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

§ 5001. Licensed private career schools
§ 5002. Standards for licensed private career schools
§ 5003. Disciplinary actions, hearings and penalties
§ 5004. Private school agent's certificate
  § 5005. Disclosure to students
  § 5006. Teachout plans
§ 5007. Tuition reimbursement account
  § 5008. Trust accounts
§ 5009. Duties of the commissioner
  § 5010. Advisory council
§ 5001. Licensed private career schools

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

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

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

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

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

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

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

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

5001(2)d. schools which engage exclusively in training of students with disabilities as defined in section forty-four hundred one of this chapter;
5001(2)e. schools conducted on a not-for-profit basis by firms or organizations for the training of their own employees only, provided that such instruction is offered at no charge to such employees, or by a fraternal society or benevolent order for its members or their immediate relatives only;

5001(2)f. schools which provide instruction in the following subjects only: religion, dancing, music, painting, drawing, sculpture, poetry, dramatic art, languages, reading comprehension, mathematics, recreation, yoga, martial arts, pilates and athletics, including the training of students to teach such subjects, provided, however, that schools conducted for the purpose of training personal trainers shall be excluded from this exemption and shall be required to obtain licensure;

5001(2)g. schools in which the course of instruction is licensed, registered or approved under any other section of this chapter or by any other department or agency of the state;

5001(2)h. schools which provide instruction designed solely for giving flight training and/or related ground school instruction;

5001(2)i. schools in which instruction designed solely to prepare applicants for admission to professional licensing examinations administered by the department pursuant to title eight of this chapter, and applicants for examination for admission to the practice of law;

5001(2)j. schools which offer continuing education courses exclusively for individuals licensed by the department pursuant to title eight of this chapter and for individuals admitted to the practice of law;

5001(2)k. schools which provide instruction given exclusively to employees of a person or organization which has contracted with another person or organization to provide such instruction at no cost to the employees;

5001(2)l. conferences, trade shows, workshops, seminars, institutes or courses of study offered and sponsored either jointly or individually by recognized trade, business or professional organizations for the benefit of their membership;

5001(2)m. schools that limit their total conferences, trade shows, workshops, seminars, institutes or other course offerings to no more than twice in one calendar year with each of those offerings for no more than five days;

5001(2)n. schools which provide instruction exclusively to persons employed full-time or part-time in the field in which instruction is being offered, where the instruction is provided to meet continuing education standards required for professional licensure as defined by law in this state;
5001(2)o. schools in candidacy status pursuant to subparagraph (iv) of paragraph b of subdivision four of this section; and

5001(2)(p). schools which provide instruction in photography exclusively for non-occupational purposes.

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

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

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

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

5001(2-b)c. Prior to the commencement of the program, such schools shall submit to the department a disclosure form, prescribed by the commissioner, copies of which shall be provided to all students in such exempt program, which shall include but not be limited to the following information:

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

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

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

5001(2-b)(c)(iv) the signatures of the school director or owner of the school and the representative of the employer for which the program is being offered certifying the accuracy of the statements on the form.

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

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

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

5001(4)b.

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

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

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

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

5001(4)(b)(iv) A school which has applied for a private career school license may request candidacy status for one time only. Candidacy status shall not be issued to schools offering programs to train students to pass licensure examinations such as appearance enhancement tests, achieve nurse aide or nurse assistant certification, or pass examinations leading to licensure in any other profession or occupation determined by the commissioner to require full licensure status. Candidacy status shall allow a school to operate unlicensed for an initial period of twelve months during the licensure application process, which may be extended to a maximum, non-renewable period of eighteen months, under the following conditions:

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

5001(4)(b)(iv)(2) the school shall not represent that it is licensed or that its programs are approved through the department;

5001(4)(b)(iv)(3) to every prospective student, the school shall disseminate a statement, provided by the department, that the facilities, instructors, and programs being provided have not been approved and are not under the department's jurisdiction during the candidacy period. Such statement shall indicate that students attending candidate schools shall have no recourse through the department's student complaint process nor have any restitution available from the tuition reimbursement account. Students shall sign an attestation to the receipt of this statement. The school shall retain the signed attestation and provide the student
with a copy of such signed statement;

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

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

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

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

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

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

5001(4)(e)(i) Licensed private career schools and candidate schools shall submit such certified statistical reports and annual financial statements as required by the commissioner. The commissioner may require audited statistical reports upon a determination that a school has provided false or inaccurate certified statistical reports. The financial statements shall be based on the fiscal year of the school and shall also include an itemized account of tuition refunds due and owing to past or presently enrolled students.

7 of 46
tical reports shall include, but not be limited to, enrollment, completion and placement data. The commissioner shall use such financial statements and statistical reports submitted for the purposes of licensure of schools, establishing fees or assessments pursuant to this article and determining standards pursuant to paragraph b of subdivision five of section five thousand two of this article. The attorney general, the comptroller and the president of the higher education services corporation shall have access to this information when it is necessary to perform their duties as required by state law.

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

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

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

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

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

5001(4)(f)(3) non-profit schools exempt from taxation under section 501(c)(3) of the internal revenue code whose programs are funded entirely through donations from individuals or philanthropic organizations, or endowments, and interest accrued thereon; and
5001(4)(f)(4) language schools conducted for-profit which provide instruction in English as a second language and which accept no public funds.

5001(5). Required disclosure for licensure.

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

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

5001(5)(a)(2) Whether the applicant, or any corporation, partnership, association or organization or person holding an ownership or control interest in such school, or any employee responsible in a supervisory capacity for the administration of student funds or governmental funds has been convicted:

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

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

5001(5)(a)(3) Whether the applicant, or any corporation, partnership, association or organization or person holding an ownership or control interest in such school, or any employee responsible in a supervisory capacity for the administration of student funds or governmental funds, has been finally determined in any administrative or civil proceeding to have committed a violation of any provision of this article or any rules and regulations promulgated pursuant thereto, or any related order or determination of the commis-
sioner, or of any similar statute, rule, regulation, order or determination of another juris-
diction pertaining to the licensure and operation of any educational or training program; and

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

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

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

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

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

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

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

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

5001(9)b.

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

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

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

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

5001(9)d. Payments made within thirty days following the due date shall be subject to interest at one percent above the prevailing prime rate. Thereafter, late payments may result in suspension of licensure by the commissioner. Payments required by this subdivision shall be considered a condition of licensure.
§ 5002. Standards for licensed private career schools

Any school licensed pursuant to section five thousand one of this article shall be organized and conducted only as a school and shall be subject to the jurisdiction of the department exclusively, or in conjunction with such other state agency or department or district attorney upon which jurisdiction has also been conferred by law. Such schools shall be subject to and comply with the provisions of this section.

5002(1). Standards.

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

5002(1)b. For every such school, the commissioner shall set forth in regulation standards governing all of the following:

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

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

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

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

5002(1)(b)(5) the form and content of the student enrollment agreement or contract, provided that such agreement or contract shall be written in the same language as that principally used in the sales presentation;

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

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

5002(1)(b)(8) the sufficiency and suitability of the resources available for the support of such school; and
5002(1)(b)(9) counseling provided to students.

5002(1)b-1.

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

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

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

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

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

5002(1)b-1(2)(D) Loans of other financial aid payments for amounts greater than five thousand dollars that reflect a class term greater than twelve months shall have four equal disbursements. The disbursement schedule for such loans or payments shall be as follows: one-quarter of the tuition amount released initially, the second disbursement shall be released one quarter of the way through the length of the training; the third disbursement shall be released halfway through the length of the training, and the remainder shall be released three-quarters of the way through the training.
5002(1)b-1(3) No school may enter into any contract or agreement with or receive any students loan or financial aid funds from private entities, including, but not limited to, banks, financing companies, and any other private lending sources unless the private entity has a disbursement policy that, at a minimum, meets the requirements of subparagraph two of this paragraph.

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

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

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

5002(1)(d)(1) Certification. Each school admitting students who do not possess at least a high school diploma or its equivalent shall certify to the satisfaction of the commissioner that such prospective students have been administered and passed an examination which has been approved by the commissioner to determine their ability to benefit from the chosen curriculum prior to admission to the curriculum or course of study. Such examination shall, whenever possible, be a nationally recognized test appropriate for the course of instruction which has been approved by the commissioner. The examination results of each such student who is admitted shall be made available to the commissioner at a time prescribed by the commissioner and, together with the student's original answer sheet, shall be maintained by the school in the student's permanent record. For any student failing to achieve the necessary score on such examination for enrollment, the school shall be required to provide such student with a listing of appropriate counseling and educational opportunities available to the student at no cost, as determined by the commissioner. Where appropriate, the commissioner may accept such other entrance requirement documentation such as prerequisite coursework, professional or vendor certifications, personal interviews, and/or attestations of equivalent knowledge in lieu of the examination requirement.

5002(1)(d)(2) Counseling. Each school offering curricula which admit students who do not possess a high school diploma or its equivalent shall develop a plan to be approved by the commissioner for the counseling of such students on an individual basis on matters including but not limited to the student's ability to progress in the curriculum, the student's financial aid rights and responsibilities, the availability of programs to earn a high
school equivalency diploma, including programs provided at no cost to the student, and the potential of the training to prepare the student for available employment opportunities within the region.

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

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

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

5002(2). Inspections.

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

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

5002(2)(b)(1) names and addresses of each enrolled student;
5002(2)(b)(2) the course of study offered by the institution;
5002(2)(b)(3) the name and address of its faculty, together with a record of the educational qualifications of each;
5002(2)(b)(4) the graduation date of each student; and
5002(2)(b)(5) for each student who fails to complete his or her program, the student's last date of attendance and, if applicable, the amount of any refund paid to, or on behalf of, the student and the date the refund was made.
5002(2)c. The commissioner shall conduct periodic unscheduled inspections of licensed private career schools to monitor compliance with the provisions of this article or the rules or regulations promulgated thereunder or any final order or decision of the commissioner made pursuant to this article. The department shall conduct an inspection of each school at least once every licensure period. All schools shall provide upon request of the department, any and all records necessary to review compliance with the provisions of this article.

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

5002(3) Tuition liability.

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

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

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

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

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

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

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

5002(3)(b)(1)(v) one hundred percent of the quarter’s tuition if the termination occurs after the fourth week of instruction.

5002(3)(b)(2) For programs organized by terms of fifteen, sixteen, seventeen or eighteen weeks apiece, the school shall evenly divide the total tuition charges among the number of terms. After instruction is begun in a school, if a student withdraws or is discontinued,
the school may retain no more than:

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

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

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

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

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

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

5002(3)(c).

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

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

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

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

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

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

5002(3)(c)(1)(B) For programs organized by terms of fifteen, sixteen, seventeen
or eighteen weeks apiece, the school shall evenly divide the total tuition charges among the number of terms. After instruction is begun in a school, if a student withdraws or is discontinued, the school may retain no more than:

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

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

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

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

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

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

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

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

5002(3)f. The amount of the refund shall be calculated based on the last day of student attendance.

5002(3)g.

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

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

5002(3)(g)(1)(ii) the date on which the student is deemed to have withdrawn pursuant to subparagraph two of this paragraph.
5002(3)(g)(2) If a student has failed to attend classes for a period of thirty calendar days, the school shall send by regular mail a notice to the student that the student shall be deemed to have withdrawn from the program if the student does not notify the school to the contrary within twelve days from the date on which the letter is sent. If the student fails to respond within such twelve-day period, the student shall be deemed to have withdrawn and the school shall notify the higher education services corporation that the student has withdrawn and the date of the withdrawal.

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

5002(3)i. Upon payment of a refund to a lender, the school shall forthwith send a notice to a person designated by the president of the higher education services corporation upon a form approved by the president that such refund was made.

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

5002(4). Curriculum approval.

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

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

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

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

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

5002(4)(b)(4) that the instructional equipment used within the curriculum is comparable
to the equipment currently used by business or industry in the occupational area for which the curriculum was developed; and

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

5002(4)c.

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

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

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

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

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

5002(5). Application for reapproval.

5002(5)a. An application and fee shall be made for reapproval of a curriculum or course. Such application shall be considered timely if submitted at least one hundred twenty days prior to the expiration of the current approval. The application fee for any curriculum of one hundred clock hours or more shall be two hundred fifty dollars. The application fee for any course of less than one hundred clock hours shall be one hundred dollars, provided that no fee shall be assessed for
the submission of a reapproval application without change. Such application fee shall accrue to the credit of the proprietary vocational school supervision account.

5002(5)b. Curriculum reapproval standards.

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

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

5002(5)(b)(1)(ii) the acquisition of a specified minimum level of skills by the students; and

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

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

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

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

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

5002(5)f. The commissioner shall act upon enrollment agreements and catalogs within ninety days of receipt, and, in the case of denial, shall set forth in writing the reasons for such denial. If the commissioner fails to act within ninety days, a catalog shall be deemed approved for one year and an enrollment agreement shall be deemed approved until the commissioner acts upon it.
5002(6). Teachers and directors.

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

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

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

5002(7). Advertising.

5002(7)a. The commissioner is authorized to commence a disciplinary proceeding pursuant to
this article for false, misleading, deceptive or fraudulent advertising pursuant to regulations
promulgated by the commissioner which shall be consistent with article twenty-two-A of the
general business law. The department shall issue guidelines as to appropriate advertising content.
In developing such guidelines, the department shall consider advertising for similar programs of-
fered by various educational institutions. In a disciplinary action or other proceeding, such guide-
lines shall not be presumptive evidence that particular advertising is appropriate.

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

5002(8). The higher education services corporation shall adopt rules and regulations to effectuate the
cessation of collection activities by lenders or by the corporation in cases in which a licensed private
career school at which the student enrolled has closed or ceased its teaching activities during the aca-
demic period for which the loan was made or guaranteed.
§ 5003. Disciplinary actions, hearings and penalties

5003(1). Disciplinary action.

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

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

- 5003(1)(b)(1) fraudulent statements or representations to the department, the public or any student in connection with any activity of the school;
- 5003(1)(b)(2) violation of any provision of this article or regulation of the commissioner;
- 5003(1)(b)(3) conviction or a plea of no contest on the part of any owner, operator, director or teacher:
  - 5003(1)(b)(3)(A) of any of the following felonies defined in the penal law: bribery involving public servants; commercial bribery; perjury in the second degree; rewarding official misconduct; larceny, in connection with the provision of services or involving the theft of governmental funds; offering a false instrument for filing, falsifying business records; tampering with public records; criminal usury; scheme to defraud; or defrauding the government; or
  - 5003(1)(b)(3)(B) in any other jurisdiction of an offense which is substantially similar to any of the felonies defined in clause (A) of this subparagraph and for which a sentence to a term of imprisonment in excess of one year was authorized and is authorized in this state regardless of whether such sentence was imposed; or
- 5003(1)(b)(4) incompetence of any owner or operator to operate a school.

5003(1)c.

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

- 5003(1)(c)(1)(A) two years of the alleged violation; or
- 5003(1)(c)(1)(B) one year of receiving notification from the higher education services corporation or any other guarantee agency that the student has defaulted on
a student loan payment; provided, however, that no complaint may be filed after
three years from the date of the alleged violation. The commissioner shall main-
tain a written record of each complaint that is made. The commissioner shall also
send to the complainant a form acknowledging the complaint and requesting fur-
ther information if necessary and shall advise the director of the school that a
complaint has been made and, where appropriate the nature of the complaint.

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

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

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

5003(2). Hearing procedures.

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

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

5003(2)c.

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

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

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

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

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

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

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

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

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

5003(6). Civil penalties and administrative sanctions.

5003(6)a. A hearing officer may recommend, and the commissioner may impose, a civil penalty
not to exceed three thousand five hundred dollars for any violation of this article, including a
school's failure to offer a course or program as approved by the commissioner. In the case of a
second or further violation committed within five years of the previous violation, the liability
shall be a civil penalty not to exceed seven thousand five hundred dollars for each such violation.

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

5003(6)(b)(1) operation of a school without a license in violation of section five thousand
one of this article;
5003(6)(b)(2) operation of a school knowing that the school's license has been suspended
or revoked;
5003(6)(b)(3) use of false, misleading, deceptive or fraudulent advertising;
5003(6)(b)(4) employment of recruiters on the basis of a commission, bonus or quota,
except as authorized by the commissioner;
5003(6)(b)(5) directing or authorizing recruiters to offer guarantees of jobs upon comple-
tion of a course;
5003(6)(b)(6) failure to make a tuition refund when such failure is part of a pattern of
misconduct;
5003(6)(b)(7) the offering of a course or program that has not been approved by the
commissioner;
5003(6)(b)(8) admitting students, who subsequently drop out, who were admitted in vi-
olation of the admission standards established by the commissioner, where such admis-
sions constitute a pattern of misconduct and where the drop out resulted at least in part
from such violation;
5003(6)(b)(9) failure to provide the notice of discontinuance and the plan required by
subdivision seven of section five thousand one of this article; or
5003(6)(b)(10) violation of any other provision of this article, or any rule or regulation
promulgated pursuant thereto, when such violation constitutes part of a pattern of mis-
conduct which significantly impairs the educational quality of the program or programs
being offered by the school. For each enumerated offense, a second or further violation
committed within five years, shall be subject to a civil penalty not to exceed one and one-
half times the amount of the previous violation for each such violation.

5003(6)c. In addition to the penalties authorized in paragraphs a and b of this subdivision, a hear-
ing officer may recommend and the commissioner may impose any of the following administra-
tive sanctions:
5003(6)(c) (1) a cease and desist order;
5003(6)(c) (2) a mandatory direction;
5003(6)(c) (3) a suspension or revocation of a license;
5003(6)(c) (4) a probation order; or
5003(6)(c) (5) an order of restitution.

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

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

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

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

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

5003(7)b. Any person who knowingly

5003(7)(b)(1) falsifies or destroys school or other business records relating to the operation of the school with intent to defraud;
5003(7)(b)(2) fails to make a tuition refund as required by section five thousand two of this article with the intent to defraud more than one person; or
5003(7)(b)(3) operates a school without a valid license required by section five thousand one of this article shall be guilty of a class A misdemeanor punishable in accordance with the penal law.

5003(7)c. Any person who, having been convicted within the past five years of failing to make a
tuition refund in violation of subparagraph two of paragraph b of this subdivision, knowingly and
intentionally engages in a scheme constituting a systematic ongoing course of conduct involving
the wrongful withholding of refunds in violation of section five thousand two of this article with
the intent to defraud ten or more persons, and so withholds tuition refunds in excess of one thou-
sand dollars, shall be guilty of a class E felony punishable in accordance with the penal law.

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

5003(8). Private right of action. A student injured by a violation of this article may bring an action
against the owner or operator of a licensed private career school for actual damages or one hundred
dollars, whichever is greater. A court may, in its discretion, award reasonable attorney's fees to a pre-
vailing plaintiff.
§ 5004. Private school agent's certificate

5004(1).

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

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

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

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

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

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

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

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

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

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

5004(1)(d)(2) the use of ethical and fair practices in the presentation of the school's offerings; and

5004(1)(d)(3) whether the prospective agent has within five years of the date of the application violated any provision of this article or the regulations of the commissioner adopted pursuant to this article.
5004(2). Instruction, as contemplated by this section, shall be any plan or method for teaching any subject or subjects in any form or manner, including correspondence or home study.

5004(3).

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

5004(3)(b)

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

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

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

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

5004(3)(b)(i)(4) An online education marketplace shall not receive from a student an amount greater than the tuition or fees to be charged by the licensed private career school or certified ESL school to the student, and shall separately account for monies received from the prospective student to be thereafter transferred to a licensed private career school or certified ESL school in payment of tuition or fees, and any remuneration and/or compensation received by the online education marketplace from a licensed private career school or certified ESL school in payment for services rendered to such school by the online education marketplace. The licensed private career school or certified ESL school shall also separately account for tuition or fees transferred to the school by an online education mar-
ketplace on behalf of a student in payment of tuition or fees, and payments made
by the school to an online education marketplace for services rendered to the
school by the online education marketplace.

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

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

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

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

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

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

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

5004(6). The issuance of such a private school agent's certificate shall not be deemed to constitute ap-
proval of any course or of the person or institution offering, conducting or administering the same.
The commissioner, after giving to the certificate holder due notice and opportunity to be heard, may fine a private school agent, suspend or revoke a private school agent's certificate at any time for failure to comply with the provisions of the law or the regulations of the commissioner or for any other good cause.

No employer of a private school agent other than a school may indemnify, save harmless or otherwise reimburse any agent for the amount of any fines imposed pursuant to this section. If a person fined pursuant to this section can demonstrate to the satisfaction of the commissioner that the action for which the fine was imposed was undertaken pursuant to explicit instructions from the employer, the employer shall indemnify, save harmless, and reimburse that person for the fine and shall pay to the commissioner an additional fine of an equal amount.
§ 5005. Disclosure to students

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

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

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

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

5005(a)(3) a schedule of tuition payments, fees and all other charges and expenses necessary for completion of the course or program;

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

5005(a)(5) a description of the faculty and other instructional personnel and their qualifications;

5005(a)(6) the names of associates, agencies or governmental bodies which accredit, approve or license the school;

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

5005(a)(8) any other items identified by the commissioner in regulation following consultation with the advisory council;

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

5005(c). information concerning any student financial assistance, including a description of the procedures and forms, student eligibility requirements and the rights and responsibilities of students receiving financial aid;

5005(d). the pass rate of graduates of the program for the most recent calendar year on any licensure or certification examination required by the state for employment in the particular vocational, trade, or career field;

5005(e). the process for obtaining a tuition refund from the tuition reimbursement fund and the availability of loan forgiveness in the event the school closes while the student is in attendance;
a sample enrollment contract, a sample cancellation form developed by the department in consultation with the advisory council and a tuition reimbursement fund claim form; and

a description of the complaint procedures established pursuant to this article.
§ 5006. Teachout plans

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

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

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

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

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

5006(2)(d) the teachout school shall agree to fulfill the enrollment agreement signed by the student at the school ceasing instruction.

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

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

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

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

5006(5). The commissioner shall require all teachout schools to address the following issues:
5006(5)(a) Integration of students into a curriculum which may be different from the curriculum in which they are currently receiving instruction;

5006(5)(b) Assessments of students' progress so that they may be placed into an appropriate course;

5006(5)(c) Provision of remedial instruction to students who are found to be deficient in one or more course areas upon their initial assessment;

5006(5)(d) Provision by the teachout school to adhere to the required student/teacher ratios and room capacities; and

5006(5)(e) Compliance with statutory and regulatory requirements during the teachout.

5006(6). The student shall not be subject to any costs beyond the total costs identified in the original enrollment agreement.

5006(7). A student may decline to pursue instruction at the teachout school and may instead seek a refund pursuant to section five thousand seven of this article.
§ 5007. Tuition reimbursement account

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

5007(2). Repealed

5007(3).

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

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

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

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

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

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

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

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

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

5007(4)c. A student who was enrolled in a school at the time the school closes or ceases opera-
tion is entitled to a refund of the full amount of prepaid tuition. In addition, commencing Sep-
ember first, nineteen hundred ninety-three, a student who drops out of a school, where such
school closes within thirty days of the student's termination and prior to completion of such stu-
dent's program as specified in the enrollment agreement, shall be entitled to a full refund of all
tuition, fees and book charges paid for by or on behalf of the student in cash or in loans, exclud-
ing funding provided by any government agencies.

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

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

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

5007(5).

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

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

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

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

5007(5)b. For schools that have closed or ceased operation, the commissioner shall refund actual
personal tuition, fees and book expenditures to the student. The repayment of any loans incurred
by the student as part of the actual personal tuition, fees and book expenditures shall be paid di-
rectly to the lender or the guarantee agency where appropriate.
5007(6).

5007(6)a. Where a claim is paid to a student of an operating school, the commissioner shall immediately notify the school.

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

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

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

5007(9).

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

5007(9)b. Any amounts remaining in the tuition reimbursement fund as of June first, nineteen hundred ninety-three and on every March thirty-first thereafter, shall be made available to the higher education services corporation for payment of student loans on which collection activity has ceased pursuant to the provisions of subdivision six of former section six hundred eighty-three of this chapter. No amounts shall be paid to the higher education services corporation for
loans on which collection activity has ceased because of the operation of section 437 of the
Higher Education Act of 1965, as amended.

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

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

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

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

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

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

5007(10)f. Repealed.

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

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

5007(11). Fund audit. The state comptroller shall audit or cause to be audited the tuition reimbursement fund once every two years and produce an audited financial statement according to generally accepted accounting principles.

5007(12). New schools. Within the first year that a school begins licensed operation, the commissioner shall assess such school an amount to be deposited into the fund in an amount to be determined by the commissioner.
§ 5008. Trust accounts

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

5008(2). In making this determination, the commissioner shall consider the following factors: the number of refunds not paid by the school in a timely manner; the number of claims made to, or paid by, the tuition reimbursement account; a pattern of misconduct which substantially affects the financial interests of students or the state, potential liability to the tuition reimbursement account, current assets as opposed to current liabilities, and such other measures as may be appropriate.
§ 5009. Duties of the commissioner

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

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

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

5009(3). administering a public information campaign aimed at increasing awareness about the importance of attending licensed proprietary vocational schools. Such campaign shall be targeted to populations at risk of enrolling in unlicensed schools, and shall be conducted using means including, but not limited to, public service announcements on commercial radio and television stations, public access television, and print media.

5009(4). providing for the orderly maintenance of any student records which may be transferred to the department pursuant to any school’s plan developed pursuant to subdivision eight of section five thousand one of this article; including responding to student requests for transcripts and records within twenty days of receiving a request. The commissioner is hereby authorized to impose an appropriate fee for such transcripts pursuant to a schedule approved by the director of the budget.
§ 5010. Advisory council

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

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

5010(3). The council shall advise the commissioner on such matters as the council determines are appropriate.