CIP may be obtained from the National Center for Education Statistics website at <http://nces.ed.gov/ipeds/cipcode>.

“College,” “institution,” or “institution of higher education” means a postsecondary educational institution that provides college credit-bearing instruction beyond the 12th grade level.

“Fees” means the mandatory fees charged to the most recent students registered in the career-oriented program of study. Such fees may include, but are not limited to, general education fees, registration fees, facility fees, technology fees, laboratory fees, student service and activity fees, and program and course fees, including fees associated with coursework.

“Institutional grant aid” means the award of money that an institution is authorized to grant on a per student basis to students registered in a career-oriented program of study. Such aid includes, but is not limited to, need-based or merit-based aid in the form of grants, scholarships, subsidies, endowments, and discounts.

“OSHE” means the New Jersey Office of the Secretary of Higher Education.

“Program teach-out plan” means a written plan developed by the institution that provides for the equitable treatment of students if an institution, or an institutional location, ceases to offer a program of study before all enrolled students have completed the program of study, and may include any requirements by an accrediting agency.

“Proprietary institution” means a postsecondary institution that is operated for profit.

“Secretary” means the New Jersey Secretary of Higher Education.

“Standard Occupational Classification” or “SOC” means the numeric code developed to classify occupations by the Bureau of Labor Statistics, incorporated herein by reference, as amended and supplemented. The current version is 2018. The SOC may be obtained from the Bureau of Labor Statistics website at <https://www.bls.gov/soc>.

“Tuition” means the net dollar amount most recently represented by the institution as the price for attending class(es) in order to pay for instruction. Tuition does not account for the other elements associated with the net price calculator requirements, in accordance with the Higher Education Act of 1965 at 20 U.S.C. § 1015a.

“Tuition-and-fees-to-earnings ratio” means the annual repayment amount for the total of the combined tuition and average fees for a career-oriented program of study, if paid out over a 10-year period, divided by the average earnings for the specific occupation for which the career-orientated program of study prepares students. For example, a combined tuition and average fee amount for a career-oriented program of study of \$50,000, payable over 10 years, equals a payment of \$5,000 per year. If average earnings for the specific occupation that the career-oriented program of study leads to is \$60,000 annually, then the tuition-and-fees-to-earnings ratio would be \$5,000 divided by \$60,000 ($5,000/60,000 = 0.083$ or 8.3 percent).

SUBCHAPTER 2. REPORTING

9A:7-2.1 General reporting procedures

(a) Beginning with the 2024 fall semester, institutions of higher education and degree-granting proprietary institutions shall annually notify the Secretary of all career-oriented programs of study offered by the institution that:

1. Provide occupation-specific knowledge and technical skill proficiency that culminates in the attainment of a license for a specific occupation; and/or
2. Are publicized and/or represented by the institution as preparing students for at least one specific occupation.

(b) On an annual basis, OSHE shall provide institutions of higher education and degree-granting proprietary institutions with a template for the purpose of making the notification required at (a) above. The Secretary shall set the submission schedule for each institution and shall consider the academic calendar of each institution when determining the schedule.

(c) Using the template provided by OSHE, each institution of higher education and each degree-granting proprietary institution shall submit, in accordance with the submission schedule established by the Secretary pursuant to (b) above, the following information, at a minimum:

1. A list of all career-oriented programs of study offered by the institution including CIP code and SOC code for each career-oriented program of study.
2. Identification of the specific occupation(s) and/or license(s) for which students will be prepared upon completion of each career-oriented program of study.
3. Tuition and fee information, including:
 - i. Tuition and fees for each career-oriented program of study; and
 - ii. Institutional grant aid awarded to students registered in each program.

(d) The Secretary may, at their discretion, require the submission of supplemental information from an institution of higher education or degree-granting proprietary institution in order to verify the accuracy of the career-oriented programs of study provided in the notification made pursuant to (c) above.

SUBCHAPTER 3. PERFORMANCE QUALITY STANDARD ANALYSIS

9A:7-3.1 Performance quality standard assessment

(a) The Secretary shall annually assess each institution of higher education or degree-granting proprietary institution to identify whether each career-oriented program of study at an institution meets the acceptable performance quality standard.

(b) The Secretary shall set the assessment schedule for each institution and shall consider the academic calendar of each institution when determining the schedule.

9A:7-3.2 Performance quality standard determination

(a) Upon completion of the annual assessment by the Secretary set forth at N.J.A.C. 9A:7-3.1, OSHE shall provide the institution of higher education or degree-granting proprietary institution with the results of the assessment within 10 business days.

(b) Institutions of higher education and degree-granting institutions with career-oriented programs of study that the Secretary has determined do not meet the acceptable performance quality standard shall receive the findings in the assessment results provided pursuant to (a) above. The findings shall include:

1. A summary of the Secretary's determination;
2. The results of the performance quality standard review that led to the Secretary's determination;

3. A description of the applicable accountability procedures pursuant to N.J.A.C. 9A:7-4, including any projected deadlines and submission requirements; and

4. An action plan template for the institution to use pursuant to N.J.A.C. 9A:7-4.1 or 4.2.

SUBCHAPTER 4. PERFORMANCE QUALITY STANDARD ACCOUNTABILITY

9A:7-4.1 Program

(a) Suspension. If a career-oriented program of study does not meet the acceptable performance quality standard, the Secretary shall provide notice within 10 business days that the career-oriented program is suspended.

(b) Within 30 days of receiving a notification pursuant to (a) above, the institution shall use a template provided by OSHE to submit the following information, at a minimum, to the Secretary for review and approval:

1. An action plan to meet the acceptable performance quality standard within one year of the date of the notification made pursuant to this section, including the following action items for the institution to complete:

- i. Cease enrollment of new students into the career-oriented program of study that did not meet the acceptable performance quality standard;
- ii. Disclose on all recruiting publications and all publications related to the career-oriented program of study that the career-oriented program of study is considered to be suspended by OSHE because the suspended program did not meet the acceptable performance quality standard;
- iii. Use a template provided by OSHE to individually notify current and accepted students in the program, including program applicants, that the career-oriented

program of study is considered suspended by OSHE for not meeting the acceptable performance quality standard;

iv. Provide the citation for the performance quality standard rules on all official publications related to the career-oriented program of study, including personal notifications to current and potential students; and

v. Submit a program teach-out plan to OSHE for a career-oriented program of study that did not meet the acceptable performance quality standard;

2. A timeline for implementation of the action plan; and

3. A detailed description of any human and/or fiscal resource adjustments that will be made pursuant to the action plan.

9A:7-4.2 Program termination

(a) If, at the completion of an action plan submitted by an institution of higher education or degree-granting proprietary institution for a career-oriented program of study that has been suspended pursuant to N.J.A.C. 9A:7-4.1, the career-oriented program of study continues to not meet the acceptable level of performance, the Secretary will order the institution of higher education or degree-granting proprietary institution to terminate the career-oriented program of study.

(b) Unless the timeline is extended by the Secretary upon a showing of good cause, no later than 15 days from the receipt of the Secretary's order to terminate the career-oriented program of study, the institution must:

1. Cease and desist promotion or advertisement of any career-oriented program of study that is terminated;

2. Disclose in all recruiting publications and all publications related to the career-oriented program of study for a period of five years that the career-oriented program of study is terminated for not meeting the acceptable performance quality standard;

3. Use a template provided by OSHE to individually notify current and accepted students in the program, including program applicants, that the career-oriented program of study is terminated by the Secretary for not meeting the acceptable performance quality standard;

4. Provide the citation for the performance quality standard rules on all official publications related to the career-oriented program of study, including personal notifications to current and potential students; and

5. Provide any student enrolled or registered in the terminated career-oriented program of study the option to complete the program through a program teach-out plan submitted to OSHE.

(c) A career-oriented program of study terminated pursuant to this section may not be offered by the institution for a period of five years, which begins on the date the Secretary orders the termination of the program.

SUBCHAPTER 5. CONTESTED CASE HEARING

9A:7-5.1 General procedures

An institution of higher education or degree-granting proprietary institution subject to termination pursuant to N.J.A.C. 9A:7-4.2 shall have the opportunity for a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The institution shall submit its request for a hearing to the Secretary within 15 days of receiving notice of the Secretary's order to terminate the career-oriented program of study.