



**TO:** The Honorable the Members of the Board of Regents

**FROM:** Kevin G. Smith 

**SUBJECT:** Proposed Amendment of Part 126 of the Regulations of the Commissioner of Education Relating to the Operation of Licensed Private Career Schools

**DATE:** July 3, 2018

**AUTHORIZATION(S):**  

## SUMMARY

### Issue for Decision (Consent Agenda)

Should the Board of Regents adopt amendments to Part 126 of the Regulations of the Commissioner of Education relating to the operation of Licensed Private Career Schools?

### Reason(s) for Consideration

Review of Policy.

### Proposed Handling

The proposed amendment is presented to the Full Board for adoption as a permanent rule. A copy of the proposed amendment is included as Attachment A.

### Procedural History

A Notice of Proposed Rule Making was published in the State Register on April 25, 2018. Supporting materials are available upon request to the Secretary of the Board of Regents. Following the 60-day public comment period required under the State Administrative Procedure Act, the Department received no comments on the proposed amendment.

## **Background Information**

The Bureau of Proprietary School Supervision (BPSS) oversees and monitors non-degree granting proprietary schools in New York State. BPSS's mission is to ensure that the overall educational quality of the programs offered will provide students with the necessary skills to secure meaningful employment and to protect students' financial interests while attending proprietary schools. BPSS licenses/registers proprietary schools and credentials proprietary school teachers to ensure that appropriate standards are met. BPSS investigates student complaints and conducts comprehensive investigations of schools to ensure compliance with Education Law (§5001 - §5010) and Commissioner's Regulations (8 CRR-NY Part 126).

During 2017, BPSS undertook a review of the regulations and policy guidelines which govern the application of the Education Law to the operation of Licensed Private Career Schools and English as a Second Language ("ESL") Schools. BPSS has created or revised eighteen Policy Guidelines during this time and found several areas of the Commissioner's Regulations that need to be clarified for their application to the operation of licensed schools.

The proposed amendment makes the following technical amendments to Part 126 of the Commissioner's regulations:

- Adds a new subdivision (k) to §126.10 of the Commissioner's regulations to implement Education Law section 5001(4)(f)(3) to establish alternative licensing procedures for non-profit licensed career schools that are exempt from taxations and whose programs are funded exclusively through donations.
- Amends §126.6 of the Commissioner's regulations to make a technical correction to allow for electronic submissions due to technological advancements since the statute was originally enacted.
- Amends §126.7 of the Commissioner's regulations to make a technical correction to allow a licensed private career school to include as part of its enrollment agreement the ability to withhold a diploma, certificate, or other document evidencing satisfactory program or course completion.

## **Related Regents Items**

[April 2018](http://www.regents.nysed.gov/common/regents/files/418accesd1.pdf): (<http://www.regents.nysed.gov/common/regents/files/418accesd1.pdf>)

## **Recommendation**

VOTED: That Part 126 of the Regulations of the Commissioner of Education be amended, as submitted, effective August 1, 2018.

## **Timetable for Implementation**

If adopted at the July 2018 meeting, the proposed amendment will be effective on August 1, 2018.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 5001 through 5010.

1. Subdivision (k) is added to Part 126.10 of the Commissioner's Regulations as follows:

(k) Alternate licensing requirements for non-profit licensed careers schools that are exempt from taxation and whose programs are funded exclusively through donations. Pursuant to Education Law §5001(4)(f)(3), non-profit licensed career schools that are exempt from taxation under section 501(c)(3) of the Internal Revenue Code and whose programs, including registration fees, the sale of books, supplies, services, kits, uniforms or equipment are funded entirely through donations, exclusive of public sources, from individuals or philanthropic organizations, or endowments, and interest accrued thereon, shall be subject to all of the requirements of article 101 of Education Law and this Part, except that:

(1) such schools shall be exempt from the following requirements of Education Law:

(i) Education §5002(3), relating to tuition liability;

(ii) Education Law §5001(4)(e)(i), relating to the inclusion in financial statements of refunds due and owing to past or presently enrolled students;

(iii) Education Law § 5002(2)(b)(5), relating to the inclusion in any school record of the amount of any refund paid to any student;

(iv) Education Law §5005(a)(4), relating to disclosure to prospective and enrolled students of any refund policy;

(v) Education Law §§ 5005(e) and 5005(f), relating to a tuition reimbursement fund claim form.

(2) Such schools shall also be exempt from the following requirements of this

Part:

(i) section 126.4(c)(6), relating to data required to be submitted about tuition and other charges and method of payment;

(ii) sections 126.7(b)(6) through (9), relating to the inclusion in enrollment agreements of any tuition charges or fees or method of payment;

(iii) section 126.7(b)(15), relating to any refund a school will make under certain prescribed circumstances;

(iv) section 126.7(d), except section 126.7(d)(3) thereof, relating to the inclusion in enrollment agreements of a reasonable adjustment of tuition and other fees, and any refund policies;

(v) section 126.7(e), relating to the option to use the refund policy of a nationally recognized accrediting agency and the use of the refund policy required by federal law;

(vi) section 126.7(g), relating to when refunds must be paid to students who withdraw, cancel, or are discontinued;

(vii) section 126.9(a)(8), relating to the inclusion in the school catalog of a schedule of fees or charges;

(viii) section 126.9(a)(9), relating to the inclusion in the school catalog of school policies and regulations governing the refund of any unused portion of tuition, fees and other charges in certain circumstances;

(ix) section 126.9(a)(13)(i), relating to state and federal financial aid only, except that any private grant, scholarship, or other financial assistance offered to students by the school, which shall not expose the student to any tuition liability, shall be included in such school's catalog;

(x) section 126.9(a)(13)(ii)(d), relating to the terms and expected schedules of repayment of any loan received by the student as a part of the student's financial aid;

(xi) section 126.9(a)(18), relating to the inclusion in the school catalog of information about tuition refunds from the Tuition Reimbursement Account (TRA);

(xii) section 126.9(a)(19), relating to the inclusion in the school catalog of requirement to include a weekly tuition liability chart for each program that indicates the amount of refund due the student in the event of a withdraw; and

(xiii) section 126.11(a)(10), relating to the maintenance of records of tuition, fees, public loans and grants, and their disbursement, by a school for seven years.

3. Subdivision (a) of section 126.6 of the Commissioner's Regulations shall be amended to read as follows:

(a) Each applicant shall submit, 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 director, the owner 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 applications for teachers and directors shall be mailed or submitted electronically to the commissioner 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. If a teacher or director application, submitted to the department is mailed and postmarked, or electronically submitted less than four days prior to the employment of such individual, is evaluated and 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.

3. Subdivision (f) of section 126.7 of the Commissioner's regulations is amended, to read as follows:

(f) If a transcript, diploma, certificate, or other document evidencing satisfactory program or course completion is to be withheld until all fees and charges have been met, the enrollment agreement must so state, and such documents may then be withheld except as otherwise provided by law.