



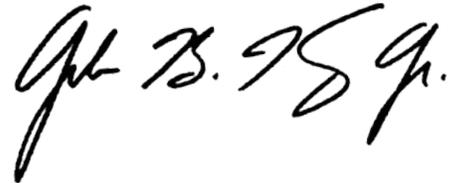
TO: The Honorable the Members of the Board of Regents

FROM: Kevin Smith 

SUBJECT: Proposed Amendments to Part 126 and Section 145-2.3 of the Regulations of the Commissioner of Education Relating to the Licensure of Non-Degree Granting Proprietary Schools

DATE: March 4, 2013

AUTHORIZATION(S):



SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt the proposed amendment to Part 126 and Section 145-2.3 of the Regulations of the Commissioner of Education relating to the licensure requirements for non-degree granting proprietary schools?

Reason(s) for Consideration

State statute.

Proposed Handling

The proposed amendment is submitted to the ACCES Committee for adoption as a second emergency measure and as a permanent rule at its March 2013 meeting. A statement of facts and circumstances justifying the emergency is attached (Attachment 1).

Procedural History

A Notice of Proposed Rule Making and a Notice of Revised Rule Making were published in the State Register on November 7, 2012 and January 23, 2013, respectively. A copy of the proposed amendment is attached (Attachment 2). Supporting materials are available upon request from the Secretary to the Board of Regents.

Background

Chapter 381 of the Laws of 2012 amended Article 101 of the Education Law (sections 5001 through 5010) to eliminate the distinction between licensed private schools and registered business schools, to replace the phrase “licensed private schools” with the more descriptive “licensed private career schools”, adjust fees, which have not changed since 1990, and establish a candidate school category that would allow a school to operate legally while it is in the process of obtaining a non-degree-granting proprietary school license.

Specifically, section 5001 of the Education Law is amended to provide for the consolidation of registered business schools and licensed private schools into one designation, eliminating the artificial distinction between these types of schools and reflecting the current heterogeneous nature of training programs offered at these schools. This section also clarifies the exemptions for certain schools from the licensure requirements and exempts certain conferences, trade shows, workshops and such other courses of study from the licensing requirements. Candidate school status is also allowed as a practical means for prospective schools to operate legally prior to meeting all the requirements of full licensure. This section also amends the specific fees for initial and renewal applications for such licensure. Renewal fees are increased to reflect the State Education Department’s (“Department’s”) current cost of supervising these schools and to meet the prospective costs for reimbursing tuition for a significant number of students when these students’ schools close due to fiscal failure or non-compliance. Initial application fees are set at certain amounts and fees for renewal are based on the school’s gross annual tuition income. Renewal fees are accrued to the credit of the proprietary vocational school supervision account.

Section 5001 sets forth procedures for working with schools that are not financially viable to protect the tuition reimbursement account. The method of assessing schools is changed from more complicated regular and special assessment formulas to one based on the number of quarterly assessments paid, whereby newer schools with the potential to fail would pay a higher assessment than schools with a history of satisfactory licensed operation. Section 5001(4)(e), relating to annual audited financial statements, is amended to change the gross tuition criteria for submission of such statements to the Commissioner and the filing schedule for such statements to bring the non-degree sector into parity with schools in the degree-granting and public college sectors. This section also authorizes the Commissioner to deny, suspend, revoke or decline to renew any license if the Commissioner determines that a school’s financial condition may result in the interruption or cessation of instruction or jeopardize student tuition funds. If the Commissioner determines that the financial condition may result in interruption or cessation of instruction or jeopardize student tuition funds, the Commissioner may place the school on probation for a period of no more than one year and the school shall be required to submit a report on its financial condition to the Commissioner.

Section 5002 is amended to restrict the amount of private loan payments for tuition that a school could receive on behalf of a student prior to their completing a

program, thereby limiting students' loan liability as well as the tuition reimbursement account's liability for payment of loan funds for tuition payments, which is the most significant portion of the loan. This section also increases the maintenance of record requirement from 6 to 7 years. Section 5002(1)(d)(1) relating to admission of students under the ability to benefit provision is amended to authorize the Commissioner to accept other entrance requirement documentation, such as prerequisite coursework, professional or vendor certifications, personal interviews and/or attestations of equivalent knowledge in lieu of the examination requirement. Section 5002(3)(h) is amended to require schools to submit for approval a school catalog that contains a weekly tuition liability chart for each program that indicates the amount of refund due a student upon withdrawal. This section is also amended to provide that in addition to paying the curriculum application fee, schools will be required to pay the cost of an expert or independent consultant for an outside evaluation of a particular course or facility. This section is also amended to provide for the payment of a curriculum fee upon submission of the application. Fees from school and personnel license applications do not cover the cost of curriculum review, as some schools have only a handful of courses or curricula that require approval while others have between 400 and 700. Schools requiring the most evaluation would pay more, those with few programs would pay less. Section 5002(6) is also amended so that all teacher licenses would no longer be restricted to a single school location, as private career school teacher licenses currently are. This will result in a more mobile and efficient teacher pool for schools to draw from for faculty members, reduced expense for processing teacher applications and a reduced workload for the Bureau.

Section 5003 is amended to establish more practical timeframes for disciplinary proceedings by prescribing procedures for handling written complaints by students attending candidacy schools alleging failure of the school to disclose its candidacy status and the implications and to obtain the required attestation from the student. If such a violation is found, the school is required to provide the student a full refund of all monies received from the student. Section 5003(6) is also amended to increase the fines established in 1990 so they reflect the Department's current cost of school oversight and expands the list of violations that may result in the imposition of a civil penalty, including failure to offer an approved course or program.

Section 5004 is amended to increase private school agent fees from \$100 to \$200, while extending the term of a private school agent's certificate from 2 years to 3 years.

Section 5006 is amended to allow the Department to intervene more effectively when a private career education school ceases instruction. Currently, schools that are closing are required to develop teachout plans that arrange to have students continue to receive instruction from other private career schools upon closure of the school. The Department's experience is that schools that must close have little incentive to establish teachouts, so authorizing the Department to arrange for a teachout plan would provide greater protection for students. This section also authorizes the Commissioner to prescribe the educational qualifications and practical experience for teachers and directors in these schools.

Section 5007 is amended to expand the expenses eligible for reimbursement for students whose schools are closing. This section provides refunds of tuition, fees and book charges paid by or on behalf of the students in cash or through loans, excluding funding obtained through government agencies and authorizes the Commissioner to refund expenditures for fees, books and tuition to students of schools that have closed. The provisions for special assessments for new schools in section 5007(10) are also amended to be consistent with the assessment changes in section 5001, and to reflect the Department's experience with assessing schools that have not been in operation for an entire year. The requirement in section 5007(11) for an annual fund audit of the tuition reimbursement account would be changed to mandate a two-year audit.

The proposed amendment implements these provisions.

Following a 45-day public comment period pursuant to the State Administrative Procedure Act, the Department received comments on the proposed amendment. Attached is an assessment of the public comment received (Attachment 3). Based on the comments received, a couple of minor changes were made to the proposed amendment, including elimination of new language that had been proposed to be added to §126.7(b)(9) that would have required an enrollment agreement to include a provision for the method or methods of payment including, as appropriate, the disbursement schedule for each type of financial assistance available, and a Notice of Revised Rule Making was published in the State Register on January 23, 2013. Following the 30-day public comment on the revised rule making, the Department received no additional comments.

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That Part 126 and Section 145-2.3 of the Regulations of the Commissioner of Education be amended, as submitted, effective March 14, 2013, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to timely implement the provisions of Chapter 381 of the Laws of 2012 and to ensure that the rule remains continuously in effect until it can be adopted as a permanent rule; and it is further

VOTED: That Part 126 of the Regulations of the Commissioner of Education be amended, as submitted, effective March 27, 2013.

Timetable for Implementation

If adopted at the March Regents meeting, the proposed amendment will become effective as an emergency measure on March 14, 2013 and as a permanent rule on March 27, 2013.

8 NYCRR Part 126

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The proposed amendment to the Regulations of the Commissioner of Education is necessary to implement Chapter 381 of the Laws of 2012, which amends Education Law sections 5001 through 5010, to amend the licensure requirements for non-degree granting schools. In order to timely implement the provisions of Chapter 381 of the Laws of 2012 before its stated effective date on December 15, 2012, the Board of Regents adopted the proposed amendment as an emergency measure at its December 2012 meeting and the proposed amendment became effective on December 15, 2012.

The proposed rule was adopted as an emergency action at the December 2012 Regents meeting, effective December 15, 2012. Since publication of the Notice of Proposed Rule Making in the State Register on November 7, 2012, the proposed rule has been revised in response to public comment.

Because the Board of Regents meets at scheduled intervals, the March 2013 meeting is the earliest the revised proposed rule could be presented for permanent adoption, after publication of a Notice of Revised Rule Making in the State Register and expiration of the 30-day public comment period required under State Administrative Procedure Act §202(4-a). If adopted as a permanent rule, the earliest the rule can become effective is March 27, 2013. However, the December emergency rule will expire on March 15, 2013. A lapse in the rule will disrupt implementation of Chapter 381 of the Laws of 2012.

A second emergency action is therefore necessary for the preservation of the general welfare to timely implement the provisions of the Chapter 381 of the Laws of 2012 and to

otherwise ensure that the emergency rule adopted at the December Regents meeting, as so revised, remains continuously in effect until it can be presented and made effective as a permanent rule. If adopted as an emergency measure at the March 2013 meeting, the proposed amendment will become effective on March 14, 2013.

AMENDMENTS TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 212, 305, 5001, 5002, 5003, 5004, 5005, 5006, 5007, 5008, 5009 and 5010 of the Education Law and Chapter 381 of the Laws of 2012.

1. Part 126 of the Regulations of the Commissioner of Education is amended, effective March 14, 2013, to read as follows:

PART 126 LICENSED PRIVATE CAREER SCHOOLS [, REGISTERED BUSINESS SCHOOLS AND COMPUTER TRAINING FACILITIES] OR LICENSED PRIVATE SCHOOLS

Section 126.1 Definitions. As used in this Part:

(a) . . .

(b) . . .

(c) . . .

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

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

(f) . . .

(g) . . .

(h) . . .

(i) . . .

(j) . . .

(k) . . .

(l) . . .

(m) . . .

(n) [Technical occupational subject means subject areas taught in licensed private schools that may also be taught in registered business schools/computer training facilities by teachers licensed or holding a permit pursuant to the requirements of section 126.6 of this Part.] Practical experience means full-time work experience, or its part time equivalent, that is acceptable to the Commissioner using skills included in the occupation for which the program is designed and approved.

(o) Gross tuition means all [charges] revenues received for instruction by or on behalf of the student, prior to any refund, from all sources, including but not limited to, lending institutions, Federal agencies, State agencies, and any other entity or organization. Gross tuition shall not include income from registration fees, the sale of books, supplies, services, kits, uniforms or equipment.

(p) School means a licensed private career school [, registered business school, or a computer training facility] or licensed private school as defined in section 5001 of the Education Law.

(q) . . .

(r) . . .

(s) . . .

(t) . . .

(u) [Unaudited reviewed] Reviewed financial statement means a financial statement reported in accordance with standards established by the American Institute

of Certified Public Accountants and conducted by a licensed public accountant or a certified public accountant.

(v) [Unaudited compiled financial statement means a financial statement prepared in accordance with the standards established by the American Institute of Certified Public Accountants and in accordance with the requirements of the commissioner.] Occupationally required credential means a professional license, vendor certification, or other credential that is required for employment in the occupation or where employment in the occupation without such a credential is diminished.

(w) Audited financial statement [of revenue] means a [special report] financial statement prepared by a licensed public accountant or a certified public accountant in accordance with generally accepted [auditing standards] accounting principles issued by the American Institute of Certified Public Accountants.

(x) Certified English as a Second Language Schools or Nonpublicly funded ESL schools means schools that provide instruction in English as a second language; receive no public funding, including but not limited to public funding received as a result of participation in student financial aid general award programs pursuant to articles 13 and 14 of the Education Law; and operate on a for-profit basis.

(y) . . .

(z) . . .

(aa) . . .

126.2 Conduct of the school.

(a) . . .

(b) . . .

(c) . . .

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

126.3 Advertising.

(a) . . .

(b) . . .

(c) . . .

(d) . . .

(e) . . .

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

126.4 Standards and methods of instruction.

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

- (1) . . .
- (2) . . .
- (3) . . .
- (4) . . .
- (5) . . .
- (6) . . .
- (7) . . .

- (b) . . .
- (c) . . .
- (d) . .
- (e) . . .
- (f) . . .
- (g) . . .
- (h) . . .
- (i) . . .

126.5 Equipment and housing.

- (a) . . .
- (b) . . .
- (c) . . .
- (d) . . .
- (e) . . .

126.6 Qualifications of teaching and management personnel.

(a) [A school] Each applicant shall submit, [on forms] in a format specified by the commissioner, such data concerning the education, training, experience and other qualifications, including supporting documentation, of the administrative, supervisory and instructional staff of the school as the commissioner may require. Upon submission of an application for a [teacher or] director, the owner [or director] shall attest to the applicant's ability to comply with the provisions of this section. Pursuant to section 5002(6) of the Education Law, all [complete] applications for teachers and directors shall be mailed to the commissioner [and postmarked] four days prior to employment at the school, and must be completed, with all supporting materials and fees required for

evaluation of the file, within 20 days thereafter. However, the commissioner, for good cause shown, may extend the time within which to complete the application. When a complete application is made, the commissioner shall act upon such application within 30 days. If no written denial is made within 30 days, the application shall be deemed to be approved until the commissioner acts upon it or until the end of the term or semester, whichever occurs first. If a written denial is made after the 30-day period, the commissioner may allow the applicant to teach at the school for the remainder of the term or semester if the commissioner determines that the removal of the teacher would not be in the best interest of students. [Any school submitting an application for a teacher or director to the department that is postmarked less than four days prior to the employment of such individual and who and the applicant is subsequently determined not to be qualified pursuant to the provisions of this section, the school may be subject to disciplinary action pursuant to section 5003 of the Education Law, if such conduct constitutes a pattern of abuse.] If a teacher or director application, submitted to the department and postmarked less than four days prior to the employment of such individual, is evaluated and it is subsequently determined that the applicant is not qualified pursuant to the provisions of this section, the school may be subject to disciplinary action pursuant to section 5003 of the Education Law, if such conduct constitutes a pattern of abuse. As used in this subdivision, a pattern of abuse is defined as violations which occur three or more times in a 12-month period.

As used in this subdivision, a pattern of abuse is defined as violations which occur three or more times in a 12-month period.

(b) . . .

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

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

(ii) Teachers' permits or licenses issued prior to December 15, 2012, including licenses for teaching specific occupational subjects or specific subjects certified by a nationally recognized vendor, or the licenses approved pursuant to subdivision (k) of this section shall be valid only for the school or schools, [curriculum] curricula, [course or] courses/content areas, or occupation indicated on the license, except that a teacher's license issued to a teacher in a registered business school/computer training facility on or after January 1, 1987 shall be valid at all [registered business schools/computer training facilities] licensed private career schools for the courses, curricula/content areas or occupation indicated on the license [; unless the license is for teaching specific occupational subjects or specific subjects from a curriculum certified by a nationally recognized vendor, or the license is approved pursuant to subdivision (k) of this section, in which case the license shall be restricted to a specific school]. Teachers holding valid private school teacher licenses valid at only one school location shall have them replaced, at no cost, with licenses valid at any licensed school in the same subject or subjects and with the same expiration date as was listed on the previous teaching license.

(d) Each licensed private career school [and registered business school/computer training facility] shall employ a director who shall be responsible for all activities of the school or done in the name of the school. A director shall meet the

requirements of this subdivision to be licensed by the department and, pursuant to section 5004(4-a) of the Education Law, may apply for a private school agent's certificate on forms prescribed by the Commissioner without incurring the agent application fees.

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

(i) [Licensed private schools.] Directors of licensed private career schools shall meet the following preparation requirements:

(a) . . .

(b) . . .

(c) have received an appropriate baccalaureate or higher degree upon completion of an approved college program in the field of business administration, educational administration, or public administration.

(ii) [Registered business schools/computer training facilities. Directors of registered business schools/computer training facilities shall meet the following preparation requirements:

(a) have received an appropriate baccalaureate or higher degree upon completion of an approved college program; and

(b) have at least five years of acceptable practical experience in one or more of the courses taught in the school, or five years of acceptable teaching experience in one or more of the courses taught in the school, or five years of acceptable administrative or supervisory experience, or a combination of such acceptable experience amounting to at least five years.

(iii)] In addition to meeting the preparation requirements of subparagraph (i) [or (ii)] of this paragraph [, as applicable,] all directors shall have completed an approved 15 clock-hour course offered by the department in private school administration prior to receiving a full director license.

[(iv)] (iii) Upon a finding by the commissioner that an applicant for licensure possesses education, training and/or experience that is substantially equivalent to a preparation requirement of this paragraph, the commissioner may accept such education, training and/or experience in lieu of meeting the preparation requirement of this paragraph.

(2) . . .

(3) . . .

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

(5) Duration of license.

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

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

[(6) Directors whose education and practical experience qualifications were approved prior to July 1, 1973 shall be deemed to have met the requirements of paragraph (1) of this subdivision.]

(e) All teachers who have been issued a license or permit pursuant to the requirements of this section shall successfully complete an orientation to classroom management program within four weeks of employment at a licensed private career school [, registered business school/computer training facility or chain of schools], according to the following requirements:

(1) . . .

(2) . . .

(3) . . .

(f) All teachers in licensed private career schools shall meet the requirements of this subdivision[, except that prospective teachers seeking a license to teach English as a second language, a high school equivalency program or business courses shall be subject to the provisions of subdivision (g) of this section and except that the requirements of this subdivision shall be applicable to teachers seeking a license to teach specific subjects from a curriculum certified by a nationally recognized vendor only to the extent they are made applicable by subdivision (g) of this section].

(1) Teachers shall meet the following requirements:

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

(ii) [have had at least two years of practical experience acceptable to the commissioner in the subject area or occupation to be taught. Teaching experience will not be accepted in lieu of practical experience;] have the required preparation and training set forth in either clause (a) or (b) of this subparagraph:

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

(b) for specific business subject areas only:

(1) the candidate shall hold a valid permit:

(i) for a permit in general academic, an applicant shall have been awarded a baccalaureate or equivalent degree from an institution whose programs are registered or recognized by the department.

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

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

(a) shall have successfully completed an approved 30-clock-hour course in teaching English for speakers of other languages (ESOL) from a proprietary school association recognized by the commissioner; or

(b) shall have been awarded three semester hour credits in teaching ESOL from an institution whose programs are registered or recognized by the department.

(iv) for a permit in computer applications or computer programming, an applicant either:

(a) shall have been awarded a baccalaureate or equivalent degree and 18 semester hour credits in approved course work appropriate for the instructional area of the permit from an institution whose programs are registered or recognized by the department; provided that such 18 semester hour credits may be earned in the baccalaureate or equivalent program or may be credits earned in addition to credits earned in such a program and that appropriate work experience may be substituted for up to six of the 18 semester hour credits; or

(b) shall have been awarded an associate degree in computer science from an institution whose programs are registered or recognized by the department and shall have completed two years of appropriate work experience in the instructional area of the permit.

(v) for a permit in hospitality management, an applicant either:

(a) shall have been awarded a baccalaureate in hospitality management from an institution whose programs are registered or recognized by the department; or

(b) shall have been awarded a baccalaureate or equivalent degree in another field and 12 semester hour credits in approved course work appropriate for a permit in hospitality management from an institution whose programs are registered or recognized by the department; provided that such 12 semester hour credits may be earned in the baccalaureate or equivalent program or may be credits earned in addition to credits earned in such a program, and shall have completed four years of appropriate work experience in hospitality management; or

(c) shall have been awarded an associate degree in hospitality management from an institution whose programs are registered or recognized by the department and shall have completed two years of appropriate work experience in hospitality management.

(vi) For a permit in court reporting or paralegal, the applicant shall have been awarded a high school diploma or its equivalent, completed successfully an approved program in the instructional area of the permit, and completed two years of appropriate work experience.

(vii) for a permit for travel and tourism, an applicant either:

(a) shall have been awarded a high school diploma or its equivalent and shall have completed four years of appropriate work experience in travel and tourism; or

(b) shall have been awarded an associate degree in travel and tourism from an institution whose programs are registered or recognized by the department and shall have completed two years of appropriate experience in the field of travel and tourism.

(viii) for a permit to teach a specific subject from a curriculum certified by a nationally recognized vendor, an applicant shall hold certification as an instructor by the vendor, in accordance with section 5002(6)(c) of the Education Law.

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

(iv) if [Federal or State license] an occupationally required credential is required for the performance of any occupation other than teaching, the teacher shall also be required to hold such [license] credential;

(v) . . .

(vi) . . .

(2) . . .

(3) . . .

[(g) All teachers in registered business schools/computer training facilities, English as a second language curricula, or high school equivalency programs shall be subject to the requirements of this subdivision. Such teachers shall meet the requirements of paragraph (1) of this subdivision and have completed professional preparation specified in paragraph (4) of this subdivision, which shall be substantially equal to that required of teachers of equivalent curricula or courses in public secondary schools.

(1) Teachers shall meet the following requirements:

(i) be of good moral character as determined by the commissioner; and

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

(2) Scope of permits and licenses. Teacher's permits or licenses issued on or after January 1, 1987 shall be valid at all registered business schools/computer training facilities for the instructional areas, curricula, or subjects indicated on the permit or license, except that permits or licenses for teaching specific technical occupational subjects or specific subjects from a curriculum certified by a nationally recognized vendor, or for instructors approved pursuant to subdivision (k) of this section shall be restricted to the specific school in which the teacher was employed at the time that such license was issued. Teacher's permits or licenses shall be issued in the following instructional areas:

(i) accounting;

(ii) bank teller;

- (iii) computer applications;
- (iv) computer programming;
- (v) court reporting;
- (vi) English for speakers of other languages;
- (vii) general academic;
- (viii) hospitality management;
- (ix) management and marketing;
- (x) office skills;
- (xi) paralegal;
- (xii) travel and tourism;
- (xiii) specific technical occupational subject(s) ; and
- (xiv) specific subjects from a curriculum certified by a nationally recognized

vendor .

(3) Term of permits and licenses.

(i) Upon application, teachers who satisfy the requirements set forth in paragraph (1) of this subdivision and the applicable requirements set forth in paragraph (4) of this subdivision may be issued one of the following:

- (a) a permit valid for one year from the date of issue;
- (b) a provisional license valid for three years from the date of issue; or
- (c) a full license valid for four years from the date of issue and renewable.

(ii) A permanent teacher's license issued prior to May 25, 2000, shall continue to be valid without renewal, except that such permanent teacher's license restricted to a specific school and location shall continue to be valid without renewal until such time as the teacher leaves the school and location for which the license is valid.

(4) Required preparation and training.

(i) Permits. Applicants for a permit shall meet the following requirements:

(a) For a permit in general academic, an applicant shall have been awarded a baccalaureate or equivalent degree from an institution whose programs are registered or recognized by the department.

(b) For a permit in accounting, office skills, or management and marketing, an applicant shall have been awarded a baccalaureate or equivalent degree and 18 semester hour credits in approved course work appropriate for the instructional area of the permit from an institution whose programs are registered or recognized by the department. Such 18 semester hour credits may be earned in the baccalaureate or equivalent program or may be credits earned in addition to credits earned in such a program.

(c) For a permit in English for speakers of other languages (ESOL), an applicant shall have been awarded a baccalaureate or equivalent degree from an institution whose programs are registered or recognized by the department; and either:

(1) shall have successfully completed an approved 30-clock-hour course in teaching English for speakers of other languages (ESOL) from a proprietary school association recognized by the commissioner; or

(2) shall have been awarded three semester hour credits in teaching ESOL from an institution whose programs are registered or recognized by the department.

(d) For a permit in computer applications or computer programming, an applicant either:

(1) shall have been awarded a baccalaureate or equivalent degree and 18 semester hour credits in approved course work appropriate for the instructional area of the permit from an institution whose programs are registered or recognized by the department, provided that such 18 semester hour credits may be earned in the

baccalaureate or equivalent program or may be credits earned in addition to credits earned in such a program and that appropriate work experience may be substituted for up to six of the 18 semester hour credits; or

(2) shall have been awarded an associate degree in computer science from an institution whose programs are registered or recognized by the department and shall have completed two years of appropriate work experience in the instructional area of the permit.

(e) For a permit in hospitality management, an applicant either:

(1) shall have been awarded a baccalaureate in hospitality management from an institution whose programs are registered or recognized by the department; or

(2) shall have been awarded a baccalaureate or equivalent degree in another field and 12 semester hour credits in approved course work appropriate for a permit in hospitality management from an institution whose programs are registered or recognized by the department, provided that such 12 semester hour credits may be earned in the baccalaureate or equivalent program or may be credits earned in addition to credits earned in such a program, and shall have completed four years of appropriate work experience in hospitality management; or

(3) shall have been awarded an associate degree in hospitality management from an institution whose programs are registered or recognized by the department and shall have completed two years of appropriate work experience in hospitality management.

(f) For a permit in court reporting or paralegal, the applicant shall have been awarded a high school diploma or its equivalent, completed successfully an approved program in the instructional area of the permit, and completed two years of appropriate work experience.

(g) For a permit for bank teller, an applicant shall have been awarded a high school diploma or its equivalent and shall have completed four years of appropriate work experience.

(h) For a permit for travel and tourism, an applicant either:

(1) shall have been awarded a high school diploma or its equivalent and shall have completed four years of appropriate work experience in travel and tourism; or

(2) shall have been awarded an associate degree in travel and tourism from an institution whose programs are registered or recognized by the department and shall have completed two years of appropriate experience in the field of travel and tourism.

(i) For a permit for a specific technical occupational subject, an applicant shall have met the requirements for a temporary teacher's permit for teachers in licensed private schools, as set forth in subdivision (f) of this section.

(j) For a permit to teach a specific subject from a curriculum certified by a nationally recognized vendor, an applicant shall hold certification as an instructor by the vendor, in accordance with section 5002(6)(c) of the Education Law.]

[(ii)] (4) Provisional licenses. Applicants for a provisional license shall meet the appropriate requirements set forth in subparagraph [(i)] (1) of this paragraph and shall also meet the following requirements:

[(a)](i) For a provisional license for all instructional areas identified in paragraph [(2)] (1) of this subdivision with the exception of English for speakers of other languages (ESOL) [and a specific technical occupational subject], an applicant shall have successfully completed either three semester credit hours of study in approved course work in general teaching methods from an institution whose programs are registered or recognized by the department, or an approved 30-clock-hour course in general teaching methods from a proprietary school association recognized by the commissioner.

[(b) For a provisional license for accounting, bank teller, computer applications, computer programming, management and marketing, or office skills, an applicant shall have completed the requirements set forth in clause (a) of this subparagraph and shall have completed one year of either teaching experience, or college supervised student teaching or appropriate work experience, provided that such work experience is in addition to any work experience used to qualify for a permit.

(c) For a provisional license for court reporting, English for speakers of other languages (ESOL), general academic, hospitality management, paralegal, and travel and tourism, an applicant shall have completed the requirements set forth in clause (a) of this subparagraph and shall have completed one year of teaching experience or college supervised student teaching.

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

[(e) For a provisional license for a specific technical occupational subject or a specific subject from a curriculum certified by a nationally recognized vendor, an applicant shall have met the requirements for a provisional teacher's license for teachers in licensed private schools, as set forth in subdivision (f) of this section.]

[(iii)] (5) Full licenses. Applicants for a full license shall meet the appropriate requirements set forth in subparagraphs (i) and (ii) of this paragraph [and, shall also

meet the following requirements], including any required coursework. Applicants shall also complete the following:

[(a)] (i) For a full license for all instructional areas with the exception of English for speakers of other languages (ESOL) [and a specific technical occupational subject], applicants shall have successfully completed [one additional year of teaching experience and] either:

[(1)] (a) an additional three semester credit hours of appropriate study in professional education from an institution whose programs are registered or recognized by the department; or

[(2)] (b) an approved 60-clock-hour program(s) in professional education from a proprietary school professional association recognized by the commissioner.

[(b)](ii) For a full license [for] to teach English for speakers of other languages (ESOL), an applicant shall have successfully completed:

[(1)] one additional year of teaching experience; and

(2) for an applicant without three semester hour credits in methods of teaching English for speakers of other languages (ESOL) and three semester hour credits in general education methods from an institution whose programs are registered or recognized by the department, an approved 30-clock-hour program in either professional education or methods of teaching English for speakers of other languages (ESOL) from a proprietary school association recognized by the commissioner, provided that the applicant has completed a total of 60-clock-hours in approved study in methods of teaching English for speakers of other languages (ESOL) from such an association.

(c) For full license for accounting, general academic, management and marketing, office skills, computer applications, computer programming or hospitality management, an applicant shall have completed the requirements set forth in clause (a)

of this subparagraph and shall have successfully completed an additional 12 semester credit hours of study in approved course work appropriate for the instructional area of the permanent license from an institution whose programs are registered or recognized by the department.

(d) For a full license for a specific technical occupational subject or a specific subject from a curriculum certified by a nationally recognized vendor, an applicant shall have met the requirements for a full teacher's license for teachers in licensed private schools, as set forth in subdivision (f) of this section.

(5) Continuing eligibility. A teacher holding a permanent license to teach in a registered business school that was issued prior to January 1, 1987 may continue to teach the subjects or curricula that appear on the license in the registered business school for which the license was issued.]

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

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

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

[(i) Teacher's licenses or permits issued pursuant to subdivision (f) of this section may be amended to include additional curricula or courses upon the submission

of such additional evidence of practical experience or education as required by the commissioner]

[(j)] (h) A [~~\$50~~] \$100 nonrefundable application fee in the form of a check or money order payable to the State Education Department shall accompany all applications for teachers' permits and licenses, directors' permits and licenses, renewals thereof, and amendments of temporary permits and licenses. [All applications for a temporary permit or license issued in accordance with the provisions of subdivision (f) of this section shall be submitted by the director of the school.] Applications for licenses issued to teachers [in registered business schools/computer training facilities in accordance with the provisions of subdivision (g) of this section] may be submitted by the applicants or the directors of the schools.

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

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

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

(1) . . .

(2) . . .

[(n) Teachers of fine arts are exempt from professional teacher training requirements.

(o) Teachers whose education and practical experience qualifications were approved prior to July 1, 1973 will be deemed to have met the requirements of subdivision (f) of this section.

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

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

[(1) A teacher holding a license for a licensed private school shall not act as a substitute teacher in a registered business school/computer training facility unless otherwise approved by the commissioner.

(2) (1) Except as otherwise noted in paragraph [(3)] (2) of this subdivision, a substitute teacher shall be licensed in the course, curriculum or instructional area for which he or she is providing instruction.

[(3)] (2) A school may utilize the services of a substitute teacher who is licensed but not licensed for the [specific school and/or in the] appropriate course, curriculum or instructional area, if such substitute teacher meets the following requirements:

(i) the school's director appoints an appropriately licensed teacher employed at the school to serve as a mentor for such substitute teacher, and such mentor meets with the substitute teacher at least one hour each week to review lesson plans, resolve

problems, explain school policies and provide the necessary support for the substitute teacher; and

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

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

126.7 Enrollment agreement and student refund policies.

(a) . . .

(b)

126.8 Resources.

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

(b) Financial reports.

(1) . . .

(2) . . .

(3) Pursuant to section 500l(4)(e) of the Education Law, schools shall be required to submit to the commissioner an annual financial statement and shall meet the following requirements with respect to the submission of such annual financial statement:

(i) Any school which received [in excess of \$250,000] \$500,000 or more in gross tuition or whose combined state and federal student financial aid is \$100,000 or more in a school fiscal year shall submit an audited financial statement to the commissioner for that fiscal year.

(ii) Any school which received [in excess of \$100,000] less than \$500,000 and less than \$100,000 in combined Federal and State student financial aid in a school fiscal year shall submit either an unaudited reviewed financial statement in a format prescribed by the Commissioner or an audited financial statement to the commissioner for that fiscal year provided that a reviewed financial statement cannot be submitted for two consecutive fiscal years. An audited financial statement must be filed for the year following the fiscal year for which a reviewed financial statement was filed.

[(iii) Any school which received between \$100,000 and \$250,000 in gross tuition and \$100,000 or less in combined State and Federal student financial aid in a school fiscal year shall submit an unaudited reviewed financial statement to the commissioner for that fiscal year.

(iv) Any school which received less than \$100,000 in gross tuition and \$100,000 or less in combined State and Federal student financial aid in a school fiscal year shall submit an unaudited compiled financial statement to the commissioner for that fiscal year.

(v) Any school which received in excess of \$50,000 but no more than \$250,000 in gross tuition and \$100,000 or less in combined State and Federal student financial

aid in a school fiscal year shall submit an audited financial statement to the commissioner for the next school fiscal year, provided that such school has not filed at least one audited financial statement since its first year of operation.

(vi) Any school may satisfy the requirement for an unaudited compiled financial statement with either an unaudited reviewed financial statement or an audited financial statement; and may satisfy the requirement for an unaudited reviewed financial statement with an audited financial statement.]

126.9 Catalogs.

(a) Each licensed private career school [and registered business school/computer training facility] shall publish a catalog or bulletin, which shall be furnished to each prospective or enrolled student, which shall include the following:

- (1) . . .
- (2) . . .
- (3) . . .
- (4) . . .
- (5) . . .
- (6) . . .
- (7) . . .
- (8) . . .
- (9) . . .
- (10) . . .
- (11) . . .
- (12) . . .
- (13) . . .
- (14) . . .

(15) . . .

(16) the names of associations, agencies or governmental bodies which accredit, approve [, register] or license the school;

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

(18) a description of the process for obtaining a tuition refund from the tuition reimbursement fund pursuant to section 5007 of the Education Law; [and]

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

(20) . . .

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

(c) As an alternative to the prior approval of a catalog or bulletin by the commissioner, a school may submit, in a form prescribed by the commissioner, an attestation that the catalog or bulletin meets all of the requirements set forth in subdivision (a) of this section, is true and accurate, and contains no false, misleading, or fraudulent representations. A subsequent determination by the commissioner that the catalog does not meet the requirements of subdivision (a) of this section, or is not true and accurate, or that the catalog contains false, misleading or fraudulent representations, may subject the school to disciplinary action, as prescribed in section 126.14 of this Part and section 5003 of the Education Law].

126.10 School license [or registration required]; licensing [or registration] procedure.

(a) Every applicant shall submit an application for licensure of a private career school [or registration of a business school/computer training facility,] upon forms

provided by the commissioner, together with such other information as the commissioner may require, including applications for approval of curricula or courses of study, quarters or facilities, required personnel licenses, and documentation of ownership and adequacy of resources. The application shall be accompanied by the statutory fee. [The commissioner shall act on an initial application for a license or registration within 120 days of receipt of a complete application.] In accordance with section 5001(4) of the Education Law, the applicant shall receive a written approval or denial, together with the reasons for a denial of such application.

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

(c) Pursuant to section 5001(7) of the Education Law, no license [or registration] granted under this Part shall be transferrable or assignable without the approval of the commissioner. [Any] Upon transfer or assignment of any interest totaling [10] 25 percent or more, whether direct or indirect, in the total equity or assets of a school shall be deemed a [transfer of such schools' license or registration. The commissioner shall approve or deny a transfer or assignment based on the requirements set forth in this Part. Such approval or denial, together with the reasons for denial, shall be transmitted in writing within 90 days of the receipt of the complete application by the commissioner. Upon a showing of good cause as to why the applicant could not obtain the

commissioner's approval prior to a transfer or assignment, the commissioner shall temporarily approve the transfer or assignment for a period not to exceed 45 days and for such additional periods as the commissioner may deem appropriate] new school required to submit a new school application and obtain a new license pursuant to the requirements of this Part. However, upon such a substantial change in interest, the previous school license shall remain in effect until the new license is issued or denied or the previous license expires or is revoked, whichever comes first.

(d) Each school shall display, near the entrance to the school [and under glass], the license [or registration] which has been issued to it. Such authorization shall be displayed only during the period of its validity.

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

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

(1) number of applicants, by [gender and] program of instruction, who were accepted for enrollment during the reporting period;

(2) number of applicants, by [gender and] program of instruction, who applied for, but were denied, enrollment because they failed to satisfy the entrance requirements;

(3) number of full-time and part-time students, by [gender and] program of instruction, enrolled at the beginning of the reporting period;

(4) number of full-time and part-time students, by [gender and] program of instruction, who enrolled during the reporting period;

(5) number of full-time and part-time students, by [gender and] program of instruction, who were still enrolled at the end of the reporting period;

(6) number of full-time and part-time students, by [gender and] program of instruction, who graduated during the reporting period;

(7) number of full-time and part-time students, by [gender and] program of instruction, who withdrew without completing the program of instruction during the reporting period;

(8) number of full-time and part-time students, by [gender and] program of instruction, who received financial assistance from Federal and/or State programs during the reporting period; and

(9) the employment or educational status, by [gender and] program, of students graduating during the reporting period.

(g) Schools conducted for profit which provide instruction in English as a second language or preparation for the high school equivalency examinations to out-of-school youth or adults which are required to be licensed under section 5001 of the Education Law, pursuant to chapter 887 of the Laws of 1990, shall comply with the provisions of

this Part, article 101 of the Education Law and all other applicable laws and regulations, in a time frame established by the commissioner. Such schools in operation prior to September 1, 1990 may be granted a variance from any provision of this Part relating to an initial or renewal application for licensure, if in the judgment of the commissioner, the educational quality of the program or financial viability of the school will not be impaired.

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

- (1) . . .
- (2) . . .
- (3) . . .
- (4) . . .
- (5) . . .
- (6) . . .
- (7) . . .
- (8) . . .
- (9) . . .
- (10) . . .
- (11) . . .
- (12) . . .

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

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

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

(a) . . .

(b) . . .

(c) . . .

(d) [paragraph (e) of subdivision (3) of section 5001 of the Education Law and section 126.8 of this Part relating to financial resources and financial statements;

(e)] section 126.4(e)(2) of this Part relating to academic standards of progress;

and

(e) [(f)] section 126.11 of this Part relating to school and student records.

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

(2) Other exempt schools which elect to be licensed. All exempt schools which elect to be licensed, with the exception of those specified in paragraph (1) of this subdivision, shall meet all of the requirements of article 101 of the Education Law and

this Part, except that such schools may meet the requirement for a certificate of occupancy by meeting the requirement in paragraph (3) of this subdivision.

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

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

(1) . . .

(2) Application procedures.

(i) Initial certification.

(a) [Schools] Every applicant and renewal applicant shall apply for [initial] certification on an application form prescribed by the commissioner and shall submit with such application a nonrefundable and nontransferable [250] \$5000 certificate fee of which \$3,000 shall accrue to the credit of the proprietary vocational school supervision account and \$2,000 shall accrue to the tuition reimbursement account. For additional locations of currently certified operating schools, the application fee shall be \$2,500 which shall accrue to the credit of the proprietary vocational school supervision account.

(b) . . .

(ii) Renewal of certification.

(a) Schools shall apply for renewal of certification at least 120 days prior to the expiration of the current certificate on an application form prescribed by the commissioner and shall submit with such an application a nonrefundable and

nontransferable fee in accordance with the provisions of [sections] section 5001(4)(b) [and 5001(4)(g)] of the Education Law.

(b) Schools which received \$500,000 or more in [excess of \$250,000] gross tuition in the previous school fiscal year shall submit with such completed application an audited statement of revenue to the commissioner for that fiscal year, and schools which received [\$250,000 or less] less than \$500,000 in gross tuition in the previous school fiscal year shall submit either an audited statement of revenue or an unaudited reviewed statement of revenue, as prescribed by the commissioner, for that fiscal year provided that the school choosing to submit an unaudited reviewed statement of revenue had submitted an audited statement of revenue in the preceding year.

(iii) . . .

(3) Personnel.

(i)

(a) . . .

(b) . . .

(c) Individuals shall apply for a director's license, or renewal thereof, on an application form prescribed by the commissioner. Such application form shall be submitted to the commissioner with a nonrefundable and nontransferable application fee of [\$50] \$100. A school director's license renewal application shall be submitted with the renewal application of the employing school.

(ii) . . .

(iii) Teachers.

(a) Teachers providing instruction in English as a second language programs at a nonpublicly funded ESL school shall have been awarded a baccalaureate or equivalent degree from an institution [registered] licensed or recognized by the department; and

have successfully completed either an English as a second language training program recognized by the department or one year of teaching experience in an English as a second language program.

(b) . . .

(4) . . .

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

(i) a description of the status of the school as a nonpublicly funded English as a second language school certified by the New York State Education Department as meeting alternative licensing requirements and not subject to all of the licensing standards and requirements in Article 101 of the Education Law this Part which are applicable to licensed private career schools [and registered business schools/computer training facilities];

(ii) . . .

(iii) . . .

(6) . . .

(7) . . .

(8) . . .

(9) . . .

(10) . . .

(11) Supervision account and tuition reimbursement account assessments.

(i) The commissioner shall annually assess each school an assessment equal to five-tenths of one percent of its gross tuition, as determined by the audited statement of

revenue or the unaudited reviewed statement of revenue, as required by this subdivision, of which three-tenths of one percent shall accrue to the benefit of the proprietary vocational school supervision account. Any school which received \$500,000 or more in gross tuition in a school fiscal year shall be required to submit to the commissioner an annual audited statement of revenue prepared in accordance with generally accepted accounting principles for that fiscal year. In addition, any school which has a gross tuition of less than \$500,000 in a school fiscal year shall file with the commissioner either an audited statement of revenue or an unaudited reviewed statement of revenue provided, however, that any such school shall file an audited statement of revenue the fiscal year after an unaudited reviewed statement of revenue is submitted. For such schools, audited statements of revenue are required every two years, at minimum, with unaudited reviewed statements of revenue allowed during the alternate year. Upon a determination by the commissioner that a school has submitted false or inaccurate statements or that a significant, unsubstantiated decline in gross tuition has occurred, the commissioner may require any such school to file an audited statement of revenue pursuant to this paragraph even during alternate years when unaudited reviewed statements would ordinarily be allowed.

(ii). . .

(iii). . .

(iv). . .

(12) . . .

126.11 Records.

(a) . . .

(b) Student permanent records, compiled at the time of course or curriculum completion, discontinuance or withdrawal, shall be maintained in a single file for each student, for a period of not less than 20 years after the student completes the program, and contain the following information:

- (1) name, address, and date of birth [and gender];
- (2) . . .
- (3) . . .
- (4) . . .
- (5) . . .
- (6) . . .
- (c) . . .
- (d) . . .
- (e) . . .

126.12 Private school agent's certificate.

(a) No person shall receive any form of compensation or remuneration from any representative, agent, employee or officer of a licensed private career school [or registered business school/computer training facility] for the purpose of soliciting, procuring, or enrolling students, unless such person is a salaried employee of the school and holds a valid private school agent's certificate. Each agent shall produce his or her agent certificate upon the request of the commissioner, the commissioner's designee, or any prospective student. A school shall submit an application for licensure for an agent on or before the first day of employment of such individual. Upon submission of a complete initial agent application for licensure, the commissioner shall issue a temporary approval certificate within five days of receipt of the application by

mail, or on the same day at offices and times designated by the commissioner. Upon receipt of a temporary approval certificate, an applicant may procure, solicit or enroll any student. A temporary approval certificate shall be effective for up to 60 days, as determined by the commissioner, and shall be destroyed by the school upon the issuance or denial of the applicant's [two] three-year certificate. An initial agent application shall mean an application submitted on behalf of an individual having never held an agent's certificate for the submitting school.

(b) Application for a certificate shall be made on forms furnished by the commissioner. It may be made only by the school or schools which the agent is to represent. If an agent represents more than one school, each school must apply for a certificate. If the school employs more than one agent, a separate application must be filed for each agent. The application shall request such information as the commissioner may require, including information about whether the applicant has ever been convicted of a crime or whether criminal charges are now pending. The application must be accompanied by: two full-face photographs which are a good likeness of the applicant and are one inch by one inch in dimension; certification by two persons other than employers or coworkers attesting to the good moral character of the applicant; and a nonrefundable \$[100 check or money order] 200 fee payable to the Education Department except that, pursuant to Section 5004(4-a), the school director may apply for an agent's certificate without incurring the application fee. In making application for an agent's certificate, the school shall certify that through the medium of sales manuals, bulletins or other similar means, the agent is fully informed as to its courses, services, charges, enrollment conditions and operating policies, including the refund policy. The school must further certify that it assumes full responsibility for the actions, statements

and conduct of its agent, acting in its behalf, and that it uses an acceptable plan for the selection, training and supervision of the agent.

(c) Application for the renewal of an agent's certificate shall be filed by mail no later than 30 days before the expiration of the current certificate at an office designated by the commissioner. A renewal application shall mean an application submitted prior to the expiration date of the current certificate. All other applications shall be filed as new applications. Certificates which have been renewed shall be valid for a period of [two] three years from the expiration date of the certificate which has been renewed. It shall be accompanied by a nonrefundable \$[100 check or money order] 200 fee payable to the Education Department.

(d) . . .

(e) . . .

(f) . . .

126.13 Exemptions. Entities that are exempt from Article 101 of the Education Law and this Part are prescribed in section 5001(2) of the Education Law.

126.14 Disciplinary actions and penalties.

(a) . . .

(b) . . .

(c) . . .

126.15 Disclosure to students.

(a) . . .

126.16 Teachout plans. All teachout plans developed [by schools] pursuant to section 5006 of the Education Law shall be submitted to the department at least 30 days prior to

the implementation of the teachout plan. Teachout plans submitted less than 30 days prior to the teachout may be denied based upon a school's inability to meet such a timeline.

126.17 Tuition reimbursement account.

(a) . . .

(b) . . .

(c) New schools. New schools [the commissioner shall base the assessments for the tuition reimbursement account and the proprietary vocational school supervision account, pursuant to sections 5001(9) and 5007(10) of the Education Law, on the annualized gross tuition of the school computed by the department from financial reports from the school as required by the department, and the assessments shall be prorated based upon the number of quarters that the school has operated in the assessment year.], which did not operate in the year prior to licensure, will have no gross tuition upon which to be assessed until either the end of their first fiscal year or March 31 of the year after the school was licensed, whichever comes first. For schools whose fiscal year end comes before March 31 of the year after the school was licensed, a complete financial statement in compliance with the provisions set forth in section 5001(4)(e) of the Education Law is required. For new schools whose fiscal year comes later than March 31 after their initial licensure date, the school shall submit an unaudited reviewed income statement for the time period between initial licensure and March 31, detailing the amount of gross tuition received during that period. Thereafter, complete financial statements shall be required as prescribed in section 5001(4)(e) of the Education Law.

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

2. Subparagraph (iii) of paragraph (2) of subdivision (b) and subdivision (c) of section 145-2.3 of the Regulations of the Commissioner of Education shall be amended, effective March 14, 2013, to read as follows:

(iii) Two-year programs in [registered private business schools] licensed private career schools. Such programs shall denote programs of at least 1440 instructional hours' duration that are offered by [private business schools] licensed private career schools not authorized to grant degrees and that are registered by the State Education Department under Part 126 of this Title.

(c) When a [private business school is registered] licensed private career schools or when an institution is authorized by the Regents to grant degrees, the effective date of the eligibility of students attending such institution to receive awards shall be the beginning of the academic year in which such action is taken by the Regents. When a program is registered by the commissioner, the effective date of the eligibility of students enrolled in such program shall be the date on which the program is registered, unless the registration is specifically made retroactive to an earlier date.

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the November 7, 2012 State Register, the State Education Department received comments from the public. The following is a summary assessing these comments:

1. COMMENT

One commenter expressed concern with the change to section 126.7 (b) (9) of the proposed amendment which requires an enrollment agreement to include a provision for the method or methods of payment including, as appropriate, the disbursement schedule for each type of financial assistance available which shall meet the requirements set forth in section 5002(1)(b-1) of the Education Law. The commenter noted that disclosure in an enrollment agreement is not necessary and is not compliant with Federal regulations. (Financial Aid is already a highly regulated area and these types of disclosures are given to students in other documents. Additionally, this would allow for a potential cross-over of the world of financial aid into the admissions department, which is strictly prohibited by Federal regulations.)

RESPONSE:

The proposed amendment has been amended to eliminate this requirement.

2. COMMENT:

A commenter questions the amendment to 126.9 (a) (19) of the Commissioner's regulations which requires each catalog to publish a catalog which includes "a weekly tuition liability chart for each program that indicates the amount of refund due the student in the event of withdrawal.

RESPONSE:

The proposed amendment implements Education Law 5002(3)(h), as amended by Chapter 381 of the Laws of 2012. Therefore, no change is warranted.

3. COMMENT:

A commenter challenges the deletion of the following provision in section 126.9 of the current Commissioner's regulations:

“As an alternative to the prior approval of a catalog or bulletin by the commissioner, a school may submit, in a form prescribed by the commissioner, an attestation that the catalog or bulletin meets all of the requirements set forth in subdivision (a) of this section, is true and accurate, and contains no false, misleading, or fraudulent representations. A subsequent determination by the commissioner that the catalog does not meet the requirements of subdivision (a) of this section, or is not true and accurate, or that the catalog contains false, misleading or fraudulent representations, may subject the school to disciplinary action, as prescribed in section 126.14 of this Part and section 5003 of the Education Law.”

The commenter indicates that this amendment may delay the dissemination of information to students in a timely manner.

RESPONSE:

Section 5002(5)(f) of the Education Law provides that the Commissioner shall act upon a catalog within 90 days of receipt. The statute further states that if the Commissioner fails to act within 90 days, a catalog shall be deemed approved for one year. Therefore, the Department believes that there will be no delay in getting information to students and that no change is warranted.

