

Education Law Article 101.

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

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§ 5001. Licensed private career schools

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

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

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

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

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

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

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

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

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

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

65 5001(2)o. schools in candidacy status pursuant to subparagraph (iv) of paragraph b of subdivi-
66 sion four of this section; and

67 5001(2)(p). schools which provide instruction in photography exclusively for non-occupational
68 purposes.

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

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

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

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

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

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

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

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

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

95 5001(2-b)d. Any additional student openings in a program deemed exempt by the department
96 may be made available to students not affiliated with the employer on the condition that such

97 students execute a disclosure form as prescribed in paragraph c of this subdivision. Such admit-
98 ted students shall only constitute up to ten percent of the exempt program's total capacity.

99 5001(4). Application, renewal application and application fees.

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

117 5001(4)b.

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

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

GROSS ANNUAL TUITION INCOME	FEE
0-\$199,999	\$ 750.00

\$200,000-\$499,999	\$ 1,500.00
\$500,000-\$999,999	\$ 2,225.00
\$1,000,000-\$4,999,999	\$ 4,500.00
\$5,000,000-\$9,999,999	\$ 9,000.00
\$10,000,000 or above	\$18,000.00

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

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

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

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

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

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

160 with a copy of such signed statement;

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

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

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

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

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

188 5001(4)e. Financial statements and statistical reports.

189 5001(4)(e)(i) Licensed private career schools and candidate schools shall submit such
190 certified statistical reports and annual financial statements as required by the commis-
191 sioner. The commissioner may require audited statistical reports upon a determination
192 that a school has provided false or inaccurate certified statistical reports. The financial
193 statements shall be based on the fiscal year of the school and shall also include an item-
194 ized account of tuition refunds due and owing to past or presently enrolled students. Sta-

195 tistical reports shall include, but not be limited to, enrollment, completion and placement
196 data. The commissioner shall use such financial statements and statistical reports submit-
197 ted for the purposes of licensure of schools, establishing fees or assessments pursuant to
198 this article and determining standards pursuant to paragraph b of subdivision five of sec-
199 tion five thousand two of this article. The attorney general, the comptroller and the presi-
200 dent of the higher education services corporation shall have access to this information
201 when it is necessary to perform their duties as required by state law.

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

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

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

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

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

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

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

233 5001(5). Required disclosure for licensure.

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

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

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

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

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

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

264 sioner, or of any similar statute, rule, regulation, order or determination of another juris-
265 diction pertaining to the licensure and operation of any educational or training program;
266 and

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

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

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

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

302 liability to the tuition reimbursement account should the school cease operation, limiting the collection
303 of tuition funds until each student completes the program of study, or other means acceptable to the
304 commissioner. If no resolution can be attained, a hearing, pursuant to subdivisions two and three of
305 section five thousand three of this article will be scheduled. Such probation may include additional
306 monitoring, inspections, limitations on enrollment, teaching out some or all of a school's present stu-
307 dents or temporary cessation of instruction.

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

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

319 5001(9). Annual supervision fund and tuition reimbursement account assessment.

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

326 5001(9)b.

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

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

333 5001(9)c.

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

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

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

§ 5002. Standards for licensed private career schools

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

355 5002(1). Standards.

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

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

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

366 5002(1)(b)(2) the standards and the methods of instruction;

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

369 5002(1)(b)(4) the qualifications and experience of teaching and management personnel;

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

373 5002(1)(b)(6) the methods of collecting tuition;

374 5002(1)(b)(7) eligibility criteria for programs that will require licensure;

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

377 5002(1)(b)(9) counseling provided to students.

378 5002(1)b-1.

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

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

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

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

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

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

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

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

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

423 5002(1)d. Admission of students under the ability to benefit provision.

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

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

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

449 5002(1)(d)(3) Compliance.

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

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

462 5002(2). Inspections.

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

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

469 5002(2)(b)(1) names and addresses of each enrolled student;

470
471 5002(2)(b)(2) the course of study offered by the institution;

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

474 5002(2)(b)(4) the graduation date of each student; and

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

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

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

486 5002(3) Tuition liability.

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

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

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

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

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

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

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

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

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

510 the school may retain no more than:

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

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

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

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

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

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

523 5002(3)c.

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

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

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

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

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

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

538 5002(3)(c)(1)(B) For programs organized by terms of fifteen, sixteen, seventeen

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

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

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

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

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

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

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

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

559 5002(3)e. No program shall have a term in excess of eighteen weeks.

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

562 5002(3)g.

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

566 5002(3)(g)(1)(i) the date on which the student gives written notice to the school or

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

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

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

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

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

586 5002(4). Curriculum approval.

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

593 5002(4)b. In approving curriculum, the commissioner shall take into consideration the following:

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

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

599 5002(4)(b)(3) that the school will utilize appropriate instructional methods;

600 5002(4)(b)(4) that the instructional equipment used within the curriculum is comparable

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

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

606 5002(4)c.

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

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

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

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

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

629 5002(5). Application for reapproval.

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

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

637 5002(5)b. Curriculum reapproval standards.

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

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

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

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

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

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

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

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

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

5002(6).

666 5002(6)a. Teachers and directors.

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

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

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

700 5002(7). Advertising.

701 5002(7)a. The commissioner is authorized to commence a disciplinary proceeding pursuant to

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

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

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

§ 5003. Disciplinary actions, hearings and penalties

716 5003(1). Disciplinary action.

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

720 5003(1)b. Good cause shall include, but not be limited to, any of the following:

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

723 5003(1)(b)(2) violation of any provision of this article or regulation of the commissioner;

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

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

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

737 5003(1)(b)(4) incompetence of any owner or operator to operate a school.

738 5003(1)c.

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

742 5003(1)(c)(1)(A) two years of the alleged violation; or

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

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

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

757 5003(1)(c)(3) The commissioner may initiate an investigation without a complaint.

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

768
769 5003(1)(c)(5) No owner, operator, licensed personnel, or agent thereof of a licensed pri-
770 vate career school shall discriminate, intimidate, or retaliate against any person who files
771 a written complaint pursuant to this paragraph.

772 5003(2). Hearing procedures.

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

782 5003(2)b. Opportunity shall be afforded to the party to respond and present evidence and argu-
783 ment on the issues involved in the hearing including the right of cross examination. In a hearing,
784 the school or such party shall be accorded the right to have its representative appear in person or
785 by or with counsel or other representative. Disposition may be made in any hearing by stipula-
786 tion, agreed settlement, consent order, default or other informal method.

787 5003(2)c.

788 5003(2)(c)(1) The commissioner shall designate an impartial hearing officer to conduct
789 the hearing, who shall be empowered to:

790 5003(2)(c)(1)(A) administer oaths and affirmations; and

791 5003(2)(c)(1)(B) regulate the course of the hearings, set the time and place for
792 continued hearings, and fix the time for filing of briefs and other documents; and

793 5003(2)(c)(1)(C) direct the school or such party to appear and confer to consider
794 the simplification of the issues by consent; and

795 5003(2)(c)(1)(D) grant a request for an adjournment of the hearing only upon
796 good cause shown.

797 5003(2)(c)(2) The strict legal rules of evidence shall not apply, but the decision shall be
798 supported by substantial evidence in the record.

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

809 5003(4). Judicial review. Any order imposed under this section shall be subject to judicial review un-
810 der article seventy-eight of the civil practice law and rules, but no such determination shall be stayed
811 or enjoined except upon application to the court after notice to the commissioner.

812 5003(5). Enforcement proceedings. The attorney general, in his or her own capacity, or at the request
813 of the commissioner, may bring an appropriate action or proceeding in any court of competent juris-
814 diction to recover a fine or otherwise enforce any provision of this article.

815 5003(6). Civil penalties and administrative sanctions.

816 5003(6)a. A hearing officer may recommend, and the commissioner may impose, a civil penalty
817 not to exceed three thousand five hundred dollars for any violation of this article, including a
818 school's failure to offer a course or program as approved by the commissioner. In the case of a
819 second or further violation committed within five years of the previous violation, the liability
820 shall be a civil penalty not to exceed seven thousand five hundred dollars for each such violation.

821 5003(6)b. Notwithstanding the provisions of paragraph a of this subdivision, a hearing officer
822 may recommend, and the commissioner may impose a civil penalty not to exceed seventy-five
823 thousand dollars or double the documented amount from which the school benefited, whichever
824 is greater, for any of the following violations:

825 5003(6)(b)(1) operation of a school without a license in violation of section five thousand
826 one of this article;

827 5003(6)(b)(2) operation of a school knowing that the school's license has been suspended
828 or revoked;

829 5003(6)(b)(3) use of false, misleading, deceptive or fraudulent advertising;

830 5003(6)(b)(4) employment of recruiters on the basis of a commission, bonus or quota,
831 except as authorized by the commissioner;

832 5003(6)(b)(5) directing or authorizing recruiters to offer guarantees of jobs upon comple-
833 tion of a course;

834 5003(6)(b)(6) failure to make a tuition refund when such failure is part of a pattern of
835 misconduct;

836 5003(6)(b)(7) the offering of a course or program that has not been approved by the
837 commissioner;

838 5003(6)(b)(8) admitting students, who subsequently drop out, who were admitted in vio-
839 lation of the admission standards established by the commissioner, where such admis-
840 sions constitute a pattern of misconduct and where the drop out resulted at least in part
841 from such violation;

842 5003(6)(b)(9) failure to provide the notice of discontinuance and the plan required by
843 subdivision seven of section five thousand one of this article; or

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

850 5003(6)c. In addition to the penalties authorized in paragraphs a and b of this subdivision, a hear-
851 ing officer may recommend and the commissioner may impose any of the following administra-
852 tive sanctions:

853 5003(6)(c)(1) a cease and desist order;

854 5003(6)(c)(2) a mandatory direction;

855 5003(6)(c)(3) a suspension or revocation of a license;

856 5003(6)(c)(4) a probation order; or

857 5003(6)(c)(5) an order of restitution.

858 5003(6)d. Penalty factors. In the recommendation of any penalty, a hearing officer shall, at a
859 minimum, give due consideration, where applicable, to the good faith of the violator and the
860 gravity of the violation.

861 5003(6)e. The commissioner may suspend a license upon the failure of a school to pay any fee,
862 fine, penalty, settlement or assessment as required by this article unless such failure is deter-
863 mined by the commissioner to be for good cause.

864 5003(6)f. All civil penalties, fines and settlements received after April first, nineteen hundred
865 ninety shall accrue to the credit of the tuition reimbursement account established pursuant to sec-
866 tion ninety-seven-hh of the state finance law.

867 5003(7). Criminal penalties. In addition to any other penalties elsewhere prescribed:

868 5003(7)a. Any person who knowingly violates any of the provisions of this article shall be guilty
869 of a class B misdemeanor punishable in accordance with the penal law. If the conviction is for a
870 second offense committed within five years of the first conviction under this paragraph, such
871 person shall be guilty of a class A misdemeanor punishable in accordance with the penal law.

872 5003(7)b. Any person who knowingly

873 5003(7)(b)(1) falsifies or destroys school or other business records relating to the opera-
874 tion of the school with intent to defraud;

875 5003(7)(b)(2) fails to make a tuition refund as required by section five thousand two of
876 this article with the intent to defraud more than one person; or

877 5003(7)(b)(3) operates a school without a valid license required by section five thousand

878 one of this article shall be guilty of a class A misdemeanor punishable in accordance with
879 the penal law.

880 5003(7)c. Any person who, having been convicted within the past five years of failing to make a
881 tuition refund in violation of subparagraph two of paragraph b of this subdivision, knowingly and
882 intentionally engages in a scheme constituting a systematic ongoing course of conduct involving
883 the wrongful withholding of refunds in violation of section five thousand two of this article with
884 the intent to defraud ten or more persons, and so withholds tuition refunds in excess of one thou-
885 sand dollars, shall be guilty of a class E felony punishable in accordance with the penal law.

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

892 5003(8). Private right of action. A student injured by a violation of this article may bring an action
893 against the owner or operator of a licensed private career school for actual damages or one hundred dol-
894 lars, whichever is greater. A court may, in its discretion, award reasonable attorney's fees to a prevailing
895 plaintiff. No owner, operator, licensed personnel, or agent thereof of a licensed private career
896 school shall discriminate, intimidate, or retaliate against any student who brings a private right of action
897 against the owner or operator of a licensed private career school pursuant to this subdivision.

§ 5004. Private school agent's certificate

5004(1).

898 5004(1)a. No party may, for a consideration or remuneration procure, solicit or enroll any stu-
899 dent for instruction in or given by any school within or without the state of New York, unless

900 5004(1)(a)(i) the party is a salaried employee of the school and

901 5004(1)(a)(ii) the party shall have secured a private school agent's certificate from the
902 department pursuant to regulations of the commissioner.

903 5004(1)b. Upon submission of a complete new application for licensure, an applicant may pro-
904 cure, solicit or enroll any student for instruction; provided, however, that such applicant be in
905 possession at all times during the procurement, solicitation or enrollment processes of a tempo-
906 rary approval certificate which the commissioner shall issue within five days of receipt by mail
907 or on the same day at designated offices. A school shall submit such application for licensure on
908 or before the first day of employment of such individual.

909 5004(1)c. No consideration or remuneration shall be paid in the form of a fee per student en-
910 rolled by a private school agent except pursuant to the following limitations:

911 5004(1)(c)(1) a school may pay twenty-five percent of the consideration or remuneration
912 after the student has completed three weeks of the program;

913 5004(1)(c)(2) a school may pay the remainder of the consideration or remuneration after
914 the student has completed eight weeks of the program;

915 5004(1)(c)(3) the total amount of the consideration or remuneration paid per student may
916 not exceed one percent of the annual salary paid to the agent.

917 5004(1)d. In promulgating regulations in relation to the issuance of such certificates and the con-
918 duct of the holders of such certificates, the commissioner shall give consideration to:

919 5004(1)(d)(1) good moral character of the candidate for such certificate;

920 5004(1)(d)(2) the use of ethical and fair practices in the presentation of the school's offer-
921 ings; and

922 5004(1)(d)(3) whether the prospective agent has within five years of the date of the appli-
923 cation violated any provision of this article or the regulations of the commissioner adopt-
924 ed pursuant to this article.

925 5004(2). Instruction, as contemplated by this section, shall be any plan or method for teaching any
926 subject or subjects in any form or manner, including correspondence or home study.

5004(3).

927 5004(3)(a) Exempted from the requirements of this section are persons acting solely for schools
928 which are not required to be licensed or are specifically exempted from the licensing require-
929 ments of this article.

5004(3)(b)

930 5004(3)(b)(i) also exempted from the requirements of this section is an online education
931 marketplace as defined in paragraph c of subdivision one of section five thousand one of
932 this article, provided that the online education marketplace complies with each of the fol-
933 lowing:

934 5004(3)(b)(i)(1) An online education marketplace shall not solicit, procure, or en-
935 roll any student for instruction in a licensed private career school or certified ESL
936 school, as defined by the commissioner in regulations.

937 5004(3)(b)(i)(2) Upon receipt of any monies collected by an online education
938 marketplace from a prospective student for payment of tuition and/or fees, the
939 prospective student and the licensed private career school or certified ESL school
940 shall execute an enrollment agreement in accordance with regulations of the
941 commissioner. If an enrollment agreement is not executed, the monies shall be
942 promptly returned to the prospective student in a timeframe and manner pre-
943 scribed by the commissioner in regulations.

944 5004(3)(b)(i)(3) If an enrollment agreement is executed, the online education
945 marketplace shall forward the monies received from the prospective student to the
946 licensed private career school or certified ESL school in a timeframe and manner
947 prescribed by the commissioner in regulations.

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

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

961 5004(3)(b)(i)(5) The commissioner may take disciplinary action against an online
962 education marketplace pursuant to section five thousand three of this article, to
963 the extent such provisions are deemed applicable by the commissioner in regula-
964 tions.

965 5004(3)(b)(i)(6) An online education marketplace is prohibited from offering ad-
966 vertising/marketing services to an unlicensed private career school or uncertified
967 ESL school.

968 5004(3)(b)(ii) Any licensed private career school or certified ESL school that contracts
969 with an online education marketplace shall comply with the provisions of this subdivision
970 and the regulations of the commissioner or they may be subject to disciplinary action pur-
971 suant to section five thousand three of this article.

972 5004(3)(c). Persons who are paid to procure, solicit or enroll students on the premises of schools
973 required to be licensed shall not be exempt from the provisions of this section.

974 5004(4). Application and renewal application for a private school agent's certificate shall be filed on
975 forms to be prescribed and provided by the commissioner. Said certificate shall be valid for three years
976 from the date of issuance. Certificates which have been renewed shall be valid for a period of three
977 years from the expiration date of the certificate which has been renewed. Every applicant and renewal
978 applicant shall pay to the department a fee of two hundred dollars.

979 5004(4-a). Notwithstanding the provisions of subdivision four of this section, the school director may
980 apply for a private school agent's certificate on forms to be prescribed and provided by the commis-
981 sioner without incurring the agent application fee.

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

990 5004(6). The issuance of such a private school agent's certificate shall not be deemed to constitute ap-
991 proval of any course or of the person or institution offering, conducting or administering the same.

992 5004(7). The commissioner, after giving to the certificate holder due notice and opportunity to be
993 heard, may fine a private school agent, suspend or revoke a private school agent's certificate at any
994 time for failure to comply with the provisions of the law or the regulations of the commissioner or for
995 any other good cause.

996 5004(8). No employer of a private school agent other than a school may indemnify, save harmless or
997 otherwise reimburse any agent for the amount of any fines imposed pursuant to this section. If a per-
998 son fined pursuant to this section can demonstrate to the satisfaction of the commissioner that the ac-
999 tion for which the fine was imposed was undertaken pursuant to explicit instructions from the employ-
1000 er, the employer shall indemnify, save harmless, and reimburse that person for the fine and shall pay to
1001 the commissioner an additional fine of an equal amount.

§ **5005. Disclosure to students**

1002 The school shall disseminate to all prospective and enrolled students through an enrollment contract or
1003 agreement or other appropriate publications or documents, and in appropriate languages as required by
1004 the commissioner in regulation:

1005 5005(a). information concerning the school, including but not limited to:

1006 5005(a)(1) a description of the courses offered;

1007 5005(a)(2) program objectives and the length of the program;

1008 5005(a)(3) a schedule of tuition payments, fees and all other charges and expenses neces-
1009 sary for completion of the course or program;

1010 5005(a)(4) the tuition refund and contract cancellation policies;

1011 5005(a)(5) a description of the faculty and other instructional personnel and their qualifi-
1012 cations;

1013 5005(a)(6) the names of associates, agencies or governmental bodies which accredit, ap-
1014 prove or license the school;

1015 5005(a)(7) a description of any special facilities and services available to handicapped
1016 students; and

1017 5005(a)(8) any other items identified by the commissioner in regulation following con-
1018 sultation with the advisory council;

1019 5005(b). if the school advertises job placement rates as means of attracting students to enroll in
1020 the school, the most recent available data on employment and graduation statistics for students
1021 who have attended that school;

1022 5005(c). information concerning any student financial assistance, including a description of the
1023 procedures and forms, student eligibility requirements and the rights and responsibilities of stu-
1024 dents receiving financial aid;

1025 5005(d). the pass rate of graduates of the program for the most recent calendar year on any licen-
1026 sure or certification examination required by the state for employment in the particular vocation-
1027 al, trade, or career field;

1028 5005(e). the process for obtaining a tuition refund from the tuition reimbursement fund and the
1029 availability of loan forgiveness in the event the school closes while the student is in attendance;

- 1030 5005(f). a sample enrollment contract, a sample cancellation form developed by the department
- 1031 in consultation with the advisory council and a tuition reimbursement fund claim form; and
- 1032 5005(g). a description of the complaint procedures established pursuant to this article.

§ 5006. Teachout plans

1033 5006(1). A school may submit a teachout plan to the commissioner for approval pursuant to regula-
1034 tions established by the commissioner. A teachout plan shall consist of a contract between a licensed
1035 private career school, with another school, hereinafter called the teachout school, so that in the event
1036 that the licensed private career school ceases instruction, the teachout school will provide the neces-
1037 sary instruction specified in a student's original enrollment agreement with the school ceasing instruc-
1038 tion. A teachout plan may employ more than one teachout school to provide instruction to students in
1039 the school ceasing instruction. Schools under common ownership but having separate licenses may,
1040 subject to the approval of the commissioner, enter into teachout agreements. A teachout plan may be
1041 contracted between the commissioner and one or more teachout schools in the event that the closing
1042 school is unable or unwilling to do so.

1043 5006(2). A teachout plan shall include the following provisions:

1044 5006(2)(a) the teachout school must offer courses of study that are substantially similar to those
1045 offered in the school ceasing instruction;

1046 5006(2)(b) teachout schools must be located in the geographic area in which the school ceasing
1047 instruction was located unless the school ceasing instruction provided distance learning or online
1048 training;

1049 5006(2)(c) all provisions for a teachout plan must be included in the enrollment agreement
1050 signed by the student; and

1051 5006(2)(d) the teachout school shall agree to fulfill the enrollment agreement signed by the stu-
1052 dent at the school ceasing instruction.

1053 5006(3). The licensed school shall provide to the teachout school and to the department the following
1054 information prior to closure:

1055 5006(3)(a) Copies of the academic and financial records for all students in attendance at the
1056 school at the projected time of closure;

1057 5006(3)(b) A listing of all such students presently in attendance including their names, addresses,
1058 social security numbers, curriculum that each student is enrolled in and the number of hours the
1059 students will have completed at the time of the school closure.

1060 5006(4). The department will provide to the teachout school, immediately upon notification of a
1061 school closing, a copy of each approved curriculum that the closing school is presently offering.

1062 5006(5). The commissioner shall require all teachout schools to address the following issues:

- 1063 5006(5)(a) Integration of students into a curriculum which may be different from the curriculum
1064 in which they are currently receiving instruction;
- 1065 5006(5)(b) Assessments of students' progress so that they may be placed into an appropriate
1066 course;
- 1067 5006(5)(c) Provision of remedial instruction to students who are found to be deficient in one or
1068 more course areas upon their initial assessment;
- 1069 5006(5)(d) Provision by the teachout school to adhere to the required student/teacher ratios and
1070 room capacities; and
- 1071 5006(5)(e) Compliance with statutory and regulatory requirements during the teachout.
- 1072 5006(6). The student shall not be subject to any costs beyond the total costs identified in the original
1073 enrollment agreement.
- 1074 5006(7). A student may decline to pursue instruction at the teachout school and may instead seek a re-
1075 fund pursuant to section five thousand seven of this article.

§ **5007. Tuition reimbursement account**

1076 5007(1). Except as otherwise provided in subdivision six of this section, the portion of the annual as-
1077 sessment of schools licensed pursuant to section five thousand one of this article as prescribed in sub-
1078 division nine of such section and all fines, penalties and settlements received pursuant to this article
1079 shall be transferred upon receipt into the tuition reimbursement account.

1080 5007(2). Repealed

1081 5007(3).

1082 5007(3)a. The commissioner shall develop a complaint form and provide such form to students.
1083 In order to claim a refund, a student shall apply to the fund with a complaint form pursuant to the
1084 requirements of section five thousand three of this article. Except as otherwise provided in this
1085 article, the commissioner shall compute the refund, if any, using the refund formula established
1086 by subdivision three of section five thousand two of this article.

1087 5007(3)b. Claimants who had been enrolled in schools which have not closed or ceased opera-
1088 tion shall be required to show in a manner determined by the commissioner that:

1089 5007(3)(b)(1) the student is eligible for a refund;

1090 5007(3)(b)(2) the student has made a request to the school for a refund; and

1091 5007(3)(b)(3) the school has failed to make the refund within the time period required by
1092 this article.

1093 5007(3)c. The commissioner shall act on each refund request within thirty business days of such
1094 request.

1095 5007(4). Students may be eligible for refunds under this section as follows:

1096 5007(4)a. A student who is offered a teachout plan for the curriculum in which the student was
1097 enrolled at the time the school closed or ceased operation, which has been approved by the de-
1098 partment, may elect to continue instruction pursuant to the teachout plan or may decline to con-
1099 tinue instruction and may instead apply for a full refund under this section. The option to apply
1100 for a refund shall extend to the end of the first week of instruction at the teachout school.

1101 5007(4)b. A student who was enrolled in a school which has not closed or ceased operation is en-
1102 titled to a refund computed in accordance with the refund policy established by subdivision three
1103 of section five thousand two of this article.

1104 5007(4)c. A student who was enrolled in a school at the time the school closes or ceases opera-

1105 tion is entitled to a refund of the full amount of prepaid tuition. In addition, commencing Sep-
1106 tember first, nineteen hundred ninety-three, a student who drops out of a school, where such
1107 school closes within thirty days of the student's termination and prior to completion of such stu-
1108 dent's program as specified in the enrollment agreement, shall be entitled to a full refund of all
1109 tuition, fees and book charges paid for by or on behalf of the student in cash or in loans, exclud-
1110 ing funding provided by any government agencies.

1111 5007(4)d. A student who was enrolled in a school which has not closed or ceased operation, and
1112 who has dropped out, is entitled to a full refund of all tuition, fees and other required costs paid
1113 by the student if the student has submitted a complaint form to the commissioner and the com-
1114 missioner has determined that a violation of this article has occurred which warrants a refund.
1115 The commissioner shall promulgate regulations identifying those violations that warrant a re-
1116 fund.

1117 5007(4)e. Commencing September first, nineteen hundred ninety-three, a student who drops out
1118 of a school, which subsequently closes, and who is owed a refund for the failure of such school
1119 to follow the provisions enumerated in subdivision three of section five thousand two of this arti-
1120 cle shall be eligible for a refund from the tuition reimbursement fund according to the provisions
1121 of subdivision three of section five thousand two of this article.

1122 5007(4)f. Commencing September first, nineteen hundred ninety-three, any student enrolled in a
1123 school based upon an ability to benefit examination shall be eligible for a full refund, regardless
1124 of whether the student is currently enrolled, graduated or dropped out, if the school enrolled the
1125 student contrary to the provisions of the approved entrance requirements and the student com-
1126 plies with the requirements of subdivision one of section five thousand three of this article.

1127 5007(5).

1128 5007(5)a. For a student who had been enrolled in a school that has not closed or ceased opera-
1129 tion, the refund shall be paid as follows:

1130 5007(5)(a)(1) guaranteed student loans, if any, in which case the commissioner shall noti-
1131 fy the student of such payment and shall be paid directly to the lender or guarantee agen-
1132 cy where appropriate;

1133 5007(5)(a)(2) actual personal tuition expenditures, if any; and

1134 5007(5)(a)(3) tuition assistance program awards and other governmental aid.

1135 5007(5)b. For schools that have closed or ceased operation, the commissioner shall refund actual
1136 personal tuition, fees and book expenditures to the student. The repayment of any loans incurred
1137 by the student as part of the actual personal tuition, fees and book expenditures shall be paid di-
1138 rectly to the lender or the guarantee agency where appropriate.

1139 5007(6).

1140 5007(6)a. Where a claim is paid to a student of an operating school, the commissioner shall im-
1141 mediately notify the school.

1142 5007(6)b. Within ten days of the receipt of the notice, the school shall either request a hearing to
1143 challenge the commissioner's determination that a refund was owed to the student or reimburse
1144 the fund the amount paid to the claimant plus a penalty up to two times such amount. This pay-
1145 ment shall also incur interest for each day it remains unpaid at an annual interest rate of one per-
1146 cent above the prime rate. The commissioner may promulgate streamlined procedures for con-
1147 ducting hearings pursuant to this paragraph. Any penalty assessed under this paragraph shall be
1148 in addition to any other penalties assessed pursuant to this article. Notwithstanding any other
1149 provision of law, penalties and interest paid pursuant to this paragraph shall accrue to the credit
1150 of the proprietary vocational school supervision account to support the costs associated with the
1151 hearings authorized in this subdivision.

1152 5007(7). Notwithstanding the notice procedures described in subdivision three of this section, in the
1153 event of a school closing, the commissioner on his or her own initiative may take appropriate action in
1154 accordance with this section to process refund claims on behalf of all of the students of the closed
1155 school.

1156 5007(8). Assignment of rights. Persons and entities receiving refunds under this section shall be
1157 deemed to have assigned or subrogated their tuition reimbursement rights to the commissioner on be-
1158 half of the tuition reimbursement fund only for the amount refunded by the tuition reimbursement
1159 fund. Within ninety days of any refund made pursuant to this section, the commissioner or the attorney
1160 general shall take appropriate action to recover the total amount of the refunds made, plus administra-
1161 tive costs, from the school.

1162 5007(9).

1163 5007(9)a. A student whose loan liability is exempted pursuant to former section six hundred
1164 eighty-three of this chapter and is entitled to or owed a refund shall transfer to the higher educa-
1165 tion services corporation the right to claim the refund owed and due from the tuition reimburse-
1166 ment fund. In such event, the corporation shall be entitled to receive a refund for that portion of
1167 the claim not paid to the corporation by the United States Secretary of Education pursuant to the
1168 federal guaranteed loan program.

1169 5007(9)b. Any amounts remaining in the tuition reimbursement fund as of June first, nineteen
1170 hundred ninety-three and on every March thirty-first thereafter, shall be made available to the
1171 higher education services corporation for payment of student loans on which collection activity
1172 has ceased pursuant to the provisions of subdivision six of former section six hundred eighty-
1173 three of this chapter. No amounts shall be paid to the higher education services corporation for

1174 loans on which collection activity has ceased because of the operation of section 437 of the
1175 Higher Education Act of 1965, as amended.

1176 5007(10). Management of the tuition reimbursement account.

1177 5007(10)a. As used in this subdivision, net balance is defined as the actual cash balance of the
1178 account as determined by the commissioner on June thirtieth, nineteen hundred ninety-three and
1179 every three months thereafter. For the purpose of calculating the net balance, the commissioner
1180 shall not take into consideration any refunds made from the account pursuant to paragraphs d and
1181 f of subdivision four of this section for the year immediately preceding the date on which the
1182 calculation is made.

1183 5007(10)b. In the event that the account has accumulated a net balance in excess of one million
1184 eight hundred thousand dollars, the commissioner shall, with the approval of the director of the
1185 budget, waive an amount not to exceed the amount due for the next quarterly assessment pursu-
1186 ant to this section and subdivision nine of section five thousand one of this article for schools
1187 which have paid sixteen quarters or more of assessments only. In such event, payment of future
1188 quarterly assessments shall be suspended for schools which have paid sixteen quarters or more of
1189 assessments until the net balance of the account falls below one million three hundred thousand
1190 dollars.

1191 5007(10)c. In the event the net balance of the account falls below one million three hundred
1192 thousand dollars, if the quarterly assessment has been suspended for schools which have paid
1193 sixteen quarters or more of assessments pursuant to paragraph b of this subdivision, it shall be re-
1194 instated for the next quarterly assessment and all subsequent quarterly assessments until the ac-
1195 count has accumulated a net balance in excess of one million eight hundred thousand dollars.

1196 5007(10)d. Notwithstanding the provisions of paragraph b of this subdivision, in the event that
1197 the balance of the account is in excess of one million three hundred thousand dollars, all schools
1198 licensed after June thirtieth, nineteen hundred ninety-nine shall be required to pay into the ac-
1199 count the equivalence of three years of annual assessments over a five year period.

1200 5007(10)e. Notwithstanding the provisions of paragraph b of this subdivision all schools licensed
1201 after June thirtieth, nineteen hundred ninety-three and before July first, nineteen hundred ninety-
1202 nine will be required to pay into the account the equivalence of three years of annual assessments
1203 within four years of the effective date of this paragraph. This amount to be assessed shall be de-
1204 termined based upon the school's gross tuition in its first three years of licensure.

1205 5007(10)f. Repealed.

1206 5007(10)g. In the event that the balance of the tuition reimbursement account is equal to or in
1207 excess of two million dollars, the amounts assessed the schools in accordance with the provisions
1208 of paragraphs d and e of this subdivision shall be deposited directly to the proprietary vocational

1209 school supervision account.

1210 5007(10)h. The commissioner may annually apportion from the account an amount up to two
1211 hundred thousand dollars for the purpose of securing, scanning and otherwise making student
1212 records from closed schools available to students who attended such schools. Provided, however,
1213 that in no case shall such apportionment cause the account to fall below the balance set forth in
1214 paragraph c of this subdivision, nor shall such apportionment cause schools whose quarterly as-
1215 sessments have been suspended to pay additional quarterly assessments.

1216 5007(11). Fund audit. The state comptroller shall audit or cause to be audited the tuition reimburse-
1217 ment fund once every two years and produce an audited financial statement according to generally ac-
1218 cepted accounting principles.

1219 5007(12). New schools. Within the first year that a school begins licensed operation, the commissioner
1220 shall assess such school an amount to be deposited into the fund in an amount to be determined by the
1221 commissioner.

§ 5008. Trust accounts

1222 5008(1). If the commissioner determines that a school has demonstrated a pattern or practice of failing
1223 to make tuition refunds in a timely manner consistent with this article and/or the school's financial
1224 condition may result in the interruption or cessation of instruction or jeopardize student tuition funds,
1225 the commissioner shall require a school to establish a trust account in a form or manner which the
1226 commissioner shall determine to be appropriate. The assets or funds contained in the trust account
1227 shall be maintained for the sole and exclusive benefit of the students.

1228 5008(2). In making this determination, the commissioner shall consider the following factors: the
1229 number of refunds not paid by the school in a timely manner; the number of claims made to, or paid
1230 by, the tuition reimbursement account; a pattern of misconduct which substantially affects the finan-
1231 cial interests of students or the state, potential liability to the tuition reimbursement account, current
1232 assets as opposed to current liabilities, and such other measures as may be appropriate.

§ **5009. Duties of the commissioner**

1233 In addition to all other duties assigned in this article, the duties of the commissioner shall include, but
1234 not be limited to:

1235 5009(1). ensuring that up-to-date, accurate information is available to the public, via the internet and
1236 other appropriate media, regarding every duly licensed proprietary school in this state, as well as dis-
1237 ciplinary actions decided by the state.

1238 5009(2). developing and issuing to duly licensed proprietary schools a symbol to indicate such status;
1239 provided that such symbol shall be developed and made available to such schools no later than Sep-
1240 tember thirtieth, nineteen hundred ninety-nine.

1241 5009(3). administering a public information campaign aimed at increasing awareness about the im-
1242 portance of attending licensed proprietary vocational schools. Such campaign shall be targeted to pop-
1243 ulations at risk of enrolling in unlicensed schools, and shall be conducted using means including, but
1244 not limited to, public service announcements on commercial radio and television stations, public ac-
1245 cess television, and print media.

1246 5009(4). providing for the orderly maintenance of any student records which may be transferred to the
1247 department pursuant to any school's plan developed pursuant to subdivision eight of section five thou-
1248 sand one of this article; including responding to student requests for transcripts and records within
1249 twenty days of receiving a request. The commissioner is hereby authorized to impose an appropriate
1250 fee for such transcripts pursuant to a schedule approved by the director of the budget.

§ 5010. Advisory council

1251 5010(1). An advisory council for licensed private career schools is hereby created for the purpose of
1252 advising the board of regents and the commissioner as provided herein. The council shall be composed
1253 of eleven members appointed by the governor, two of whom shall be upon the recommendation of the
1254 temporary president of the senate, two of whom shall be upon the recommendation of the speaker of
1255 the assembly, one of whom shall be upon the recommendation of the minority leader of the senate and
1256 one of whom shall be upon the recommendation of the minority leader of the assembly. Of the five
1257 remaining members, one shall be an owner or director of a school regulated pursuant to this article,
1258 and one shall be a student advocate. The governor shall designate a chairperson from such members.
1259 The commissioner, the president of the higher education services corporation, the secretary of state,
1260 the comptroller, the director of the division of the budget, and the executive director of the job training
1261 partnership council, or their designees, shall serve as ex-officio, non-voting members of the council.

1262 5010(2). The council shall meet no less than four times a year. Members of the council shall receive
1263 no compensation for their services but shall be reimbursed for reasonable expenses actually and neces-
1264 sarily incurred by them in the performance of their duties. Council member terms of office shall be
1265 limited to three years, provided that members may be reappointed. All appointments to the council to
1266 fill vacancies in existence on the effective date of the chapter of the laws of two thousand twelve
1267 which amended this subdivision shall be made within ninety days of such effective date.

1268 5010(3). The council shall advise the commissioner on such matters as the council determines are ap-
1269 propriate.