

ESL School Ownership Change Fact Sheet

The transfer of an ESL school's certification may not be effected without the Commissioner's approval. Any transfer or assignment of an interest in the total equity or assets of an ESL school, whether direct or indirect, effects a transfer of the school's certification from its original owner, whom BPSS approved to operate the school, to a new owner, in whole or in part. Therefore, the transfer or assignment of an ESL school's equity or assets, while not approved or denied by BPSS, is integrally linked to the transfer of the school's certification.

Accordingly, in order to ensure that the Commissioner may approve (or deny) the transfer or assignment of the school's certification (as opposed to its equity or assets), the transferee(s) or assignee(s) of an interest in the equity or assets of an ESL school must, under Commissioner's Regulation at [8 NYCRR 126.10\(i\)\(2\)\(iii\)](#), submit the following information at least 14 days before a change in ownership occurs, *i.e.*, when the transfer or assignment closes.

- An Application for a Transfer of a Certification to Operate an ESL School in New York State ([FORM BPSS-4](#)).
- A Notification of Ownership Change (ESL) ([FORM BPSS-1T](#) (12/12a))
- An exact duplicate copy of the original, executed sales or transfer agreement containing the terms and conditions under which the equity or assets of the school will be acquired
- A photocopy of the statement of revenue for the school's most recent fiscal year
- The seller's audited or reviewed statement of revenue from the end of the previous fiscal year to the date of filing the transfer application, including all tuition income received and all student refunds made, and an attestation that, within 60 days following the date of the sale, a full income statement from the end of the previous fiscal year to the date of the sale will be provided
- A listing of teachers, certified agents and their certificate numbers, permitted or licensed director(s), with corresponding license/permit number(s), and all registered curricula, including their effective date(s)
- A letter from the owner to whom the school's certification was issued, granting permission to the transferee(s) or assignee(s) to take possession, in proportion to the percentage of its acquisition, of all registered curriculum/courses

Depending on the legal identity of the transferee(s) or assignee(s) of the school's equity or assets, the transferee(s) or assignee(s) will also be required to submit to BPSS some or all of the following documentation, in addition to that in the bulleted list above, as well as any documentation that BPSS may reasonably require in order to determine whether to approve the transfer of the school's certification.

If the school, after the transfer or assignment takes place, will be owned entirely by a new corporation or LLC, the following must be submitted by the purchaser, in addition to the items in the bulleted list above:

1. A Certificate of Incorporation, or Articles of Organization and Filing Receipt
2. [Consent](#) from the NYS Education Department's Office of Counsel
3. Certificate of Assumed Name and Filing Receipt (if applicable because of a concurrent name change)
4. [Secretary's Certificate](#) (for corporations)

5. Copies of all stock certificates issued up to and including the next blank certificate

If the school, after the transfer or assignment takes place, will change its shareholder composition (or LLC equivalent), but the corporate or LLC owner will remain the same, the following must be submitted by the purchaser, in addition to the items in the bulleted list above:

1. [Secretary's Certificate](#)
2. A copy of the most recent stock ledger or copies of all stock certificates, issued and canceled, up to and including the next blank certificate.

If the school, after the transfer or assignment takes place, will be owned entirely by a new partnership, the following must be submitted by the purchaser, in addition to the items in the bulleted list above:

1. Business certificate from County Clerk (county where school is located)
2. Partnership agreement

If the school, after the transfer or assignment takes place, will be owned entirely by a sole proprietor, the following must be submitted by the purchaser, in addition to the items in the bulleted list above:

1. A business certificate from the County Clerk in the county where the school is located

If the transfer or assignment of your ESL school's equity or assets, in whole or in part, is not covered by any of the foregoing categories, the parties to the transfer or assignment should contact BPSS to arrange for the timely provision of whatever documentation that BPSS may reasonably require to assess the financial viability of the transferee(s) or assignee(s), and the competence of the transferee(s) or assignee(s) to operate an ESL school.

Regardless of the legal identity of the transferee(s) or assignee(s), any transferee(s) or assignee(s) that, after the transfer or assignment takes place, will have an interest of 10% or more in the total equity or assets of the ESL school must also furnish BPSS with a signed written statement acknowledging that it (or they) agree to settle any liabilities to students with respect to present and past refunds due or incurred as a result of a meritorious student complaint(s) submitted within the statute of limitations.

If, in connection with the transfer or assignment, the ESL school's location will also change, the parties must cause proof to be provided to BPSS that the buildings, rooms, and all facilities and equipment within them meet local standards. This means submitting two copies of form [BPSS-6](#), a current certificate of occupancy, and, outside of NYC, documentation of the local fire department approval, and health department approval, where applicable. Within NYC, BPSS must order the fire inspection from the FDNY.

If, in connection with the transfer or assignment, changes in personnel will take place under the school's new ownership composition, the school should ensure that all necessary and appropriate personnel applications are timely and completely submitted under Commissioner's Regulation at [8 NYCRR 126.10\(j\)\(3\)](#).

When BPSS processes the transfer of the school's certification, a superseding school certification will be generated, as well as any appropriate personnel certificates, permits, or licenses.

Questions regarding any of these requirements should be directed to Lisa Stiles-Roy at Lisa.Stiles-Roy@nysed.gov.

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