

**Education Law Article 101.**

**Licensed Private Career Schools and Certified English as a Second Language Schools**

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§ 5001. Licensed private career schools

1 5001(1). Schools required to be licensed. No private school which charges tuition or fees related to in-  
2 struction and which is not exempted hereunder shall be operated by any person or persons, firm, cor-  
3 poration, or private organization for the purpose of teaching or giving instruction in any subject or sub-  
4 jects, unless it is licensed by the department. As used in this article:

5 5001(1)a. “licensed private career school” or “licensed private school” shall mean any entity of-  
6 fering to instruct or teach any subject by any plan or method including written, visual or audio-  
7 visual methods, and shall include any institution licensed or registered as a registered business  
8 school or computer training facility on the effective date of the chapter of the laws of two thou-  
9 sand twelve which amended this subdivision. Following such effective date, there shall be no  
10 distinction between institutions previously defined as “registered business schools” or “computer  
11 training facilities” and other licensed private schools, and any reference in law to a registered  
12 business school or computer training facility shall be deemed a reference to a licensed private ca-  
13 reer school. Institutions holding a valid business school registration on such effective date, in-  
14 cluding computer-training facilities, shall have such registrations replaced by the commissioner,  
15 at no cost, with licenses valid until the expiration date listed on such previous registration; and

16 5001(1)b. “certified English as a second language school” or “certified ESL school” shall mean a  
17 language school conducted for-profit which provides instruction in English as a second language  
18 and which accepts no public funds and is certified pursuant to paragraph f of subdivision four of  
19 this section.

20 5001(2). Exempt schools. The following schools are exempted from the licensing requirement of this  
21 section:

22 5001(2)a. institutions authorized to confer degrees in this state;

23 5001(2)b. schools providing kindergarten, nursery, elementary or secondary education, except  
24 schools conducted for profit which provide instruction in English as a second language or prepa-  
25 ration for high school equivalency examinations to out-of-school youth or adults;

26 5001(2)c. schools operated by governmental agencies or authorities;

27 5001(2)d. schools which engage exclusively in training of students with disabilities as defined in  
28 section forty-four hundred one of this chapter;

29 5001(2)e. schools conducted on a not-for-profit basis by firms or organizations for the training of  
30 their own employees only, provided that such instruction is offered at no charge to such employ-  
31 ees, or by a fraternal society or benevolent order for its members or their immediate relatives on-  
32 ly;

- 33 5001(2)f. schools which provide instruction in the following subjects only: religion, dancing,  
34 music, painting, drawing, sculpture, poetry, dramatic art, languages, reading comprehension,  
35 mathematics, recreation, yoga, martial arts, pilates and athletics, including the training of stu-  
36 dents to teach such subjects, provided, however, that schools conducted for the purpose of train-  
37 ing personal trainers shall be excluded from this exemption and shall be required to obtain licen-  
38 sure;
- 39 5001(2)g. schools in which the course of instruction is licensed, registered or approved under any  
40 other section of this chapter or by any other department or agency of the state;
- 41 5001(2)h. schools which provide instruction designed solely for giving flight training and/or re-  
42 lated ground school instruction;
- 43 5001(2)i. schools in which instruction designed solely to prepare applicants for admission to pro-  
44 fessional licensing examinations administered by the department pursuant to title eight of this  
45 chapter, and applicants for examination for admission to the practice of law;
- 46 5001(2)j. schools which offer continuing education courses exclusively for individuals licensed  
47 by the department pursuant to title eight of this chapter and for individuals admitted to the prac-  
48 tice of law;
- 49 5001(2)k. schools which provide instruction given exclusively to employees of a person or or-  
50 ganization which has contracted with another person or organization to provide such instruction  
51 at no cost to the employees;
- 52 5001(2)l. conferences, trade shows, workshops, seminars, institutes or courses of study offered  
53 and sponsored either jointly or individually by recognized trade, business or professional organi-  
54 zations for the benefit of their membership;
- 55 5001(2)m. schools that limit their total conferences, trade shows, workshops, seminars, institutes  
56 or other course offerings to no more than twice in one calendar year with each of those offerings  
57 for no more than five days;
- 58 5001(2)n. schools which provide instruction exclusively to persons employed full-time or part-  
59 time in the field in which instruction is being offered, where the instruction is provided to meet  
60 continuing education standards required for professional licensure as defined by law in this state;  
61 and
- 62 5001(2)o. schools in candidacy status pursuant to subparagraph (iv) of paragraph b of subdivi-  
63 sion four of this section.
- 64 5001(2-a). Schools exempted pursuant to subdivision two of this section may waive such exemption

65 and apply for a license; provided, however, that the review of such applications shall be left to the dis-  
66 cretion of the commissioner.

67 5001(2-b). Programs offered by licensed private career schools to employees of a person or organiza-  
68 tion which has contracted with another person or organization to provide such instruction at no cost to  
69 the employees shall be exempt from the requirements of this article, provided that the following re-  
70 quirements are met:

71 5001(2-b)a. Only employees of the employer for which the program is being offered may enroll  
72 in classes that make up the program.

73 5001(2-b)b. Certificates or diplomas awarded to students in the program may not reference in  
74 any way the department.

75 5001(2-b)c. Prior to the commencement of the program, such schools shall submit to the depart-  
76 ment a disclosure form, prescribed by the commissioner, copies of which shall be provided to all  
77 students in such exempt program, which shall include but not be limited to the following infor-  
78 mation:

79 5001(2-b)(c)(i) a description of the location and time period in which the program will be  
80 offered;

81 5001(2-b)(c)(ii) a statement that the students enrolled in the program shall not be subject  
82 to any tuition liability for the program, even if such students do not complete the pro-  
83 gram;

84 5001(2-b)(c)(iii) a statement that the program being provided to the employer has not  
85 been approved by the department and is not under the department's jurisdiction and that  
86 the students in the program have been advised of the fact; and

87 5001(2-b)(c)(iv) the signatures of the school director or owner of the school and the rep-  
88 resentative of the employer for which the program is being offered certifying the accura-  
89 cy of the statements on the form.

90 5001(2-b)d. Any additional student openings in a program deemed exempt by the department  
91 may be made available to students not affiliated with the employer on the condition that such  
92 students execute a disclosure form as prescribed in paragraph c of this subdivision. Such admit-  
93 ted students shall only constitute up to ten percent of the exempt program's total capacity.

94 5001(4). Application, renewal application and application fees.

95 5001(4)a. Application and renewal application for a license as a private career school required by  
96 the commissioner shall be filed on forms prescribed and provided by the department. Except as

97 provided in subparagraph (iii) of paragraph e of this subdivision, each renewal application for a  
98 private career school licensed pursuant to this section shall include an audited financial statement  
99 audited according to generally accepted auditing standards by an independent certified public ac-  
100 countant or an independent public accountant and statistical reports certified by the owner or op-  
101 erator of the school, as required by the commissioner; provided, however, that the commissioner  
102 shall accept a copy of a current financial statement previously filed by a school with any other  
103 governmental agency in compliance with the provisions of any federal or state laws, or rules or  
104 regulations if such statement contains all of the information required under this subdivision and  
105 conforms to this subdivision's requirements of auditing, review and certification. Any required  
106 audit of the financial statement shall be a condition of licensure and shall be paid for by the  
107 school, and the results of the audit shall be forwarded to the commissioner. Applications not ac-  
108 companied by the audits and reports required pursuant to this subdivision shall not be considered  
109 for approval by the commissioner. Initial applications shall be accompanied by financial reports  
110 as required by the commissioner. The applicant shall receive a written approval or denial togeth-  
111 er with the reasons for a denial of such application.

112 5001(4)b.

113 5001(4)(b)(i) An initial license issued pursuant to the provisions of this article shall be  
114 valid for a period of two years. A renewal of license issued pursuant to the provisions of  
115 this article shall be valid for a period of four years.

116 5001(4)(b)(ii) Every applicant and renewal applicant shall pay to the department a nonre-  
117 fundable, nontransferable application fee. The initial application fee for new schools shall  
118 be five thousand dollars, of which three thousand dollars shall accrue to the credit of the  
119 proprietary vocational school supervision account and two thousand dollars shall accrue  
120 to the tuition reimbursement account. For additional licensed locations of currently oper-  
121 ating schools, the application fee shall be two thousand five hundred dollars, which shall  
122 accrue to the credit of the proprietary vocational school supervision account. For renewal  
123 applications, the fee shall be based on gross annual tuition income as determined by the  
124 annual financial statements required in paragraph a of this subdivision for the most recent  
125 school fiscal year, according to the following schedule:

GROSS ANNUAL TUITION INCOME	FEE
0-\$199,999	\$ 750.00
\$200,000-\$499,999	\$ 1,500.00
\$500,000-\$999,999	\$ 2,225.00
\$1,000,000-\$4,999,999	\$ 4,500.00
\$5,000,000-\$9,999,999	\$ 9,000.00
\$10,000,000 or above	\$18,000.00

126 Such renewal fees shall accrue to the credit of the proprietary vocational school supervi-  
127 sion account. If the evaluation of a particular course or facility requires the services of an  
128 expert not employed by the department, the department shall retain such expert and the  
129 school shall reimburse the department for the reasonable cost of such services.

130 5001(4)(b)(iii) Each school shall display, near the entrance to the school, the license  
131 which has been issued to it. Such authorization shall be displayed only during the period  
132 of its validity.

133 5001(4)(b)(iv) A school which has applied for a private career school license may request  
134 candidacy status for one time only. Candidacy status shall not be issued to schools offer-  
135 ing programs to train students to pass licensure examinations such as appearance en-  
136 hancement tests, achieve nurse aide or nurse assistant certification, or pass examinations  
137 leading to licensure in any other profession or occupation determined by the commission-  
138 er to require full licensure status. Candidacy status shall allow a school to operate unli-  
139 censed for an initial period of twelve months during the licensure application process,  
140 which may be extended to a maximum, non-renewable period of eighteen months, under  
141 the following conditions:

142 5001(4)(b)(iv)(1) the prospective school submits a candidate school application  
143 fee, separate from the school application fee, of five thousand dollars which shall  
144 accrue to the credit of the proprietary vocational school supervision account;

145 5001(4)(b)(iv)(2) the school shall not represent that it is licensed or that its pro-  
146 grams are approved through the department;

147 5001(4)(b)(iv)(3) to every prospective student, the school shall disseminate a  
148 statement, provided by the department, that the facilities, instructors, and pro-  
149 grams being provided have not been approved and are not under the department's  
150 jurisdiction during the candidacy period. Such statement shall indicate that stu-  
151 dents attending candidate schools shall have no recourse through the department's  
152 student complaint process nor have any restitution available from the tuition re-  
153 imbursement account. Students shall sign an attestation to the receipt of this  
154 statement. The school shall retain the signed attestation and provide the student  
155 with a copy of such signed statement;

156 5001(4)(b)(iv)(4) the school shall demonstrate financial viability through means  
157 deemed appropriate by the commissioner. Such means may include submitting an  
158 audited financial statement based on the most recently completed fiscal year; se-  
159 curing and maintaining a performance bond, payable to the commissioner, in an  
160 amount appropriate to eliminate any liability to the tuition reimbursement account

161 in the event the school ceases operation; limiting the collection of tuition funds  
162 until each student completes the program of study; or other means acceptable to  
163 the commissioner; and

164 5001(4)(b)(iv)(5) any breach of the above conditions shall result in the disapprov-  
165 al of the school's licensure application and the forfeiture of candidate status. Con-  
166 tinued operation after this disapproval shall subject the school to the disciplinary  
167 action prescribed under paragraph b of subdivision six of section five thousand  
168 three of this article.

169 5001(4)(b)(iv)(6) On or before the end of the initial twelve-month period of can-  
170 didacy status, the commissioner shall review the school's application for licensure  
171 and documentation relating to the school's candidacy status and shall determine  
172 whether such candidacy status should be extended to the full eighteen months and  
173 whether the school may continue to enroll students beyond the eighteen-month  
174 period or the school's application for licensure will be initially disapproved for  
175 failure to meet required standards.

176 5001(4)c. An application for renewal of any license shall be submitted at least one hundred twen-  
177 ty days prior to the expiration date of the current authorization to operate accompanied by the  
178 nonrefundable application fee and such certified statistical reports and annual financial state-  
179 ments required pursuant to this subdivision.

180 5001(4)d. When complete and timely application has been made for renewal of any license, the  
181 school shall receive a written approval or denial, together with the reasons for denial of renewal,  
182 from the commissioner no less than thirty days prior to the date such license expires.

183 5001(4)e. Financial statements and statistical reports.

184 5001(4)(e)(i) Licensed private career schools and candidate schools shall submit such  
185 certified statistical reports and annual financial statements as required by the commis-  
186 sioner. The commissioner may require audited statistical reports upon a determination  
187 that a school has provided false or inaccurate certified statistical reports. The financial  
188 statements shall be based on the fiscal year of the school and shall also include an item-  
189 ized account of tuition refunds due and owing to past or presently enrolled students. Sta-  
190 tistical reports shall include, but not be limited to, enrollment, completion and placement  
191 data. The commissioner shall use such financial statements and statistical reports submit-  
192 ted for the purposes of licensure of schools, establishing fees or assessments pursuant to  
193 this article and determining standards pursuant to paragraph b of subdivision five of sec-  
194 tion five thousand two of this article. The attorney general, the comptroller and the presi-  
195 dent of the higher education services corporation shall have access to this information  
196 when it is necessary to perform their duties as required by state law.

197 5001(4)(e)(ii) Any school which received five hundred thousand dollars or more in gross  
198 tuition in a school fiscal year shall be required to submit to the commissioner an annual  
199 audited financial statement prepared in accordance with generally accepted accounting  
200 principles for that fiscal year. In addition, any school which has a gross tuition of less  
201 than five hundred thousand dollars in a school fiscal year but whose combined state and  
202 federal student financial aid in such year equals one hundred thousand dollars or more  
203 shall also submit an annual audited financial statement to the commissioner for that fiscal  
204 year.

205 5001(4)(e)(iii) Schools whose gross tuition is less than five hundred thousand dollars in a  
206 school fiscal year and which receive less than one hundred thousand dollars in state and  
207 federal student financial aid in a school fiscal year shall file with the commissioner an  
208 unaudited financial statement in a format prescribed by the commissioner, provided,  
209 however, that any such school shall file an audited financial statement the fiscal year after  
210 a reviewed financial statement is submitted. For such schools, audited financial state-  
211 ments are required every two years, at minimum, with reviewed financial statements al-  
212 lowed during the alternate year. Upon a determination by the commissioner that a school  
213 has submitted false or inaccurate statements or that a significant, unsubstantiated decline  
214 in gross tuition has occurred, the commissioner may require any such school to file an  
215 audited financial statement pursuant to this paragraph even during alternate years when  
216 reviewed statements would ordinarily be allowed.

217 5001(4)f. Alternate licensing provision. The commissioner shall issue regulations which define  
218 alternate licensing or certification requirements for the following:

219 5001(4)(f)(1) correspondence schools in which all approved programs and courses are  
220 under three hundred hours;

221 5001(4)(f)(2) schools which are eligible for exemption under this section but which elect  
222 to be licensed;

223 5001(4)(f)(3) non-profit schools exempt from taxation under section 501(c)(3) of the in-  
224 ternal revenue code whose programs are funded entirely through donations from individ-  
225 uals or philanthropic organizations, or endowments, and interest accrued thereon; and

226 5001(4)(f)(4) language schools conducted for-profit which provide instruction in English  
227 as a second language and which accept no public funds.

228 5001(5). Required disclosure for licensure.

229 5001(5)a. The commissioner shall require that each applicant for a license for the operation of a  
230 private career school disclose the following information:

231 5001(5)(a)(1) Whether the applicant, or any corporation, partnership, association or or-  
232 ganization or person holding an ownership or control interest in such school, or any em-  
233 ployee responsible in a supervisory capacity for the administration of student funds or  
234 governmental funds, has been convicted of a crime defined in this article, or any other  
235 crime involving the operation of any educational or training program, or, in connection  
236 with the operation of any such program, a crime involving the unlawful acquisition, use,  
237 payment or expenditure of educational or training program funds; and

238 5001(5)(a)(2) Whether the applicant, or any corporation, partnership, association or or-  
239 ganization or person holding an ownership or control interest in such school, or any em-  
240 ployee responsible in a supervisory capacity for the administration of student funds or  
241 governmental funds has been convicted:

242 5001(5)(a)(2)(A) in this state of any of the following felonies defined in the penal  
243 law: bribery involving public servants; commercial bribery; perjury in the second  
244 degree; rewarding official misconduct; larceny, in connection with the provision  
245 of services or involving the theft of governmental funds; offering a false instru-  
246 ment for filing, falsifying business records; tampering with public records; crimi-  
247 nal usury; scheme to defraud; or defrauding the government; or

248 5001(5)(a)(2)(B) in any other jurisdiction of an offense which is substantially  
249 similar to any of the felonies defined in clause (A) of this subparagraph and for  
250 which a sentence to a term of imprisonment in excess of one year was authorized  
251 and is authorized in this state regardless of whether such sentence was imposed;  
252 and

253 5001(5)(a)(3) Whether the applicant, or any corporation, partnership, association or or-  
254 ganization or person holding an ownership or control interest in such school, or any em-  
255 ployee responsible in a supervisory capacity for the administration of student funds or  
256 governmental funds, has been finally determined in any administrative or civil proceed-  
257 ing to have committed a violation of any provision of this article or any rules and regula-  
258 tions promulgated pursuant thereto, or any related order or determination of the commis-  
259 sioner, or of any similar statute, rule, regulation, order or determination of another juris-  
260 diction pertaining to the licensure and operation of any educational or training program;  
261 and

262 5001(5)(a)(4) Whether any school owned or operated by the applicant closed or ceased  
263 operation and, if so, whether at the time of the closing the applicant was subject to a  
264 pending disciplinary action, disallowance, fine or other penalty and whether it owed re-

265 funds to any government agency or students.

266 5001(5)b. No application for any license pursuant to this article shall be denied by reason of dis-  
267 closure pursuant to this subdivision of the applicant, or any corporation, partnership, association  
268 or organization or person holding an ownership or control interest in such school, or any em-  
269 ployee responsible in a supervisory capacity for the administration of student funds or govern-  
270 mental funds unless the commissioner makes a written determination that there is a direct rela-  
271 tionship between one or more of such previous offenses and the license sought, or that issuance  
272 of the license would create an unreasonable risk to property or to the safety, education or welfare  
273 of specific individuals or the general public. In making such determination, the commissioner  
274 shall be guided by the factors set forth in section seven hundred fifty-three of the correction law.  
275 For purposes of this subdivision, "ownership or control interest" means: with respect to a school  
276 that is organized as or owned by a corporation, a position as an officer or director of such corpo-  
277 ration; or, with respect to a school that is organized as or owned by a partnership, a position as a  
278 partner; or any other interest totaling ten percent or more, whether direct or indirect, in the total  
279 equity or assets of such school.

280 5001(5)c. The commissioner may deny, suspend, revoke or decline to renew any license: (1) if  
281 the significance of the convictions or administrative violations warrant such action; (2) if the  
282 commissioner determines that a school did not make any disclosure required by this subdivision;  
283 or (3) if the commissioner determines that a school's financial condition may result in the inter-  
284 ruption or cessation of instruction or jeopardize student tuition funds.

285 5001(6). If, during the period for which a license is granted, the commissioner determines that a  
286 school's financial condition may result in the interruption or cessation of instruction or jeopardize stu-  
287 dent tuition funds, the commissioner may, upon notice to the school, place the school on probation for  
288 a period of no more than one year, during which time the school and the department must make efforts  
289 to resolve the problems at the school. The school shall submit a report on its financial condition to the  
290 commissioner within the time prescribed by the commissioner. Such report shall be in the form and  
291 shall include content prescribed by the commissioner and shall be reviewed by the commissioner to  
292 determine the school's financial viability. The commissioner may suspend or revoke the school's li-  
293 cense, as well as require the cessation of student enrollment, upon a determination that the school's fi-  
294 nancial condition continues to threaten its ability to educate students and/or the student tuition funds.  
295 Alternatives for the school to demonstrate a fiscally sound operation may include securing and main-  
296 taining a performance bond, payable to the commissioner, in an appropriate amount to eliminate any  
297 liability to the tuition reimbursement account should the school cease operation, limiting the collection  
298 of tuition funds until each student completes the program of study, or other means acceptable to the  
299 commissioner. If no resolution can be attained, a hearing, pursuant to subdivisions two and three of  
300 section five thousand three of this article will be scheduled. Such probation may include additional  
301 monitoring, inspections, limitations on enrollment, teaching out some or all of a school's present stu-  
302 dents or temporary cessation of instruction.

303 5001(7). No license granted under this section shall be transferable or assignable without the approval  
304 of the commissioner. Upon transfer or assignment of any interest totaling twenty-five percent or more,  
305 whether direct or indirect, in the total equity or assets of a school, such school shall be deemed a new  
306 school required to submit a new school application and obtain a new license pursuant to this article.  
307 Provided, however, that upon such a substantial change in interest, the previous school license shall  
308 remain in effect until the new license is issued or denied or the previous license expires or is revoked,  
309 whichever occurs first.

310 5001(8). No licensed school shall discontinue operation or surrender its license unless thirty days writ-  
311 ten notice of its intention to do so and a plan for maintenance of safe keeping of the records of the  
312 school is provided to the commissioner. However, upon good cause shown, the commissioner may  
313 waive the thirty days notice requirement.

314 5001(9). Annual supervision fund and tuition reimbursement account assessment.

315 5001(9)a. The commissioner shall annually assess each school a total percentage of that school's  
316 gross tuition pursuant to subdivision three of section five thousand two of this article, as deter-  
317 mined by the annual audited financial statement required by this article. This assessment shall be  
318 based upon each school's gross tuition from the previous year, and shall be payable to the com-  
319 missioner in equal quarterly installments which shall be due on June first, September first, De-  
320 cember first and March first.

321 5001(9)b.

322 5001(9)(b)(i) Such annualized assessment shall be one percent for schools which have  
323 paid less than sixteen quarters of assessments, but such annual assessment shall not fall  
324 below five hundred dollars.

325 5001(9)(b)(ii) Such annualized assessment shall be eight-tenths of one percent for  
326 schools which have paid sixteen or more quarters of assessments, but such annual as-  
327 sessment shall not fall below five hundred dollars.

328 5001(9)c.

329 5001(9)(c)(i) Of the total assessment provided for herein, five-tenths of one percent shall  
330 accrue to the credit of the tuition reimbursement account pursuant to section five thou-  
331 sand seven of this article for those schools which have paid less than sixteen quarters of  
332 assessments. Of the total assessment provided for schools which have paid sixteen or  
333 more quarters of assessments, three-tenths of one percent shall accrue to the credit of the  
334 tuition reimbursement account pursuant to section five thousand seven of this article. For  
335 schools paying the minimum five hundred dollars annual assessment, none shall accrue to  
336 the tuition reimbursement account.

337 5001(9)(c)(ii) The balance of the total assessment provided for herein shall be dedicated  
338 to fund the department's supervision and regulation of licensed private schools pursuant  
339 to an annual appropriation and an annual plan of expenditure prepared by the commis-  
340 sioner and approved by the director of the budget.

341 5001(9)d. Payments made within thirty days following the due date shall be subject to interest at  
342 one percent above the prevailing prime rate. Thereafter, late payments may result in suspension  
343 of licensure by the commissioner. Payments required by this subdivision shall be considered a  
344 condition of licensure.

§ 5002. Standards for licensed private career schools

345 Any school licensed pursuant to section five thousand one of this article shall be organized and con-  
346 ducted only as a school and shall be subject to the jurisdiction of the department exclusively, or in con-  
347 junction with such other state agency or department or district attorney upon which jurisdiction has al-  
348 so been conferred by law. Such schools shall be subject to and comply with the provisions of this sec-  
349 tion.

350 5002(1). Standards.

351 5002(1)a. No program of such schools shall be conducted in a factory or commercial establish-  
352 ment, except where the use of facilities or equipment of such factory or commercial establish-  
353 ment is permitted for necessary or desirable educational purposes and objectives.

354 5002(1)b. For every such school, the commissioner shall set forth in regulation standards govern-  
355 ing all of the following:

356 5002(1)(b)(1) criteria for admission, which shall provide that students at least possess a  
357 high school diploma or its equivalent or demonstrate the ability to benefit from the in-  
358 struction, except that in the case of students who do not possess a high school diploma or  
359 its equivalent, certification of the students' ability to benefit from instruction shall be pro-  
360 vided to the commissioner as provided in paragraph c of this subdivision;

361 5002(1)(b)(2) the standards and the methods of instruction;

362 5002(1)(b)(3) the equipment available for instruction with the maximum enrollment that  
363 such equipment and physical plant will accommodate;

364 5002(1)(b)(4) the qualifications and experience of teaching and management personnel;

365 5002(1)(b)(5) the form and content of the student enrollment agreement or contract, pro-  
366 vided that such agreement or contract shall be written in the same language as that prin-  
367 cipally used in the sales presentation;

368 5002(1)(b)(6) the methods of collecting tuition;

369 5002(1)(b)(7) eligibility criteria for programs that will require licensure;

370 5002(1)(b)(8) the sufficiency and suitability of the resources available for the support of  
371 such school; and

372 5002(1)(b)(9) counseling provided to students.

373 5002(1)b-1.

374 5002(1)b-1(1) Student loans or other financial aid funds received from federal, state, or  
375 local governments or administered under the federal student financial assistance pro-  
376 grams governed by Title IV of the Higher Education Act of nineteen hundred sixty-five,  
377 20 U.S.C. section 1070 et seq., as amended, must be collected and applied in the manner  
378 as controlled by the applicable federal, state or local regulations.

379 5002(1)b-1(2) Student loans or other financial aid funds received from private entities,  
380 including, but not limited to, banks, financing companies, and other lending sources must  
381 be collected or disbursed in the following manner:

382 5002(1)b-1(2)(A) Loans or other financial aid payments for amounts of five thou-  
383 sand dollars or less may be disbursed as a single disbursement, regardless of  
384 course length.

385 5002(1)b-1(2)(B) Loans or other financial aid payments for amounts greater than  
386 five thousand dollars that reflect a class term of less than six months shall have  
387 two equal disbursements. The disbursement schedule for such loans or payments  
388 shall be as follows: one-half of the tuition amount released initially, and the re-  
389 mainder released halfway through the course term.

390 5002(1)b-1(2)(C) Loans or other financial aid payments for amounts greater than  
391 five thousand dollars that reflect a class term of greater than six months, but less  
392 than twelve months must have three equal disbursements. The disbursement  
393 schedule for such loans or payments shall be as follows: one-third of the tuition  
394 amount released initially, the second disbursement shall be released one-third of  
395 the way through the length of the training, and the remainder released two-thirds  
396 of the way through the course term.

397 5002(1)b-1(2)(D) Loans of other financial aid payments for amounts greater than  
398 five thousand dollars that reflect a class term greater than twelve months shall  
399 have four equal disbursements. The disbursement schedule for such loans or pay-  
400 ments shall be as follows: one-quarter of the tuition amount released initially, the  
401 second disbursement shall be released one quarter of the way through the length  
402 of the training; the third disbursement shall be released halfway through the  
403 length of the training, and the remainder shall be released three-quarters of the  
404 way through the training.

405 5002(1)b-1(3) No school may enter into any contract or agreement with or receive any  
406 students loan or financial aid funds from private entities, including, but not limited to,  
407 banks, financing companies, and any other private lending sources unless the private enti-  
408 ty has a disbursement policy that, at a minimum, meets the requirements of subparagraph  
409 two of this paragraph.

410 5002(1)b-1(4) The term private entity referenced in subparagraphs two and three of this  
411 paragraph shall not be construed to include a friend or family member of the student who  
412 is not in the routine business of providing student loans or financial aid funds. The provi-  
413 sion of such a loan or fund by a private entity shall also not include the payment of the  
414 student's tuition or fees by use of a credit card.

415 5002(1)c. Notwithstanding any other provisions of this article to the contrary, the commissioner  
416 shall define alternative educational and curriculum standards for any program of less than forty  
417 hours designed exclusively for non-occupational, personal enrichment purposes.

418 5002(1)d. Admission of students under the ability to benefit provision.

419 5002(1)(d)(1) Certification. Each school admitting students who do not possess at least a  
420 high school diploma or its equivalent shall certify to the satisfaction of the commissioner  
421 that such prospective students have been administered and passed an examination which  
422 has been approved by the commissioner to determine their ability to benefit from the cho-  
423 sen curriculum prior to admission to the curriculum or course of study. Such examination  
424 shall, whenever possible, be a nationally recognized test appropriate for the course of in-  
425 struction which has been approved by the commissioner. The examination results of each  
426 such student who is admitted shall be made available to the commissioner at a time pre-  
427 scribed by the commissioner and, together with the student's original answer sheet, shall  
428 be maintained by the school in the student's permanent record. For any student failing to  
429 achieve the necessary score on such examination for enrollment, the school shall be re-  
430 quired to provide such student with a listing of appropriate counseling and educational  
431 opportunities available to the student at no cost, as determined by the commissioner.  
432 Where appropriate, the commissioner may accept such other entrance requirement docu-  
433 mentation such as prerequisite coursework, professional or vendor certifications, personal  
434 interviews, and/or attestations of equivalent knowledge in lieu of the examination re-  
435 quirement.

436 5002(1)(d)(2) Counseling. Each school offering curricula which admit students who do  
437 not possess a high school diploma or its equivalent shall develop a plan to be approved by  
438 the commissioner for the counseling of such students on an individual basis on matters  
439 including but not limited to the student's ability to progress in the curriculum, the stu-  
440 dent's financial aid rights and responsibilities, the availability of programs to earn a high

441 school equivalency diploma, including programs provided at no cost to the student, and  
442 the potential of the training to prepare the student for available employment opportunities  
443 within the region.

444 5002(1)(d)(3) Compliance.

445 5002(1)(d)(3)(A) The commissioner shall monitor compliance with this paragraph  
446 and verify the examination and counseling process and student examination  
447 scores. Such procedures may include but not be limited to an annual, statistically  
448 significant, random sampling of the examinations taken by prospective students of  
449 each school administering such examinations.

450 5002(1)(d)(3)(B) In the event that the commissioner determines that the school is  
451 out of compliance with the examination process and counseling, the commissioner  
452 shall require that examinations and counseling for students admitted under the  
453 ability to benefit provision and the counseling required by subparagraph two of  
454 this paragraph be conducted off the premises of the school by an entity approved  
455 by the commissioner for such period of time as the commissioner deems appro-  
456 priate, the cost of which shall be incurred by the school.

457 5002(2). Inspections.

458 5002(2)a. Every school licensed pursuant to this article shall maintain adequate and accurate rec-  
459 ords for a period of not less than seven years at its principal place of business within this state.  
460 Such records shall be maintained in a manner and form prescribed by the commissioner and shall  
461 be made available to the department and the higher education services corporation upon request.

462 5002(2)b. In addition to other requirements in this article, the information to be made a part of  
463 the record shall include, but not be limited to:

464 5002(2)(b)(1) names and addresses of each enrolled student;

465  
466 5002(2)(b)(2) the course of study offered by the institution;

467 5002(2)(b)(3) the name and address of its faculty, together with a record of the educa-  
468 tional qualifications of each;

469 5002(2)(b)(4) the graduation date of each student; and

470 5002(2)(b)(5) for each student who fails to complete his or her program, the student's last  
471 date of attendance and, if applicable, the amount of any refund paid to, or on behalf of,  
472 the student and the date the refund was made.

473 5002(2)c. The commissioner shall conduct periodic unscheduled inspections of licensed private  
474 career schools to monitor compliance with the provisions of this article or the rules or regulations  
475 promulgated thereunder or any final order or decision of the commissioner made pursuant to this  
476 article. The department shall conduct an inspection of each school at least once every licensure  
477 period. All schools shall provide upon request of the department, any and all records necessary to  
478 review compliance with the provisions of this article.

479 5002(2)d. Student permanent records, as defined in the regulations of the commissioner, shall be  
480 maintained for a period of twenty years.

481 5002(3) Tuition liability.

482 5002(3)a. The tuition charge for programs approved for participation in student financial aid  
483 general award programs pursuant to articles thirteen and fourteen of this chapter shall be appor-  
484 tioned on the basis of terms, quarters or semesters. For the purposes of this section, the terms  
485 “term”, “quarter” and “semester” shall be defined in regulations by the commissioner.

486 5002(3)b. The tuition refund policy for the first term or quarter of any program at schools li-  
487 censed pursuant to section five thousand one of this article shall be as follows:

488 5002(3)(b)(1) For programs which are divided into quarters of up to fourteen weeks, the  
489 school shall evenly divide the total tuition charges among the number of quarters. After  
490 instruction is begun in a school, if a student withdraws or is discontinued, the school may  
491 retain no more than:

492 5002(3)(b)(1)(i) zero percent of the quarter's tuition if the termination is during  
493 the first week of instruction; or

494 5002(3)(b)(1)(ii) twenty-five percent of the quarter's tuition if the termination is  
495 during the second week of instruction; or

496 5002(3)(b)(1)(iii) fifty percent of the quarter's tuition if the termination is during  
497 the third week of instruction; or

498 5002(3)(b)(1)(iv) seventy-five percent of the quarter's tuition if the termination is  
499 during the fourth week of instruction; or

500 5002(3)(b)(1)(v) one hundred percent of the quarter's tuition if the termination oc-  
501 curs after the fourth week of instruction.

502 5002(3)(b)(2) For programs organized by terms of fifteen, sixteen, seventeen or eighteen  
503 weeks apiece, the school shall evenly divide the total tuition charges among the number  
504 of terms. After instruction is begun in a school, if a student withdraws or is discontinued,

505 the school may retain no more than:

506 5002(3)(b)(2)(i) zero percent of the term's tuition if the termination is during the  
507 first week of instruction; or

508 5002(3)(b)(2)(ii) twenty percent of the term's tuition if the termination is during  
509 the second week of instruction; or

510 5002(3)(b)(2)(iii) thirty-five percent of the term's tuition if the termination is dur-  
511 ing the third week of instruction; or

512 5002(3)(b)(2)(iv) fifty percent of the term's tuition if the termination is during the  
513 fourth week of instruction; or

514 5002(3)(b)(2)(v) seventy percent of the term's tuition if the termination is during  
515 the fifth week of instruction; or

516 5002(3)(b)(2)(vi) one hundred percent of the term's tuition if the termination oc-  
517 curs after the completion of the fifth week of instruction.

518 5002(3)c.

519 5002(3)(c)(1) The tuition refund policy for the second term or quarter of any program at  
520 schools licensed pursuant to section five thousand one of this article shall be as follows:

521 5002(3)(c)(1)(A) For programs which are divided into quarters of up to fourteen  
522 weeks, the school shall evenly divide the total tuition charges among the number  
523 of quarters. After instruction is begun in a school, if a student withdraws or is dis-  
524 continued, the school may retain no more than:

525 5002(3)(c)(1)(A)(i) twenty-five percent of the quarter's tuition if the ter-  
526 mination is during the first week of instruction; or

527 5002(3)(c)(1)(A)(ii) fifty percent of the quarter's tuition if the termination  
528 is during the second week of instruction; or

529 5002(3)(c)(1)(A)(iii) seventy-five percent of the quarter's tuition if the  
530 termination is during the third week of instruction; or

531 5002(3)(c)(1)(A)(iv) one hundred percent of the quarter's tuition if the  
532 termination occurs after the third week of instruction.

533 5002(3)(c)(1)(B) For programs organized by terms of fifteen, sixteen, seventeen

534 or eighteen weeks apiece, the school shall evenly divide the total tuition charges  
535 among the number of terms. After instruction is begun in a school, if a student  
536 withdraws or is discontinued, the school may retain no more than:

537 5002(3)(c)(1)(B)(i) twenty percent of the term's tuition if the termination  
538 is during the first week of instruction; or

539 5002(3)(c)(1)(B)(ii) thirty-five percent of the term's tuition if the termina-  
540 tion is during the second week of instruction; or

541 5002(3)(c)(1)(B)(iii) fifty percent of the term's tuition if the termination is  
542 during the third week of instruction; or

543 5002(3)(c)(1)(B)(iv) seventy percent of the term's tuition if the termination  
544 is during the fourth week of instruction; or

545 5002(3)(c)(1)(B)(v) one hundred percent of the term's tuition if the termi-  
546 nation occurs after the completion of the fourth week of instruction.

547 5002(3)(c)(2) Notwithstanding the provisions of subparagraph one of this paragraph, the  
548 tuition refund policy set forth in paragraph b of this subdivision shall apply unless the  
549 school demonstrates that there are no significant educational changes in the educational  
550 program of the student, such changes as defined in regulations of the commissioner.

551 5002(3)d. The tuition refund policy for the third and any subsequent term or quarter of any pro-  
552 gram licensed pursuant to section five thousand one of this article shall be the policy set forth in  
553 subparagraph one of paragraph c of this subdivision.

554 5002(3)e. No program shall have a term in excess of eighteen weeks.

555 5002(3)f. The amount of the refund shall be calculated based on the last day of student attend-  
556 ance.

557 5002(3)g.

558 5002(3)(g)(1) Any refund due to a student shall be paid by the school within forty-five  
559 days of the date on which the student withdraws from the program. For the purposes of  
560 this article, such date shall be the earliest of

561 5002(3)(g)(1)(i) the date on which the student gives written notice to the school or

562 5002(3)(g)(1)(ii) the date on which the student is deemed to have withdrawn pur-  
563 suant to subparagraph two of this paragraph.

564 5002(3)(g)(2) If a student has failed to attend classes for a period of thirty calendar days,  
565 the school shall send by regular mail a notice to the student that the student shall be  
566 deemed to have withdrawn from the program if the student does not notify the school to  
567 the contrary within twelve days from the date on which the letter is sent. If the student  
568 fails to respond within such twelve-day period, the student shall be deemed to have with-  
569 drawn and the school shall notify the higher education services corporation that the stu-  
570 dent has withdrawn and the date of the withdrawal.

571 5002(3)h. Schools shall submit, for approval by the commissioner, the school catalog with a  
572 weekly tuition liability chart for each program that indicates the amount of refund due the stu-  
573 dent in the event of withdrawal.

574 5002(3)i. Upon payment of a refund to a lender, the school shall forthwith send a notice to a per-  
575 son designated by the president of the higher education services corporation upon a form ap-  
576 proved by the president that such refund was made.

577 5002(3)j. If the higher education services corporation fails to receive the notice required by para-  
578 graph i of this subdivision, it shall forthwith notify the student of his or her right to a refund and  
579 the commissioner of such failure. Upon receipt of such notification, the commissioner shall take  
580 appropriate action against the school.

581 5002(4). Curriculum approval.

582 5002(4)a. An application and fee shall be made for the initial approval of a curriculum or course  
583 and shall include such information as the commissioner may require by regulation. Approval  
584 shall be valid for a period not to exceed four years. The application fee for any curriculum of one  
585 hundred clock hours or more shall be two hundred fifty dollars. The application fee for any  
586 course of less than one hundred clock hours shall be one hundred dollars. Such application fees  
587 shall accrue to the credit of the proprietary vocational school supervision account.

588 5002(4)b. In approving curriculum, the commissioner shall take into consideration the following:

589 5002(4)(b)(1) that the entrance requirements demonstrate that students possess the skills,  
590 competencies and prerequisite knowledge needed to progress in the curriculum;

591 5002(4)(b)(2) that the content will enable the student to develop those skills and compe-  
592 tencies required for employment in the occupational area for which the curriculum was  
593 developed;

594 5002(4)(b)(3) that the school will utilize appropriate instructional methods;

595 5002(4)(b)(4) that the instructional equipment used within the curriculum is comparable

596 to the equipment currently used by business or industry in the occupational area for  
597 which the curriculum was developed; and

598 5002(4)(b)(5) that a curriculum may include instruction in English as a second language  
599 at a beginning or basic level, provided such instruction shall not constitute more than fifty  
600 percent of such program.

601 5002(4)c.

602 5002(4)(c)(1) If the evaluation of a particular course or facility requires the services of an  
603 expert not employed by the department, the department shall retain such expert at the  
604 school's expense in addition to the application fees prescribed in paragraph a of this sub-  
605 division.

606 5002(4)(c)(2) If, in the interest of expediting the approvals, a school requests the depart-  
607 ment to employ an outside consultant, the school shall pay the cost of such services in  
608 addition to the application fees prescribed in paragraph a of this subdivision.

609 5002(4)d. The commissioner shall act on applications for approval of a course or curriculum  
610 within one hundred twenty days of receipt of a complete application and, in the case of a denial,  
611 shall set forth in writing the reasons for such denial.

612 5002(4)e. Notwithstanding paragraphs b, c and d of this subdivision, curriculum certified by a  
613 nationally recognized vendor as defined in commissioner's regulations shall be recognized by the  
614 department in lieu of an expert evaluation when such curriculum is adopted by a school in the  
615 original format provided by the vendor as long as the proposed curriculum is a stand alone pro-  
616 gram and not part of a larger comprehensive course.

617 5002(4)f. Notwithstanding any other provision of the law, a not-for-profit licensed career school,  
618 that is eligible for participation in the tuition assistance program and which has national accredi-  
619 tation, may, for the purpose of calculation of federal financial aid amounts only, measure stu-  
620 dents' academic progress in an approved curriculum in non-degree granting credit hours, based  
621 upon a national accrediting agency's conversion and approval of clock hours to non-degree credit  
622 hours. For the purposes of this paragraph, "national accreditation" shall mean accreditation by a  
623 national accrediting agency as defined in the commissioner's regulations.

624 5002(5). Application for reapproval.

625 5002(5)a. An application and fee shall be made for reapproval of a curriculum or course. Such  
626 application shall be considered timely if submitted at least one hundred twenty days prior to the  
627 expiration of the current approval. The application fee for any curriculum of one hundred clock  
628 hours or more shall be two hundred fifty dollars. The application fee for any course of less than  
629 one hundred clock hours shall be one hundred dollars, provided that no fee shall be assessed for

630 the submission of a reapproval application without change. Such application fee shall accrue to  
631 the credit of the proprietary vocational school supervision account.

632 5002(5)b. Curriculum reapproval standards.

633 5002(5)(b)(1) The commissioner shall prescribe by regulation, standards for reapproval  
634 after the first year of licensure, of any curriculum or course based upon factors including  
635 but not limited to the following, as appropriate:

636 5002(5)(b)(1)(i) for each curriculum or course, the percentage of students who  
637 have dropped out;

638 5002(5)(b)(1)(ii) the acquisition of a specified minimum level of skills by the stu-  
639 dents; and

640 5002(5)(b)(1)(iii) for each curriculum or course, the percentage of students placed  
641 in occupations related to the instruction, where applicable.

642 5002(5)(b)(2) Such standards shall be consistent with those applied to all non-degree ca-  
643 reer education programs.

644 5002(5)c. Reapproval contingency. Reapproval of a curriculum or course shall be contingent up-  
645 on a demonstration by the applicant that the curriculum or course has met the curriculum reap-  
646 proval standards set forth in this subdivision. Except as otherwise provided in paragraph d of this  
647 subdivision, no such curriculum or course or substantially similar curriculum or course may be  
648 given without reapproval by the commissioner.

649 5002(5)d. When timely and complete application is made for the reapproval of a curriculum or  
650 course, and no written denial is made thirty days prior to the date of expiration of the existing  
651 approval, the curriculum or course shall be deemed to be approved for the period of the curricu-  
652 lum. If the application is denied, the commissioner shall set forth in writing the reasons for such  
653 denial.

654 5002(5)e. The commissioner may provide in regulations for reapproval procedures, consistent  
655 with this subdivision, for applications submitted less than one hundred twenty days from the ex-  
656 piration date.

657 5002(5)f. The commissioner shall act upon enrollment agreements and catalogs within ninety  
658 days of receipt, and, in the case of denial, shall set forth in writing the reasons for such denial. If  
659 the commissioner fails to act within ninety days, a catalog shall be deemed approved for one year  
660 and an enrollment agreement shall be deemed approved until the commissioner acts upon it.

5002(6).

661 5002(6)a. Teachers and directors.

662 No person shall be employed by a private career school as a director or teacher who is not li-  
663 censed in such capacity by the department pursuant to regulations of the commissioner, which  
664 shall take into consideration such factors as moral character, educational qualifications and prac-  
665 tical experience. The application shall include a statement, signed by the president or chief exec-  
666 utive officer of the school, certifying that to the best of his or her knowledge, the applicant is  
667 able to meet the educational qualifications and practical experience set forth in the commission-  
668 er's regulations. Such application shall be considered timely if mailed to the commissioner and  
669 postmarked four days prior to employment at the school and must be completed within twenty  
670 days thereafter; provided, however, that the commissioner may, for good cause shown, extend  
671 the time within which to complete the application. When a complete application is made, the  
672 commissioner shall act upon such application within thirty days. If no written denial is made  
673 within the thirty days, the application shall be deemed to be approved until the commissioner  
674 acts upon it or until the end of the term or semester, whichever occurs first. If a written denial is  
675 made after the thirty day period, the commissioner may allow the applicant to teach at the school  
676 for the remainder of the term or semester if the commissioner determines that the removal of the  
677 teacher would not be in the best educational interest of the students. This subdivision shall not  
678 apply to directors or teachers employed on or before July first, nineteen hundred seventy-two.  
679 Teachers' licenses issued on or after the effective date of the chapter of the laws of two thousand  
680 twelve which amended this paragraph shall be valid at all licensed private career schools for the  
681 courses, curricula, or occupations indicated on the license. Teachers holding valid private school  
682 teacher licenses valid at only one school location shall have them replaced, at no cost, with li-  
683 censes valid at any licensed school in the same subject or subjects and with the same expiration  
684 date as was listed on the previous teaching license.

685 5002(6)b. A school director shall have access to all student and school records which shall be  
686 maintained in accordance with this article and the regulations of the commissioner and shall  
687 make such records available to the commissioner or the commissioner's designee upon request  
688 during an on-site school inspection.

689 5002(6)c. Notwithstanding paragraph a of this subdivision, a teacher who has been certified as an  
690 instructor by a nationally recognized vendor as defined in commissioner's regulations may be  
691 deemed qualified as an instructor by the department, provided such teacher shall only provide in-  
692 struction in the course or courses for which he or she holds vendor's certification. A teacher au-  
693 thorized by this paragraph will be subject to all licensing fees required by the department for li-  
694 censed teachers.

695 5002(7). Advertising.

696 5002(7)a. The commissioner is authorized to commence a disciplinary proceeding pursuant to

697 this article for false, misleading, deceptive or fraudulent advertising pursuant to regulations  
698 promulgated by the commissioner which shall be consistent with article twenty-two-A of the  
699 general business law. The department shall issue guidelines as to appropriate advertising content.  
700 In developing such guidelines, the department shall consider advertising for similar programs of-  
701 fered by various educational institutions. In a disciplinary action or other proceeding, such guide-  
702 lines shall not be presumptive evidence that particular advertising is appropriate.

703 5002(7)b. Beginning on January first, two thousand, all schools shall include in their advertising,  
704 promotional material, or letterhead the statement “Licensed by the State of New York”, and an  
705 accompanying symbol to indicate such status, issued by the commissioner pursuant to section  
706 five thousand nine of this article.

707 5002(8). The higher education services corporation shall adopt rules and regulations to effectuate the  
708 cessation of collection activities by lenders or by the corporation in cases in which a licensed private  
709 career school at which the student enrolled has closed or ceased its teaching activities during the aca-  
710 demic period for which the loan was made or guaranteed.

§ 5003. Disciplinary actions, hearings and penalties

711 5003(1). Disciplinary action.

712 5003(1)a. The commissioner for good cause, after affording a school an opportunity for a hear-  
713 ing, may take disciplinary action as hereinafter provided against any school authorized to operate  
714 under this article.

715 5003(1)b. Good cause shall include, but not be limited to, any of the following:

716 5003(1)(b)(1) fraudulent statements or representations to the department, the public or  
717 any student in connection with any activity of the school;

718 5003(1)(b)(2) violation of any provision of this article or regulation of the commissioner;

719 5003(1)(b)(3) conviction or a plea of no contest on the part of any owner, operator, direc-  
720 tor or teacher:

721 5003(1)(b)(3)(A) of any of the following felonies defined in the penal law: brib-  
722 ery involving public servants; commercial bribery; perjury in the second degree;  
723 rewarding official misconduct; larceny, in connection with the provision of ser-  
724 vices or involving the theft of governmental funds; offering a false instrument for  
725 filing, falsifying business records; tampering with public records; criminal usury;  
726 scheme to defraud; or defrauding the government; or

727 5003(1)(b)(3)(B) in any other jurisdiction of an offense which is substantially  
728 similar to any of the felonies defined in clause (A) of this subparagraph and for  
729 which a sentence to a term of imprisonment in excess of one year was authorized  
730 and is authorized in this state regardless of whether such sentence was imposed;  
731 or

732 5003(1)(b)(4) incompetence of any owner or operator to operate a school.

733 5003(1)c.

734 5003(1)(c)(1) Any person who believes he or she has been aggrieved by a violation of  
735 this section, except a person aggrieved by the actions or omissions of a candidate school,  
736 shall have the right to file a written complaint within:

737 5003(1)(c)(1)(A) two years of the alleged violation; or

738 5003(1)(c)(1)(B) one year of receiving notification from the higher education ser-  
739 vices corporation or any other guarantee agency that the student has defaulted on

740 a student loan payment; provided, however, that no complaint may be filed after  
741 three years from the date of the alleged violation. The commissioner shall main-  
742 tain a written record of each complaint that is made. The commissioner shall also  
743 send to the complainant a form acknowledging the complaint and requesting fur-  
744 ther information if necessary and shall advise the director of the school that a  
745 complaint has been made and, where appropriate the nature of the complaint.

746 5003(1)(c)(2) The commissioner shall within twenty days of receipt of such written com-  
747 plaint commence an investigation of the alleged violation and shall within ninety days of  
748 the receipt of such written complaint, issue a written finding. The commissioner shall  
749 furnish such findings to the person who filed the complaint and to the chief operating of-  
750 ficer of the school cited in the complaint. If the commissioner finds that there has been a  
751 violation of this section, the commissioner shall take appropriate action.

752 5003(1)(c)(3) The commissioner may initiate an investigation without a complaint.

753 5003(1)(c)(4) Notwithstanding the provisions of subparagraph one of this paragraph or  
754 any other provision of this article to the contrary, a student at a candidate school shall  
755 have the right to file a written complaint from an alleged violation of the provisions of  
756 clause three of subparagraph (iv) of paragraph b of subdivision four of section five thou-  
757 sand one of this article that require disclosure of candidacy status and its implications and  
758 a signed attestation by the student, within two years of such violation. Upon a finding that  
759 such a violation has occurred, the candidate school shall be required to provide a refund  
760 of all monies and fees received from or on behalf of the student. Appropriate action shall  
761 also be taken against the candidate school pursuant to the provisions of subparagraph (iv)  
762 of paragraph b of subdivision four of section five thousand one of this article.

763 5003(2). Hearing procedures.

764 5003(2)a. Upon a finding that there is good cause to believe that a candidate school under the  
765 provisions of subparagraph (iv) of paragraph b of subdivision four of section five thousand one  
766 of this article, or a licensed school, or an officer, agent, employee, partner or teacher, has com-  
767 mitted a violation of this article, the commissioner shall initiate proceedings by serving a notice  
768 of hearing upon each and every such party subject to the administrative action. The school or  
769 such party shall be given reasonable notice of hearing, including the time, place, and nature of  
770 the hearing and a statement sufficiently particular to give notice of the transactions or occurrenc-  
771 es intended to be proved, the material elements of each cause of action and the civil penalties  
772 and/or administrative sanctions sought.

773 5003(2)b. Opportunity shall be afforded to the party to respond and present evidence and argu-  
774 ment on the issues involved in the hearing including the right of cross examination. In a hearing,  
775 the school or such party shall be accorded the right to have its representative appear in person or  
776 by or with counsel or other representative. Disposition may be made in any hearing by stipula-

777 tion, agreed settlement, consent order, default or other informal method.

778 5003(2)c.

779 5003(2)(c)(1) The commissioner shall designate an impartial hearing officer to conduct  
780 the hearing, who shall be empowered to:

781 5003(2)(c)(1)(A) administer oaths and affirmations; and

782 5003(2)(c)(1)(B) regulate the course of the hearings, set the time and place for  
783 continued hearings, and fix the time for filing of briefs and other documents; and

784 5003(2)(c)(1)(C) direct the school or such party to appear and confer to consider  
785 the simplification of the issues by consent; and

786 5003(2)(c)(1)(D) grant a request for an adjournment of the hearing only upon  
787 good cause shown.

788 5003(2)(c)(2) The strict legal rules of evidence shall not apply, but the decision shall be  
789 supported by substantial evidence in the record.

790 5003(3). Decision after hearing. The hearing officer shall make written findings of fact and conclu-  
791 sions of law, and shall also recommend in writing to the commissioner a final decision including pen-  
792 alties. The hearing officer shall mail a copy of his or her findings of fact, conclusions of law and rec-  
793 ommended penalty to the party and his or her attorney, or representative. The commissioner shall  
794 make the final decision, which shall be based exclusively on evidence and other materials introduced  
795 at the hearing. If it is determined that a party has committed a violation, the commissioner shall issue a  
796 final order and shall impose penalties in accordance with this section. The commissioner shall send by  
797 certified mail, return receipt requested, a copy of the final order to the party and his or her attorney, or  
798 representative. The commissioner shall, at the request of the school or such party, furnish a copy of the  
799 transcript or any part thereof upon payment of the cost thereof.

800 5003(4). Judicial review. Any order imposed under this section shall be subject to judicial review un-  
801 der article seventy-eight of the civil practice law and rules, but no such determination shall be stayed  
802 or enjoined except upon application to the court after notice to the commissioner.

803 5003(5). Enforcement proceedings. The attorney general, in his or her own capacity, or at the request  
804 of the commissioner, may bring an appropriate action or proceeding in any court of competent juris-  
805 diction to recover a fine or otherwise enforce any provision of this article.

806 5003(6). Civil penalties and administrative sanctions.

807 5003(6)a. A hearing officer may recommend, and the commissioner may impose, a civil penalty

808 not to exceed three thousand five hundred dollars for any violation of this article, including a  
809 school's failure to offer a course or program as approved by the commissioner. In the case of a  
810 second or further violation committed within five years of the previous violation, the liability  
811 shall be a civil penalty not to exceed seven thousand five hundred dollars for each such violation.

812 5003(6)b. Notwithstanding the provisions of paragraph a of this subdivision, a hearing officer  
813 may recommend, and the commissioner may impose a civil penalty not to exceed seventy-five  
814 thousand dollars or double the documented amount from which the school benefited, whichever  
815 is greater, for any of the following violations:

816 5003(6)(b)(1) operation of a school without a license in violation of section five thousand  
817 one of this article;

818 5003(6)(b)(2) operation of a school knowing that the school's license has been suspended  
819 or revoked;

820 5003(6)(b)(3) use of false, misleading, deceptive or fraudulent advertising;

821 5003(6)(b)(4) employment of recruiters on the basis of a commission, bonus or quota,  
822 except as authorized by the commissioner;

823 5003(6)(b)(5) directing or authorizing recruiters to offer guarantees of jobs upon comple-  
824 tion of a course;

825 5003(6)(b)(6) failure to make a tuition refund when such failure is part of a pattern of  
826 misconduct;

827 5003(6)(b)(7) the offering of a course or program that has not been approved by the  
828 commissioner;

829 5003(6)(b)(8) admitting students, who subsequently drop out, who were admitted in vio-  
830 lation of the admission standards established by the commissioner, where such admis-  
831 sions constitute a pattern of misconduct and where the drop out resulted at least in part  
832 from such violation;

833 5003(6)(b)(9) failure to provide the notice of discontinuance and the plan required by  
834 subdivision seven of section five thousand one of this article; or

835 5003(6)(b)(10) violation of any other provision of this article, or any rule or regulation  
836 promulgated pursuant thereto, when such violation constitutes part of a pattern of mis-  
837 conduct which significantly impairs the educational quality of the program or programs  
838 being offered by the school. For each enumerated offense, a second or further violation  
839 committed within five years, shall be subject to a civil penalty not to exceed one and one-  
840 half times the amount of the previous violation for each such violation.

841 5003(6)c. In addition to the penalties authorized in paragraphs a and b of this subdivision, a hear-  
842 ing officer may recommend and the commissioner may impose any of the following administra-  
843 tive sanctions:

- 844 5003(6)(c)(1) a cease and desist order;
- 845 5003(6)(c)(2) a mandatory direction;
- 846 5003(6)(c)(3) a suspension or revocation of a license;
- 847 5003(6)(c)(4) a probation order; or
- 848 5003(6)(c)(5) an order of restitution.

849 5003(6)d. Penalty factors. In the recommendation of any penalty, a hearing officer shall, at a  
850 minimum, give due consideration, where applicable, to the good faith of the violator and the  
851 gravity of the violation.

852 5003(6)e. The commissioner may suspend a license upon the failure of a school to pay any fee,  
853 fine, penalty, settlement or assessment as required by this article unless such failure is deter-  
854 mined by the commissioner to be for good cause.

855 5003(6)f. All civil penalties, fines and settlements received after April first, nineteen hundred  
856 ninety shall accrue to the credit of the tuition reimbursement account established pursuant to sec-  
857 tion ninety-seven-hh of the state finance law.

858 5003(7). Criminal penalties. In addition to any other penalties elsewhere prescribed:

859 5003(7)a. Any person who knowingly violates any of the provisions of this article shall be guilty  
860 of a class B misdemeanor punishable in accordance with the penal law. If the conviction is for a  
861 second offense committed within five years of the first conviction under this paragraph, such  
862 person shall be guilty of a class A misdemeanor punishable in accordance with the penal law.

863 5003(7)b. Any person who knowingly

864 5003(7)(b)(1) falsifies or destroys school or other business records relating to the opera-  
865 tion of the school with intent to defraud;

866 5003(7)(b)(2) fails to make a tuition refund as required by section five thousand two of  
867 this article with the intent to defraud more than one person; or

868 5003(7)(b)(3) operates a school without a valid license required by section five thousand  
869 one of this article shall be guilty of a class A misdemeanor punishable in accordance with  
870 the penal law.

871 5003(7)c. Any person who, having been convicted within the past five years of failing to make a

872 tuition refund in violation of subparagraph two of paragraph b of this subdivision, knowingly and  
873 intentionally engages in a scheme constituting a systematic ongoing course of conduct involving  
874 the wrongful withholding of refunds in violation of section five thousand two of this article with  
875 the intent to defraud ten or more persons, and so withholds tuition refunds in excess of one thou-  
876 sand dollars, shall be guilty of a class E felony punishable in accordance with the penal law.

877 5003(7)d. Upon a determination that there exist reasonable grounds to believe that a violation of  
878 this article has been committed, or that any other crime has been committed in connection with  
879 the operation of a school required to be licensed pursuant to this article, the commissioner shall  
880 refer such determination, and the information upon which it is based, to the attorney general or to  
881 the appropriate district attorney. The attorney general or a district attorney may bring an action  
882 on his or her own initiative.

883 5003(8). Private right of action. A student injured by a violation of this article may bring an action  
884 against the owner or operator of a licensed private career school for actual damages or one hundred  
885 dollars, whichever is greater. A court may, in its discretion, award reasonable attorney's fees to a pre-  
886 vailing plaintiff.

§ **5004. Private school agent's certificate**

5004(1).

887 5004(1)a. No party may, for a consideration or remuneration procure, solicit or enroll any stu-  
888 dent for instruction in or given by any school within or without the state of New York, unless

889 5004(1)(a)(i) the party is a salaried employee of the school and

890 5004(1)(a)(ii) the party shall have secured a private school agent's certificate from the  
891 department pursuant to regulations of the commissioner.

892 5004(1)b. Upon submission of a complete new application for licensure, an applicant may pro-  
893 cure, solicit or enroll any student for instruction; provided, however, that such applicant be in  
894 possession at all times during the procurement, solicitation or enrollment processes of a tempo-  
895 rary approval certificate which the commissioner shall issue within five days of receipt by mail  
896 or on the same day at designated offices. A school shall submit such application for licensure on  
897 or before the first day of employment of such individual.

898 5004(1)c. No consideration or remuneration shall be paid in the form of a fee per student en-  
899 rolled by a private school agent except pursuant to the following limitations:

900 5004(1)(c)(1) a school may pay twenty-five percent of the consideration or remuneration  
901 after the student has completed three weeks of the program;

902 5004(1)(c)(2) a school may pay the remainder of the consideration or remuneration after  
903 the student has completed eight weeks of the program;

904 5004(1)(c)(3) the total amount of the consideration or remuneration paid per student may  
905 not exceed one percent of the annual salary paid to the agent.

906 5004(1)d. In promulgating regulations in relation to the issuance of such certificates and the con-  
907 duct of the holders of such certificates, the commissioner shall give consideration to:

908 5004(1)(d)(1) good moral character of the candidate for such certificate;

909 5004(1)(d)(2) the use of ethical and fair practices in the presentation of the school's offer-  
910 ings; and

911 5004(1)(d)(3) whether the prospective agent has within five years of the date of the appli-  
912 cation violated any provision of this article or the regulations of the commissioner adopt-  
913 ed pursuant to this article.

914 5004(2). Instruction, as contemplated by this section, shall be any plan or method for teaching any  
915 subject or subjects in any form or manner, including correspondence or home study.

916 5004(3). Exempted from the requirements of this section are persons acting solely for schools which  
917 are not required to be licensed or are specifically exempted from the licensing requirements of this ar-  
918 ticle. Persons who are paid to procure, solicit or enroll students on the premises of schools required to  
919 be licensed shall not be exempt from the provisions of this section.

920 5004(4). Application and renewal application for a private school agent's certificate shall be filed on  
921 forms to be prescribed and provided by the commissioner. Said certificate shall be valid for three years  
922 from the date of issuance. Certificates which have been renewed shall be valid for a period of three  
923 years from the expiration date of the certificate which has been renewed. Every applicant and renewal  
924 applicant shall pay to the department a fee of two hundred dollars.

925 5004(4-a). Notwithstanding the provisions of subdivision four of this section, the school director may  
926 apply for a private school agent's certificate on forms to be prescribed and provided by the commis-  
927 sioner without incurring the agent application fee.

928 5004(5). No recovery shall be had against any student or enrollee and full recovery shall be made on  
929 any contract for or in connection with any instruction if the student or enrollee was procured, solicited  
930 or enrolled outside or on the school premises by a person paid to procure, solicit or enroll students but  
931 not having a valid private school agent's certificate pursuant to the provisions of this section at the  
932 time that the contract was negotiated or executed or the sale of the instruction was made, or by a per-  
933 son who holds such a certificate but has made fraudulent or improper claims. Each enrollment agree-  
934 ment shall include, where applicable the name of the agent responsible for procuring, soliciting or en-  
935 rolling the student or enrollee.

936 5004(6). The issuance of such a private school agent's certificate shall not be deemed to constitute ap-  
937 proval of any course or of the person or institution offering, conducting or administering the same.

938 5004(7). The commissioner, after giving to the certificate holder due notice and opportunity to be  
939 heard, may fine a private school agent, suspend or revoke a private school agent's certificate at any  
940 time for failure to comply with the provisions of the law or the regulations of the commissioner or for  
941 any other good cause.

942 5004(8). No employer of a private school agent other than a school may indemnify, save harmless or  
943 otherwise reimburse any agent for the amount of any fines imposed pursuant to this section. If a per-  
944 son fined pursuant to this section can demonstrate to the satisfaction of the commissioner that the ac-  
945 tion for which the fine was imposed was undertaken pursuant to explicit instructions from the employ-  
946 er, the employer shall indemnify, save harmless, and reimburse that person for the fine and shall pay to  
947 the commissioner an additional fine of an equal amount.

§ 5005. Disclosure to students

948 The school shall disseminate to all prospective and enrolled students through an enrollment contract or  
949 agreement or other appropriate publications or documents, and in appropriate languages as required by  
950 the commissioner in regulation:

951 5005(a). information concerning the school, including but not limited to:

952 5005(a)(1) a description of the courses offered;

953 5005(a)(2) program objectives and the length of the program;

954 5005(a)(3) a schedule of tuition payments, fees and all other charges and expenses neces-  
955 sary for completion of the course or program;

956 5005(a)(4) the tuition refund and contract cancellation policies;

957 5005(a)(5) a description of the faculty and other instructional personnel and their qualifi-  
958 cations;

959 5005(a)(6) the names of associates, agencies or governmental bodies which accredit, ap-  
960 prove or license the school;

961 5005(a)(7) a description of any special facilities and services available to handicapped  
962 students; and

963 5005(a)(8) any other items identified by the commissioner in regulation following con-  
964 sultation with the advisory council;

965 5005(b). if the school advertises job placement rates as means of attracting students to enroll in  
966 the school, the most recent available data on employment and graduation statistics for students  
967 who have attended that school;

968 5005(c). information concerning any student financial assistance, including a description of the  
969 procedures and forms, student eligibility requirements and the rights and responsibilities of stu-  
970 dents receiving financial aid;

971 5005(d). the pass rate of graduates of the program for the most recent calendar year on any licen-  
972 sure or certification examination required by the state for employment in the particular vocation-  
973 al, trade, or career field;

974 5005(e). the process for obtaining a tuition refund from the tuition reimbursement fund and the  
975 availability of loan forgiveness in the event the school closes while the student is in attendance;

976 5005(f). a sample enrollment contract, a sample cancellation form developed by the department  
977 in consultation with the advisory council and a tuition reimbursement fund claim form; and  
978 5005(g). a description of the complaint procedures established pursuant to this article.

§ 5006. Teachout plans

979 5006(1). A school may submit a teachout plan to the commissioner for approval pursuant to regula-  
980 tions established by the commissioner. A teachout plan shall consist of a contract between a licensed  
981 private career school, with another school, hereinafter called the teachout school, so that in the event  
982 that the licensed private career school ceases instruction, the teachout school will provide the neces-  
983 sary instruction specified in a student's original enrollment agreement with the school ceasing instruc-  
984 tion. A teachout plan may employ more than one teachout school to provide instruction to students in  
985 the school ceasing instruction. Schools under common ownership but having separate licenses may,  
986 subject to the approval of the commissioner, enter into teachout agreements. A teachout plan may be  
987 contracted between the commissioner and one or more teachout schools in the event that the closing  
988 school is unable or unwilling to do so.

989 5006(2). A teachout plan shall include the following provisions:

990 5006(2)(a) the teachout school must offer courses of study that are substantially similar to those  
991 offered in the school ceasing instruction;

992 5006(2)(b) teachout schools must be located in the geographic area in which the school ceasing  
993 instruction was located unless the school ceasing instruction provided distance learning or online  
994 training;

995 5006(2)(c) all provisions for a teachout plan must be included in the enrollment agreement  
996 signed by the student; and

997 5006(2)(d) the teachout school shall agree to fulfill the enrollment agreement signed by the stu-  
998 dent at the school ceasing instruction.

999 5006(3). The licensed school shall provide to the teachout school and to the department the following  
1000 information prior to closure:

1001 5006(3)(a) Copies of the academic and financial records for all students in attendance at the  
1002 school at the projected time of closure;

1003 5006(3)(b) A listing of all such students presently in attendance including their names, addresses,  
1004 social security numbers, curriculum that each student is enrolled in and the number of hours the  
1005 students will have completed at the time of the school closure.

1006 5006(4). The department will provide to the teachout school, immediately upon notification of a  
1007 school closing, a copy of each approved curriculum that the closing school is presently offering.

1008 5006(5). The commissioner shall require all teachout schools to address the following issues:

- 1009 5006(5)(a) Integration of students into a curriculum which may be different from the curriculum  
1010 in which they are currently receiving instruction;
- 1011 5006(5)(b) Assessments of students' progress so that they may be placed into an appropriate  
1012 course;
- 1013 5006(5)(c) Provision of remedial instruction to students who are found to be deficient in one or  
1014 more course areas upon their initial assessment;
- 1015 5006(5)(d) Provision by the teachout school to adhere to the required student/teacher ratios and  
1016 room capacities; and
- 1017 5006(5)(e) Compliance with statutory and regulatory requirements during the teachout.
- 1018 5006(6). The student shall not be subject to any costs beyond the total costs identified in the original  
1019 enrollment agreement.
- 1020 5006(7). A student may decline to pursue instruction at the teachout school and may instead seek a re-  
1021 fund pursuant to section five thousand seven of this article.

§ **5007. Tuition reimbursement account**

1022 5007(1). Except as otherwise provided in subdivision six of this section, the portion of the annual as-  
1023 sessment of schools licensed pursuant to section five thousand one of this article as prescribed in sub-  
1024 division nine of such section and all fines, penalties and settlements received pursuant to this article  
1025 shall be transferred upon receipt into the tuition reimbursement account.

1026 5007(2). Repealed

1027 5007(3).

1028 5007(3)a. The commissioner shall develop a complaint form and provide such form to students.  
1029 In order to claim a refund, a student shall apply to the fund with a complaint form pursuant to the  
1030 requirements of section five thousand three of this article. Except as otherwise provided in this  
1031 article, the commissioner shall compute the refund, if any, using the refund formula established  
1032 by subdivision three of section five thousand two of this article.

1033 5007(3)b. Claimants who had been enrolled in schools which have not closed or ceased opera-  
1034 tion shall be required to show in a manner determined by the commissioner that:

1035 5007(3)(b)(1) the student is eligible for a refund;

1036 5007(3)(b)(2) the student has made a request to the school for a refund; and

1037 5007(3)(b)(3) the school has failed to make the refund within the time period required by  
1038 this article.

1039 5007(3)c. The commissioner shall act on each refund request within thirty business days of such  
1040 request.

1041 5007(4). Students may be eligible for refunds under this section as follows:

1042 5007(4)a. A student who is offered a teachout plan for the curriculum in which the student was  
1043 enrolled at the time the school closed or ceased operation, which has been approved by the de-  
1044 partment, may elect to continue instruction pursuant to the teachout plan or may decline to con-  
1045 tinue instruction and may instead apply for a full refund under this section. The option to apply  
1046 for a refund shall extend to the end of the first week of instruction at the teachout school.

1047 5007(4)b. A student who was enrolled in a school which has not closed or ceased operation is en-  
1048 titled to a refund computed in accordance with the refund policy established by subdivision three  
1049 of section five thousand two of this article.

1050 5007(4)c. A student who was enrolled in a school at the time the school closes or ceases opera-

1051 tion is entitled to a refund of the full amount of prepaid tuition. In addition, commencing Sep-  
1052 tember first, nineteen hundred ninety-three, a student who drops out of a school, where such  
1053 school closes within thirty days of the student's termination and prior to completion of such stu-  
1054 dent's program as specified in the enrollment agreement, shall be entitled to a full refund of all  
1055 tuition, fees and book charges paid for by or on behalf of the student in cash or in loans, exclud-  
1056 ing funding provided by any government agencies.

1057 5007(4)d. A student who was enrolled in a school which has not closed or ceased operation, and  
1058 who has dropped out, is entitled to a full refund of all tuition, fees and other required costs paid  
1059 by the student if the student has submitted a complaint form to the commissioner and the com-  
1060 missioner has determined that a violation of this article has occurred which warrants a refund.  
1061 The commissioner shall promulgate regulations identifying those violations that warrant a re-  
1062 fund.

1063 5007(4)e. Commencing September first, nineteen hundred ninety-three, a student who drops out  
1064 of a school, which subsequently closes, and who is owed a refund for the failure of such school  
1065 to follow the provisions enumerated in subdivision three of section five thousand two of this arti-  
1066 cle shall be eligible for a refund from the tuition reimbursement fund according to the provisions  
1067 of subdivision three of section five thousand two of this article.

1068 5007(4)f. Commencing September first, nineteen hundred ninety-three, any student enrolled in a  
1069 school based upon an ability to benefit examination shall be eligible for a full refund, regardless  
1070 of whether the student is currently enrolled, graduated or dropped out, if the school enrolled the  
1071 student contrary to the provisions of the approved entrance requirements and the student com-  
1072 plies with the requirements of subdivision one of section five thousand three of this article.

1073 5007(5).

1074 5007(5)a. For a student who had been enrolled in a school that has not closed or ceased opera-  
1075 tion, the refund shall be paid as follows:

1076 5007(5)(a)(1) guaranteed student loans, if any, in which case the commissioner shall noti-  
1077 fy the student of such payment and shall be paid directly to the lender or guarantee agen-  
1078 cy where appropriate;

1079 5007(5)(a)(2) actual personal tuition expenditures, if any; and

1080 5007(5)(a)(3) tuition assistance program awards and other governmental aid.

1081 5007(5)b. For schools that have closed or ceased operation, the commissioner shall refund actual  
1082 personal tuition, fees and book expenditures to the student. The repayment of any loans incurred  
1083 by the student as part of the actual personal tuition, fees and book expenditures shall be paid di-  
1084 rectly to the lender or the guarantee agency where appropriate.

1085 5007(6).

1086 5007(6)a. Where a claim is paid to a student of an operating school, the commissioner shall im-  
1087 mediately notify the school.

1088 5007(6)b. Within ten days of the receipt of the notice, the school shall either request a hearing to  
1089 challenge the commissioner's determination that a refund was owed to the student or reimburse  
1090 the fund the amount paid to the claimant plus a penalty up to two times such amount. This pay-  
1091 ment shall also incur interest for each day it remains unpaid at an annual interest rate of one per-  
1092 cent above the prime rate. The commissioner may promulgate streamlined procedures for con-  
1093 ducting hearings pursuant to this paragraph. Any penalty assessed under this paragraph shall be  
1094 in addition to any other penalties assessed pursuant to this article. Notwithstanding any other  
1095 provision of law, penalties and interest paid pursuant to this paragraph shall accrue to the credit  
1096 of the proprietary vocational school supervision account to support the costs associated with the  
1097 hearings authorized in this subdivision.

1098 5007(7). Notwithstanding the notice procedures described in subdivision three of this section, in the  
1099 event of a school closing, the commissioner on his or her own initiative may take appropriate action in  
1100 accordance with this section to process refund claims on behalf of all of the students of the closed  
1101 school.

1102 5007(8). Assignment of rights. Persons and entities receiving refunds under this section shall be  
1103 deemed to have assigned or subrogated their tuition reimbursement rights to the commissioner on be-  
1104 half of the tuition reimbursement fund only for the amount refunded by the tuition reimbursement  
1105 fund. Within ninety days of any refund made pursuant to this section, the commissioner or the attorney  
1106 general shall take appropriate action to recover the total amount of the refunds made, plus administra-  
1107 tive costs, from the school.

1108 5007(9).

1109 5007(9)a. A student whose loan liability is exempted pursuant to former section six hundred  
1110 eighty-three of this chapter and is entitled to or owed a refund shall transfer to the higher educa-  
1111 tion services corporation the right to claim the refund owed and due from the tuition reimburse-  
1112 ment fund. In such event, the corporation shall be entitled to receive a refund for that portion of  
1113 the claim not paid to the corporation by the United States Secretary of Education pursuant to the  
1114 federal guaranteed loan program.

1115 5007(9)b. Any amounts remaining in the tuition reimbursement fund as of June first, nineteen  
1116 hundred ninety-three and on every March thirty-first thereafter, shall be made available to the  
1117 higher education services corporation for payment of student loans on which collection activity  
1118 has ceased pursuant to the provisions of subdivision six of former section six hundred eighty-  
1119 three of this chapter. No amounts shall be paid to the higher education services corporation for

1120 loans on which collection activity has ceased because of the operation of section 437 of the  
1121 Higher Education Act of 1965, as amended.

1122 5007(10). Management of the tuition reimbursement account.

1123 5007(10)a. As used in this subdivision, net balance is defined as the actual cash balance of the  
1124 account as determined by the commissioner on June thirtieth, nineteen hundred ninety-three and  
1125 every three months thereafter. For the purpose of calculating the net balance, the commissioner  
1126 shall not take into consideration any refunds made from the account pursuant to paragraphs d and  
1127 f of subdivision four of this section for the year immediately preceding the date on which the  
1128 calculation is made.

1129 5007(10)b. In the event that the account has accumulated a net balance in excess of one million  
1130 eight hundred thousand dollars, the commissioner shall, with the approval of the director of the  
1131 budget, waive an amount not to exceed the amount due for the next quarterly assessment pursu-  
1132 ant to this section and subdivision nine of section five thousand one of this article for schools  
1133 which have paid sixteen quarters or more of assessments only. In such event, payment of future  
1134 quarterly assessments shall be suspended for schools which have paid sixteen quarters or more of  
1135 assessments until the net balance of the account falls below one million three hundred thousand  
1136 dollars.

1137 5007(10)c. In the event the net balance of the account falls below one million three hundred  
1138 thousand dollars, if the quarterly assessment has been suspended for schools which have paid  
1139 sixteen quarters or more of assessments pursuant to paragraph b of this subdivision, it shall be re-  
1140 instated for the next quarterly assessment and all subsequent quarterly assessments until the ac-  
1141 count has accumulated a net balance in excess of one million eight hundred thousand dollars.

1142 5007(10)d. Notwithstanding the provisions of paragraph b of this subdivision, in the event that  
1143 the balance of the account is in excess of one million three hundred thousand dollars, all schools  
1144 licensed after June thirtieth, nineteen hundred ninety-nine shall be required to pay into the ac-  
1145 count the equivalence of three years of annual assessments over a five year period.

1146 5007(10)e. Notwithstanding the provisions of paragraph b of this subdivision all schools licensed  
1147 after June thirtieth, nineteen hundred ninety-three and before July first, nineteen hundred ninety-  
1148 nine will be required to pay into the account the equivalence of three years of annual assessments  
1149 within four years of the effective date of this paragraph. This amount to be assessed shall be de-  
1150 termined based upon the school's gross tuition in its first three years of licensure.

1151 5007(10)f. Repealed.

1152 5007(10)g. In the event that the balance of the tuition reimbursement account is equal to or in  
1153 excess of two million dollars, the amounts assessed the schools in accordance with the provisions  
1154 of paragraphs d and e of this subdivision shall be deposited directly to the proprietary vocational

1155 school supervision account.

1156 5007(10)h. The commissioner may annually apportion from the account an amount up to two  
1157 hundred thousand dollars for the purpose of securing, scanning and otherwise making student  
1158 records from closed schools available to students who attended such schools. Provided, however,  
1159 that in no case shall such apportionment cause the account to fall below the balance set forth in  
1160 paragraph c of this subdivision, nor shall such apportionment cause schools whose quarterly as-  
1161 sessments have been suspended to pay additional quarterly assessments.

1162 5007(11). Fund audit. The state comptroller shall audit or cause to be audited the tuition reimburse-  
1163 ment fund once every two years and produce an audited financial statement according to generally ac-  
1164 cepted accounting principles.

1165 5007(12). New schools. Within the first year that a school begins licensed operation, the commissioner  
1166 shall assess such school an amount to be deposited into the fund in an amount to be determined by the  
1167 commissioner.

§ 5008. Trust accounts

1168 5008(1). If the commissioner determines that a school has demonstrated a pattern or practice of failing  
1169 to make tuition refunds in a timely manner consistent with this article and/or the school's financial  
1170 condition may result in the interruption or cessation of instruction or jeopardize student tuition funds,  
1171 the commissioner shall require a school to establish a trust account in a form or manner which the  
1172 commissioner shall determine to be appropriate. The assets or funds contained in the trust account  
1173 shall be maintained for the sole and exclusive benefit of the students.

1174 5008(2). In making this determination, the commissioner shall consider the following factors: the  
1175 number of refunds not paid by the school in a timely manner; the number of claims made to, or paid  
1176 by, the tuition reimbursement account; a pattern of misconduct which substantially affects the finan-  
1177 cial interests of students or the state, potential liability to the tuition reimbursement account, current  
1178 assets as opposed to current liabilities, and such other measures as may be appropriate.

§ 5009. Duties of the commissioner

1179 In addition to all other duties assigned in this article, the duties of the commissioner shall include, but  
1180 not be limited to:

1181 5009(1). ensuring that up-to-date, accurate information is available to the public, via the internet and  
1182 other appropriate media, regarding every duly licensed proprietary school in this state, as well as dis-  
1183 ciplinary actions decided by the state.

1184 5009(2). developing and issuing to duly licensed proprietary schools a symbol to indicate such status;  
1185 provided that such symbol shall be developed and made available to such schools no later than Sep-  
1186 tember thirtieth, nineteen hundred ninety-nine.

1187 5009(3). administering a public information campaign aimed at increasing awareness about the im-  
1188 portance of attending licensed proprietary vocational schools. Such campaign shall be targeted to pop-  
1189 ulations at risk of enrolling in unlicensed schools, and shall be conducted using means including, but  
1190 not limited to, public service announcements on commercial radio and television stations, public ac-  
1191 cess television, and print media.

1192 5009(4). providing for the orderly maintenance of any student records which may be transferred to the  
1193 department pursuant to any school's plan developed pursuant to subdivision eight of section five thou-  
1194 sand one of this article; including responding to student requests for transcripts and records within  
1195 twenty days of receiving a request. The commissioner is hereby authorized to impose an appropriate  
1196 fee for such transcripts pursuant to a schedule approved by the director of the budget.

**§ 5010. Advisory council**

1197 5010(1). An advisory council for licensed private career schools is hereby created for the purpose of  
1198 advising the board of regents and the commissioner as provided herein. The council shall be composed  
1199 of eleven members appointed by the governor, two of whom shall be upon the recommendation of the  
1200 temporary president of the senate, two of whom shall be upon the recommendation of the speaker of  
1201 the assembly, one of whom shall be upon the recommendation of the minority leader of the senate and  
1202 one of whom shall be upon the recommendation of the minority leader of the assembly. Of the five  
1203 remaining members, one shall be an owner or director of a school regulated pursuant to this article,  
1204 and one shall be a student advocate. The governor shall designate a chairperson from such members.  
1205 The commissioner, the president of the higher education services corporation, the secretary of state,  
1206 the comptroller, the director of the division of the budget, and the executive director of the job training  
1207 partnership council, or their designees, shall serve as ex-officio, non-voting members of the council.

1208 5010(2). The council shall meet no less than four times a year. Members of the council shall receive  
1209 no compensation for their services but shall be reimbursed for reasonable expenses actually and neces-  
1210 sarily incurred by them in the performance of their duties. Council member terms of office shall be  
1211 limited to three years, provided that members may be reappointed. All appointments to the council to  
1212 fill vacancies in existence on the effective date of the chapter of the laws of two thousand twelve  
1213 which amended this subdivision shall be made within ninety days of such effective date.

1214 5010(3). The council shall advise the commissioner on such matters as the council determines are ap-  
1215 propriate.