

**OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS
OF THE STATE OF NEW YORK
TITLE 8. EDUCATION DEPARTMENT
CHAPTER II. REGULATIONS OF THE COMMISSIONER
SUBCHAPTER F. PRIVATE SCHOOLS
PART 126. LICENSED PRIVATE CAREER SCHOOLS OR LICENSED
PRIVATE SCHOOLS**

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SECTION 126.1. DEFINITIONS

1 As used in this Part:

2 (a) **Acceptable, adequate, appropriate, proper, reasonable, satisfactory, sufficient** and
3 **suitable** shall mean educationally appropriate and/or beneficial to students in the judgment of
4 the commissioner.

5 (b) **Approved** means approved by the commissioner based upon a finding of educational
6 appropriateness and/or benefit to students.

7 (c) **Conform** means to meet or satisfy in the judgment of the commissioner.

8 (d) **Curriculum** means a sequence of courses which together comprise a program of
9 instruction and is 100 clock hours or longer in duration.

10 (e) **Course** means a sequence of units of instruction in a given subject area which is a
11 component of a program of instruction or curriculum, or which has an educational or
12 vocational objective of its own and is less than 100 clock hours in duration.

13 (f) **Diploma** or **certificate of completion** means a document evidencing the successful
14 completion of a curriculum or course.

15 (g) **Documentation of entrance requirements** means a copy of a student's high school
16 diploma or transcript, GED, original ability to benefit examination answer sheet indicating a
17 passing score, appropriate student certifications as specified by the approved curriculum, or
18 other approved documentation as determined by the commissioner, including but not limited to
19 a college degree.

20 (h) **Grades** means letters, number or symbols used to indicate the quality of work performed
21 by students.

22 (i) **Instruction** means any method or procedure used by the school faculty to impart
23 knowledge or develop skills.

24 (j) **Instructional hour** means an instructional unit of time consisting of a minimum of 50
25 minutes and a maximum of 60 minutes.

26 (k) **Properly** or **in proper manner** means in the manner prescribed by the commissioner.

27 (l) **Recognized** means approved by a regional or national accrediting agency or determined by
28 the department to be equivalent in scope and content to a registered program, unless the
29 context calls for a different meaning.

30 (m) **Standards**, unless otherwise indicated by the context, means the criteria established or
31 used by the commissioner to implement this Part.

- 32 (n) **Practical experience** means full-time work experience, or its part time equivalent, that is
33 acceptable to the Commissioner using skills included in the occupation for which the program
34 is designed and approved.
- 35 (o) **Gross tuition** means all revenues received for instruction by or on behalf of the student,
36 prior to any refund, from all sources, including but not limited to, lending institutions, Federal
37 agencies, State agencies, and any other entity or organization. Gross tuition shall not include
38 income from registration fees, the sale of books, supplies, services, kits, uniforms or
39 equipment.
- 40 (p) **School** means a licensed private career school or licensed private school as defined in
41 section 5001 of the Education Law.
- 42 (q) **Department** means the New York State Education Department.
- 43 (r) **Marking period** means the period of time established by the school to measure a student's
44 progress in a course or curriculum.
- 45 (s) **Attendance register** means a complete record of student attendance containing the
46 information required by section 126.4(e) of this Part which is maintained by the school as a
47 bound document or computer printout for each course, or each curriculum if there are no
48 courses.
- 49 (t) **Non-occupational course** means a course for personal enrichment or self-improvement
50 with no occupational performance objective and under 40 hours in length.
- 51 (u) **Reviewed financial statement** means a financial statement reported in accordance with
52 standards established by the American Institute of Certified Public Accountants and conducted
53 by a licensed public accountant or a certified public accountant.
- 54 (v) **Occupationally required credential** means a professional license, vendor certification, or
55 other credential that is required for employment in the occupation or where employment in the
56 occupation without such a credential is diminished.
- 57 (w) **Audited financial statement** means a financial statement prepared by a licensed public
58 accountant or a certified public accountant in accordance with generally accepted accounting
59 principles issued by the American Institute of Certified Public Accountants.
- 60 (x) **Certified English as a second language schools** or **Nonpublicly funded ESL schools**
61 means schools that provide instruction in English as a second language; receive no public
62 funding, including but not limited to public funding received as a result of participation in
63 student financial aid general award programs pursuant to articles 13 and 14 of the Education
64 Law; and operate on a for-profit basis.
- 65 (y) **Nationally recognized vendor** means an independent, industry recognized, educational
66 products provider offering curriculum and instructor qualifications to third party educational
67 service providers via the internet and other appropriate media.

68 (z) **Significant educational change** means, for the purposes of section 5002(3)(c)(2) of the
69 Education Law and this Part, sufficient substantive changes in a student's educational program,
70 in terms of curriculum, resources and the quality and quantity of faculty, as to indicate that the
71 program is not substantially equivalent to the initial offering to the student.

72 (aa) **Commissioner** means the Commissioner of Education.

SECTION 126.2. CONDUCT OF THE SCHOOL

73 126.2(a) Fees or other charges for services or products produced in the course of instruction by
74 students or instructors shall not be collected from the public unless the commissioner approves
75 the collection of such fees or charges for the purpose of facilitating adequate practice in the
76 curriculum or course.

77 126.2(b) A school shall provide the same instruction, tools, equipment or instructional
78 supplies, and charge the same tuition rates and other fees or charges, to all student or groups of
79 students in like circumstances, unless otherwise approved by the commissioner.

80 126.2(c) Enrollment of students shall not be sought by:

81 126.2(c)(1) Assuring or seeming to assure employment in any business, establishment or
82 occupation.

83 126.2(c)(2) Including in advertising or promotional material representations with respect to
84 potential earnings in entry level employment or employment with experience, unless such
85 representations can be documented for the graduates of the school. All such advertising or
86 promotional material shall include the number and percent of graduates employed at the
87 advertised salary level listed by year of graduation and may be presented in conjunction with
88 State and national labor statistics.

89 126.2(c)(3) Including in advertising or promotional material representations of job placement
90 rates, unless such representations can be documented with the data required under section
91 126.10 of this Part.

92 126.2(c)(4) Misrepresentations of the cost of instruction or of the education, experience or
93 abilities required for successful completion of the course and the utilization thereof.

94 126.2(c)(5) Use of such phrases as “university,” “college,” or “professional school,” or other
95 terminology which connotes an institution which confers the associate or higher degrees,
96 except where the school has been authorized by the Regents to confer such degrees and has
97 been authorized to use the word “college” in its corporate name pursuant to section 3.29(c) of
98 this Title.

99 126.2(d) Each school shall submit to the commissioner for approval all scholarship and grant
100 programs offered by the school. In approving such programs, the commissioner shall consider
101 the following factors: the name of the scholarship program; the number and amount of
102 scholarships; period of time covered by the scholarship; the eligibility and application criteria;
103 academic and award criteria; source of scholarship funds; the manner in which scholarships are
104 paid; and that such funds are collected and applied in accordance with section 5002(1)(b-1) of
105 the Education Law; provisions for awarding scholarships to alternate candidates; standards for
106 continued scholarship eligibility; and the names and affiliation of all award committee
107 members. Each school shall assure that all scholarship recipients meet department-mandated
108 entrance requirements.

SECTION 126.3. ADVERTISING

109 126.3(a) Advertising conducted by or on behalf of a school shall not be false, misleading,
110 deceptive or fraudulent and shall be consistent with the provisions of article 22-A of the
111 General Business Law.

112 126.3(b) Statements and representations in all forms of advertising and promotion shall be
113 fairly and clearly presented, accurate, and restricted to facts which can be substantiated. All
114 forms of advertising and promotion by or on behalf of a school, shall identify the school for
115 which the advertising or promotion was undertaken, and shall be available for inspection at the
116 school by the commissioner, in accordance with section 126.11(a)(3) of this Part.

117 126.3(c) Endorsements, commendations or recommendations from any person or persons, firm,
118 corporation or other organization shall be used only with the identification and qualifications of
119 such person, persons, firm, corporation or other organization (*e.g.*, graduate, employer) and
120 with their written consent. Such consent shall be on file with the school, and shall be available
121 for examination. No consideration for any such endorsement, commendation or
122 recommendation shall be offered or paid by a school. The date of any such endorsement,
123 commendation or recommendation shall be included in the advertising matter unless it is less
124 than two years old.

125 126.3(d) Illustrations in all advertising matter shall relate solely to the school or shall be clearly
126 designated otherwise.

127 126.3(e) Services or articles produced in the process of instruction shall not be advertised for
128 sale in connection with the school unless such practice is approved by the commissioner.

129 126.3(f) Pursuant to section 5002(7)(b) of the Education Law, beginning on January 1, 2000 all
130 schools shall include in their advertising, promotional material or letterhead the phrase,
131 "Licensed by the State of New York, New York State Education Department". Such statement
132 shall also be accompanied by the symbol issued by the commissioner to indicate such status.

SECTION 126.4. STANDARDS AND METHODS OF INSTRUCTION

133 126.4(a) Schools shall conduct only those curricula or courses which have been approved by
134 the commissioner, and shall conduct such curricula or courses in accordance with section
135 5002(4) and (5) of the Education Law and this Part; except for those programs which have
136 been deemed exempt from the requirements of article 101 of the Education Law and this Part,
137 as prescribed in section 5001(2-b) of the Education Law. The commissioner shall approve the
138 appropriate student-to-teacher ratio for each course or curricula. Schools shall ensure that
139 student enrollment on the attendance register does not exceed the approved ratio after the first
140 week of instruction. Pursuant to section 5002(4)(c) of the Education Law, for all courses or
141 curricula reviewed by an expert or outside consultant not employed by the department, the
142 department shall retain the expert or outside consultant and the school shall bear the expense of
143 the expert or outside consultant, in addition to the curriculum or course application fee set forth
144 in section 5002(4)(a) of the Education Law. The cost of a review by an expert or outside
145 consultant not employed by the department shall be set according to the following schedule:

146 126.4(a)(1) for courses or curricula up to 100 clock hours, the reimbursement shall be \$200;

147 126.4(a)(2) for courses or curricula between 101 and 400 clock hours, the reimbursement
148 shall be \$300;

149 126.4(a)(3) for courses or curricula between 401 and 700 clock hours, the reimbursement
150 shall be \$400;

151 126.4(a)(4) for courses or curricula between 701 and 1000 clock hours, the reimbursement
152 shall be \$500;

153 126.4(a)(5) for courses or curricula between 1001 and 1400 clock hours, the reimbursement
154 shall be \$600;

155 126.4(a)(6) for courses or curricula between 1401 and 1800 clock hours, the reimbursement
156 shall be \$700;

157 126.4(a)(7) for courses or curricula above 1800 clock hours, the reimbursement shall be
158 \$800.

159 126.4(b) The director of the school shall cause to be prepared data concerning curricula or
160 courses of study and methods of instruction in sufficient detail to clearly indicate the nature of
161 the proposed instruction. He shall submit such data to the commissioner in such form as said
162 commissioner shall direct, accompanied by a request for approval.

163 126.4(c) Data submitted for approval of curricula or courses or revisions thereof given on
164 school premises shall include the following information:

165 126.4(c)(1) the name and the educational or occupational objective of the curriculum or
166 course;

167 126.4(c)(2) the minimum entrance requirements, and complete information with respect to
168 any aptitude tests administered to prospective students in connection therewith, including
169 wherever possible a nationally recognized test appropriate to the course of instruction;

170 126.4(c)(3) the minimum and/or maximum instructional hours and the allocation of time to
171 each portion of the curriculum or course;

172 126.4(c)(4) the daily and weekly schedule of instruction;

173 126.4(c)(5) a description of the method of instruction, indicating the number of instructional
174 hours to be devoted to classroom activities and shop or laboratory practice, and where
175 appropriate, practice and experience components outside the school premises, and the
176 relation between the classroom and practice phases of the curriculum or course;

177 126.4(c)(6) the tuition and other charges and the method of payment thereof;

178 126.4(c)(7) an itemized list of equipment;

179 126.4(c)(8) an itemized list of the small tools, books and supplies loaned or furnished to
180 students;

181 126.4(c)(9) a detailed floor plan of the premises occupied by the school, indicating all
182 facilities;

183 126.4(c)(10) the language in which instruction is to be provided and an appropriate
184 justification required by the commissioner for offering instruction in a language other than
185 English;

186 126.4(c)(11) the manner in which the course or curriculum is apportioned into quarters,
187 semesters or terms pursuant section 126.7 of this Part; and

188 126.4(c)(12) for applications for approval of curriculum certified by a nationally recognized
189 vendor pursuant to section 5002(4)(e) of the Education Law, the school shall provide, in
190 addition to the information prescribed in paragraphs (1) through (11) of this subdivision, an
191 identification of the vendor and the vendor-maintained location that shall enable the
192 commissioner to determine that the curriculum proposed by the school is in its original
193 format.

194 126.4(d) Data submitted for approval of curricula or courses of study or revisions thereof given
195 by correspondence or home study or by internet transmission shall include the following
196 information:

197 126.4(d)(1) the name and the educational or occupational objective of the curriculum or
198 course;

199 126.4(d)(2) the minimum entrance requirements, and complete information with respect to
200 any aptitude tests administered to prospective students in connection therewith;

201 126.4(d)(3) the complete instructional units, in detail, as they are to be furnished to the
202 student, showing the instructional content to be taught, the method or procedure to be
203 followed, and the types of skills or knowledge to be learned;

204 126.4(d)(4) the approximate time necessary for completion of each instructional unit;

205 126.4(d)(5) the method of mailing or transmitting and correcting instructional units and the
206 manner in which remedial instruction is to be given to individual students;

207 126.4(d)(6) the language in which instruction is to be provided and an appropriate
208 justification required by the commissioner for offering instruction in a language other than
209 English; and

210 126.4(d)(7) the manner in which the course or curriculum is apportioned into quarters,
211 semesters or terms pursuant to section 126.7 of this Part.

212 126.4(e) Each school shall establish and maintain attendance policies and regulations,
213 acceptable to and approved by the commissioner, in accordance with the following
214 requirements:

215 126.4(e)(1) An attendance register shall be maintained by the school and be available for
216 inspection by the department for each course or curriculum, as applicable and shall contain
217 the following:

218 126.4(e)(1)(i) the room number, schedule and approved name of the course or
219 curriculum;

220 126.4(e)(1)(ii) the start and completion dates of the course or curriculum;

221 126.4(e)(1)(iii) the time and date of each class, laboratory or session;

222 126.4(e)(1)(iv) a daily record of attendance for each student which shall identify each
223 student as “present,” “absent,” “late” or “make-up;”

224 126.4(e)(1)(v) the name and signature of the instructor for each class, laboratory or
225 session;

226 126.4(e)(1)(vi) verification of the instructor by oath or affirmation of the accuracy of the
227 attendance register;

228 126.4(e)(1)(vii) any leaves of absence;

229 126.4(e)(1)(viii) last date of attendance for any student who drops out or is discontinued;

230 126.4(e)(1)(ix) the marking period and grades for each student for each marking period,
231 unless otherwise approved by the commissioner; and

232 126.4(e)(1)(x) any other information required by the commissioner.

233 126.4(e)(2) A school shall determine the academic standing of each student in accordance
234 with the following:

235 126.4(e)(2)(i) except as provided in subparagraph (iii) of this paragraph, any student who
236 is absent more than 15 percent of the total number of instructional hours offered during
237 each marking period of the student's program, excluding approved leaves of absence
238 pursuant to paragraph (6) of this subdivision, and who has not maintained satisfactory
239 academic progress, shall be dismissed or placed on academic probation. Any student who
240 fails to meet satisfactory academic progress at the end of any marking period, regardless
241 of attendance, shall be dismissed or placed on academic probation in accordance with
242 subparagraph (iii) of this paragraph;

243 126.4(e)(2)(ii) satisfactory academic progress means a cumulative average of 1.5 for the
244 curriculum or course, unless otherwise approved by the commissioner;

245 126.4(e)(2)(iii) a school may, in its discretion, place a student on academic probation for
246 one marking period if the student would otherwise be dismissed pursuant to the
247 requirements set forth in subparagraph (i) of this paragraph. The school shall dismiss any
248 student who at the end of such academic probation fails to raise his or her cumulative
249 average to 1.5 and who fails to maintain attendance for at least 85 percent of the
250 instructional hours offered during the probationary period;

251 126.4(e)(2)(iv) during a student's academic probation, a school shall make available to
252 the student appropriate counseling and remediation; and

253 126.4(e)(2)(v) a student shall achieve a cumulative average of 2.0 to graduate from the
254 program.

255 126.4(e)(3) Each school shall have a written policy concerning tardiness and early dismissal.

256 126.4(e)(4) For purposes of determining the proportion of the time a student was enrolled in
257 a course or curriculum when such student leaves before finishing the entire course or
258 curriculum, the school may regard as attendance such absences and tardiness as may have
259 occurred between the first and last day of attendance.

260 126.4(e)(5) Any make-up session for attendance purposes shall be approved by the licensed
261 school director, and shall consist of instruction in that portion of the course or curriculum
262 which was not received by the student as a result of absences. A record of make-up sessions
263 shall be maintained in the attendance register. Any charge for make-up sessions shall be
264 expressed on the enrollment agreement and in the school's catalog.

265 126.4(e)(6) In the case of a prolonged illness or accident, death in the family, or other special
266 circumstances that make attendance impossible or impractical, a leave of absence may be
267 granted to the student if requested in writing by the student or his designee. The approval of

268 such leaves of absence shall be in writing by the school director. No monetary charges or
269 accumulated absences may be assessed to the student during a leave of absence. When a
270 student returns from an approved leave of absence, the student shall be placed in the
271 instructional program at the point commensurate with the skill level retained by the student at
272 the time of his or her return in accordance with the following:

273 126.4(e)(6)(i) for leaves of absence less than 30 calendar days, the school shall assess the
274 student's retention level either through a counseling session with the student or by
275 employing a written or oral evaluation instrument designed to measure a student's level of
276 retention in the instructional program; or

277 126.4(e)(6)(ii) for leaves of absence 30 calendar days or longer, the school shall assess a
278 student's retention level either through a written or oral evaluation instrument designed to
279 measure a student's level of retention in each course in the curriculum; and

280 126.4(e)(6)(iii) documentation that such evaluation took place pursuant to subparagraphs
281 (i) or (ii) of this paragraph along with the actual evaluation instruments, student results
282 and evidence the student was appropriately placed according to skill level shall be placed
283 in the student's permanent file.

284 126.4(e)(7) Schools may establish attendance requirements permitting less absence and
285 tardiness.

286 126.4(e)(8) School policy and regulations relating to attendance and leaves of absence shall
287 be submitted to the department for approval prior to implementation, and shall be published
288 in the school catalog.

289 126.4(f) Any required orientation to school policies or practices, or a general overview of
290 courses shall not be included in the total instructional hours of a course or curriculum, unless
291 such orientation is necessary for the successful completion of the program, given within the
292 first week of instruction as defined in section 126.7 of this Part and approved by the
293 commissioner.

294 126.4(g) All courses or curricula offered at no cost to a student by a school shall comply with
295 all requirements of this Part.

296 126.4(h) Schools may provide instruction in English as a second language in accordance with
297 the following:

298 126.4(h)(1) all teachers shall be appropriately licensed pursuant to section 126.6(g) of this
299 Part.

300 126.4(h)(2) where an English as a second language component is combined with an
301 occupational education component into one program and the student signs an enrollment
302 agreement for such a program, the following conditions shall be met:

303 126.4(h)(2)(i) prior to initiating the occupational education component the student shall

304 have completed the English as a second language component and shall have attained a
305 score on a reading test, approved by the commissioner, demonstrating sufficient
306 proficiency in reading English as required by the commissioner for such a program;

307 126.4(h)(2)(ii) the English as a second language component shall not exceed 50 percent
308 of the total clock hours for the program;

309 126.4(h)(2)(iii) upon application for approval of such a curriculum, when a school
310 requests permission to accept students at the beginning or basic English as a second
311 language level, the school shall demonstrate that the English as a second language
312 component is designed to provide the student with the necessary reading skills to comply
313 with the provisions of subparagraph (i) of this paragraph; and

314 126.4(h)(2)(iv) the English as a second language component shall be coterminous with a
315 quarter or term as defined in section 5002(3) of the Education Law unless otherwise
316 approved by the commissioner. In all instances, the student's enrollment agreement shall
317 clearly state that if a student fails to pass the reading test as required in subparagraph (i)
318 of this paragraph, then the student may not continue in the program.

319 126.4(i) Notwithstanding any other provisions of this Part, non-occupational courses, as
320 defined in section 126.1(t) of this Part, shall be subject to the following alternate educational
321 and curriculum standards:

322 126.4(i)(1) an application for a non-occupational course shall be submitted in a format
323 prescribed by the commissioner;

324 126.4(i)(2) upon receipt of a completed application, the department shall notify a school
325 within 20 business days as to whether the application is approved;

326 126.4(i)(3) students may be admitted into a non-occupational course based upon a
327 personal interview, except where a specialized skill is needed by the applicant in order to
328 successfully complete the course;

329 126.4(i)(4) teachers of non-occupational courses shall meet the requirements of section
330 126.6 of this Part, except that teachers who provide instruction in non-occupational
331 courses only shall meet the requirements for a special lecturer as set forth in section
332 126.6(m) of this Part;

333 126.4(i)(5) an enrollment agreement for a non-occupational course shall conform to the
334 requirements set forth in section 126.7 of this Part and in addition, shall include the
335 statement: "This course is not intended to provide instruction which will result in the
336 student's acquisition of occupational skills. Placement assistance by the school is not
337 available for this course.";

338 126.4(i)(6) non-occupational courses shall be clearly identified as such within the school
339 catalog and shall include the statement: "Non-occupational courses are not intended to
340 provide instruction which will result in the student's acquisition of occupational skills.";

341 and

342 126.4(i)(7) certificates of completion or diplomas awarded for the completion of a non-
343 occupational course shall include the term “non-occupational” or “personal enrichment”
344 on that certificate or diploma.

SECTION 126.5. EQUIPMENT AND HOUSING

345 126.5(a) A school shall have classrooms, laboratories, shops and other facilities for instruction
346 and administration which, in the judgment of the commissioner, are satisfactory for the proper
347 conduct of the school.

348 126.5(b) The instructional devices, machines, apparatus, supplies and other equipment shall be
349 adapted to the courses of study being offered and adequate for satisfactory instruction, as
350 approved by the commissioner. Any course or curriculum containing a skill component
351 involving the use of machines shall maintain a student-to-machine ratio of one-to-one, unless
352 otherwise approved by the commissioner.

353 126.5(c) In addition to adequate and satisfactory classrooms, laboratories and shops, a private
354 school shall, as appropriate, provide a library, administrative and supervisory offices,
355 restrooms and toilet facilities and a checkroom and/or lockers for student use. Such rooms or
356 space shall be properly equipped and large enough to meet the needs of students and faculty.

357 126.5(d) The buildings, rooms or space in which staff and students are housed for any purpose
358 while attending a school, and all facilities and equipment therein, shall meet the standards for
359 school purposes of local fire, health and building authorities.

360 126.5(e) Schools shall have their facilities approved by the commissioner upon initial
361 application for a license and every renewal of a license thereafter, sale or transfer of a school
362 license, relocation of a school, renovation or alteration of a school's facilities or reorganization
363 of instructional space or equipment.

SECTION 126.6.
QUALIFICATIONS OF TEACHING AND MANAGEMENT PERSONNEL

364 126.6(a) Each applicant shall submit, in a format specified by the commissioner, such data
365 concerning the education, training, experience and other qualifications, including supporting
366 documentation, of the administrative, supervisory and instructional staff of the school as the
367 commissioner may require. Upon submission of an application for a director, the owner shall
368 attest to the applicant's ability to comply with the provisions of this section. Pursuant to section
369 5002(6) of the Education Law, all applications for teachers and directors shall be mailed to the
370 commissioner four days prior to employment at the school, and must be completed, with all
371 supporting materials and fees required for evaluation of the file, within 20 days thereafter.
372 However, the commissioner, for good cause shown, may extend the time within which to
373 complete the application. When a complete application is made, the commissioner shall act
374 upon such application within 30 days. If no written denial is made within 30 days, the
375 application shall be deemed to be approved until the commissioner acts upon it or until the end
376 of the term or semester, whichever occurs first. If a written denial is made after the 30-day
377 period, the commissioner may allow the applicant to teach at the school for the remainder of
378 the term or semester if the commissioner determines that the removal of the teacher would not
379 be in the best interest of students. If a teacher or director application, submitted to the
380 department and postmarked less than four days prior to the employment of such individual, is
381 evaluated and it is subsequently determined that the applicant is not qualified pursuant to the
382 provisions of this section, the school may be subject to disciplinary action pursuant to section
383 5003 of the Education Law, if such conduct constitutes a pattern of abuse. As used in this
384 subdivision, a pattern of abuse is defined as violations which occur three or more times in a 12-
385 month period.

386 126.6(b) The commissioner shall issue the following types of licenses and permits:

387 126.6(b)(1) Director's license or permit--issued to qualified directors.

388 126.6(b)(2) Teacher's license or permit--issued to qualified instructors or supervisors.

389 126.6(c) Directors' licenses shall be valid only for the school for which they are issued. No
390 individual may be employed as a director at more than one school without the approval of the
391 commissioner.

392 126.6(c)(1) Teachers' permits or licenses, issued on or after December 15, 2012, shall be
393 valid at any licensed private career school only for the curricula, courses/content areas or
394 occupations listed on the license.

395 126.6(c)(2) Teachers' permits or licenses issued prior to December 15, 2012, including
396 licenses for teaching specific occupational subjects or specific subjects certified by a
397 nationally recognized vendor, or the licenses approved pursuant to subdivision (k) of this
398 section shall be valid only for the school or schools, curricula, courses/content areas or
399 occupation indicated on the license, except that a teacher's license issued to a teacher in a
400 registered business school/computer training facility on or after January 1, 1987 shall be
401 valid at all licensed private career schools for the courses, curricula/content areas or

402 occupation indicated on the license. Teachers holding valid private school teacher licenses
403 valid at only one school location shall have them replaced, at no cost, with licenses valid at
404 any licensed school in the same subject or subjects and with the same expiration date as was
405 listed on the previous teaching license.

406 126.6(d) Each licensed private career school shall employ a director who shall be responsible
407 for all activities of the school or done in the name of the school. A director shall meet the
408 requirements of this subdivision to be licensed by the department and, pursuant to section
409 5004(4-a) of the Education Law, may apply for a private school agent's certificate on forms
410 prescribed by the commissioner without incurring the agent application fees.

411 126.6(d)(1) Preparation. Directors shall meet the preparation requirements for licensure
412 prescribed in subparagraph (i) or (ii) of this paragraph, as applicable, and also the preparation
413 requirement in subparagraph (iii) of this paragraph.

414 126.6(d)(1)(i) Directors of licensed private career schools shall meet the following
415 preparation requirements:

416 126.6(d)(1)(i)(a) have completed an approved four-year high school program or hold
417 a high school equivalency diploma; and

418 126.6(d)(1)(i)(b) have at least five years of acceptable practical experience in one or
419 more of the courses taught in the school, or five years of acceptable teaching
420 experience in one or more of the courses taught in the school, or five years of
421 acceptable administrative or supervisory experience, or a combination of such
422 acceptable experience amounting to at least five years; or

423 126.6(d)(1)(i)(c) have received an appropriate baccalaureate or higher degree upon
424 completion of an approved college program in the field of business administration,
425 educational administration, or public administration.

426 126.6(d)(1)(ii) In addition to meeting the preparation requirements of subparagraph (i) of
427 this paragraph all directors shall have completed an approved 15 clock-hour course
428 offered by the department in private school administration prior to receiving a full
429 director license.

430 126.6(d)(1)(iii) Upon a finding by the commissioner that an applicant for licensure
431 possesses education, training and/or experience that is substantially equivalent to a
432 preparation requirement of this paragraph, the commissioner may accept such education,
433 training and/or experience in lieu of meeting the preparation requirement of this
434 paragraph.

435 126.6(d)(2) Directors shall be of good moral character, as determined by the commissioner.

436 126.6(d)(3) Directors shall have the administrative and educational competency to operate a
437 school, as determined by the commissioner. The factors considered by the commissioner in
438 evaluating administrative and educational competency shall include, but not be limited to,

439 patterns of violations of the duties and responsibilities of a director relating to the
440 administration of a school, as set forth in this Part and article 101 of the Education Law.

441 126.6(d)(4) Temporary permit requirements. Individuals who meet the preparation
442 requirements of subparagraph (1)(i) of this subdivision may be issued a temporary permit,
443 valid for one year, during which the requirement of subparagraph (1)(ii) of this subdivision
444 shall be met. A full director's license shall not be issued until the candidate meets all
445 applicable preparation requirements, prescribed in paragraph (1) of this subdivision.

446 126.6(d)(5) Duration of license.

447 126.6(d)(5)(i) A full director's license issued on or after May 25, 2000 shall be valid for
448 the same period for which the school is licensed or registered and a renewal application
449 for such license shall be submitted with the renewal application for the employing school.

450 126.6(d)(5)(ii) A permanent director's license issued prior to May 25, 2000, shall
451 continue to be valid without renewal until such time as the director leaves the school and
452 location for which the license is valid.

453 126.6(e) All teachers who have been issued a license or permit pursuant to the requirements of
454 this section shall successfully complete an orientation to classroom management program
455 within four weeks of employment at a licensed private career school, according to the
456 following requirements:

457 126.6(e)(1) The orientation to classroom management program shall be developed by the
458 licensed private school or registered business school/computer training facility and offered to
459 all licensed teachers or teachers holding a permit.

460 126.6(e)(2) The topics for the orientation to classroom management program shall include,
461 but not be limited to, information on adult learning styles, introduction to the syllabus,
462 writing lesson plans, testing, the maintenance of attendance records, grading, discipline and
463 teacher licensing requirements.

464 126.6(e)(3) A one-page checklist in a format prescribed by the commissioner, certifying the
465 teacher's completion of the program, must be provided to the teacher and placed in the
466 teacher's personnel file for review by department staff upon request.

467 126.6(f) All teachers in licensed private career schools shall meet the requirements of this
468 subdivision.

469 126.6(f)(1) Teachers shall meet the following requirements:

470 126.6(f)(1)(i) have completed an approved four-year high school program or hold a valid
471 high school equivalency diploma; and

472 126.6(f)(1)(ii) have the required preparation and training set forth in either clause (a) or
473 (b) of this subparagraph:

474 126.6(f)(1)(ii)(a) at least two years of practical experience acceptable to the
475 commissioner in the subject area or occupation to be taught. Teaching experience
476 will not be accepted in lieu of practical experience; or

477 126.6(f)(1)(ii)(b) for specific business subject areas only:

478 126.6(f)(1)(ii)(b)(1) the candidate shall hold a valid permit:

479 126.6(f)(1)(ii)(b)(1)(i) for a permit in general academic, an applicant shall
480 have been awarded a baccalaureate or equivalent degree from an
481 institution whose programs are registered or recognized by the
482 department;

483 126.6(f)(1)(ii)(b)(1)(ii) for a permit in accounting, office skills, or
484 management and marketing, an applicant shall have been awarded a
485 baccalaureate or equivalent degree and 18 semester hour credits in
486 approved course work appropriate for the instructional area of the permit
487 from an institution whose programs are registered or recognized by the
488 department. Such 18 semester hour credits may be earned in the
489 baccalaureate or equivalent program or may be credits earned in addition
490 to credits earned in such a program;

491 126.6(f)(1)(ii)(b)(1)(iii) for a permit in English for speakers of other
492 languages (ESOL), an applicant shall have been awarded a baccalaureate
493 or equivalent degree from an institution whose programs are registered or
494 recognized by the department; and either:

495 126.6(f)(1)(ii)(b)(1)(iii)(A) shall have successfully completed an
496 approved 30-clock-hour course in teaching English for speakers of
497 other languages (ESOL) from a proprietary school association
498 recognized by the commissioner; or

499 126.6(f)(1)(ii)(b)(1)(iii)(B) shall have been awarded three semester
500 hour credits in teaching ESOL from an institution whose programs are
501 registered or recognized by the department;

502 126.6(f)(1)(ii)(b)(1)(iv) for a permit in computer applications or computer
503 programming, an applicant either:

504 126.6(f)(1)(ii)(b)(1)(iv)(A) shall have been awarded a baccalaureate or
505 equivalent degree and 18 semester hour credits in approved course
506 work appropriate for the instructional area of the permit from an
507 institution whose programs are registered or recognized by the
508 department; provided that such 18 semester hour credits may be earned
509 in the baccalaureate or equivalent program or may be credits earned in
510 addition to credits earned in such a program and that appropriate work

511 experience may be substituted for up to six of the 18 semester hour
512 credits; or

513 126.6(f)(1)(ii)(b)(1)(iv)(B) shall have been awarded an associate
514 degree in computer science from an institution whose programs are
515 registered or recognized by the department and shall have completed
516 two years of appropriate work experience in the instructional area of
517 the permit;

518 126.6(f)(1)(ii)(b)(1)(v) for a permit in hospitality management, an
519 applicant either:

520 126.6(f)(1)(ii)(b)(1)(v)(A) shall have been awarded a baccalaureate in
521 hospitality management from an institution whose programs are
522 registered or recognized by the department; or

523 126.6(f)(1)(ii)(b)(1)(v)(B) shall have been awarded a baccalaureate or
524 equivalent degree in another field and 12 semester hour credits in
525 approved course work appropriate for a permit in hospitality
526 management from an institution whose programs are registered or
527 recognized by the department; provided that such 12 semester hour
528 credits may be earned in the baccalaureate or equivalent program or
529 may be credits earned in addition to credits earned in such a program,
530 and shall have completed four years of appropriate work experience in
531 hospitality management; or

532 126.6(f)(1)(ii)(b)(1)(v)(C) shall have been awarded an associate degree
533 in hospitality management from an institution whose programs are
534 registered or recognized by the department and shall have completed
535 two years of appropriate work experience in hospitality management;

536 126.6(f)(1)(ii)(b)(1)(vi) for a permit in court reporting or paralegal, the
537 applicant shall have been awarded a high school diploma or its equivalent,
538 completed successfully an approved program in the instructional area of
539 the permit, and completed two years of appropriate work experience;

540 126.6(f)(1)(ii)(b)(1)(vii) for a permit for travel and tourism, an applicant
541 either:

542 126.6(f)(1)(ii)(b)(1)(vii)(A) shall have been awarded a high school
543 diploma or its equivalent and shall have completed four years of
544 appropriate work experience in travel and tourism; or

545 126.6(f)(1)(ii)(b)(1)(vii)(B) shall have been awarded an associate
546 degree in travel and tourism from an institution whose programs are
547 registered or recognized by the department and shall have completed
548 two years of appropriate experience in the field of travel and tourism;

549 126.6(f)(1)(ii)(b)(1)(viii) for a permit to teach a specific subject from a
550 curriculum certified by a nationally recognized vendor, an applicant shall
551 hold certification as an instructor by the vendor, in accordance with
552 section 5002(6)(c) of the Education Law;

553 126.6(f)(1)(iii) an exception may be made by the commissioner for an applicant who
554 does not meet the requirements of subparagraph (i) or (ii) of this paragraph, if such
555 applicant possesses qualifications sufficiently unique in the judgment of the
556 commissioner to warrant such exception;

557 126.6(f)(1)(iv) if an occupationally required credential is required for the
558 performance of any occupation other than teaching, the teacher shall also be required
559 to hold such credential;

560 126.6(f)(1)(v) be of good moral character, as determined by the commissioner; and

561 126.6(f)(1)(vi) have the instructional competency to provide the instruction
562 authorized by the license, as determined by the commissioner, based on factors to be
563 considered by the commissioner which shall include, but shall not be limited to,
564 patterns of violations of the requirements of this Part or article 101 of the Education
565 Law, relating to the instruction of students.

566 126.6(f)(2) Teachers who meet the requirements of paragraph (1) of this subdivision and
567 apply for a permit or license may be issued:

568 126.6(f)(2)(i) a temporary teacher's permit valid for one year, during which time a 30-
569 clock-hour approved course in general teaching methods from a proprietary school
570 association recognized by the commissioner or a three-semester-credit-hour course in
571 general teaching methods from an institution whose programs are registered or
572 recognized by the department shall be completed;

573 126.6(f)(2)(ii) a provisional teacher's license valid for a period of three years after
574 completion of the requirements set forth in subparagraph (i) of this paragraph;

575 126.6(f)(2)(iii) a full teacher's license after completion of two additional 30-clock-hour
576 approved professional education courses from a proprietary school association
577 recognized by the commissioner or three additional semester credit hours in appropriate
578 professional education from an institution whose programs are registered or recognized
579 by the department during the period of validity of the provisional license. Such full
580 teacher's license shall be valid for a period of four years, and a teacher shall apply for the
581 renewal of such teacher's license every four years.

582 126.6(f)(3) A permanent teacher's license issued prior to May 25, 2000, shall continue to be
583 valid without renewal until such time as the teacher leaves the school and location for which
584 the license is valid.

585 126.6(f)(4) Provisional licenses. Applicants for a provisional license shall meet the
586 appropriate requirements set forth in subparagraph (1) of this subdivision and shall also meet
587 the following requirements:

588 126.6(f)(4)(i) For a provisional license for all instructional areas identified in paragraph
589 (1) of this subdivision with the exception of English for speakers of other languages
590 (ESOL), an applicant shall have successfully completed either three semester credit hours
591 of study in approved course work in general teaching methods from an institution whose
592 programs are registered or recognized by the department, or an approved 30-clock-hour
593 course in general teaching methods from a proprietary school association recognized by
594 the commissioner.

595 126.6(f)(4)(ii) For a provisional license for English for speakers of other languages
596 (ESOL), an applicant shall have successfully completed either three semester credit hours
597 of study in approved course work in general teaching methods from an institution whose
598 programs are registered or recognized by the department, or an approved 30-clock-hour
599 program in general teaching methods or methods of teaching English for speakers of
600 other languages (ESOL) from a proprietary school association recognized by the
601 commissioner.

602 126.6(f)(5) Full licenses. Applicants for a full license shall meet the appropriate requirements
603 set forth in subparagraphs (i) and (ii) of this paragraph, including any required coursework.
604 Applicants shall also complete the following:

605 126.6(f)(5)(i) For a full license for all instructional areas with the exception of English
606 for speakers of other languages (ESOL), applicants shall have successfully completed
607 either:

608 126.6(f)(5)(i)(a) an additional three semester credit hours of appropriate study in
609 professional education from an institution whose programs are registered or
610 recognized by the department; or

611 126.6(f)(5)(i)(b) an approved 60-clock-hour program(s) in professional education
612 from a proprietary school professional association recognized by the
613 commissioner.

614 126.6(f)(5)(ii) For a full license to teach English for speakers of other languages (ESOL),
615 an applicant shall have successfully completed:

616 126.6(f)(5)(ii)(a) coursework in methods of teaching ESOL totaling 60 clock hours
617 from a proprietary school association recognized by the commissioner or three
618 semester credits from a program registered or recognized by the department; and

619 126.6(f)(5)(ii)(b) coursework in general teaching methods totaling 30 clock hours
620 from a proprietary school association recognized by the commissioner or three
621 semester credits from a program registered or recognized by the department.

622 126.6(g) Notwithstanding the provisions of subdivision (f) of this section, instructors and/or
623 examiners in home study, internet or correspondence schools must have appropriate education
624 and experience qualifications acceptable to the commissioner to meet the requirements for a
625 license.

626 126.6(h) A \$100 nonrefundable application fee in the form of a check or money order payable
627 to the State Education Department shall accompany all applications for teachers' permits and
628 licenses, directors' permits and licenses, renewals thereof, and amendments of temporary
629 permits and licenses. Applications for licenses issued to teachers may be submitted by the
630 applicants or the directors of the schools.

631 126.6(i) Upon a finding by the commissioner that an applicant possesses sufficiently unique
632 and exceptional training and/or experience that are the substantial equivalent of the preparation
633 and experience requirements of this section, a variance may be granted from any such
634 requirements established in this section.

635 126.6(j) All teachers or directors licensed pursuant to this section who hold a permit or a
636 provisional license shall submit an application for the next level of licensure at least 30 days
637 prior to the expiration of the existing permit or license. All full license holders shall submit
638 appropriate license renewal applications at least 90 days prior to the expiration of the existing
639 license.

640 126.6(k) An applicant for licensure pursuant to the requirements of subdivision (f) of this
641 section shall be exempt from the required general teaching methods course and the professional
642 education courses, if the applicant meets one of the following criteria:

643 126.6(k)(1) possesses a degree in doctor of law (J.D.), doctor of medicine (M.D.), doctor of
644 philosophy (Ph.D.) or doctor of education (Ed.D); or

645 126.6(k)(2) is identified by the commissioner as a special lecturer for a non-occupational
646 course who is employed by the school as an expert in the field to provide instruction for a
647 limited component of a course or curriculum.

648 126.6(l) Proprietary school professional associations approved by the commissioner to conduct
649 teacher training courses as specified in this section may have such approval rescinded if the
650 courses are not provided as approved including but not limited to the failure to conduct such
651 courses the approved number of times.

652 126.6(m) Substitute teachers. Only a teacher licensed pursuant to this section may act as a
653 substitute teacher in a school under the following conditions:

654 126.6(m)(1) Except as otherwise noted in paragraph (2) of this subdivision, a substitute
655 teacher shall be licensed in the course, curriculum or instructional area for which he or she is
656 providing instruction.

657 126.6(m)(2) A school may utilize the services of a substitute teacher who is licensed but not
658 licensed for the appropriate course, curriculum or instructional area, if such substitute teacher

659 meets the following requirements:

660 126.6(m)(2)(i) the school's director appoints an appropriately licensed teacher
661 employed at the school to serve as a mentor for such substitute teacher, and such
662 mentor meets with the substitute teacher at least one hour each week to review lesson
663 plans, resolve problems, explain school policies and provide the necessary support for
664 the substitute teacher; and

665 126.6(m)(2)(ii) such substitute teaching shall not exceed 10 percent of the total hours
666 of the course or curriculum offering.

667 126.6(n) Vendor demonstrator. In cases where the curricula/courses offered require the
668 assistance of a vendor demonstrator, the need for a demonstrator must be included and
669 approved in the specific course or curriculum approval. Vendor demonstrators are not
670 recognized as teachers, may not assume the routine function of teachers, and can only be used
671 with a licensed teacher present.

SECTION 126.7. ENROLLMENT AGREEMENT AND STUDENT REFUND POLICIES

672 126.7(a) All conditions for enrollment in or completion of a curriculum or course shall be set
673 forth in an enrollment agreement which shall be fully completed, dated and signed by both an
674 authorized agent of the school and the student prior to the time instruction begins. The school
675 shall retain a signed copy of the enrollment agreement and one signed copy shall be delivered
676 to the student at the time of execution. The enrollment agreement may not be transferred or
677 assigned to a third party. Acknowledgment of the receipt of a copy of the enrollment
678 agreement by the student shall be made on the copy retained by the school.

679 126.7(b) The enrollment agreement shall be printed in no less than 10-point type, shall contain
680 no advertising or extraneous material and shall set forth briefly and clearly the following:

681 126.7(b)(1) the name of the school;

682 126.7(b)(2) the title of the curriculum, course of courses as approved;

683 126.7(b)(3) the length of the curriculum, course or courses in instructional hours;

684 126.7(b)(4) the schedule of sessions or hours per week or the number of lessons for home
685 study, internet or correspondence instruction;

686 126.7(b)(5) the name and date of birth and social security number of the student;

687 126.7(b)(6) the amount of the tuition fee and the amount of the application or registration fee
688 set forth separately. Any portion of the application or registration fee that is nonrefundable
689 shall be stated separately and shall be clearly identified as a nonrefundable application or
690 registration fee;

691 126.7(b)(7) the amount of any and all other fees and charges required for completion of the
692 course. Fees and charges, such as student fee for kit, textbooks, tools, equipment and
693 supplies, make-up fees, laboratory fees and deposits, shall be itemized separately and shall
694 not be included in tuition;

695 126.7(b)(8) the total cost of the course of instruction;

696 126.7(b)(9) provision for the method or methods of payment;

697 126.7(b)(10) the conditions of any approved cooperative practical experience outside the
698 school premises;

699 126.7(b)(11) the following statement “while placement service may be provided, it is
700 understood that the school cannot promise or guarantee employment to any student or
701 graduate” or a similar statement acceptable to the commissioner;

702 126.7(b)(12) such reasonable rules, regulations and conditions as the school may desire to set
703 forth in the agreement;

704 126.7(b)(13) the names and certificate numbers of the agents responsible for procuring,
705 soliciting or enrolling the student or enrollee. The enrollment agreement shall contain an
706 appropriate place in which the student shall by signature, confirm the names of such agents;

707 126.7(b)(14) a separately signed acknowledgment by the student that he or she has received
708 the disclosure material, as required by section 5005 of the Education Law; and

709 126.7(b)(15) the refund a school will make in the event a student fails to enter, withdraws, or
710 is discontinued from instruction consistent with the provisions set forth in subdivision 3 of
711 section 5002 of the Education Law and subdivision (d) of this section; or for schools using
712 the correspondence, internet or home study method of instruction, subdivision (c) of this
713 section.

714 126.7(c) Enrollment agreements for curricula and courses offered by schools using the
715 correspondence, internet or home study method of instruction shall meet the requirements of
716 the Personal Property Law, section 412-a.

717 126.7(d) Enrollment agreements shall provide for a reasonable adjustment of tuition and other
718 fees. Except as otherwise provided in subdivision (e) of this section and Education Law,
719 section 5002(3), a refund policy not consistent with the following shall not be approved:

720 126.7(d)(1) Definitions. As used in this subdivision:

721 126.7(d)(1)(i) *Quarter* means up to 14 weeks of instruction.

722 126.7(d)(1)(ii) *Term or semester* means between 15, 16, 17 or 18 weeks of instruction.

723 126.7(d)(1)(iii) Except as otherwise provided in paragraph (2) of this subdivision, a *week*
724 *of instruction* means between 2 and 30 clock hours of instruction within seven
725 consecutive days. Upon approval of the commissioner, a school may exceed such hours
726 provided that: the school has submitted an educational justification for exceeding 30
727 hours per week; and the program provides for one hour off for each student within each
728 day of instruction.

729 126.7(d)(2) If in calculating the weeks of instruction pursuant to subparagraph (1)(iii) of this
730 subdivision, the total number of calendar weeks is six or less, then a week of instruction shall
731 be defined as follows:

732 126.7(d)(2)(i) *the first week of instruction* means 0 to 15 percent of the program's total
733 clock hours;

734 126.7(d)(2)(ii) *the second week of instruction* means 16 to 30 percent of the program's
735 total clock hours;

736 126.7(d)(2)(iii) *the third week of instruction* means 31 to 45 percent of the program's total
737 clock hours;

738 126.7(d)(2)(iv) *the fourth week of instruction* means 46 to 60 percent of the program's
739 total clock hours;

740 126.7(d)(2)(v) *the fifth week of instruction* means 61 to 75 percent of the program's total
741 clock hours;

742 126.7(d)(2)(vi) *the sixth week of instruction* means 76 to 90 percent of the program's total
743 clock hours; and

744 126.7(d)(2)(vii) *the seventh week of instruction* means 91 to 100 percent of the program's
745 total clock hours.

746 126.7(d)(3) A school shall divide all courses or curricula into quarters or terms. In
747 establishing such quarters or terms, the school shall take into account the educational
748 purposes of the program, and to the maximum extent possible, ensure that units of instruction
749 or courses are coterminous with a quarter or term.

750 126.7(d)(4) The student refund policy for the first term or quarter of any program, as set forth
751 in section 5002(3)(b) of the Education Law, shall be clearly stated in the enrollment
752 agreement.

753 126.7(d)(5) For those programs with a second term or quarter, the student refund policy for
754 such second term or quarter shall be the same as the first quarter or term unless the school
755 demonstrates that there were no significant educational changes in the student's educational
756 program at the time of a student's termination, in which case the student refund policy for the
757 second term or quarter shall be the policy set forth in section 5002(3)(c)(1) of the Education
758 Law.

759 126.7(d)(6) For those programs with a third or subsequent term or quarter, the tuition refund
760 policy for such third or subsequent term or quarter shall be the policy set forth in section
761 5002(3)(c)(1) of the Education Law.

762 126.7(d)(7) Fees and charges as described in paragraph (b)(7) of this section, and paid to the
763 school for goods or services which have not been provided by the school and accepted by the
764 student, shall be refunded.

765 126.7(d)(8) Notwithstanding any other provision of this subdivision, an application or
766 registration fee not to exceed 10 percent of the tuition cost of the program or \$100,
767 whichever is less, may be retained by the school, in whole or in part, if the student signs the
768 enrollment agreement, except for schools using the correspondence, internet or home study
769 method of instruction which shall comply with subdivision (c) of this section.

770 126.7(d)(9) In the case of a school in which the instruction is given in residence, a student
771 may cancel the agreement at no penalty, with the exception of the loss of that portion of the
772 application or registration fee which is designated in the agreement as nonrefundable, by
773 notifying the school in writing within seven days after midnight of the day on which the

774 agreement was signed, provided the student has not yet entered into instruction. Before
775 entering into instruction, a student may cancel the agreement after the seven-day period. In
776 such a case, the student will be liable only for the nonrefundable application or registration
777 fee and any books or supplies that have been accepted.

778 126.7(e) Notwithstanding the provisions of subdivision (d) of this section, a school accredited
779 by a nationally recognized accrediting agency may use the refund policy of such agency only
780 to the extent that such policy offers the student less tuition liability than the provisions of
781 section 5002(3) of the Education Law and is approved by the commissioner. A school required
782 by Federal law to follow a predetermined student refund policy may do so only to the extent
783 that such student refund policy offers the student less tuition liability than the provisions of
784 section 5002(3) of the Education Law and is approved by the commissioner.

785 126.7(f) If a transcript is to be withheld until all fees and charges have been met, the
786 enrollment agreement must so state.

787 126.7(g) Any refunds due to students who cancel, withdraw or are discontinued shall be made
788 within 45 days of such action pursuant to section 5002(3)(g) of the Education Law.

SECTION 126.8. RESOURCES

789 126.8(a) The owners, or chief administrative officer of a private career school shall submit to
790 the commissioner such evidence as he may require to determine the adequacy of resources
791 beyond all indebtedness available for instruction purposes and to ensure financial viability of
792 the school to meet its obligations to all enrolled students as defined in their enrollment
793 agreements. Schools failing, in the judgment of the commissioner, to maintain such adequacy
794 of resources may be subject to suspension or revocation of the school's license, or the
795 Commissioner may require the cessation of student enrollment, pursuant to section 5001(6) of
796 the Education Law.

797 126.8(b) Financial reports.

798 126.8(b)(1) The initial application for licensure of a school organized as or owned by a
799 corporation or partnership shall be accompanied by the following financial reports:

800 126.8(b)(1)(i) a balance sheet of the corporate entity or partnership with a certification of
801 accuracy signed by the individual shareholders of the corporation or partners, and dated
802 not more than 30 days prior to the date of the license application;

803 126.8(b)(1)(ii) a certificate of incorporation for the corporate entity or a partnership
804 agreement for the partnership;

805 126.8(b)(1)(iii) a statement indicating the location and type of all bank accounts held by
806 the corporate owner or partners in their official capacity;

807 126.8(b)(1)(iv) a projected operating statement including projected profits and losses for
808 the school for a 12-month period;

809 126.8(b)(1)(v) such other information as the commissioner may require.

810 126.8(b)(2) The initial application for licensure of all other schools shall be accompanied by
811 a financial report prescribed by the commissioner.

812 126.8(b)(3) Pursuant to section 5001(4)(e) of the Education Law, schools shall be required to
813 submit to the commissioner an annual financial statement and shall meet the following
814 requirements with respect to the submission of such annual financial statement:

815 126.8(b)(3)(i) Any school which received \$500,000 or more in gross tuition or whose
816 combined state and federal student financial aid is \$100,000 or more in a school fiscal
817 year shall submit an audited financial statement to the commissioner for that fiscal year.

818 126.8(b)(3)(ii) Any school which received less than \$500,000 and less than \$100,000 in
819 combined Federal and State student financial aid in a school fiscal year shall submit
820 either an unaudited reviewed financial statement in a format prescribed by the
821 commissioner or an audited financial statement to the commissioner for that fiscal year
822 provided that a reviewed financial statement cannot be submitted for two consecutive

823 fiscal years. An audited financial statement must be filed for the year following the fiscal
824 year for which a reviewed financial statement was filed.

SECTION 126.9. CATALOGS

825 126.9(a) Each licensed private career school shall publish a catalog or bulletin, which shall be
826 furnished to each prospective or enrolled student, which shall include the following:

827 126.9(a)(1) identifying data, such as volume number and date of publication;

828 126.9(a)(2) names of the school and its governing body, officials and faculty, and other
829 instructional personnel and their qualifications;

830 126.9(a)(3) a calendar of the school showing legal holidays, beginning and ending dates of
831 each quarter, term, or semester, and other important dates;

832 126.9(a)(4) school policy and regulations on enrollment with respect to enrollment dates and
833 specific entrance requirements for each course;

834 126.9(a)(5) school policy and regulations relative to leaves of absence, class cuts, makeup
835 work, tardiness and interruptions for unsatisfactory attendance;

836 126.9(a)(6) school policy and regulations relative to standards of progress required of the
837 student by the school. Such policy shall define the grading system of the school, the marking
838 periods used at the school, the minimum grades considered satisfactory, conditions for
839 interruption for unsatisfactory grades or progress; and shall describe the probationary period,
840 if any, allowed by the school, conditions for reentrance for those students dismissed for
841 unsatisfactory progress, and the student progress records kept by the school and furnished to
842 the student. Such standards of progress shall conform with the requirement set forth in
843 section 126.4 of this Part;

844 126.9(a)(7) school policy and regulations relating to student conduct and conditions for
845 dismissal for unsatisfactory conduct;

846 126.9(a)(8) a detailed schedule of fees or charges for registration, tuition, books, supplies,
847 tools, student activities, laboratory use, rentals, deposits, uniforms, equipment, taxes and all
848 other charges associated with the program;

849 126.9(a)(9) school policy and regulations relative to the refund of the unused portion of
850 tuition, fees and other charges in the event the student does not enter the course, or withdraws
851 or is discontinued. Catalogs shall contain the following statement “the failure of a student to
852 immediately notify the school director in writing of the student's intent to withdraw may
853 delay a refund of tuition to the student pursuant to section 5002(3) of the Education Law”;

854 126.9(a)(10) a description of the available space, facilities and equipment including any
855 special facilities and services available to students with disabilities or handicapping
856 conditions;

857 126.9(a)(11) a description of each course or curriculum including program objectives, the
858 length of the total program and, if applicable, the length and description of the individual

859 courses within the curriculum;

860 126.9(a)(12) school policy and regulations relative to granting credit for previous educational
861 training;

862 126.9(a)(13) financial assistance information to be disseminated to enrolled and prospective
863 students, including:

864 126.9(a)(13)(i) a description of all State, Federal and school financial aid programs
865 including scholarship or grant programs offered by the school. Such description shall also
866 include the procedures for the preparation of forms to apply for such aid, student
867 eligibility requirements, and criteria for selecting recipients and determining the amount
868 of a student's award. Standard current descriptions of State and Federal financial
869 assistance programs will be provided by the Education Department in cooperation with
870 the Higher Education Services Corporation to the schools subject to the provisions of this
871 Part. Such descriptions, or other equivalent descriptions providing the required
872 information, along with current procedures and definitions related to emancipated student
873 status, shall be provided by the schools to enrolled and prospective students. Where
874 summary information is provided, a school office where detailed information can be
875 obtained shall be identified;

876 126.9(a)(13)(ii) a statement of the rights and responsibilities of students receiving
877 financial aid under the programs listed above. This information shall include:

878 126.9(a)(13)(ii)(a) criteria for continued eligibility for each program, including the
879 financial conditions which must be met;

880 126.9(a)(13)(ii)(b) criteria for determining that a student is in good standing and
881 maintaining satisfactory progress in his course of study, and the criteria by which a
882 student who has failed to maintain satisfactory progress or good standing may
883 reestablish his or her eligibility for aid;

884 126.9(a)(13)(ii)(c) the means by which payment of awards will be made to students,
885 and the frequency of such payment;

886 126.9(a)(13)(ii)(d) the terms, and expected schedules, of repayment of any loan
887 received by a student as a part of the student's financial aid; and

888 126.9(a)(13)(ii)(e) the general conditions and terms of any employment provided to a
889 student as part of the student's financial aid;

890 126.9(a)(13)(iii) the designated employee or group of employees, by title, who are
891 available to assist students in obtaining the information specified above; and

892 126.9(a)(14) data regarding student completion and job placement as set forth in subdivision
893 (f) of section 126.10 of this Part for the two most recent reporting periods. Such reporting
894 periods shall be defined by the commissioner;

895 126.9(a)(15) the pass rate of the school's graduates for any license or certificate examination
896 required by the State for employment in a specific vocational, trade or career field for which
897 the school provides training programs. Such information shall be for a reporting period
898 defined by the commissioner;

899 126.9(a)(16) the names of associations, agencies or governmental bodies which accredit,
900 approve or license the school;

901 126.9(a)(17) a description of the complaint procedures pursuant to section 5003 of the
902 Education Law;

903 126.9(a)(18) a description of the process for obtaining a tuition refund from the tuition
904 reimbursement fund pursuant to section 5007 of the Education Law;

905 126.9(a)(19) a weekly tuition liability chart for each program that indicates the amount of
906 refund due the student in the event of withdrawal; and

907 126.9(a)(20) such other information as the commissioner may require.

908 126.9(b) Each school catalog or bulletin shall be approved by the commissioner prior to its use,
909 except as provided in section 5002(5)(f) of the Education Law.

SECTION 126.10. SCHOOL LICENSE; LICENSING PROCEDURE

910 126.10(a) Every applicant shall submit an application for licensure of a private career school
911 upon forms provided by the commissioner, together with such other information as the
912 commissioner may require, including applications for approval of curricula or courses of study,
913 quarters or facilities, required personnel licenses, and documentation of ownership and
914 adequacy of resources. The application shall be accompanied by the statutory fee. In
915 accordance with section 5001(4) of the Education Law, the applicant shall receive a written
916 approval or denial, together with the reasons for a denial of such application.

917 126.10(b) An application for renewal of any license shall be submitted at least 120 days prior
918 to the expiration date of the current authorization, on a form prescribed by the commissioner
919 and accompanied by the statutory fee; annual financial reports on forms prescribed by the
920 commissioner; and such other information as the commissioner may require. When complete
921 and timely application for renewal of any license has been made, the school shall receive a
922 written approval or denial, together with the reasons for denial of renewal, from the
923 commissioner no less than 30 days prior to the date such license expires.

924 126.10(c) Pursuant to section 5001(7) of the Education Law, no license granted under this Part
925 shall be transferrable or assignable without the approval of the commissioner. Upon transfer or
926 assignment of any interest totaling 25 percent or more, whether direct or indirect, in the total
927 equity or assets of a school shall be deemed a new school required to submit a new school
928 application and obtain a new license pursuant to the requirements of this Part. However, upon
929 such a substantial change in interest, the previous school license shall remain in effect until the
930 new license is issued or denied or the previous license expires or is revoked, whichever comes
931 first.

932 126.10(d) Each school shall display, near the entrance to the school, the license which has been
933 issued to it. Such authorization shall be displayed only during the period of its validity.

934 126.10(e) A school shall be subject to an annual assessment based on the school's gross tuition
935 from the previous year, in accordance with the requirements of sections 5001(9) and 5007(10)
936 of the Education Law. For a school in operation in the year prior to the issuance of its license,
937 such assessment shall begin in its initial year of licensure, based on the school's gross tuition
938 from such previous year, in accordance with the requirements of sections 5001(9) and
939 5007(10) of the Education Law.

940 126.10(f) Each school shall submit annual statistical reports on forms prescribed by the
941 commissioner. Such statistical reports shall be certified by the owner that they are true and
942 accurate, in a manner established by the commissioner. The commissioner may require audited
943 statistical reports upon a determination that a school has provided false or inaccurate statistical
944 reports. Statistical reports shall be submitted annually for a reporting period established by the
945 commissioner and shall include the following information:

946 126.10(f)(1) number of applicants, by program of instruction, who were accepted for
947 enrollment during the reporting period;

948 126.10(f)(2) number of applicants, by program of instruction, who applied for, but were
949 denied, enrollment because they failed to satisfy the entrance requirements;

950 126.10(f)(3) number of full-time and part-time students, by program of instruction, enrolled
951 at the beginning of the reporting period;

952 126.10(f)(4) number of full-time and part-time students, by program of instruction, who
953 enrolled during the reporting period;

954 126.10(f)(5) number of full-time and part-time students, by program of instruction, who were
955 still enrolled at the end of the reporting period;

956 126.10(f)(6) number of full-time and part-time students, by program of instruction, who
957 graduated during the reporting period;

958 126.10(f)(7) number of full-time and part-time students, by program of instruction, who
959 withdrew without completing the program of instruction during the reporting period;

960 126.10(f)(8) number of full-time and part-time students, by program of instruction, who
961 received financial assistance from Federal and/or State programs during the reporting period;
962 and

963 126.10(f)(9) the employment or educational status, by program, of students graduating during
964 the reporting period.

965 126.10(g) Schools conducted for profit which provide instruction in English as a second
966 language or preparation for the high school equivalency examinations to out-of-school youth or
967 adults which are required to be licensed under section 5001 of the Education Law, pursuant to
968 chapter 887 of the Laws of 1990, shall comply with the provisions of this Part, article 101 of
969 the Education Law and all other applicable laws and regulations, in a time frame established by
970 the commissioner. Such schools in operation prior to September 1, 1990 may be granted a
971 variance from any provision of this Part relating to an initial or renewal application for
972 licensure, if in the judgment of the commissioner, the educational quality of the program or
973 financial viability of the school will not be impaired.

974 126.10(h) Alternate licensing procedures for correspondence, internet or home study schools.
975 Pursuant to section 5001(4)(f) of the Education Law, correspondence, internet or home study
976 schools in which all approved programs and courses are under 300 hours shall be subject to all
977 of the requirements of article 101 of Education Law and this Part, except that they shall be
978 exempt from the following provisions:

979 126.10(h)(1) paragraphs (8) and (9) of subdivision (f) of this section relating to the reporting
980 of financial assistance and placement information;

981 126.10(h)(2) section 5002(1)(c)(1) of the Education Law relating to the passing of an
982 entrance examination, provided that the commissioner determines that such action will not
983 impair a student's ability to successfully complete the program;

984 126.10(h)(3) section 5002(1)(c)(2) of the Education Law relating to the required counseling
985 plan for schools admitting students who do not possess a high school diploma or its
986 equivalent, provided that the commissioner determines that such action will not impair a
987 student's ability to successfully complete the program;

988 126.10(h)(4) section 126.4(a) of this Part relating to student-to-teacher ratio;

989 126.10(h)(5) section 126.4(e) of this Part relating to attendance requirements;

990 126.10(h)(6) section 126.5 of this Part relating to equipment and housing;

991 126.10(h)(7) section 126.7 relating to enrollment agreements with the exception of section
992 126.7(c) relating to refund policies for correspondence schools;

993 126.10(h)(8) section 126.9(a)(13) of this Part relating to financial information in a school's
994 catalog;

995 126.10(h)(9) placement data as required in section 126.9(a)(14) of this Part for a school's
996 catalog;

997 126.10(h)(10) section 126.9(a)(10) of this Part relating to facilities and equipment
998 information in a school's catalog;

999 126.10(h)(11) section 5005(a)(7) of the Education Law relating to a description of facilities
1000 and equipment in the student disclosure material; and

1001 126.10(h)(12) section 5005(c) of the Education Law relating to a description of financial
1002 information in the student's disclosure material.

1003 126.10(i) Alternate licensing procedures for schools exempt from licensure pursuant to
1004 subdivision (2) of section 5001 of the Education Law which elect to be licensed.

1005 126.10(i)(1) Exempt schools operated, licensed, regulated, approved by or contracting with a
1006 governmental agency or authority, which elect to be licensed.

1007 126.10(i)(1)(i) Exempt schools operated, licensed, regulated, approved by or contracting
1008 with a governmental agency or authority, which elect to be licensed, shall meet all of the
1009 requirements of article 101 of the Education Law and this Part, except that such schools
1010 may meet the requirement for a certificate of occupancy by meeting the requirement in
1011 paragraph (3) of this subdivision and except that such school shall be subject to an
1012 alternate requirement established by the governmental agency or authority, provided that
1013 the commissioner determines that such requirement is equivalent to a requirement
1014 established in one or more of the following provisions:

1015 126.10(i)(1)(i)(a) subdivisions (4) and (5) of section 5002 of the Education Law and
1016 section 126.4(a)-(d) and (f)-(g) of this Part relating to curriculum approval and

1017 reapproval;

1018 126.10(i)(1)(i)(b) subdivision (6) of section 5002 of the Education Law and section
1019 126.6 of this Part relating to teacher and director licensing;

1020 126.10(i)(1)(i)(c) section 5004 of the Education Law and section 126.12 of this Part
1021 relating to school agents, for only those schools which enroll students solely on the
1022 basis of a contract with an organization or business, which do not solicit enrollment
1023 through communication aimed at the prospective student, and where there is no
1024 tuition liability to the student;

1025 126.10(i)(1)(i)(d) section 126.4(e)(2) of this Part relating to academic standards of
1026 progress; and

1027 126.10(i)(1)(i)(e) section 126.11 of this Part relating to school and student records.

1028 126.10(i)(1)(ii) The commissioner shall consult with the governmental agency or
1029 authority which operates, licenses, regulates, approves or contracts with such a school
1030 before implementing the provisions of section 5003(6) of the Education Law relating to
1031 civil penalties and administrative action against such school.

1032 126.10(i)(2) Other exempt schools which elect to be licensed. All exempt schools which elect
1033 to be licensed, with the exception of those specified in paragraph (1) of this subdivision, shall
1034 meet all of the requirements of article 101 of the Education Law and this Part, except that
1035 such schools may meet the requirement for a certificate of occupancy by meeting the
1036 requirement in paragraph (3) of this subdivision.

1037 126.10(i)(3) For any exempt school which elects to be licensed pursuant to article 101 of the
1038 Education Law and this Part and is in existence prior to such licensure, a certificate of
1039 occupancy which was in effect at the time of application for licensure shall be acceptable to
1040 the commissioner, provided that the governmental authority issuing such certificate of
1041 occupancy has determined that the certificate of occupancy is valid as of that date.

1042 126.10(j) Alternate licensing requirements for nonpublicly funded ESL schools.

1043 126.10(j)(1) General provisions.

1044 126.10(j)(1)(i) Nonpublicly funded ESL schools shall be exempt from the requirements
1045 of this Part and article 101 of the Education Law, except as provided in this subdivision.

1046 126.10(j)(1)(ii) Schools that meet the requirements of this subdivision shall receive initial
1047 certification for a two-year period and renewal certification for a four-year period and
1048 shall be listed in the *New York State English as a Second Language School Registry*.

1049 126.10(j)(1)(iii) Schools shall be subject to unscheduled visits by the commissioner or the
1050 commissioner's designee to ensure the school's compliance with the requirements of this
1051 subdivision.

1052 126.10(j)(1)(iv) Upon request by the department, schools shall provide any and all
1053 records necessary to review compliance with the requirements of this subdivision.

1054 126.10(j)(1)(v) The payment of all fees and assessments required by this subdivision
1055 shall be considered a condition of certification.

1056 126.10(j)(1)(vi) The definitions in section 126.1 of this Part shall be applicable to such
1057 schools.

1058 126.10(j)(2) Application procedures.

1059 126.10(j)(2)(i) Initial certification.

1060 126.10(j)(2)(i)(a) Every applicant and renewal applicant shall apply for
1061 certification on an application form prescribed by the commissioner and shall
1062 submit with such application a nonrefundable and nontransferable \$5000
1063 certificate fee of which \$3,000 shall accrue to the credit of the proprietary
1064 vocational school supervision account and \$2,000 shall accrue to the tuition
1065 reimbursement account. For additional locations of currently certified
1066 operating schools, the application fee shall be \$2,500 which shall accrue to the
1067 credit of the proprietary vocational school supervision account.

1068 126.10(j)(2)(i)(b) Schools shall submit the following information with a
1069 completed application for initial certification:

1070 126.10(j)(2)(i)(b)(1) sample enrollment agreements, which meet the
1071 requirements in paragraph (6) of this subdivision, used for each English as
1072 a second language curriculum offered by the school;

1073 126.10(j)(2)(i)(b)(2) a complete description of the content of all English as
1074 a second language curricula offered by the school in a form prescribed by
1075 the commissioner;

1076 126.10(j)(2)(i)(b)(3) a description of refund policies which pertain to
1077 English as a second language curricula in the event a student fails to enter,
1078 withdraws or is discontinued from instruction;

1079 126.10(j)(2)(i)(b)(4) educational and administrative policies and
1080 procedures that are provided students in English as a second language
1081 curricula upon enrollment;

1082 126.10(j)(2)(i)(b)(5) disclosures required to be made to students, pursuant
1083 to paragraph (5) of this subdivision;

1084 126.10(j)(2)(i)(b)(6) evidence, satisfactory to the commissioner, that the
1085 school meets the requirements relating to personnel in paragraph (3) of

1086 this subdivision;

1087 126.10(j)(2)(i)(b)(7) evidence, satisfactory to the commissioner, that the
1088 school meets the requirements relating to facilities and equipment in
1089 paragraph (4) of this subdivision; and

1090 126.10(j)(2)(i)(b)(8) an unaudited statement of revenue, as prescribed by
1091 the commissioner, for the previous fiscal year.

1092 126.10(j)(2)(ii) Renewal of certification.

1093 126.10(j)(2)(ii)(a) Schools shall apply for renewal of certification at least 120
1094 days prior to the expiration of the current certificate on an application form
1095 prescribed by the commissioner and shall submit with such an application a
1096 nonrefundable and nontransferable fee in accordance with the provisions of
1097 section 5001(4)(b) of the Education Law.

1098 126.10(j)(2)(ii)(b) Schools which received \$500,000 or more in gross tuition
1099 in the previous school fiscal year shall submit with such completed
1100 application an audited statement of revenue to the commissioner for that fiscal
1101 year, and schools which received less than \$500,000 in gross tuition in the
1102 previous school fiscal year shall submit either an audited statement of revenue
1103 or an unaudited reviewed statement of revenue, as prescribed by the
1104 commissioner, for that fiscal year provided that the school choosing to submit
1105 an unaudited reviewed statement of revenue had submitted an audited
1106 statement of revenue in the preceding year.

1107 126.10(j)(2)(iii) A school shall submit to the commissioner any changes in the
1108 information, policy or programs which it has submitted in support of an application for
1109 initial certification or an application for renewal of certification 14 days prior to the date
1110 on which such changes take effect.

1111 126.10(j)(3) Personnel.

1112 126.10(j)(3)(i) Director.

1113 126.10(j)(3)(i)(a) Each school shall employ a director who shall meet the
1114 requirements in section 126.6(d)(1)(i), (2) and (3) of this Part and this
1115 subparagraph.

1116 126.10(j)(3)(i)(b) Directors' permits or licenses, issued on or after May 25,
1117 2000, shall be renewable and valid only for the school for which they are
1118 issued. No individual may be employed as a director at more than one school
1119 without the approval of the commissioner. An ESL school director's license,
1120 issued on or after May 25, 2000, shall be valid for the same period for which
1121 the school is licensed or registered.

1122 126.10(j)(3)(i)(c) Individuals shall apply for a director's license, or renewal
1123 thereof, on an application form prescribed by the commissioner. Such
1124 application form shall be submitted to the commissioner with a nonrefundable
1125 and nontransferable application fee of \$100. A school director's license
1126 renewal application shall be submitted with the renewal application of the
1127 employing school.

1128 126.10(j)(3)(i)(d) Any permanent director's license, issued prior to May 25,
1129 2000, shall continue to be deemed approved without renewal until such time
1130 as the director leaves the school and location for which the license is valid.

1131 126.10(j)(3)(ii) Private school agent.

1132 126.10(j)(3)(ii)(a) Each school shall employ at least one private school agent
1133 who meets the requirements in this subparagraph.

1134 126.10(j)(3)(ii)(b) Each agent shall produce his or her agent certificate upon
1135 the request of the commissioner, the commissioner's designee, or any
1136 prospective student.

1137 126.10(j)(3)(ii)(c) A school shall submit an application for licensure for an
1138 agent on or before the first day of employment of such individual, in
1139 accordance with the requirements of section 126.12(a) of this Part.

1140 126.10(j)(3)(ii)(d) A school or its private school agent, as applicable, shall
1141 meet the requirements in section 126.12(b)-(e) of this Part.

1142 126.10(j)(3)(ii)(e) A private school agent meeting the requirements of this
1143 paragraph shall take responsibility for enrolling each student enrolled in an
1144 English as a second language curriculum.

1145 126.10(j)(3)(iii) Teachers.

1146 126.10(j)(3)(iii)(a) Teachers providing instruction in English as a second
1147 language programs at a nonpublicly funded ESL school shall have been
1148 awarded a baccalaureate or equivalent degree from an institution licensed or
1149 recognized by the department; and have successfully completed either an
1150 English as a second language training program recognized by the department
1151 or one year of teaching experience in an English as a second language
1152 program.

1153 126.10(j)(3)(iii)(b) Upon a finding by the commissioner that the applicant
1154 possesses sufficiently unique and exceptional training and/or experience that
1155 are substantially the equivalent of the requirements set forth in clause (a) of
1156 this subparagraph, a variance may be granted from such requirements.

1157 126.10(j)(4) Facilities and equipment. The buildings, rooms or space in which staff and

1158 students are housed for any purpose while attending school, and all facilities and equipment
1159 therein, shall meet the applicable standards of local fire, health and building authorities.

1160 126.10(j)(5) Disclosure to students. For all students enrolled in English as a second language
1161 curricula, schools shall provide the following information to students in a format prescribed
1162 by the commissioner prior to the execution of the enrollment agreement with them:

1163 126.10(j)(5)(i) a description of the status of the school as a nonpublicly funded English as
1164 a second language school certified by the New York State Education Department as
1165 meeting alternative licensing requirements and not subject to all of the licensing
1166 standards and requirements in article 101 of the Education Law this Part which are
1167 applicable to licensed private career schools;

1168 126.10(j)(5)(ii) a description of the complaint procedures established pursuant to
1169 Education Law, section 5003(1)(c); and

1170 126.10(j)(5)(iii) a description of the process for obtaining a refund from the tuition
1171 reimbursement fund.

1172 126.10(j)(6) Enrollment agreement.

1173 126.10(j)(6)(i) An enrollment agreement shall be completed for all students enrolled in
1174 English as a second language curricula. Such an enrollment agreement shall meet the
1175 requirements in section 126.7(a) of this Part.

1176 126.10(j)(6)(ii) The enrollment agreement shall be printed in no less than 10-point type,
1177 shall contain no advertising or extraneous material and shall set forth briefly and clearly
1178 the following:

1179 126.10(j)(6)(ii)(a) the name of the school;

1180 126.10(j)(6)(ii)(b) the title of the curriculum, course or courses for which the
1181 student is contracting;

1182 126.10(j)(6)(ii)(c) the length of the curriculum, course or courses in
1183 instructional hours;

1184 126.10(j)(6)(ii)(d) the name and address of the student;

1185 126.10(j)(6)(ii)(e) the full contract price for instruction, including all fees,
1186 tuition, and costs of textbooks, materials, and equipment;

1187 126.10(j)(6)(ii)(f) the method of payment;

1188 126.10(j)(6)(ii)(g) such reasonable rules, regulations and conditions as the
1189 school may desire to set forth in the agreement;

1190 126.10(j)(6)(ii)(h) a separately signed acknowledgment by the student that he
1191 or she has received disclosure material, as required by paragraph (5) of this
1192 subdivision;

1193 126.10(j)(6)(ii)(i) the refund the school will make in the event a student fails
1194 to enter, withdraws or is discontinued from instruction which is consistent
1195 with the refund policy submitted to the department, pursuant to the
1196 requirement in subclause (2)(i)(b)(3) of this subdivision; and

1197 126.10(j)(6)(ii)(j) the name and certificate number of the school agent
1198 responsible for enrolling the student.

1199 126.10(j)(7) Advertising. A school shall meet the requirements of section 126.3 of this Part
1200 and shall be subject to section 5002(7) of the Education Law.

1201 126.10(j)(8) Records. Records and files of a school pertaining to English as a second
1202 language curricula shall be maintained for three years at the location of the school or other
1203 principal place of business in New York State, unless specific disposition is authorized by the
1204 commissioner, and shall include:

1205 126.10(j)(8)(i) copies of all advertising, bulletins and other promotional materials;

1206 126.10(j)(8)(ii) the attendance register for each class, laboratory or session;

1207 126.10(j)(8)(iii) records of instructional staff showing qualifications and teaching
1208 schedules;

1209 126.10(j)(8)(iv) a completed copy of the student enrollment agreement contract signed by
1210 both an authorized agent of the school and the student prior to the time instruction begins;

1211 126.10(j)(8)(v) records of all tuition and fees owed and paid by the student; and

1212 126.10(j)(8)(vi) date of student completion or discontinuance.

1213 126.10(j)(9) Teachout plans. A school may submit a teachout plan for English as a second
1214 language curricula to the commissioner for approval, subject to the requirements of section
1215 5006 of the Education Law and section 126.16 of this Part.

1216 126.10(j)(10) Disciplinary actions and penalties. Section 5003 of the Education Law shall be
1217 applicable to nonpublicly funded ESL schools, except that subparagraph (2) of paragraph (b)
1218 of subdivision (1) of such section shall not be applicable and in lieu of that requirement good
1219 cause shall include violation of any provision of this subdivision, including requirements of
1220 this Part and article 101 of the Education Law made applicable by this subdivision. Section
1221 126.14 of this Part shall be applicable.

1222 126.10(j)(11) Supervision account and tuition reimbursement account assessments.

1223 126.10(j)(11)(i) The commissioner shall annually assess each school an assessment equal
1224 to five-tenths of one percent of its gross tuition, as determined by the audited statement of
1225 revenue or the unaudited reviewed statement of revenue, as required by this subdivision,
1226 of which three-tenths of one percent shall accrue to the benefit of the proprietary
1227 vocational school supervision account. Any school which received \$500,000 or more in
1228 gross tuition in a school fiscal year shall be required to submit to the commissioner an
1229 annual audited statement of revenue prepared in accordance with generally accepted
1230 accounting principles for that fiscal year. In addition, any school which has a gross tuition
1231 of less than \$500,000 in a school fiscal year shall file with the commissioner either an
1232 audited statement of revenue or an unaudited reviewed statement of revenue provided,
1233 however, that any such school shall file an audited statement of revenue the fiscal year
1234 after an unaudited reviewed statement of revenue is submitted. For such schools, audited
1235 statements of revenue are required every two years, at minimum, with unaudited
1236 reviewed statements of revenue allowed during the alternate year. Upon a determination
1237 by the commissioner that a school has submitted false or inaccurate statements or that a
1238 significant, unsubstantiated decline in gross tuition has occurred, the commissioner may
1239 require any such school to file an audited statement of revenue pursuant to this paragraph
1240 even during alternate years when unaudited reviewed statements would ordinarily be
1241 allowed.

1242 126.10(j)(11)(ii) The commissioner shall also assess each school additional assessments
1243 as applicable under subdivision (10) of section 5007 of the Education Law.

1244 126.10(j)(11)(iii) For ESL schools in operation in the year prior to the issuance of their
1245 certification, such annual assessments prescribed in this paragraph shall begin in their
1246 initial year of certification, based on the schools' gross tuition from such previous year.
1247 For new ESL schools, the commissioner shall base the assessments prescribed in this
1248 paragraph on the annualized gross tuition of the school computed by the department from
1249 financial reports from the school as required by the department, and the assessments shall
1250 be prorated based upon the number of quarters that the school has operated in the
1251 assessment year.

1252 126.10(j)(11)(iv) The assessments prescribed in subparagraphs (i) and (ii) of this
1253 paragraph shall be based upon each school's gross tuition from the previous year, and
1254 shall be payable in equal installments which shall be due on June 1st, September 1st,
1255 December 1st and March 1st.

1256 126.10(j)(12) Tuition reimbursement account.

1257 126.10(j)(12)(i) For all English as a second language curricula, schools shall comply with
1258 subdivisions (1) through (8) of section 5007 of the Education Law, except that paragraph
1259 (a) of subdivision (3) and paragraph (b) of subdivision (4) of such section shall not be
1260 applicable. Subparagraph (3) of paragraph (b) of subdivision (3) of such section shall not
1261 be applicable and in lieu of that requirement claimants shall be required to show that the
1262 school has failed to make the refund within the time period required by school policy.

1263 126.10(j)(12)(ii) A student enrolled in an English as a second language curriculum in a

1264 school which has not closed or ceased operation, and who has not dropped out, is entitled
1265 to a full refund, provided that:

1266 126.10(j)(12)(ii)(a) the student has submitted a complaint form to the
1267 commissioner; and

1268 126.10(j)(12)(ii)(b) the commissioner has determined that the school has
1269 committed one or more of the following violations:

1270 126.10(j)(12)(ii)(b)(1) operating a school with a registry certificate which
1271 has been suspended, revoked or not renewed;

1272 126.10(j)(12)(ii)(b)(2) using false, misleading, deceptive or fraudulent
1273 advertising;

1274 126.10(j)(12)(ii)(b)(3) having no licensed private agent responsible for
1275 enrolling the student;

1276 126.10(j)(12)(ii)(b)(4) using fraudulent or improper claims by a licensed
1277 agent or school representative to enroll the student;

1278 126.10(j)(12)(ii)(b)(5) misrepresenting the school or failing to comply
1279 with the requirements of paragraph (2) of this subdivision;

1280 126.10(j)(12)(ii)(b)(6) dismissing or terminating a student for other than
1281 just cause; or

1282 126.10(j)(12)(ii)(b)(7) committing any additional violation for which the
1283 commissioner demonstrates that the student would not have enrolled in the
1284 curriculum but for the commission of that violation.

SECTION 126.11. RECORDS

- 1285 126.11(a) All records and files of a school shall be maintained for seven years, except for
1286 permanent student records as provided in subdivision (b) of this section, unless specific
1287 disposition is authorized by the commissioner, and shall include:
- 1288 126.11(a)(1) all approved courses of study, accompanied by letters from the department
1289 granting such approval;
- 1290 126.11(a)(2) all correspondence with the department and other supervisory agencies;
- 1291 126.11(a)(3) copies of all advertising, bulletins and other promotional materials;
- 1292 126.11(a)(4) the attendance register, for each class, laboratory or session, progress in training
1293 and payments made to the school either by the student or on his behalf;
- 1294 126.11(a)(5) records of administrative, supervisory and instructional staffs showing
1295 qualifications, approval by the department, teaching schedules and pupil load, attendance,
1296 contract salary and salary payments;
- 1297 126.11(a)(6) inventories of equipment and consumable supplies;
- 1298 126.11(a)(7) financial records in such form and kept in such manner as may be specified by
1299 the commissioner to facilitate the determination of the quality of instruction given and the
1300 ability of the school to discharge its obligations to its students;
- 1301 126.11(a)(8) documentation of entrance requirements for each course or curriculum for
1302 which the student has enrolled;
- 1303 126.11(a)(9) a completed copy of the student enrollment agreement contract signed by both
1304 an authorized agent of the school and the student prior to the time instruction begins;
- 1305 126.11(a)(10) records of all tuition and fees owed and paid by the student; all loans and
1306 grants from public sources received by the student or the school on behalf of the student; and
1307 the complete record of the disbursement of such public funds;
- 1308 126.11(a)(11) documentation of the award of any advanced credit due to previous academic
1309 or practical experience, and a record of any substitutes to the course or curriculum approved
1310 by the department as a result thereof;
- 1311 126.11(a)(12) records of employment or educational status of each student graduating during
1312 a reporting period established by the commissioner, which include the name, address and
1313 telephone number of hiring employer, the job title and the starting date of employment, or the
1314 name and address of the educational institution and the date when the student started
1315 instruction at that institution.
- 1316 126.11(b) Student permanent records, compiled at the time of course or curriculum completion,

1317 discontinuance or withdrawal, shall be maintained in a single file for each student, for a period
1318 of not less than 20 years after the student completes the program, and contain the following
1319 information:

1320 126.11(b)(1) name, address, and date of birth;

1321 126.11(b)(2) date of enrollment;

1322 126.11(b)(3) name of curriculum, course or courses taken;

1323 126.11(b)(4) record of all final tests and grades earned for each course or curriculum;

1324 126.11(b)(5) date of completion or discontinuance; and

1325 126.11(b)(6) a notation whether a certificate or diploma was issued and the date issued.

1326 126.11(c) No school shall discontinue operation or surrender its license or registration unless
1327 written notice of its intention to do so and a plan for maintenance of safe keeping of the records
1328 of the school is provided to the commissioner at least 30 days prior to such discontinuance or
1329 surrender. Such plan shall provide for the transportation of all student records set forth in
1330 subdivision (b) of this section in a manner and to a location prescribed by the commissioner.
1331 The cost of such transfer of records shall be paid for by the school. Schools with common
1332 ownership may, with the approval of the commissioner, store such records at another school
1333 with common ownership.

1334 126.11(d) Upon the approval of the commissioner, schools may maintain student permanent
1335 records via electronic means or microfilm. Such media shall be in a format acceptable to the
1336 commissioner and transferred upon school closure or discontinuance of operation, in
1337 accordance with section 5001(8) of the Education Law and subdivision (c) of this section.

1338 126.11(e) Schools receiving Federal funds shall maintain records required by the applicable
1339 Federal statutes and regulations.

SECTION 126.12. PRIVATE SCHOOL AGENT'S CERTIFICATE

1340 126.12(a) No person shall receive any form of compensation or remuneration from any
1341 representative, agent, employee or officer of a licensed private career school for the purpose of
1342 soliciting, procuring, or enrolling students, unless such person is a salaried employee of the
1343 school and holds a valid private school agent's certificate. Each agent shall produce his or her
1344 agent certificate upon the request of the commissioner, the commissioner's designee, or any
1345 prospective student. A school shall submit an application for licensure for an agent on or
1346 before the first day of employment of such individual. Upon submission of a complete initial
1347 agent application for licensure, the commissioner shall issue a temporary approval certificate
1348 within five days of receipt of the application by mail, or on the same day at offices and times
1349 designated by the commissioner. Upon receipt of a temporary approval certificate, an applicant
1350 may procure, solicit or enroll any student. A temporary approval certificate shall be effective
1351 for up to 60 days, as determined by the commissioner, and shall be destroyed by the school
1352 upon the issuance or denial of the applicant's three-year certificate. An *initial agent application*
1353 shall mean an application submitted on behalf of an individual having never held an agent's
1354 certificate for the submitting school.

1355 126.12(b) Application for a certificate shall be made on forms furnished by the commissioner.
1356 It may be made only by the school or schools which the agent is to represent. If an agent
1357 represents more than one school, each school must apply for a certificate. If the school employs
1358 more than one agent, a separate application must be filed for each agent. The application shall
1359 request such information as the commissioner may require, including information about
1360 whether the applicant has ever been convicted of a crime or whether criminal charges are now
1361 pending. The application must be accompanied by: two full-face photographs which are a good
1362 likeness of the applicant and are one inch by one inch in dimension; certification by two
1363 persons other than employers or coworkers attesting to the good moral character of the
1364 applicant; and a nonrefundable \$200 fee payable to the Education Department except that,
1365 pursuant to Section 5004(4-a), the school director may apply for an agent's certificate without
1366 incurring the application fee. In making application for an agent's certificate, the school shall
1367 certify that through the medium of sales manuals, bulletins or other similar means, the agent is
1368 fully informed as to its courses, services, charges, enrollment conditions and operating policies,
1369 including the refund policy. The school must further certify that it assumes full responsibility
1370 for the actions, statements and conduct of its agent, acting in its behalf, and that it uses an
1371 acceptable plan for the selection, training and supervision of the agent.

1372 126.12(c) Application for the renewal of an agent's certificate shall be filed by mail no later
1373 than 30 days before the expiration of the current certificate at an office designated by the
1374 commissioner. A *renewal application* shall mean an application submitted prior to the
1375 expiration date of the current certificate. All other applications shall be filed as new
1376 applications. Certificates which have been renewed shall be valid for a period of three years
1377 from the expiration date of the certificate which has been renewed. It shall be accompanied by
1378 a nonrefundable \$200 fee payable to the Education Department.

1379 126.12(d) In the event of the dismissal or resignation of an agent, the school shall notify the
1380 commissioner in writing within 10 days thereof. The agent's certificate shall be returned with
1381 such notification.

1382 126.12(e) Agents shall not identify themselves or be identified as counselors or by other titles
1383 which mislead or tend to mislead the prospective student.

1384 126.12(f) No school may procure, solicit or enroll students unless at least one salaried
1385 employee of the school is in receipt of an agent's certificate pursuant to this section.

SECTION 126.13. EXEMPTIONS

1386 Entities that are exempt from article 101 of the Education Law and this Part are prescribed in
1387 section 5001(2) of the Education Law.

SECTION 126.14. DISCIPLINARY ACTIONS AND PENALTIES

1388 126.14(a) Disciplinary action against schools.

1389 In determining the penalty to be imposed upon a finding that disciplinary action against a
1390 school is warranted, in accordance with the provisions of Education Law, section 5003, the
1391 commissioner shall take into account the effect of the conduct which formed the basis for the
1392 disciplinary proceeding upon the students attending the school, the general public and any
1393 other affected individual or group. Prior to initiating action against schools during the initial
1394 two-year licensing period, the commissioner shall take into consideration the factors set forth
1395 in section 5003(1)(d) of the Education Law.

1396 126.14(b) Disciplinary actions against private school agents.

1397 126.14(b)(1) The commissioner, after affording a certified private school agent notice and an
1398 opportunity to be heard, may fine such agent, or suspend or revoke such agent's certificate at
1399 any time for failure to comply with the requirements of the Education Law or of this Part or
1400 for any other good cause.

1401 126.14(b)(2) Revocation or suspension of a private school agent's certificate. Where the
1402 commissioner seeks to revoke or suspend a private school agent's certificate, the certificate
1403 holder shall be given reasonable notice of the nature of the proceeding and a statement
1404 sufficiently particular to give notice of the transactions and occurrences involved and the
1405 material elements of each cause of action against the certificate holder. The certificate holder
1406 shall also be given notice of an opportunity for a hearing in accordance with subparagraph (i)
1407 of this paragraph.

1408 126.14(b)(2)(i) If a hearing is requested, the certificate holder shall be given reasonable
1409 notice of the time, place and nature of the hearing. The certificate holder may appear in
1410 person or may be represented at the hearing by an attorney, may respond and present
1411 evidence and argument on the issues involved, and may cross-examine witnesses. The
1412 hearing, at which a verbatim record shall be taken, shall be held before a hearing officer
1413 designated by the commissioner, who shall have the powers of a presiding officer in
1414 accordance with section 304 of the State Administrative Procedure Act. The strict rules of
1415 evidence shall not apply to such hearings, but the decision of the hearing officer shall be
1416 supported by substantial evidence in the record. Disposition may be made in any hearing
1417 by stipulation, agreed settlement, consent order, default or other informal method. The
1418 decision of the hearing officer shall be delivered or mailed forthwith to the certificate
1419 holder and to his or her attorney of record.

1420 126.14(b)(2)(ii) If a hearing is not requested, the commissioner shall issue a
1421 determination based upon the evidence submitted in support of the charges and any
1422 additional evidence submitted by the certificate holder.

1423 126.14(b)(3) Fines. Where the commissioner seeks to impose a fine on a certified private
1424 school agent for misconduct not warranting a more severe disciplinary penalty, the
1425 department shall serve notice of the charges upon the certificate holder either by personal

1426 service or certified mail. Such notice shall specify the basis for the charges with sufficient
1427 particularity to apprise the certificate holder of the nature of the incidents or transactions
1428 leading to the charges, and shall contain a statement that unless an answer to the charges is
1429 received by the department within 20 days after personal service of the notice or within 25
1430 days after service by certified mail, the charges will be deemed to be true and a fine will be
1431 imposed. The certificate holder may answer the charges and may submit evidence in written
1432 form, including affidavits, in support of such answer. If the commissioner finds that the
1433 charges of misconduct are supported by substantial evidence, the commissioner shall impose
1434 an appropriate fine and shall notify the certificate holder of such determination by mail.
1435 Failure to pay such a fine within four months after receipt of such notice shall constitute good
1436 cause for suspension or revocation of a private school agent's certificate.

1437 126.14(b)(4) Indemnification. No employer of a private school agent other than a school may
1438 indemnify or otherwise reimburse an agent for fines imposed on the agent pursuant to this
1439 subdivision and Education Law, section 5004(7). If the agent demonstrates, to the
1440 satisfaction of the commissioner, that the action for which the agent was fined was
1441 undertaken because of explicit instructions from the school owner, director, or other school
1442 administrator, the commissioner shall take appropriate disciplinary action against the school
1443 in accordance with Education Law, section 5003, to require the school to indemnify or
1444 reimburse the agent the amount of the fine and pay to the commissioner an additional fine of
1445 an equal amount.

1446 126.14(c) Pursuant to section 5001(9) of the Education Law, any annual assessment fees
1447 submitted by the schools to the department after the due date shall be subject to an interest
1448 penalty. The commissioner shall calculate the amount of the interest penalty as follows:

1449 126.14(c)(1) For each due date, payments made within 30 days following such due date
1450 shall be subject to an interest penalty of one percent above the prevailing prime rate.

1451 126.14(c)(2) Interest penalties not paid within 15 days of notification of the amount of
1452 the penalty may be increased in accordance with the method used by the commissioner to
1453 compute the interest penalty in the first instance.

SECTION 126.15. DISCLOSURE TO STUDENTS

1454 126.15(a) For all prospective or enrolled students, schools shall provide the following
1455 information:

1456 126.15(a)(1) all items required pursuant to section 5005 of the Education Law;

1457 126.15(a)(2) pursuant to section 5005 of the Education Law, the materials required to be
1458 disseminated to all prospective or enrolled students shall be written in the language
1459 principally used in the sales presentation, the language of instruction as approved by the
1460 commissioner and English; and

1461 126.15(a)(3) a statement, approved by the commissioner, which indicates that a student
1462 should review the approved school catalog to determine factual information about the school.

SECTION 126.16. TEACHOUT PLANS

1463 All teachout plans developed pursuant to section 5006 of the Education Law shall be submitted
1464 to the department at least 30 days prior to the implementation of the teachout plan. Teachout
1465 plans submitted less than 30 days prior to the teachout may be denied based upon a school's
1466 inability to meet such a timeline.

SECTION 126.17. TUITION REIMBURSEMENT ACCOUNT

1467 126.17(a) Pursuant to section 5007 of the Education Law, a student who was enrolled in a
1468 school which has not closed or ceased operation, and who has dropped out, is entitled to a full
1469 refund if the student has submitted a complaint form to the commissioner and the
1470 commissioner has determined that one or more of the following violations have occurred:

1471 126.17(a)(1) any violation enumerated under section 5003(6)(b) of the Education Law;

1472 126.17(a)(2) use of an unlicensed teacher in one or more of a student's courses;

1473 126.17(a)(3) use of a substitute teacher contrary to the provisions contained in section
1474 126.6(q) of this Part;

1475 126.17(a)(4) use of an unlicensed agent to procure, solicit or enroll the student;

1476
1477 126.17(a)(5) use of fraudulent or improper claims by a licensed agent or school
1478 representative to procure, solicit or enroll the student;

1479 126.17(a)(6) dismissal or termination of the student for other than just cause;

1480 126.17(a)(7) failure of the school to offer the program as approved by the commissioner;
1481 and

1482 126.17(a)(8) any additional violation in which the commissioner demonstrates that the
1483 student would not have enrolled in the school but for the commission of that violation.

1484 126.17(b) Schools ceasing operation shall be responsible for paying the assessment charged
1485 for the tuition reimbursement account for the quarter in which the school ceases operation by
1486 the due date for such quarterly payment.

1487 126.17(c) New schools. New schools, which did not operate in the year prior to licensure, will
1488 have no gross tuition upon which to be assessed until either the end of their first fiscal year or
1489 March 31st of the year after the school was licensed, whichever comes first. For schools
1490 whose fiscal year end comes before March 31st of the year after the school was licensed, a
1491 complete financial statement in compliance with the provisions set forth in section 5001(4)(e)
1492 of the Education Law is required. For new schools whose fiscal year comes later than March
1493 31st after their initial licensure date, the school shall submit an unaudited reviewed income
1494 statement for the time period between initial licensure and March 31st, detailing the amount of
1495 gross tuition received during that period. Thereafter, complete financial statements shall be
1496 required as prescribed in section 5001(4)(e) of the Education Law.

1497 126.17(d) For the purpose of calculating the balance of the tuition reimbursement account in
1498 accordance with section 5007(10)(g) of the Education Law, the commissioner shall determine
1499 the balance of the tuition reimbursement account on a quarterly basis on June first, September
1500 first, December first and March first, as defined for the collection of school assessments under
1501 section 5001(9) of the Education Law.