

Education Law Article 101.
Licensed Private Career Schools and Certified English as a Second Language Schools

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§ 5001. Licensed private career schools

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

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

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

20 5001(1)c. "online education marketplace" shall mean a website or other internet-based online
21 technology tool with which a licensed private career school or certified ESL school contracts for
22 marketing or advertising services, or services in connection with the collection of tuition and/or
23 fees, to the extent authorized in subdivision three of section five thousand four of this article.

24 5001(2). Exempt schools. The following schools are exempted from the licensing requirement of this
25 section:

26 5001(2)a. institutions authorized to confer degrees in this state;

27 5001(2)b. schools providing kindergarten, nursery, elementary or secondary education, except
28 schools conducted for profit which provide instruction in English as a second language or prepa-
29 ration for high school equivalency examinations to out-of-school youth or adults;

30 5001(2)c. schools operated by governmental agencies or authorities;

31 5001(2)d. schools which engage exclusively in training of students with disabilities as defined in
32 section forty-four hundred one of this chapter;

- 33 5001(2)e. schools conducted on a not-for-profit basis by firms or organizations for the training of
34 their own employees only, provided that such instruction is offered at no charge to such employ-
35 ees, or by a fraternal society or benevolent order for its members or their immediate relatives on-
36 ly;
- 37 5001(2)f. schools which provide instruction in the following subjects only: religion, dancing,
38 music, painting, drawing, sculpture, poetry, dramatic art, languages, reading comprehension,
39 mathematics, recreation, yoga, martial arts, pilates and athletics, including the training of stu-
40 dents to teach such subjects, provided, however, that schools conducted for the purpose of train-
41 ing personal trainers shall be excluded from this exemption and shall be required to obtain licen-
42 sure;
- 43 5001(2)g. schools in which the course of instruction is licensed, registered or approved under any
44 other section of this chapter or by any other department or agency of the state;
- 45 5001(2)h. schools which provide instruction designed solely for giving flight training and/or re-
46 lated ground school instruction;
- 47 5001(2)i. schools in which instruction designed solely to prepare applicants for admission to pro-
48 fessional licensing examinations administered by the department pursuant to title eight of this
49 chapter, and applicants for examination for admission to the practice of law;
- 50 5001(2)j. schools which offer continuing education courses exclusively for individuals licensed
51 by the department pursuant to title eight of this chapter and for individuals admitted to the prac-
52 tice of law;
- 53 5001(2)k. schools which provide instruction given exclusively to employees of a person or or-
54 ganization which has contracted with another person or organization to provide such instruction
55 at no cost to the employees;
- 56 5001(2)l. conferences, trade shows, workshops, seminars, institutes or courses of study offered
57 and sponsored either jointly or individually by recognized trade, business or professional organi-
58 zations for the benefit of their membership;
- 59 5001(2)m. schools that limit their total conferences, trade shows, workshops, seminars, institutes
60 or other course offerings to no more than twice in one calendar year with each of those offerings
61 for no more than five days;
- 62 5001(2)n. schools which provide instruction exclusively to persons employed full-time or part-
63 time in the field in which instruction is being offered, where the instruction is provided to meet
64 continuing education standards required for professional licensure as defined by law in this state;
65 and

66 5001(2)o. schools in candidacy status pursuant to subparagraph (iv) of paragraph b of subdivi-
67 sion four of this section.

68 5001(2-a). Schools exempted pursuant to subdivision two of this section may waive such exemption
69 and apply for a license; provided, however, that the review of such applications shall be left to the dis-
70 cretion of the commissioner.

71 5001(2-b). Programs offered by licensed private career schools to employees of a person or organiza-
72 tion which has contracted with another person or organization to provide such instruction at no cost to
73 the employees shall be exempt from the requirements of this article, provided that the following re-
74 quirements are met:

75 5001(2-b)a. Only employees of the employer for which the program is being offered may enroll
76 in classes that make up the program.

77 5001(2-b)b. Certificates or diplomas awarded to students in the program may not reference in
78 any way the department.

79 5001(2-b)c. Prior to the commencement of the program, such schools shall submit to the depart-
80 ment a disclosure form, prescribed by the commissioner, copies of which shall be provided to all
81 students in such exempt program, which shall include but not be limited to the following infor-
82 mation:

83 5001(2-b)(c)(i) a description of the location and time period in which the program will be
84 offered;

85 5001(2-b)(c)(ii) a statement that the students enrolled in the program shall not be subject
86 to any tuition liability for the program, even if such students do not complete the pro-
87 gram;

88 5001(2-b)(c)(iii) a statement that the program being provided to the employer has not
89 been approved by the department and is not under the department's jurisdiction and that
90 the students in the program have been advised of the fact; and

91 5001(2-b)(c)(iv) the signatures of the school director or owner of the school and the rep-
92 resentative of the employer for which the program is being offered certifying the accura-
93 cy of the statements on the form.

94 5001(2-b)d. Any additional student openings in a program deemed exempt by the department
95 may be made available to students not affiliated with the employer on the condition that such
96 students execute a disclosure form as prescribed in paragraph c of this subdivision. Such admit-
97 ted students shall only constitute up to ten percent of the exempt program's total capacity.

98 5001(4). Application, renewal application and application fees.

99 5001(4)a. Application and renewal application for a license as a private career school required by
100 the commissioner shall be filed on forms prescribed and provided by the department. Except as
101 provided in subparagraph (iii) of paragraph e of this subdivision, each renewal application for a
102 private career school licensed pursuant to this section shall include an audited financial statement
103 audited according to generally accepted auditing standards by an independent certified public ac-
104 countant or an independent public accountant and statistical reports certified by the owner or op-
105 erator of the school, as required by the commissioner; provided, however, that the commissioner
106 shall accept a copy of a current financial statement previously filed by a school with any other
107 governmental agency in compliance with the provisions of any federal or state laws, or rules or
108 regulations if such statement contains all of the information required under this subdivision and
109 conforms to this subdivision's requirements of auditing, review and certification. Any required
110 audit of the financial statement shall be a condition of licensure and shall be paid for by the
111 school, and the results of the audit shall be forwarded to the commissioner. Applications not ac-
112 companied by the audits and reports required pursuant to this subdivision shall not be considered
113 for approval by the commissioner. Initial applications shall be accompanied by financial reports
114 as required by the commissioner. The applicant shall receive a written approval or denial togeth-
115 er with the reasons for a denial of such application.

116 5001(4)b.

117 5001(4)(b)(i) An initial license issued pursuant to the provisions of this article shall be
118 valid for a period of two years. A renewal of license issued pursuant to the provisions of
119 this article shall be valid for a period of four years.

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

GROSS ANNUAL TUITION INCOME	FEE
0-\$199,999	\$ 750.00
\$200,000-\$499,999	\$ 1,500.00

\$500,000-\$999,999	\$ 2,225.00
\$1,000,000-\$4,999,999	\$ 4,500.00
\$5,000,000-\$9,999,999	\$ 9,000.00
\$10,000,000 or above	\$18,000.00

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

134 5001(4)(b)(iii) Each school shall display, near the entrance to the school, the license
 135 which has been issued to it. Such authorization shall be displayed only during the period
 136 of its validity.

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

146 5001(4)(b)(iv)(1) the prospective school submits a candidate school application
 147 fee, separate from the school application fee, of five thousand dollars which shall
 148 accrue to the credit of the proprietary vocational school supervision account;

149 5001(4)(b)(iv)(2) the school shall not represent that it is licensed or that its pro-
 150 grams are approved through the department;

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

160 5001(4)(b)(iv)(4) the school shall demonstrate financial viability through means
161 deemed appropriate by the commissioner. Such means may include submitting an
162 audited financial statement based on the most recently completed fiscal year; se-
163 curing and maintaining a performance bond, payable to the commissioner, in an
164 amount appropriate to eliminate any liability to the tuition reimbursement account
165 in the event the school ceases operation; limiting the collection of tuition funds
166 until each student completes the program of study; or other means acceptable to
167 the commissioner; and

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

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

180 5001(4)c. An application for renewal of any license shall be submitted at least one hundred twen-
181 ty days prior to the expiration date of the current authorization to operate accompanied by the
182 nonrefundable application fee and such certified statistical reports and annual financial state-
183 ments required pursuant to this subdivision.

184 5001(4)d. When complete and timely application has been made for renewal of any license, the
185 school shall receive a written approval or denial, together with the reasons for denial of renewal,
186 from the commissioner no less than thirty days prior to the date such license expires.

187 5001(4)e. Financial statements and statistical reports.

188 5001(4)(e)(i) Licensed private career schools and candidate schools shall submit such
189 certified statistical reports and annual financial statements as required by the commis-
190 sioner. The commissioner may require audited statistical reports upon a determination
191 that a school has provided false or inaccurate certified statistical reports. The financial
192 statements shall be based on the fiscal year of the school and shall also include an item-
193 ized account of tuition refunds due and owing to past or presently enrolled students. Sta-
194 tistical reports shall include, but not be limited to, enrollment, completion and placement

195 data. The commissioner shall use such financial statements and statistical reports submit-
196 ted for the purposes of licensure of schools, establishing fees or assessments pursuant to
197 this article and determining standards pursuant to paragraph b of subdivision five of sec-
198 tion five thousand two of this article. The attorney general, the comptroller and the presi-
199 dent of the higher education services corporation shall have access to this information
200 when it is necessary to perform their duties as required by state law.

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

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

221 5001(4)f. Alternate licensing provision. The commissioner shall issue regulations which define
222 alternate licensing or certification requirements for the following:

223 5001(4)(f)(1) correspondence schools in which all approved programs and courses are
224 under three hundred hours;

225 5001(4)(f)(2) schools which are eligible for exemption under this section but which elect
226 to be licensed;

227 5001(4)(f)(3) non-profit schools exempt from taxation under section 501(c)(3) of the in-
228 ternal revenue code whose programs are funded entirely through donations from individ-
229 uals or philanthropic organizations, or endowments, and interest accrued thereon; and

230 5001(4)(f)(4) language schools conducted for-profit which provide instruction in English
231 as a second language and which accept no public funds.

232 5001(5). Required disclosure for licensure.

233 5001(5)a. The commissioner shall require that each applicant for a license for the operation of a
234 private career school disclose the following information:

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

242 5001(5)(a)(2) Whether the applicant, or any corporation, partnership, association or or-
243 ganization or person holding an ownership or control interest in such school, or any em-
244 ployee responsible in a supervisory capacity for the administration of student funds or
245 governmental funds has been convicted:

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

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

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

265 and

266 5001(5)(a)(4) Whether any school owned or operated by the applicant closed or ceased
267 operation and, if so, whether at the time of the closing the applicant was subject to a
268 pending disciplinary action, disallowance, fine or other penalty and whether it owed re-
269 funds to any government agency or students.

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

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

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

303 commissioner. If no resolution can be attained, a hearing, pursuant to subdivisions two and three of
304 section five thousand three of this article will be scheduled. Such probation may include additional
305 monitoring, inspections, limitations on enrollment, teaching out some or all of a school's present stu-
306 dents or temporary cessation of instruction.

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

314 5001(8). No licensed school shall discontinue operation or surrender its license unless thirty days writ-
315 ten notice of its intention to do so and a plan for maintenance of safe keeping of the records of the
316 school is provided to the commissioner. However, upon good cause shown, the commissioner may
317 waive the thirty days notice requirement.

318 5001(9). Annual supervision fund and tuition reimbursement account assessment.

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

325 5001(9)b.

326 5001(9)(b)(i) Such annualized assessment shall be one percent for schools which have
327 paid less than sixteen quarters of assessments, but such annual assessment shall not fall
328 below five hundred dollars.

329 5001(9)(b)(ii) Such annualized assessment shall be eight-tenths of one percent for
330 schools which have paid sixteen or more quarters of assessments, but such annual as-
331 sessment shall not fall below five hundred dollars.

332 5001(9)c.

333 5001(9)(c)(i) Of the total assessment provided for herein, five-tenths of one percent shall
334 accrue to the credit of the tuition reimbursement account pursuant to section five thou-

335 sand seven of this article for those schools which have paid less than sixteen quarters of
336 assessments. Of the total assessment provided for schools which have paid sixteen or
337 more quarters of assessments, three-tenths of one percent shall accrue to the credit of the
338 tuition reimbursement account pursuant to section five thousand seven of this article. For
339 schools paying the minimum five hundred dollars annual assessment, none shall accrue to
340 the tuition reimbursement account.

341 5001(9)(c)(ii) The balance of the total assessment provided for herein shall be dedicated
342 to fund the department's supervision and regulation of licensed private schools pursuant
343 to an annual appropriation and an annual plan of expenditure prepared by the commis-
344 sioner and approved by the director of the budget.

345 5001(9)d. Payments made within thirty days following the due date shall be subject to interest at
346 one percent above the prevailing prime rate. Thereafter, late payments may result in suspension
347 of licensure by the commissioner. Payments required by this subdivision shall be considered a
348 condition of licensure.

§ 5002. Standards for licensed private career schools

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

354 5002(1). Standards.

355 5002(1)a. No program of such schools shall be conducted in a factory or commercial establish-
356 ment, except where the use of facilities or equipment of such factory or commercial establish-
357 ment is permitted for necessary or desirable educational purposes and objectives.

358 5002(1)b. For every such school, the commissioner shall set forth in regulation standards govern-
359 ing all of the following:

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

365 5002(1)(b)(2) the standards and the methods of instruction;

366 5002(1)(b)(3) the equipment available for instruction with the maximum enrollment that
367 such equipment and physical plant will accommodate;

368 5002(1)(b)(4) the qualifications and experience of teaching and management personnel;

369 5002(1)(b)(5) the form and content of the student enrollment agreement or contract, pro-
370 vided that such agreement or contract shall be written in the same language as that prin-
371 cipally used in the sales presentation;

372 5002(1)(b)(6) the methods of collecting tuition;

373 5002(1)(b)(7) eligibility criteria for programs that will require licensure;

374 5002(1)(b)(8) the sufficiency and suitability of the resources available for the support of
375 such school; and

376 5002(1)(b)(9) counseling provided to students.

377 5002(1)b-1.

378 5002(1)b-1(1) Student loans or other financial aid funds received from federal, state, or
379 local governments or administered under the federal student financial assistance pro-
380 grams governed by Title IV of the Higher Education Act of nineteen hundred sixty-five,
381 20 U.S.C. section 1070 et seq., as amended, must be collected and applied in the manner
382 as controlled by the applicable federal, state or local regulations.

383 5002(1)b-1(2) Student loans or other financial aid funds received from private entities,
384 including, but not limited to, banks, financing companies, and other lending sources must
385 be collected or disbursed in the following manner:

386 5002(1)b-1(2)(A) Loans or other financial aid payments for amounts of five thou-
387 sand dollars or less may be disbursed as a single disbursement, regardless of
388 course length.

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

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

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

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

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

419 5002(1)c. Notwithstanding any other provisions of this article to the contrary, the commissioner
420 shall define alternative educational and curriculum standards for any program of less than forty
421 hours designed exclusively for non-occupational, personal enrichment purposes.

422 5002(1)d. Admission of students under the ability to benefit provision.

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

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

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

448 5002(1)(d)(3) Compliance.

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

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

461 5002(2). Inspections.

462 5002(2)a. Every school licensed pursuant to this article shall maintain adequate and accurate rec-
463 ords for a period of not less than seven years at its principal place of business within this state.
464 Such records shall be maintained in a manner and form prescribed by the commissioner and shall
465 be made available to the department and the higher education services corporation upon request.

466 5002(2)b. In addition to other requirements in this article, the information to be made a part of
467 the record shall include, but not be limited to:

468 5002(2)(b)(1) names and addresses of each enrolled student;

469
470 5002(2)(b)(2) the course of study offered by the institution;

471 5002(2)(b)(3) the name and address of its faculty, together with a record of the educa-
472 tional qualifications of each;

473 5002(2)(b)(4) the graduation date of each student; and

474 5002(2)(b)(5) for each student who fails to complete his or her program, the student's last
475 date of attendance and, if applicable, the amount of any refund paid to, or on behalf of,
476 the student and the date the refund was made.

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

483 5002(2)d. Student permanent records, as defined in the regulations of the commissioner, shall be
484 maintained for a period of twenty years.

485 5002(3) Tuition liability.

486 5002(3)a. The tuition charge for programs approved for participation in student financial aid
487 general award programs pursuant to articles thirteen and fourteen of this chapter shall be appor-
488 tioned on the basis of terms, quarters or semesters. For the purposes of this section, the terms
489 “term”, “quarter” and “semester” shall be defined in regulations by the commissioner.

490 5002(3)b. The tuition refund policy for the first term or quarter of any program at schools li-
491 censed pursuant to section five thousand one of this article shall be as follows:

492 5002(3)(b)(1) For programs which are divided into quarters of up to fourteen weeks, the
493 school shall evenly divide the total tuition charges among the number of quarters. After
494 instruction is begun in a school, if a student withdraws or is discontinued, the school may
495 retain no more than:

496 5002(3)(b)(1)(i) zero percent of the quarter's tuition if the termination is during
497 the first week of instruction; or

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

500 5002(3)(b)(1)(iii) fifty percent of the quarter's tuition if the termination is during
501 the third week of instruction; or

502 5002(3)(b)(1)(iv) seventy-five percent of the quarter's tuition if the termination is
503 during the fourth week of instruction; or

504 5002(3)(b)(1)(v) one hundred percent of the quarter's tuition if the termination oc-
505 curs after the fourth week of instruction.

506 5002(3)(b)(2) For programs organized by terms of fifteen, sixteen, seventeen or eighteen
507 weeks apiece, the school shall evenly divide the total tuition charges among the number
508 of terms. After instruction is begun in a school, if a student withdraws or is discontinued,

509 the school may retain no more than:

510 5002(3)(b)(2)(i) zero percent of the term's tuition if the termination is during the
511 first week of instruction; or

512 5002(3)(b)(2)(ii) twenty percent of the term's tuition if the termination is during
513 the second week of instruction; or

514 5002(3)(b)(2)(iii) thirty-five percent of the term's tuition if the termination is dur-
515 ing the third week of instruction; or

516 5002(3)(b)(2)(iv) fifty percent of the term's tuition if the termination is during the
517 fourth week of instruction; or

518 5002(3)(b)(2)(v) seventy percent of the term's tuition if the termination is during
519 the fifth week of instruction; or

520 5002(3)(b)(2)(vi) one hundred percent of the term's tuition if the termination oc-
521 curs after the completion of the fifth week of instruction.

522 5002(3)c.

523 5002(3)(c)(1) The tuition refund policy for the second term or quarter of any program at
524 schools licensed pursuant to section five thousand one of this article shall be as follows:

525 5002(3)(c)(1)(A) For programs which are divided into quarters of up to fourteen
526 weeks, the school shall evenly divide the total tuition charges among the number
527 of quarters. After instruction is begun in a school, if a student withdraws or is dis-
528 continued, the school may retain no more than:

529 5002(3)(c)(1)(A)(i) twenty-five percent of the quarter's tuition if the ter-
530 mination is during the first week of instruction; or

531 5002(3)(c)(1)(A)(ii) fifty percent of the quarter's tuition if the termination
532 is during the second week of instruction; or

533 5002(3)(c)(1)(A)(iii) seventy-five percent of the quarter's tuition if the
534 termination is during the third week of instruction; or

535 5002(3)(c)(1)(A)(iv) one hundred percent of the quarter's tuition if the
536 termination occurs after the third week of instruction.

537 5002(3)(c)(1)(B) For programs organized by terms of fifteen, sixteen, seventeen

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

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

543 5002(3)(c)(1)(B)(ii) thirty-five percent of the term's tuition if the termina-
544 tion is during the second week of instruction; or

545 5002(3)(c)(1)(B)(iii) fifty percent of the term's tuition if the termination is
546 during the third week of instruction; or

547 5002(3)(c)(1)(B)(iv) seventy percent of the term's tuition if the termination
548 is during the fourth week of instruction; or

549 5002(3)(c)(1)(B)(v) one hundred percent of the term's tuition if the termi-
550 nation occurs after the completion of the fourth week of instruction.

551 5002(3)(c)(2) Notwithstanding the provisions of subparagraph one of this paragraph, the
552 tuition refund policy set forth in paragraph b of this subdivision shall apply unless the
553 school demonstrates that there are no significant educational changes in the educational
554 program of the student, such changes as defined in regulations of the commissioner.

555 5002(3)d. The tuition refund policy for the third and any subsequent term or quarter of any pro-
556 gram licensed pursuant to section five thousand one of this article shall be the policy set forth in
557 subparagraph one of paragraph c of this subdivision.

558 5002(3)e. No program shall have a term in excess of eighteen weeks.

559 5002(3)f. The amount of the refund shall be calculated based on the last day of student attend-
560 ance.

561 5002(3)g.

562 5002(3)(g)(1) Any refund due to a student shall be paid by the school within forty-five
563 days of the date on which the student withdraws from the program. For the purposes of
564 this article, such date shall be the earliest of

565 5002(3)(g)(1)(i) the date on which the student gives written notice to the school or

566 5002(3)(g)(1)(ii) the date on which the student is deemed to have withdrawn pur-
567 suant to subparagraph two of this paragraph.

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

575 5002(3)h. Schools shall submit, for approval by the commissioner, the school catalog with a
576 weekly tuition liability chart for each program that indicates the amount of refund due the stu-
577 dent in the event of withdrawal.

578 5002(3)i. Upon payment of a refund to a lender, the school shall forthwith send a notice to a per-
579 son designated by the president of the higher education services corporation upon a form ap-
580 proved by the president that such refund was made.

581 5002(3)j. If the higher education services corporation fails to receive the notice required by para-
582 graph i of this subdivision, it shall forthwith notify the student of his or her right to a refund and
583 the commissioner of such failure. Upon receipt of such notification, the commissioner shall take
584 appropriate action against the school.

585 5002(4). Curriculum approval.

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

592 5002(4)b. In approving curriculum, the commissioner shall take into consideration the following:

593 5002(4)(b)(1) that the entrance requirements demonstrate that students possess the skills,
594 competencies and prerequisite knowledge needed to progress in the curriculum;

595 5002(4)(b)(2) that the content will enable the student to develop those skills and compe-
596 tencies required for employment in the occupational area for which the curriculum was
597 developed;

598 5002(4)(b)(3) that the school will utilize appropriate instructional methods;

599 5002(4)(b)(4) that the instructional equipment used within the curriculum is comparable

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

602 5002(4)(b)(5) that a curriculum may include instruction in English as a second language
603 at a beginning or basic level, provided such instruction shall not constitute more than fifty
604 percent of such program.

605 5002(4)c.

606 5002(4)(c)(1) If the evaluation of a particular course or facility requires the services of an
607 expert not employed by the department, the department shall retain such expert at the
608 school's expense in addition to the application fees prescribed in paragraph a of this sub-
609 division.

610 5002(4)(c)(2) If, in the interest of expediting the approvals, a school requests the depart-
611 ment to employ an outside consultant, the school shall pay the cost of such services in
612 addition to the application fees prescribed in paragraph a of this subdivision.

613 5002(4)d. The commissioner shall act on applications for approval of a course or curriculum
614 within one hundred twenty days of receipt of a complete application and, in the case of a denial,
615 shall set forth in writing the reasons for such denial.

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

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

628 5002(5). Application for reapproval.

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

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

636 5002(5)b. Curriculum reapproval standards.

637 5002(5)(b)(1) The commissioner shall prescribe by regulation, standards for reapproval
638 after the first year of licensure, of any curriculum or course based upon factors including
639 but not limited to the following, as appropriate:

640 5002(5)(b)(1)(i) for each curriculum or course, the percentage of students who
641 have dropped out;

642 5002(5)(b)(1)(ii) the acquisition of a specified minimum level of skills by the stu-
643 dents; and

644 5002(5)(b)(1)(iii) for each curriculum or course, the percentage of students placed
645 in occupations related to the instruction, where applicable.

646 5002(5)(b)(2) Such standards shall be consistent with those applied to all non-degree ca-
647 reer education programs.

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

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

658 5002(5)e. The commissioner may provide in regulations for reapproval procedures, consistent
659 with this subdivision, for applications submitted less than one hundred twenty days from the ex-
660 piration date.

661 5002(5)f. The commissioner shall act upon enrollment agreements and catalogs within ninety
662 days of receipt, and, in the case of denial, shall set forth in writing the reasons for such denial. If
663 the commissioner fails to act within ninety days, a catalog shall be deemed approved for one year
664 and an enrollment agreement shall be deemed approved until the commissioner acts upon it.

5002(6).

665 5002(6)a. Teachers and directors.

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

689 5002(6)b. A school director shall have access to all student and school records which shall be
690 maintained in accordance with this article and the regulations of the commissioner and shall
691 make such records available to the commissioner or the commissioner's designee upon request
692 during an on-site school inspection.

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

699 5002(7). Advertising.

700 5002(7)a. The commissioner is authorized to commence a disciplinary proceeding pursuant to

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

707 5002(7)b. Beginning on January first, two thousand, all schools shall include in their advertising,
708 promotional material, or letterhead the statement “Licensed by the State of New York”, and an
709 accompanying symbol to indicate such status, issued by the commissioner pursuant to section
710 five thousand nine of this article.

711 5002(8). The higher education services corporation shall adopt rules and regulations to effectuate the
712 cessation of collection activities by lenders or by the corporation in cases in which a licensed private
713 career school at which the student enrolled has closed or ceased its teaching activities during the aca-
714 demic period for which the loan was made or guaranteed.

§ 5003. Disciplinary actions, hearings and penalties

715 5003(1). Disciplinary action.

716 5003(1)a. The commissioner for good cause, after affording a school an opportunity for a hear-
717 ing, may take disciplinary action as hereinafter provided against any school authorized to operate
718 under this article.

719 5003(1)b. Good cause shall include, but not be limited to, any of the following:

720 5003(1)(b)(1) fraudulent statements or representations to the department, the public or
721 any student in connection with any activity of the school;

722 5003(1)(b)(2) violation of any provision of this article or regulation of the commissioner;

723 5003(1)(b)(3) conviction or a plea of no contest on the part of any owner, operator, direc-
724 tor or teacher:

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

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

736 5003(1)(b)(4) incompetence of any owner or operator to operate a school.

737 5003(1)c.

738 5003(1)(c)(1) Any person who believes he or she has been aggrieved by a violation of
739 this section, except a person aggrieved by the actions or omissions of a candidate school,
740 shall have the right to file a written complaint within:

741 5003(1)(c)(1)(A) two years of the alleged violation; or

742 5003(1)(c)(1)(B) one year of receiving notification from the higher education ser-
743 vices corporation or any other guarantee agency that the student has defaulted on

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

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

756 5003(1)(c)(3) The commissioner may initiate an investigation without a complaint.

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

767 5003(2). Hearing procedures.

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

777 5003(2)b. Opportunity shall be afforded to the party to respond and present evidence and argu-
778 ment on the issues involved in the hearing including the right of cross examination. In a hearing,
779 the school or such party shall be accorded the right to have its representative appear in person or
780 by or with counsel or other representative. Disposition may be made in any hearing by stipula-

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

782 5003(2)c.

783 5003(2)(c)(1) The commissioner shall designate an impartial hearing officer to conduct
784 the hearing, who shall be empowered to:

785 5003(2)(c)(1)(A) administer oaths and affirmations; and

786 5003(2)(c)(1)(B) regulate the course of the hearings, set the time and place for
787 continued hearings, and fix the time for filing of briefs and other documents; and

788 5003(2)(c)(1)(C) direct the school or such party to appear and confer to consider
789 the simplification of the issues by consent; and

790 5003(2)(c)(1)(D) grant a request for an adjournment of the hearing only upon
791 good cause shown.

792 5003(2)(c)(2) The strict legal rules of evidence shall not apply, but the decision shall be
793 supported by substantial evidence in the record.

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

804 5003(4). Judicial review. Any order imposed under this section shall be subject to judicial review un-
805 der article seventy-eight of the civil practice law and rules, but no such determination shall be stayed
806 or enjoined except upon application to the court after notice to the commissioner.

807 5003(5). Enforcement proceedings. The attorney general, in his or her own capacity, or at the request
808 of the commissioner, may bring an appropriate action or proceeding in any court of competent juris-
809 diction to recover a fine or otherwise enforce any provision of this article.

810 5003(6). Civil penalties and administrative sanctions.

811 5003(6)a. A hearing officer may recommend, and the commissioner may impose, a civil penalty

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

816 5003(6)b. Notwithstanding the provisions of paragraph a of this subdivision, a hearing officer
817 may recommend, and the commissioner may impose a civil penalty not to exceed seventy-five
818 thousand dollars or double the documented amount from which the school benefited, whichever
819 is greater, for any of the following violations:

820 5003(6)(b)(1) operation of a school without a license in violation of section five thousand
821 one of this article;

822 5003(6)(b)(2) operation of a school knowing that the school's license has been suspended
823 or revoked;

824 5003(6)(b)(3) use of false, misleading, deceptive or fraudulent advertising;

825 5003(6)(b)(4) employment of recruiters on the basis of a commission, bonus or quota,
826 except as authorized by the commissioner;

827 5003(6)(b)(5) directing or authorizing recruiters to offer guarantees of jobs upon comple-
828 tion of a course;

829 5003(6)(b)(6) failure to make a tuition refund when such failure is part of a pattern of
830 misconduct;

831 5003(6)(b)(7) the offering of a course or program that has not been approved by the
832 commissioner;

833 5003(6)(b)(8) admitting students, who subsequently drop out, who were admitted in vio-
834 lation of the admission standards established by the commissioner, where such admis-
835 sions constitute a pattern of misconduct and where the drop out resulted at least in part
836 from such violation;

837 5003(6)(b)(9) failure to provide the notice of discontinuance and the plan required by
838 subdivision seven of section five thousand one of this article; or

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

845 5003(6)c. In addition to the penalties authorized in paragraphs a and b of this subdivision, a hear-
846 ing officer may recommend and the commissioner may impose any of the following administra-
847 tive sanctions:

- 848 5003(6)(c)(1) a cease and desist order;
- 849 5003(6)(c)(2) a mandatory direction;
- 850 5003(6)(c)(3) a suspension or revocation of a license;
- 851 5003(6)(c)(4) a probation order; or
- 852 5003(6)(c)(5) an order of restitution.

853 5003(6)d. Penalty factors. In the recommendation of any penalty, a hearing officer shall, at a
854 minimum, give due consideration, where applicable, to the good faith of the violator and the
855 gravity of the violation.

856 5003(6)e. The commissioner may suspend a license upon the failure of a school to pay any fee,
857 fine, penalty, settlement or assessment as required by this article unless such failure is deter-
858 mined by the commissioner to be for good cause.

859 5003(6)f. All civil penalties, fines and settlements received after April first, nineteen hundred
860 ninety shall accrue to the credit of the tuition reimbursement account established pursuant to sec-
861 tion ninety-seven-hh of the state finance law.

862 5003(7). Criminal penalties. In addition to any other penalties elsewhere prescribed:

863 5003(7)a. Any person who knowingly violates any of the provisions of this article shall be guilty
864 of a class B misdemeanor punishable in accordance with the penal law. If the conviction is for a
865 second offense committed within five years of the first conviction under this paragraph, such
866 person shall be guilty of a class A misdemeanor punishable in accordance with the penal law.

867 5003(7)b. Any person who knowingly

868 5003(7)(b)(1) falsifies or destroys school or other business records relating to the opera-
869 tion of the school with intent to defraud;

870 5003(7)(b)(2) fails to make a tuition refund as required by section five thousand two of
871 this article with the intent to defraud more than one person; or

872 5003(7)(b)(3) operates a school without a valid license required by section five thousand
873 one of this article shall be guilty of a class A misdemeanor punishable in accordance with
874 the penal law.

875 5003(7)c. Any person who, having been convicted within the past five years of failing to make a

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

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

887 5003(8). Private right of action. A student injured by a violation of this article may bring an action
888 against the owner or operator of a licensed private career school for actual damages or one hundred
889 dollars, whichever is greater. A court may, in its discretion, award reasonable attorney's fees to a pre-
890 vailing plaintiff.

§ 5004. Private school agent's certificate

5004(1).

891 5004(1)a. No party may, for a consideration or remuneration procure, solicit or enroll any stu-
892 dent for instruction in or given by any school within or without the state of New York, unless

893 5004(1)(a)(i) the party is a salaried employee of the school and

894 5004(1)(a)(ii) the party shall have secured a private school agent's certificate from the
895 department pursuant to regulations of the commissioner.

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

902 5004(1)c. No consideration or remuneration shall be paid in the form of a fee per student en-
903 rolled by a private school agent except pursuant to the following limitations:

904 5004(1)(c)(1) a school may pay twenty-five percent of the consideration or remuneration
905 after the student has completed three weeks of the program;

906 5004(1)(c)(2) a school may pay the remainder of the consideration or remuneration after
907 the student has completed eight weeks of the program;

908 5004(1)(c)(3) the total amount of the consideration or remuneration paid per student may
909 not exceed one percent of the annual salary paid to the agent.

910 5004(1)d. In promulgating regulations in relation to the issuance of such certificates and the con-
911 duct of the holders of such certificates, the commissioner shall give consideration to:

912 5004(1)(d)(1) good moral character of the candidate for such certificate;

913 5004(1)(d)(2) the use of ethical and fair practices in the presentation of the school's offer-
914 ings; and

915 5004(1)(d)(3) whether the prospective agent has within five years of the date of the appli-
916 cation violated any provision of this article or the regulations of the commissioner adopt-
917 ed pursuant to this article.

918 5004(2). Instruction, as contemplated by this section, shall be any plan or method for teaching any
919 subject or subjects in any form or manner, including correspondence or home study.

5004(3).

920 5004(3)(a) Exempted from the requirements of this section are persons acting solely for schools
921 which are not required to be licensed or are specifically exempted from the licensing require-
922 ments of this article.

5004(3)(b)

923 5004(3)(b)(i) also exempted from the requirements of this section is an online education
924 marketplace as defined in paragraph c of subdivision one of section five thousand one of
925 this article, provided that the online education marketplace complies with each of the fol-
926 lowing:

927 5004(3)(b)(i)(1) An online education marketplace shall not solicit, procure, or en-
928 roll any student for instruction in a licensed private career school or certified ESL
929 school, as defined by the commissioner in regulations.

930 5004(3)(b)(i)(2) Upon receipt of any monies collected by an online education
931 marketplace from a prospective student for payment of tuition and/or fees, the
932 prospective student and the licensed private career school or certified ESL school
933 shall execute an enrollment agreement in accordance with regulations of the
934 commissioner. If an enrollment agreement is not executed, the monies shall be
935 promptly returned to the prospective student in a timeframe and manner pre-
936 scribed by the commissioner in regulations.

937 5004(3)(b)(i)(3) If an enrollment agreement is executed, the online education
938 marketplace shall forward the monies received from the prospective student to the
939 licensed private career school or certified ESL school in a timeframe and manner
940 prescribed by the commissioner in regulations.

941 5004(3)(b)(i)(4) An online education marketplace shall not receive from a student
942 an amount greater than the tuition or fees to be charged by the licensed private
943 career school or certified ESL school to the student, and shall separately account
944 for monies received from the prospective student to be thereafter transferred to a
945 licensed private career school or certified ESL school in payment of tuition or
946 fees, and any remuneration and/or compensation received by the online education
947 marketplace from a licensed private career school or certified ESL school in pay-
948 ment for services rendered to such school by the online education marketplace.
949 The licensed private career school or certified ESL school shall also separately
950 account for tuition or fees transferred to the school by an online education mar-

951 marketplace on behalf of a student in payment of tuition or fees, and payments made
952 by the school to an online education marketplace for services rendered to the
953 school by the online education marketplace.

954 5004(3)(b)(i)(5) The commissioner may take disciplinary action against an online
955 education marketplace pursuant to section five thousand three of this article, to
956 the extent such provisions are deemed applicable by the commissioner in regula-
957 tions.

958 5004(3)(b)(i)(6) An online education marketplace is prohibited from offering ad-
959 vertising/marketing services to an unlicensed private career school or uncertified
960 ESL school.

961 5004(3)(b)(ii) Any licensed private career school or certified ESL school that contracts
962 with an online education marketplace shall comply with the provisions of this subdivision
963 and the regulations of the commissioner or they may be subject to disciplinary action pur-
964 suant to section five thousand three of this article.

965 5004(3)(c). Persons who are paid to procure, solicit or enroll students on the premises of schools
966 required to be licensed shall not be exempt from the provisions of this section.

967 5004(4). Application and renewal application for a private school agent's certificate shall be filed on
968 forms to be prescribed and provided by the commissioner. Said certificate shall be valid for three years
969 from the date of issuance. Certificates which have been renewed shall be valid for a period of three
970 years from the expiration date of the certificate which has been renewed. Every applicant and renewal
971 applicant shall pay to the department a fee of two hundred dollars.

972 5004(4-a). Notwithstanding the provisions of subdivision four of this section, the school director may
973 apply for a private school agent's certificate on forms to be prescribed and provided by the commis-
974 sioner without incurring the agent application fee.

975 5004(5). No recovery shall be had against any student or enrollee and full recovery shall be made on
976 any contract for or in connection with any instruction if the student or enrollee was procured, solicited
977 or enrolled outside or on the school premises by a person paid to procure, solicit or enroll students but
978 not having a valid private school agent's certificate pursuant to the provisions of this section at the
979 time that the contract was negotiated or executed or the sale of the instruction was made, or by a per-
980 son who holds such a certificate but has made fraudulent or improper claims. Each enrollment agree-
981 ment shall include, where applicable the name of the agent responsible for procuring, soliciting or en-
982 rolling the student or enrollee.

983 5004(6). The issuance of such a private school agent's certificate shall not be deemed to constitute ap-
984 proval of any course or of the person or institution offering, conducting or administering the same.

985 5004(7). The commissioner, after giving to the certificate holder due notice and opportunity to be
986 heard, may fine a private school agent, suspend or revoke a private school agent's certificate at any
987 time for failure to comply with the provisions of the law or the regulations of the commissioner or for
988 any other good cause.

989 5004(8). No employer of a private school agent other than a school may indemnify, save harmless or
990 otherwise reimburse any agent for the amount of any fines imposed pursuant to this section. If a per-
991 son fined pursuant to this section can demonstrate to the satisfaction of the commissioner that the ac-
992 tion for which the fine was imposed was undertaken pursuant to explicit instructions from the employ-
993 er, the employer shall indemnify, save harmless, and reimburse that person for the fine and shall pay to
994 the commissioner an additional fine of an equal amount.

§ 5005. Disclosure to students

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

998 5005(a). information concerning the school, including but not limited to:

999 5005(a)(1) a description of the courses offered;

1000 5005(a)(2) program objectives and the length of the program;

1001 5005(a)(3) a schedule of tuition payments, fees and all other charges and expenses neces-
1002 sary for completion of the course or program;

1003 5005(a)(4) the tuition refund and contract cancellation policies;

1004 5005(a)(5) a description of the faculty and other instructional personnel and their qualifi-
1005 cations;

1006 5005(a)(6) the names of associates, agencies or governmental bodies which accredit, ap-
1007 prove or license the school;

1008 5005(a)(7) a description of any special facilities and services available to handicapped
1009 students; and

1010 5005(a)(8) any other items identified by the commissioner in regulation following con-
1011 sultation with the advisory council;

1012 5005(b). if the school advertises job placement rates as means of attracting students to enroll in
1013 the school, the most recent available data on employment and graduation statistics for students
1014 who have attended that school;

1015 5005(c). information concerning any student financial assistance, including a description of the
1016 procedures and forms, student eligibility requirements and the rights and responsibilities of stu-
1017 dents receiving financial aid;

1018 5005(d). the pass rate of graduates of the program for the most recent calendar year on any licen-
1019 sure or certification examination required by the state for employment in the particular vocation-
1020 al, trade, or career field;

1021 5005(e). the process for obtaining a tuition refund from the tuition reimbursement fund and the
1022 availability of loan forgiveness in the event the school closes while the student is in attendance;

- 1023 5005(f). a sample enrollment contract, a sample cancellation form developed by the department
1024 in consultation with the advisory council and a tuition reimbursement fund claim form; and
- 1025 5005(g). a description of the complaint procedures established pursuant to this article.

§ 5006. Teachout plans

1026 5006(1). A school may submit a teachout plan to the commissioner for approval pursuant to regula-
1027 tions established by the commissioner. A teachout plan shall consist of a contract between a licensed
1028 private career school, with another school, hereinafter called the teachout school, so that in the event
1029 that the licensed private career school ceases instruction, the teachout school will provide the neces-
1030 sary instruction specified in a student's original enrollment agreement with the school ceasing instruc-
1031 tion. A teachout plan may employ more than one teachout school to provide instruction to students in
1032 the school ceasing instruction. Schools under common ownership but having separate licenses may,
1033 subject to the approval of the commissioner, enter into teachout agreements. A teachout plan may be
1034 contracted between the commissioner and one or more teachout schools in the event that the closing
1035 school is unable or unwilling to do so.

1036 5006(2). A teachout plan shall include the following provisions:

1037 5006(2)(a) the teachout school must offer courses of study that are substantially similar to those
1038 offered in the school ceasing instruction;

1039 5006(2)(b) teachout schools must be located in the geographic area in which the school ceasing
1040 instruction was located unless the school ceasing instruction provided distance learning or online
1041 training;

1042 5006(2)(c) all provisions for a teachout plan must be included in the enrollment agreement
1043 signed by the student; and

1044 5006(2)(d) the teachout school shall agree to fulfill the enrollment agreement signed by the stu-
1045 dent at the school ceasing instruction.

1046 5006(3). The licensed school shall provide to the teachout school and to the department the following
1047 information prior to closure:

1048 5006(3)(a) Copies of the academic and financial records for all students in attendance at the
1049 school at the projected time of closure;

1050 5006(3)(b) A listing of all such students presently in attendance including their names, addresses,
1051 social security numbers, curriculum that each student is enrolled in and the number of hours the
1052 students will have completed at the time of the school closure.

1053 5006(4). The department will provide to the teachout school, immediately upon notification of a
1054 school closing, a copy of each approved curriculum that the closing school is presently offering.

1055 5006(5). The commissioner shall require all teachout schools to address the following issues:

- 1056 5006(5)(a) Integration of students into a curriculum which may be different from the curriculum
1057 in which they are currently receiving instruction;
- 1058 5006(5)(b) Assessments of students' progress so that they may be placed into an appropriate
1059 course;
- 1060 5006(5)(c) Provision of remedial instruction to students who are found to be deficient in one or
1061 more course areas upon their initial assessment;
- 1062 5006(5)(d) Provision by the teachout school to adhere to the required student/teacher ratios and
1063 room capacities; and
- 1064 5006(5)(e) Compliance with statutory and regulatory requirements during the teachout.
- 1065 5006(6). The student shall not be subject to any costs beyond the total costs identified in the original
1066 enrollment agreement.
- 1067 5006(7). A student may decline to pursue instruction at the teachout school and may instead seek a re-
1068 fund pursuant to section five thousand seven of this article.

§ **5007. Tuition reimbursement account**

1069 5007(1). Except as otherwise provided in subdivision six of this section, the portion of the annual as-
1070 sessment of schools licensed pursuant to section five thousand one of this article as prescribed in sub-
1071 division nine of such section and all fines, penalties and settlements received pursuant to this article
1072 shall be transferred upon receipt into the tuition reimbursement account.

1073 5007(2). Repealed

1074 5007(3).

1075 5007(3)a. The commissioner shall develop a complaint form and provide such form to students.
1076 In order to claim a refund, a student shall apply to the fund with a complaint form pursuant to the
1077 requirements of section five thousand three of this article. Except as otherwise provided in this
1078 article, the commissioner shall compute the refund, if any, using the refund formula established
1079 by subdivision three of section five thousand two of this article.

1080 5007(3)b. Claimants who had been enrolled in schools which have not closed or ceased opera-
1081 tion shall be required to show in a manner determined by the commissioner that:

1082 5007(3)(b)(1) the student is eligible for a refund;

1083 5007(3)(b)(2) the student has made a request to the school for a refund; and

1084 5007(3)(b)(3) the school has failed to make the refund within the time period required by
1085 this article.

1086 5007(3)c. The commissioner shall act on each refund request within thirty business days of such
1087 request.

1088 5007(4). Students may be eligible for refunds under this section as follows:

1089 5007(4)a. A student who is offered a teachout plan for the curriculum in which the student was
1090 enrolled at the time the school closed or ceased operation, which has been approved by the de-
1091 partment, may elect to continue instruction pursuant to the teachout plan or may decline to con-
1092 tinue instruction and may instead apply for a full refund under this section. The option to apply
1093 for a refund shall extend to the end of the first week of instruction at the teachout school.

1094 5007(4)b. A student who was enrolled in a school which has not closed or ceased operation is en-
1095 titled to a refund computed in accordance with the refund policy established by subdivision three
1096 of section five thousand two of this article.

1097 5007(4)c. A student who was enrolled in a school at the time the school closes or ceases opera-

1098 tion is entitled to a refund of the full amount of prepaid tuition. In addition, commencing Sep-
1099 tember first, nineteen hundred ninety-three, a student who drops out of a school, where such
1100 school closes within thirty days of the student's termination and prior to completion of such stu-
1101 dent's program as specified in the enrollment agreement, shall be entitled to a full refund of all
1102 tuition, fees and book charges paid for by or on behalf of the student in cash or in loans, exclud-
1103 ing funding provided by any government agencies.

1104 5007(4)d. A student who was enrolled in a school which has not closed or ceased operation, and
1105 who has dropped out, is entitled to a full refund of all tuition, fees and other required costs paid
1106 by the student if the student has submitted a complaint form to the commissioner and the com-
1107 missioner has determined that a violation of this article has occurred which warrants a refund.
1108 The commissioner shall promulgate regulations identifying those violations that warrant a re-
1109 fund.

1110 5007(4)e. Commencing September first, nineteen hundred ninety-three, a student who drops out
1111 of a school, which subsequently closes, and who is owed a refund for the failure of such school
1112 to follow the provisions enumerated in subdivision three of section five thousand two of this arti-
1113 cle shall be eligible for a refund from the tuition reimbursement fund according to the provisions
1114 of subdivision three of section five thousand two of this article.

1115 5007(4)f. Commencing September first, nineteen hundred ninety-three, any student enrolled in a
1116 school based upon an ability to benefit examination shall be eligible for a full refund, regardless
1117 of whether the student is currently enrolled, graduated or dropped out, if the school enrolled the
1118 student contrary to the provisions of the approved entrance requirements and the student com-
1119 plies with the requirements of subdivision one of section five thousand three of this article.

1120 5007(5).

1121 5007(5)a. For a student who had been enrolled in a school that has not closed or ceased opera-
1122 tion, the refund shall be paid as follows:

1123 5007(5)(a)(1) guaranteed student loans, if any, in which case the commissioner shall noti-
1124 fy the student of such payment and shall be paid directly to the lender or guarantee agen-
1125 cy where appropriate;

1126 5007(5)(a)(2) actual personal tuition expenditures, if any; and

1127 5007(5)(a)(3) tuition assistance program awards and other governmental aid.

1128 5007(5)b. For schools that have closed or ceased operation, the commissioner shall refund actual
1129 personal tuition, fees and book expenditures to the student. The repayment of any loans incurred
1130 by the student as part of the actual personal tuition, fees and book expenditures shall be paid di-
1131 rectly to the lender or the guarantee agency where appropriate.

1132 5007(6).

1133 5007(6)a. Where a claim is paid to a student of an operating school, the commissioner shall im-
1134 mediately notify the school.

1135 5007(6)b. Within ten days of the receipt of the notice, the school shall either request a hearing to
1136 challenge the commissioner's determination that a refund was owed to the student or reimburse
1137 the fund the amount paid to the claimant plus a penalty up to two times such amount. This pay-
1138 ment shall also incur interest for each day it remains unpaid at an annual interest rate of one per-
1139 cent above the prime rate. The commissioner may promulgate streamlined procedures for con-
1140 ducting hearings pursuant to this paragraph. Any penalty assessed under this paragraph shall be
1141 in addition to any other penalties assessed pursuant to this article. Notwithstanding any other
1142 provision of law, penalties and interest paid pursuant to this paragraph shall accrue to the credit
1143 of the proprietary vocational school supervision account to support the costs associated with the
1144 hearings authorized in this subdivision.

1145 5007(7). Notwithstanding the notice procedures described in subdivision three of this section, in the
1146 event of a school closing, the commissioner on his or her own initiative may take appropriate action in
1147 accordance with this section to process refund claims on behalf of all of the students of the closed
1148 school.

1149 5007(8). Assignment of rights. Persons and entities receiving refunds under this section shall be
1150 deemed to have assigned or subrogated their tuition reimbursement rights to the commissioner on be-
1151 half of the tuition reimbursement fund only for the amount refunded by the tuition reimbursement
1152 fund. Within ninety days of any refund made pursuant to this section, the commissioner or the attorney
1153 general shall take appropriate action to recover the total amount of the refunds made, plus administra-
1154 tive costs, from the school.

1155 5007(9).

1156 5007(9)a. A student whose loan liability is exempted pursuant to former section six hundred
1157 eighty-three of this chapter and is entitled to or owed a refund shall transfer to the higher educa-
1158 tion services corporation the right to claim the refund owed and due from the tuition reimburse-
1159 ment fund. In such event, the corporation shall be entitled to receive a refund for that portion of
1160 the claim not paid to the corporation by the United States Secretary of Education pursuant to the
1161 federal guaranteed loan program.

1162 5007(9)b. Any amounts remaining in the tuition reimbursement fund as of June first, nineteen
1163 hundred ninety-three and on every March thirty-first thereafter, shall be made available to the
1164 higher education services corporation for payment of student loans on which collection activity
1165 has ceased pursuant to the provisions of subdivision six of former section six hundred eighty-
1166 three of this chapter. No amounts shall be paid to the higher education services corporation for

1167 loans on which collection activity has ceased because of the operation of section 437 of the
1168 Higher Education Act of 1965, as amended.

1169 5007(10). Management of the tuition reimbursement account.

1170 5007(10)a. As used in this subdivision, net balance is defined as the actual cash balance of the
1171 account as determined by the commissioner on June thirtieth, nineteen hundred ninety-three and
1172 every three months thereafter. For the purpose of calculating the net balance, the commissioner
1173 shall not take into consideration any refunds made from the account pursuant to paragraphs d and
1174 f of subdivision four of this section for the year immediately preceding the date on which the
1175 calculation is made.

1176 5007(10)b. In the event that the account has accumulated a net balance in excess of one million
1177 eight hundred thousand dollars, the commissioner shall, with the approval of the director of the
1178 budget, waive an amount not to exceed the amount due for the next quarterly assessment pursu-
1179 ant to this section and subdivision nine of section five thousand one of this article for schools
1180 which have paid sixteen quarters or more of assessments only. In such event, payment of future
1181 quarterly assessments shall be suspended for schools which have paid sixteen quarters or more of
1182 assessments until the net balance of the account falls below one million three hundred thousand
1183 dollars.

1184 5007(10)c. In the event the net balance of the account falls below one million three hundred
1185 thousand dollars, if the quarterly assessment has been suspended for schools which have paid
1186 sixteen quarters or more of assessments pursuant to paragraph b of this subdivision, it shall be re-
1187 instated for the next quarterly assessment and all subsequent quarterly assessments until the ac-
1188 count has accumulated a net balance in excess of one million eight hundred thousand dollars.

1189 5007(10)d. Notwithstanding the provisions of paragraph b of this subdivision, in the event that
1190 the balance of the account is in excess of one million three hundred thousand dollars, all schools
1191 licensed after June thirtieth, nineteen hundred ninety-nine shall be required to pay into the ac-
1192 count the equivalence of three years of annual assessments over a five year period.

1193 5007(10)e. Notwithstanding the provisions of paragraph b of this subdivision all schools licensed
1194 after June thirtieth, nineteen hundred ninety-three and before July first, nineteen hundred ninety-
1195 nine will be required to pay into the account the equivalence of three years of annual assessments
1196 within four years of the effective date of this paragraph. This amount to be assessed shall be de-
1197 termined based upon the school's gross tuition in its first three years of licensure.

1198 5007(10)f. Repealed.

1199 5007(10)g. In the event that the balance of the tuition reimbursement account is equal to or in
1200 excess of two million dollars, the amounts assessed the schools in accordance with the provisions
1201 of paragraphs d and e of this subdivision shall be deposited directly to the proprietary vocational

1202 school supervision account.

1203 5007(10)h. The commissioner may annually apportion from the account an amount up to two
1204 hundred thousand dollars for the purpose of securing, scanning and otherwise making student
1205 records from closed schools available to students who attended such schools. Provided, however,
1206 that in no case shall such apportionment cause the account to fall below the balance set forth in
1207 paragraph c of this subdivision, nor shall such apportionment cause schools whose quarterly as-
1208 sessments have been suspended to pay additional quarterly assessments.

1209 5007(11). Fund audit. The state comptroller shall audit or cause to be audited the tuition reimburse-
1210 ment fund once every two years and produce an audited financial statement according to generally ac-
1211 cepted accounting principles.

1212 5007(12). New schools. Within the first year that a school begins licensed operation, the commissioner
1213 shall assess such school an amount to be deposited into the fund in an amount to be determined by the
1214 commissioner.

§ 5008. Trust accounts

1215 5008(1). If the commissioner determines that a school has demonstrated a pattern or practice of failing
1216 to make tuition refunds in a timely manner consistent with this article and/or the school's financial
1217 condition may result in the interruption or cessation of instruction or jeopardize student tuition funds,
1218 the commissioner shall require a school to establish a trust account in a form or manner which the
1219 commissioner shall determine to be appropriate. The assets or funds contained in the trust account
1220 shall be maintained for the sole and exclusive benefit of the students.

1221 5008(2). In making this determination, the commissioner shall consider the following factors: the
1222 number of refunds not paid by the school in a timely manner; the number of claims made to, or paid
1223 by, the tuition reimbursement account; a pattern of misconduct which substantially affects the finan-
1224 cial interests of students or the state, potential liability to the tuition reimbursement account, current
1225 assets as opposed to current liabilities, and such other measures as may be appropriate.

§ 5009. Duties of the commissioner

1226 In addition to all other duties assigned in this article, the duties of the commissioner shall include, but
1227 not be limited to:

1228 5009(1). ensuring that up-to-date, accurate information is available to the public, via the internet and
1229 other appropriate media, regarding every duly licensed proprietary school in this state, as well as dis-
1230 ciplinary actions decided by the state.

1231 5009(2). developing and issuing to duly licensed proprietary schools a symbol to indicate such status;
1232 provided that such symbol shall be developed and made available to such schools no later than Sep-
1233 tember thirtieth, nineteen hundred ninety-nine.

1234 5009(3). administering a public information campaign aimed at increasing awareness about the im-
1235 portance of attending licensed proprietary vocational schools. Such campaign shall be targeted to pop-
1236 ulations at risk of enrolling in unlicensed schools, and shall be conducted using means including, but
1237 not limited to, public service announcements on commercial radio and television stations, public ac-
1238 cess television, and print media.

1239 5009(4). providing for the orderly maintenance of any student records which may be transferred to the
1240 department pursuant to any school's plan developed pursuant to subdivision eight of section five thou-
1241 sand one of this article; including responding to student requests for transcripts and records within
1242 twenty days of receiving a request. The commissioner is hereby authorized to impose an appropriate
1243 fee for such transcripts pursuant to a schedule approved by the director of the budget.

§ **5010. Advisory council**

1244 5010(1). An advisory council for licensed private career schools is hereby created for the purpose of
1245 advising the board of regents and the commissioner as provided herein. The council shall be composed
1246 of eleven members appointed by the governor, two of whom shall be upon the recommendation of the
1247 temporary president of the senate, two of whom shall be upon the recommendation of the speaker of
1248 the assembly, one of whom shall be upon the recommendation of the minority leader of the senate and
1249 one of whom shall be upon the recommendation of the minority leader of the assembly. Of the five
1250 remaining members, one shall be an owner or director of a school regulated pursuant to this article,
1251 and one shall be a student advocate. The governor shall designate a chairperson from such members.
1252 The commissioner, the president of the higher education services corporation, the secretary of state,
1253 the comptroller, the director of the division of the budget, and the executive director of the job training
1254 partnership council, or their designees, shall serve as ex-officio, non-voting members of the council.

1255 5010(2). The council shall meet no less than four times a year. Members of the council shall receive
1256 no compensation for their services but shall be reimbursed for reasonable expenses actually and neces-
1257 sarily incurred by them in the performance of their duties. Council member terms of office shall be
1258 limited to three years, provided that members may be reappointed. All appointments to the council to
1259 fill vacancies in existence on the effective date of the chapter of the laws of two thousand twelve
1260 which amended this subdivision shall be made within ninety days of such effective date.

1261 5010(3). The council shall advise the commissioner on such matters as the council determines are ap-
1262 propriate.