

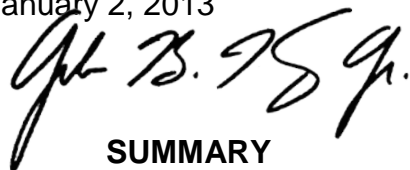


TO: Adult Career and Continuing Education Services
(ACCES) Committee

FROM: Kevin G. Smith 

SUBJECT: Bureau of Proprietary School Supervision (BPSS)

DATE: January 2, 2013

AUTHORIZATION(S): 
SUMMARY

Issue for Discussion

Update the Board of Regents on actions being taken in the Proprietary School oversight division and what future changes may be needed to develop this sector's full potential in support of multiple pathways to career opportunities for all adults?

Proposed Handling

This item will come before the Regents ACCES Committee at its January, 2013 meeting for discussion.

Procedural History

The Education Law (Sections 5001 – 5010) pertaining to non-degree post-secondary proprietary schools was recently amended along with Part 126 NYCRR, with an effective date of December 15, 2012. These statutory changes were the result of Legislation proposed by SED for the past five years to assist the Department to keep pace with the dynamic changes within the industry.

Background Information

ACCES' BPSS is responsible for overseeing New York State's 450 licensed private career schools and certified English as a Second Language schools attended by an estimated 200,000 students annually, as well as reviewing the applications for the 130 schools currently pending licensure. The size and scope of the non-degree school sector has grown significantly and has stretched the capacity of the Bureau's resources. Back in 2008, SED first proposed legislation that would enhance consumer protection and oversight and increase fees to support additional staffing and IT system capacity.

The Department's legislative advocacy was even more focused and intense the past 2 1/2 years as SED worked with the industry, Legislative Chairs in the Assembly and Senate, and the Executive to get this important legislation passed and signed by the Governor. The practical effect of these changes will be to significantly improve oversight by SED and ensure students are receiving career training they need.

In December 2011, after SED had proposed legislation but before the bill was passed, the Office of the State Comptroller initiated a program audit. While OSC has not issued a final report, preliminary findings will confirm SED's concerns regarding the time period needed to approve new applications, the promptness and completeness of actions being taken toward unlicensed schools, and the inadequacy of Department systems for maintaining data on schools. In essence, the final audit is expected to substantiate the need for stronger legislative and regulatory authority and additional human and technological resources.

BPSS Funding and Operations

BPSS' mission is carried out by a staff that is dispersed between the central office in Albany and a satellite office in New York City, where the majority of the State's proprietary schools are located. During the 2010 tuition year, tuition collections for the proprietary schools are estimated at \$600 - \$750 million. SED's work is accomplished with an annual operating budget of approximately \$3 million, with a projected increase of \$800,000.

Two revenue accounts support BPSS activities. The Supervision Account (SA) funds operations and the Tuition Reimbursement Account (TRA) provides refunds to eligible students of proprietary schools subject to certain rules and regulations. These accounts were created under the applicable provisions of Article 101 (Sections 5001 – 5010) of the Education Law and State Finance Law (Section 97-hh). Additional authority is provided through Part 126 of the Commissioner's Regulations.

Both accounts derive most of their revenue from statutory assessments placed on licensed schools. Additional revenue is generated by the assessment of fees and fines. All licensing fees collected by BPSS are deposited into the SA, while all fines imposed and collected by BPSS, through its disciplinary authority, are deposited directly into the TRA. In addition, the TRA accrues interest, while the SA does not.

The TRA was established for the protection of students and gives the Commissioner the authority to reimburse students based on a substantiated complaint against a licensed school. Additional refunds may be provided to current students who are victims of sudden school closures.

The new statute will permit the use of a limited amount of funds to comply with the requirements to scan all records of BPSS licensed schools which close and to meet our retention obligation.

Primary Changes Instituted by Revised Statute

The previous version of the Statute specifically identified business subjects such as shorthand, typing, and business math, which were taught in registered business schools. Many of these subjects are no longer relevant or distinguished and have been removed from current curriculum. Accordingly, trade and business school licenses have been consolidated under the category of **licensed private career schools**, which more appropriately identifies these schools.

This change supports a more business friendly environment as schools that once were required to have separate licenses for teaching both business and trade subjects will no longer be required to do so. This also provides greater flexibility to schools to be more responsive to consumer demands. An example is the collapse of Information Technology (IT) training following 9/11. To continue operation, these schools sought approval to teach allied health courses which required a new license and lengthy processing time. Considerable savings to schools and a reduction in work for the staff of BPSS should be realized.

BPSS currently certifies 44 **English as a Second Language** schools. There has been a shift in the student population from the recent immigrant who requires English instruction to facilitate their assimilation and gainful employment to a population of international students who wish to learn English in order to become an integral part of the global economy. This sector brings tens of thousands of students to New York State adding a significant economic boost to our economic growth. In response, new requirements have been instituted by the Department of Homeland Security (DHS). These schools now require accreditation prior to being granted eligibility to issue student visas. DHS has become an essential partner with NYSED in overseeing these institutions.

BPSS is expected to identify and investigate unlicensed schools. These institutions are difficult to track. Disciplinary action against an unlicensed school includes closing the school until a license is secured resulting in a potential training facility and small business ceasing operations forever. To facilitate transition, a new category of **candidate school** has been established. The new regulations provide these businesses an opportunity to continue to operate for up to 18 months, without penalty, while undergoing the application process and obtaining required licensure. A candidate school will be required to obtain Student Protection Disclosures as evidence that students have been duly informed of the school's unlicensed status.

It is notable that in the first week following the effective date of the new statute, four schools have applied for candidate school status. A considerable financial commitment is required of these schools, with an initial assessment of \$5,000 for the candidate school status, deposited into the SRA, and an additional \$5,000 for the school license application.

The new \$5,000 **school license application fee** has replaced the outdated \$250 fee, which was the lowest in the nation. The higher fee should result in more serious applicants with adequate financial resources and sound business plans. This

substantial increase should cut down on the number of frivolous applications including those that are undercapitalized or ill-equipped to succeed. Of the \$5,000 application fee, \$3,000 will accrue to the SRA and \$2,000 to the TRA. The fee for an additional location is assessed in the amount of \$2,500, which accrues to the SRA.

Operating with unlicensed teachers is a common violation found during investigations. Under the new statute, licensed instructors will be able to teach at multiple schools without having to apply for an additional license for each school. Flexible **teacher licensing** should greatly improve employability and marketability supporting a much more business friendly environment.

The standard for **financial reporting** is the audited financial statement. Under the old law, a significant percentage of the schools have been allowed to submit a financial compilation or review because their revenues were below \$250,000 annually. According to the data presented to the BoR in July, 2011, 234 of 471 or half of the schools were at or below \$250,000 in revenues. The new statute raises the threshold to \$500,000 for annual audits but requires that all schools have a full audit at least every other year. The standards for a full audit are significantly higher than for a compilation or review and are required to be performed by a licensed CPA.

BPSS will continue to work with SED's Office of Audit Services to approve and rate these submissions. Coupled with the measures already implemented by BPSS' Investigation's Unit, this will provide students with better protection from substandard instruction and sudden closures without significant added effort. Additionally, the TRA will be at less risk through early identification of deficiencies and allowing more time for BPSS to work with schools towards improving their financial condition prior to facing possible license revocation.

New York State was one of the few states in the nation which permitted a school **transfer of ownership** without requiring a new application for licensure. The new statute now requires that the new owner complete the entire school license application process including participation in new owner training. Previously a school could be purchased with the new owner not fully appreciating the requirements for compliance. With the increase of venture capitalism in the sector, this change should result in more serious ownership and compliance, as a school can no longer be "flipped".

When a school closes, students are entitled to a full tuition refund. In the past, schools could collect the full amount of tuition upfront; presenting a huge potential liability for the student and the TRA. The new regulations provide for a defined schedule of length/cost of programs allowing for segmented tuition payment in order to limit a student's investment.

Thousands of courses and curricula are offered by licensed schools. It is critical that the programs offered will enable a student to achieve gainful employment in their chosen field. New York requires curriculum to be evaluated and approved, unlike most other states. Reviewing the offerings assesses the effectiveness of the programs. While a unit in the Bureau is devoted to this process it has been difficult to meet demands. The new regulations require a fee for **curriculum review** to better support this unit and encourage better quality submissions.

Students victimized by a school closure will now be reimbursed through the **TRA**, if eligible, for fees and books in addition to tuition. The cost of fees and books has risen substantially over the years and could severely add to the financial hardship of students who cannot complete their training, through no fault of their own.

Hundreds of schools have closed over the past 25 years, and as the required keeper of the **closed student records**, BPSS is faced with the cost of scanning these records, which has been recognized as extremely burdensome and prohibitive. The records are needed by former students for continuing education, employment, or military service. As access to these records is a form of student protection, the new regulations allow access to the TRA, for up to \$200,000, which may be used to scan records. The balance in the TRA as well as any potential school closures would be considered prior to accessing these funds.

Changes in Fee Structure

To support the Bureau in its work to protect students and oversee the schools, all fees have been increased. The fees have not been raised in decades, while the cost of tuition has risen exponentially. The cost of supervision has also increased. The additional expected funds will enable BPSS to secure necessary staff to regulate for compliance and to provide for funding to upgrade the much outdated mainframe computer system.

Change in Fees

- License application fee--\$5,000
- Candidate school application--\$5,000 plus license application fee--\$5,000
- Teacher, director application fee—doubled to \$100
- Agent application fee—doubled to \$200, increased term by 1 year to 2 years
- Curriculum review fee--\$100 or \$250 (new fee)
- License renewal fee—increased by 50 percent, ranging from \$750 to \$18,000
- Minimum renewal fee for small schools--\$500 to reflect cost of supervision
- Increase in penalties by 50 percent--\$3,750 from \$2,500 and \$75,000 from \$50,000

Bureau Staffing

A projected increase in revenue, based upon the fee and fine schedule indicated above, will allow NYSED to hire additional staff dedicated for this purpose. The positions that have been requested and approved have been identified to complement and enhance our current staff, focus on the development of the use of technology and implement succession plans.

Six additional new staff, representing a nearly 25% increase, coupled with several additional backfills constitutes a significant re-composition of the BPSS staff that positions the office to manage the additional expectations well and continue to support the development of the sector.

Computer Support

The Bureau has operated for the past 25 years with a COBOL-based mainframe system. No upgrades have been made and the future of the system is precarious. Steps have been taken to build a web-based Oracle system internally with outside consultant services. Funds have been set aside to finance this. A request for bids has been published to solicit the consulting services. Steps are underway to hire two programmers who will help build the system, and maintain and upgrade it as needs change.

When complete, the new system will result in significant efficiencies. Students will be able to check for licensed schools, licensed teachers, and schools that offer the training in the field of interest. Students will be able to see if there are any complaints against a school. Schools will be able to track the status of submitted applications. They will be able to submit applications on line, and receive approvals electronically. Bureau staff will be able to receive and process applications on their desktops. Approved licenses may be printed from the evaluator's computer, rather than waiting for the weekly print. Incomplete applications will not be accepted until they are complete. The improved efficiency will help speed up our processing and provide better service to our customers.

Recommendation

Emergency regulatory amendments were proposed to the Board of Regents during the December, 2012 meeting as necessary to align the regulations with the amended statute. Based upon input from the field, these changes will have met the requirements for comment and should be ready for approval on March 11, 2013.

A progress report to the Board will be considered in June, 2013.