



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

**FROM:** Ceylane Meyers-Ruff 

**SUBJECT:** Proposed Amendment to Part 126 of the Regulations of the Commissioner Relating to Standards of Financial Viability, Accountability, and Evaluating Academic Progress in Licensed Private Career Schools and Certified English As a Second Language Schools

**DATE:** September 2, 2021

**AUTHORIZATION(S):** 

## SUMMARY

### Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment to Part 126 of the Regulations of the Commissioner relating to standards of financial viability, accountability, and evaluating academic progress in licensed private career schools and certified English as a second language schools?

### Reason(s) for Consideration

Review of Policy.

### Proposed Handling

The proposed rule is being presented to the Full Board for adoption at its September 2021 meeting. A copy of the proposed amendment is attached (Attachment A).

### Procedural History

The proposed amendment was presented to the Adult Career and Continuing Education Services Committee for discussion at its June 2021 meeting. A Notice of Proposed Rule Making was published in the State Register on June 23, 2021 for a 60-day public comment period. The Department received comments on the proposed amendment and an Assessment of Public Comment is included (Attachment B).

Supporting materials are available upon request to the Secretary of the Board of Regents.

## **Background Information**

Article 101 of the New York State Education Law and Part 126 of the Regulations of the Commissioner provide standards and requirements for postsecondary career schools (licensed private career schools) and for-profit English as a second language schools (certified ESL schools) to operate in New York State. These standards and requirements maintain educational quality and protect students.

Schools licensed or certified under Part 126 are overseen by the Department's Bureau of Proprietary School Supervision (BPSS). Over the past several years, BPSS has identified several areas in need of regulatory support, including the evaluation of schools' financial viability, the collection and use of school data, and the evaluation of students' academic progress. In 2020, the Office of the State Comptroller conducted an external audit of BPSS.<sup>1</sup> The findings from the OSC audit reinforced BPSS' analyses of Part 126, and the feedback and recommendations from OSC helped form the basis of the regulatory amendments proposed herein.

The Department believes that the proposed amendments will eliminate gaps in existing regulations, enhance the Department's ability to provide quality school oversight, improve educational quality, and enhance consumer protection. A summary of the proposed amendments is presented below.

### **Satisfactory Academic Progress (§126.4(e)(2))**

Current regulations require that schools perform satisfactory academic progress (SAP) evaluations of students but do not specify when, or how often, they must be performed. For example, under current rule, a school might allow students to go through 450 hours out of a 900-hour program before they receive a SAP evaluation, and only receive a second evaluation at the end of the program. The proposed amendment to 126.4(e)(2):

- Ensures that students receive early and frequent feedback related to their academic progress by generally requiring SAP evaluations at the midpoint and endpoint of each quarter or term;
- Clarifies minimum attendance and grade requirements for academic progress and graduation; and
- Creates an early warning provision, where schools must notify students who are not meeting academic or attendance requirements.

---

<sup>1</sup> Office of the State Comptroller, "Licensing and Monitoring of Proprietary Schools," Jan. 21, 2021, available at <https://www.osc.state.ny.us/state-agencies/audits/2021/01/21/licensing-and-monitoring-proprietary-schools>.

### Standard of Financial Viability (§126.8)

Current law and regulation require licensed private career schools to submit annual financial statements. The Department must review and analyze the financial viability of schools based on these filings. In addition, the Department may take measures to protect student tuition dollars, such as probation or requiring schools with low financial viability to establish a performance bond in the event of a school closure. The field will benefit from a better understanding of the process by which the Department will analyze financial viability or implement probation and other corrective interventions.

The proposed amendment creates a transparent framework and process for assessing the financial viability of all licensed private career schools and certified ESL schools. The framework is adapted from the United States Department of Education's system of evaluating the financial viability of postsecondary schools. The Department's Office of Higher Education utilizes portions of this framework in analyzing the financial viability of colleges and universities. It was also utilized by the OSC in its recent program audit of BPSS.

Additionally, current regulation requires certified ESL schools to submit an annual "statement of revenue" as opposed to audited financial statements. However, it is not possible to accurately evaluate the financial viability of schools based on a "statement of revenue." Indeed, over the past several years, several certified ESL schools have abruptly shut down due to financial issues that the Department was unable to foresee through reviewing such statements. OSC also identified this limitation in the Department's current process and the attendant risks to students in its program audit of BPSS. As a solution, the proposed amendment repeals the current section 126.8 of the Commissioner's regulations and adds a new section 126.8 which:

- Establishes clear criteria for assessing the financial viability of schools: schools will be considered financially viable if: (i) the schools' equity, primary reserve and net income ratios yield a composite score of at least 1.5; and (ii) the school is able to meet all of its financial obligations and provide the administrative resources necessary to comply with all licensure or certification requirements.
- Identifies triggering events that may indicate financial viability concerns. Schools must notify the Department within five days of any such triggering event.
- Establishes alternative standards of financial viability. A school that is determined not to be financially viable may be eligible to continue operation by meeting one of the following alternate standards:
  - Zone alternative. A school that does not meet the general standards of financial viability solely because the composite score falls below 1.5 will

be eligible for the zone alternative if its composite score falls between 1.0 and 1.4.

- Probation. A school that does not meet the general standards of financial viability and does not qualify for the zone alternative may be placed on probation. By the conclusion of the probationary period, the school must demonstrate that it is financially viable by meeting one or more alternative methods demonstrating financial viability. If the school cannot, and the Commissioner determines that the school's financial condition continues to threaten its ability to educate students and/or jeopardize student tuition funds, the Department shall schedule a hearing that may result in suspension or revocation of the school's license.
- Provides that the commissioner may deny, suspend, revoke or decline to renew any license or certification if the commissioner determines that a schools' financial condition may result in the interruption or cessation of instruction or jeopardize student tuition funds pursuant to Education Law §5001(5)(c)(3).
- Establishes financial reporting requirements for initial and renewal licensure or certification applications, including the submission of audited financial statements, and requires schools to submit annual financial statements. Previously such requirements only applied to licensed private career schools; the proposed amendment expands such requirements to include certified ESL schools.

#### School Accountability (§126.19)

Current law and regulation require licensed private career schools to submit annual statistical data reports that include information on enrollment, completion, and job-placement data. Although annual data reporting is a core element of school supervision, the current data has limited utility given the lack of clearly-defined data elements and standardized definitions for completion and job-placement rates. In addition, as OSC recognized in its program audit, certified ESL schools are not currently required to submit any data reports. The proposed section 126.19:

- Establishes clearly defined data elements to standardize data collection across schools.
- Establishes standardized definitions for "completion rate" and "job-placement rate."
- Requires both licensed private career schools and certified ESL schools to submit annual statistical data reports.
- Requires schools to report key summary data in their catalogs and promotional materials.

- Permits the commissioner to establish a school data report system on the Department's website that includes data determined to be useful for consumers to make informed decisions about whether they should attend a licensed or certified school.

#### Student Social Security Numbers on Enrollment Agreements (§126.7(b)(5))

Current regulation requires student social security numbers to be included on student enrollment agreements, which are jointly signed by a student and school agent. A student's social security number is highly confidential, and there are other ways to validate students' identity without including such information on enrollment agreements. The proposed amendment eliminates this requirement, thus providing better data privacy for students.

#### Required 30-day Notice Prior to School Closure (§126.11(c))

Subdivision (c) of section 126.11 of Regulations of the Commissioner requires licensed private career schools to provide the Department with at least 30 days' notice prior to a school's closure. This notice helps to ensure that a plan is in place for displaced students and for the maintenance of student records. However, no such regulation exists for certified ESL schools. There have been several cases over the past few years where certified ESL schools have provided minimal or no notice of closure. The proposed amendment closes this gap and ensures that ESL schools provide the same notice to the Department that licensed private career schools must provide.

#### Prohibition from Enrolling New Students Upon a Denial of Licensure Renewal (§126.10(b))

When a school submits a timely and complete application for the renewal of its license to operate, regulation guides that the Department provide schools with a written approval or denial 30 days prior to the expiration of the school license. In the case of a denial, this 30-day notice provides time to teach-out or transition students and implement a plan for the permanent safe-keeping of student records. The proposed amendment ensures that schools do not enroll any students after such a denial but before expiration of its current license.

#### Academic Standing and Counseling Records (§126.11(a))

The proposed amendment requires schools to maintain documentation of the academic standing evaluations and academic counseling in the student record.

#### Technical Amendments (§126.10(j))

The proposed amendment makes technical revisions to subdivision (j) of section 126.10 of the Commissioner's regulations to clarify that sections 126.8, 126.19, and 126.11(c) of the Commissioner's regulations are applicable to certified ESL schools. Additionally, such section is amended to remove language that is now superfluous in

light of the amendments to section 126.8 regarding financial reporting requirements for certified ESL schools.

### **Revisions to the Proposed Amendment**

In response to public comment and feedback from the field, the Department has revised §126.4(e)(2)(xi) of the Commissioner's regulations, to clarify that student's and director's signature are required only in cases where a student fails to meet SAP standards. Students who meet SAP standards shall still be provided written notice, but such notice will not require student and director signatures.

### **Related Regents Items**

June 2021: [Proposed Amendment to Part 126 of the Regulations of the Commissioner Relating to Standards of Financial Viability, Accountability, and Evaluating Academic Progress in Licensed Private Career Schools and Certified English As a Second Language Schools](https://www.regents.nysed.gov/common/regents/files/621acesd1.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/621acesd1.pdf>)

### **Recommendation**

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

VOTED: That Part 126 of the Regulations of the Commissioner of Education be amended, as submitted, effective September 29, 2021.

### **Timetable for Implementation**

If adopted at the September 2021 Regents meeting, the amendments will become effective September 29, 2021.

## Attachment A

### AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 305, and 5001 through 5010 of the Education Law.

1. Subparagraph (2) of subdivision (e) of section 126.4 of the Regulations of the Commissioner of Education is repealed and a new subparagraph (2) is added to read as follows:

(2) A school shall determine the academic standing of each student in accordance with the following:

(i) Schools shall use a cumulative grade point average of 70 percent or higher, or its equivalent in the letter-grade scale approved in the school's catalog, when determining the minimum allowable academic standing of each student at each evaluation point.

(ii) Schools shall use a cumulative attendance rate of 70 percent or higher when determining the minimum allowable cumulative attendance of each student at each evaluation point. Attendance rate shall be calculated by the number of instructional hours attended divided by the number of instructional hours offered.

(iii) Schools offering programs of seven weeks or more shall evaluate the academic standing of students at intervals of no less than the midpoint and endpoint of each quarter or term, as defined on the student enrollment agreement.

(iv) Schools offering programs of less than seven weeks shall evaluate the academic standing of students at no less than the midpoint of the program, as defined on the student enrollment agreement.

(v) Students who do not meet the minimum cumulative grade point average or the minimum attendance rate at the midpoint evaluation shall be provided a written notice of warning.

(vi) Students who have been provided a written notice of warning at the midpoint evaluation and who do not meet the minimum cumulative grade point average or the minimum attendance rate at the conclusion of each quarter or term as defined in the student enrollment agreement shall be placed on probation or withdrawn from the program.

(vii) The maximum period of probation shall be the conclusion of the next consecutive quarter or term after the student has been placed on probation, as defined in the student enrollment agreement.

(viii) Schools shall offer academic counseling and remediation for all students placed on probation.

(ix) Students who have been placed on probation and who do not meet the minimum cumulative grade point average or the minimum attendance rate at the conclusion of the probation period shall be withdrawn from the program. Prior to withdrawal, and at the school's discretion, students may be afforded no more than thirty days to make up assignments or instructional hours to achieve satisfactory academic standing as required by this section.

(x) No student shall graduate from a program with less than a 70 percent cumulative grade point average, or its equivalent in the letter-grade scale approved in the school's catalog, or earning less than 70% of the program's total instructional hours, unless otherwise mandated by curriculum requirements.

(xi) Schools shall provide students a copy of each academic standing evaluation. For students who fail to meet satisfactory academic progress, the evaluation must contain the student's and director's signatures.

2. Subdivision (a) of section 126.11 is amended by adding subparagraph (13) to read as follows:

(13) documentation of the academic standing evaluations and academic counseling in the student record pursuant to subparagraph (2) of subdivision (e) of section 126.4 of this Part, on forms approved by the commissioner.

3. Subparagraph (5) of subdivision (b) of section 126.7 is amended to read as follows:

(5) the name and date of birth [and social security number] of the student;

4. Section 126.8 is repealed and a new section 126.8 is added to read as follows:

126.8 Financial Viability and Reporting

All schools shall meet and maintain the standards of financial viability and reporting set forth in this section as a requirement and condition of licensure or certification. For the purposes of this section, *school* shall mean *school* as it is defined in subdivision (p) of section 126.1 of this Title and shall additionally include Certified English as a second language schools as defined in subdivision (x) of section 126.1.

(a) General standards of financial viability. (1) The commissioner shall consider a school to be financially viable if the commissioner determines that:

(i) the school's equity, primary reserve, and net income ratios yield a composite score of at least 1.5, using the methodology set forth in federal regulation 34 CFR section 668.172. The composite score shall be calculated at the highest level of ownership; and

(ii) the school is able to meet all of its financial obligations and provide the administrative resources necessary to comply with all licensure or certification requirements. A school is deemed unable to meet its financial or administrative obligations pursuant to this paragraph if:

(a) the school does not have sufficient operating cash flow and liquidity, as determined by the commissioner; or

(b) the school is subject to any of the triggering events set forth in subdivision (b) of this section and the commissioner determines such triggering event is likely to have a material adverse effect on the financial condition of the school or indicates a distressed financial condition.

(2) No school shall be considered financially viable pursuant to this subdivision where a school owner:

(i) owes an outstanding liability to the department for the school or any other licensed or certified school, previously licensed or certified school, or unlicensed school for which the owner has or previously had an ownership interest and fails to demonstrate that such liability is being paid in accordance with law, regulation, order, settlement, or other written agreement with the department; or

(ii) owes a liability to the department for any violation of Article 101 of the Education Law or this Part and fails to demonstrate that such liability is being paid in accordance with law, regulation, order, settlement, or other written agreement with the department.

(b) Triggering events.

(1) The commissioner may determine that a school is not able to meet its financial or administrative obligations upon occurrence of any of the following triggering events and a subsequent determination by the commissioner that such event is likely to have a material adverse effect on the financial condition of the school or indicate a distressed financial condition:

(i) the school's financial statement, regardless of the school's composite score, contains any adverse, qualified, or disclaimed opinions, or any disclosure in the notes to

the financial statement that there is substantial doubt about the school's ability to continue as a going concern in accordance with United States generally accepted accounting principles;

(ii) failure to timely and completely pay any assessments that may be due pursuant to sections 5001(9), 5007(10)(d), and 5007(10)(e) of the Education Law, and section 126.10(j)(11) of this Part;

(iii) failure to timely and completely submit any financial statements that may be due pursuant to section 5001(4) of the Education Law and section 126.10(j)(11) of this Part;

(iv) failure to timely pay a student refund where a school is required to pay such refund pursuant to Article 101 of the Education Law and this Part, or under any other law, regulation, or accreditation standard, or any failure to timely pay such refund;

(v) the school has an unacceptable level of annual student dropout/withdrawal rates, as determined by the commissioner;

(vi) the school demonstrates a precipitous decline in student enrollment or gross tuition income, as determined by the commissioner;

(vii) violation of a provision or requirement in a security or loan agreement with a creditor;

(viii) failure to make a timely lease, rent or other debt service payment; or any notice of eviction, order to vacate, or any other event or action that may impact a school's ability to operate at its licensed location;

(ix) issuance of a notice or order by a school's accrediting agency, such as an order to show cause or similar action, that, if not satisfied, could result in the withdrawal,

revocation or suspension of institutional accreditation for failing to meet one or more of the agency's standards;

(x) if the school is publicly traded, any material adverse action taken against the school by the United States Securities and Exchange Commission, including but not limited to revocation of registration, delisting, or sanction for untimely or incomplete filing of required reports;

(xi) any notice, order, or action taken by the United States government or an agent or instrumentality thereof that could result in the withdrawal, revocation, or suspension of a school's federal Student Exchange Visitor Program certification; or

(xii) any substantial withdrawal of owner equity from the school by any means that results in, or that the commissioner determines will likely result in, the school's composite score falling below 1.0.

(2) Schools must notify the department in writing, within five days of the occurrence of any action or event identified in subparagraphs (vii) through (xii) of paragraph (1) of this subdivision. Upon receiving such notice, the commissioner may require the school to provide additional information and reports, and may require the school to notify students and provide students with information and guidance regarding the potential implications of the action or event on student enrollment status, continued instruction, tuition funds and refunds, as well as all transfer options.

(c) Alternative standards of financial viability. The commissioner may permit a school that is not financially viable under the general standards set forth in subdivision (a) of this section, to be licensed or certified or continue its licensed or certified operation by meeting one of the alternate standards set forth in this subdivision.

(1) Zone alternative. A school that does not meet the general standards of financial viability solely because the commissioner determines that the composite score for its most recent fiscal year falls below 1.5 may nevertheless be found financially viable if: (1) the commissioner approves a plan, submitted by the school, which adequately details the actions the school is taking to improve its financial viability and to mitigate any risk to the interruption or cessation of instruction and to student tuition funds; and (2) maintains a composite score of between 1.0 and 1.4 or higher for each of its two subsequent fiscal years.

(i) The commissioner shall notify any such school in writing that it is eligible for the zone alternative.

(ii) The plan shall be received no later than sixty days from the date of the commissioner's notice to the school of its eligibility for the zone alternative.

(iii) A school may qualify for this alternative for no more than three consecutive years.

(2) Probation. A school that does not meet the general standards of financial viability and does not qualify for the zone alternative may be placed on probation, in the discretion of the commissioner, for a period of no more than one year. Such probation may include additional monitoring, inspections, limitations on enrollment, teaching out some or all of a school's present students, or temporary cessation of instruction.

(i) A school placed on probation shall submit reports on its financial condition as directed by the commissioner. Such report shall be on a form and shall include content prescribed by the commissioner and shall be reviewed by the commissioner to determine the school's financial viability. The commissioner may require that this report be completed by an independent auditor.

(ii) During the probationary period, the school and the department shall make efforts to resolve the problems at the school, through the school's demonstration of alternative methods of financial viability acceptable to the commissioner. Alternative methods of demonstrating financial viability may include:

(a) the school securing a performance bond payable to the department, in a form and manner determined by the commissioner, and in an amount appropriate to eliminate any liability to the tuition reimbursement account should the school cease operation;

(b) the school limiting its collection of tuition funds until each student completes their program of study;

(c) establishing a trust account for the sole and exclusive benefit of students, pursuant to section 5008 of the Education Law; or,

(d) any other means acceptable to the commissioner.

(iii) By the conclusion of the probationary period, the school must satisfactorily demonstrate to the commissioner that it is financially viable by meeting one or more alternative methods of demonstrating financial viability set forth in this subdivision, or the general standards set forth in subdivision (a) of this section. If the school cannot demonstrate to the commissioner that it is financially viable by one or more methods set forth in this subparagraph, and if the commissioner determines that the school's financial condition continues to threaten its ability to educate students and/or jeopardize student tuition funds, the commissioner shall schedule a hearing pursuant to subdivisions (2) and (3) of section 5003 of the Education law, to consider suspension or revocation the school's license.

(3) The commissioner may require applicants for initial licensure or certification that are newly formed and that have not completed any fiscal years from which to

determine a composite score to establish a performance bond, trust account, or other means acceptable to the commissioner as an alternative to the requirement set forth in paragraph (a)(1) of this section, provided that the applicant meets the standards set forth in paragraphs (a)(2) and (a)(3) of this section.

(d) Administrative actions. The commissioner may deny, suspend, revoke or decline to renew any license or certification if the commissioner determines that a school's financial condition may result in the interruption or cessation of instruction or jeopardize student tuition funds pursuant to section 5001(5)(c)(3) of the Education Law.

(e) Financial Reporting.

(1) Applicants for initial licensure or certification shall provide the following financial reports, as applicable, to the commissioner:

(i) a balance sheet of the corporate entity or partnership with a certification of accuracy signed by the individual shareholders of the corporation or partners, and dated not more than 30 days prior to the date of the license application;

(ii) a certificate of incorporation for a corporate entity, or a partnership agreement for a partnership;

(iii) a statement indicating the location and type of all bank accounts held by the corporate owners or partners in their official capacities;

(iv) audited financial statements for the previous two fiscal years.

(v) a projected operating budget, including all projected expenses, revenues, profits and losses, by month, for two consecutive 12-month periods (the first two projected years) for initial licensure; and

(vi) such other information as the commissioner may require regarding the adequacy of the applicant's resources beyond all indebtedness available for educational

purposes and to ensure the capability of the prospective school to meet its financial obligations.

(2) Applicants for renewal of licensure or certification shall submit audited financial statements in accordance with section 5001(4)(a) of the Education Law. The annual financial statements submitted pursuant to paragraph (3) of this subdivision shall satisfy this submission requirement, provided that for schools described in subparagraph (ii) of paragraph (3) of this subdivision, the annual financial statement submitted immediately prior to the due date of the renewal application is an audited financial statement.

(3) All schools shall submit annual financial statements in accordance with the following provisions:

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

(ii) Schools whose gross tuition is less than five hundred thousand dollars in a School fiscal year and which receive less than one hundred thousand dollars in state and federal student financial aid in a school fiscal year shall file with the commissioner an unaudited financial statement in a format prescribed by the commissioner, provided, however, that any such school shall file an audited financial statement the fiscal year after a reviewed financial statement is submitted. For such schools, audited financial

statements are required every two years, at minimum, with reviewed financial statements allowed during the alternate year. Upon a determination by the commissioner that a school has submitted false or inaccurate statements or that a significant, unsubstantiated decline in gross tuition has occurred, the commissioner may require any such school to file an audited financial statement pursuant to this paragraph even during alternate years when reviewed statements would ordinarily be allowed.

(iii) annual financial statements shall be due no later than 120 days from the end of the school's fiscal year. The commissioner may extend this deadline for up to 60 days for good cause shown, as determined by the commissioner.

(iv) annual financial statements shall include the following data, disaggregated by each licensed location:

(a) the gross tuition income for all approved occupational curricula and non-occupational courses; and

(b) an itemized account of tuition refunds due and owing to past or presently enrolled students, separated out for each licensed or certified location.

5. Subdivision (b) of section 126.10 of the Regulations of the Commissioner of Education is amended to read as follows:

(b) An application for renewal of any license 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 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

expires. Upon receiving a written denial, a school shall not enroll new students for the remainder of the term of the existing license.

6. Subdivision (f) of section 126.10 of the Regulations of the Commissioner of Education is repealed.

7. Subparagraph (i) of paragraph (1) of subdivision (j) of section 126.10 of the Regulations of the Commissioner of Education is amended to read as follows:

(i) Nonpublicly funded ESL schools shall be exempt from the requirements of this Part and Article 101 of the Education Law, except as provided in this subdivision and [subdivisions] sections 126.1, 126.8, [and] 126.18, 126.19 and subdivision (c) of section 126.11 of this Part, [and] paragraphs (b) and (c) of subdivision (1) of section 5001 of the Education Law, and subdivision (3) of section 5004 of the Education Law.

8. Subclause 8 of clause (b) of subparagraph (i) of paragraph (2) of subdivision (j) of section 126.10(j) of the Regulations of the Commissioner of Education is amended to read as follows:

(8) [an unaudited statement of revenue, as prescribed by the commissioner, for the previous fiscal year] financial documentation as required by paragraph (1) of subdivision (e) of section 126.8 of this Part.

9. Clause (b) of subparagraph (ii) of paragraph (2) of subdivision (j) of section 126.10 of the Regulations of the Commissioner of Education is amended to read as follow:

(b) [Schools which received \$500,000 or more in 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 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] Schools shall submit financial documentation as required by paragraph (2) of subdivision (e) of section 126.8 of this Part with their renewal applications.

10. Subparagraph (i) of paragraph (11) of subdivision (j) of section 126.10 of the Regulations of the Commissioner of Education is amended to read as follow:

(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] annual financial statements submitted in accordance with paragraph (3) of subdivision (e) of section 126.8 of this Part, 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 allowed.]

11. The Regulations of the Commissioner of Education is amended by adding a new section 126.19 to read as follows:

126.19 School Accountability.

(a) Annual statistical data reports. Each school shall report annual statistical data in a form and manner prescribed by the commissioner and each school owner shall certify that such data are true and accurate. The commissioner may require independently audited statistical data reports at the school's expense upon a determination that a school has provided false or inaccurate certified data reports. The reporting period shall be from July 1 to June 30. For the purposes of this section, unless otherwise specified, *school* shall mean *school* as it is defined in subdivision (p) of section 126.1 of this Title and certified English as a second language schools as defined in subdivision (x) of section 126.1 of this Title. For the purposes of this section, *contracted program start date* and *contracted program end date* shall mean the start date and end dates of the curriculum or course as identified on students' enrollment agreements.

(1) Licensed private career schools. (i) By no later than April 1, 2022, licensed private career schools shall submit statistical data reports from the immediately preceding reporting year, in a form and manner prescribed the commissioner. Statistical data reports shall use data elements similar to the previous reporting year, and shall include, but are not limited to, enrollment, completion, and job-placement data.

(ii) By no later than April 1, 2023, and no later than April 1 of each calendar year thereafter, licensed private career schools shall submit statistical data from the immediately preceding reporting period for each approved curriculum or course, excluding approved non-occupational courses as defined in section 126.1(t) of this Title.

This data shall include, but is not limited to, the following:

(a) the number of individuals who submitted an application for admission to the program during the reporting period;

(b) the number of applicants whose applications were accepted for admission during the reporting period;

(c) the number of applicants whose applications were denied admission during the reporting period;

(d) the number of students enrolled with a contracted program start and end date within the reporting period;

(e) the number of students enrolled with a contracted program start date during the reporting period that have a contracted program end date in a subsequent specified reporting period;

(f) the number of students enrolled with a contracted program start date in a previous reporting period that have a contracted program end date within the reporting period;

(g) the number of students who successfully completed the program during the reporting period;

(h) the number of students enrolled with a contracted program start date during the reporting period who dropped out or were withdrawn from the program during the reporting period;

(i) the number of students enrolled with a contracted program start date during a previous specified reporting period who have dropped out or were withdrawn from the program during the reporting period;

(j) the number of students who had a contracted program end date occurred during the reporting period but were still enrolled at the end of the reporting period;

(k) the number of students who completed the program within the reporting period and who, within one-hundred and eighty days from the end of the reporting period, obtained employment in the occupation for which they were trained or in a related, comparable occupation;

(l) the number of students who completed the program within the reporting period who were unavailable for employment due to the following reasons: death; incarceration; health issues that prevent employment; enrolled in a continuing postsecondary education program; and, active military duty;

(m) the number of students enrolled in the program during the reporting period who received funding or credit for tuition and fees from each of the following sources: New York State tuition assistance program (TAP); federal Pell Grants; federal Title IV loans borrowed by the student; Direct Plus loans made to parents of dependent students; federal veterans benefits; private education loans; adult career and continuing education vocational rehabilitation funding; and any other credit extended by or on behalf of the institution that the student is obligated to repay;

(n) the total cost of tuition for completion of the program as identified in the approved enrollment agreement; and

(o) the total costs of fees for completion of the program as identified in the approved enrollment agreement.

(iii) At the commissioner's direction, the data required to be reported in subparagraphs (a) through (l) of subparagraph (ii) of this paragraph shall be disaggregated by: students possessing a high school completion diploma or its equivalent and students who are enrolled without a high school diploma but who have been administered and have passed an ability to benefit-examination; full-time and part-time students; international students studying on federal student visas; and any other demographic or sub-group characteristics that the commissioner may determine to be necessary to review the performance of the school.

(iv) By no later than April 1, 2023, and no later than April 1 of each calendar year thereafter, licensed private career schools shall submit data for non-occupational courses, as defined in subdivision (t) of section 126.1 of this Part, offered in the preceding reporting period. Data submitted shall include but not be limited to the following:

(a) the total number of non-occupational courses offered during the reporting period;

(b) the total number of students enrolled in non-occupational courses during the reporting period; and

(c) the total number of students completing non-occupational courses during the reporting period.

(2) Certified English as a second language schools. By no later than April 1, 2023, and no later than April 1 of each calendar year thereafter, certified English as a Second Language Schools shall submit statistical data from the preceding reporting period, for each approved program. This data shall include, but is not limited to:

(i) the number of students enrolled in the program for the first time during the reporting period, that have a contracted program start date and end date within the reporting period;

(ii) the number of students enrolled in the program for the first time during the reporting period that have a contracted program start date within the reporting period and a contracted program end date in a subsequent specified reporting period;

(iii) the number of students repeating the program during the reporting period, that have a contracted program start date within the reporting period and a contracted program end date within the reporting period;

(iii) the number of students repeating the program during the reporting period, that have a contracted program start date within the reporting period and a contracted program end date in a subsequent specified reporting period;

(iv) the number of students who successfully completed the program during the reporting period without the need to repeat it;

(v) the number of students enrolled during the reporting period who dropped out or who were withdrawn from the program during the reporting period;

(vi) the number of students enrolled during a previous specified reporting period who have dropped out or who were withdrawn from the program during the reporting period;

(vii) the number of students whose contracted program end date occurred during the reporting period but who were still enrolled at the end of the reporting period;

(viii) the number of students enrolled who were international students studying on a student visa or other visa;

(ix) the total cost of tuition for completion of the program as identified on the approved enrollment agreement; and

(x) the total costs of fees for completion of the program as identified in the approved enrollment agreement.

(b) Data analysis, reporting, and use.

(1) Licensed private career schools. The commissioner shall analyze the statistical data submitted by licensed private career schools pursuant to paragraph (1) of subdivision (a) of this section and shall also calculate the completion rate and job placement rate for each approved curriculum or course (excluding non-occupational courses as defined in section 126.1(t) of this Part). The commissioner may also calculate school-level averages of completion and job placement rates.

(i) The completion rate shall be calculated as follows: the number of students who successfully completed the program during the reporting period divided by the number of students who enrolled in a program with a contracted program end date within the reporting period.

(ii) The job placement rate shall be calculated as follows: the number of students who successfully completed the program within the reporting period who, within one-hundred and eighty days from the end of the reporting period, obtained employment in the occupation for which they were trained or in a related, comparable occupation divided by the number of students who completed the program within the reporting period. Students who completed programs within a reporting period but who are unavailable for employment due to the following reasons shall be excluded from the denominator of the job placement rate calculations: death; incarceration; health issues that prevented

employment; enrollment in a continuing postsecondary education program; and active military duty.

(2) Certified English as a second language schools. The commissioner shall analyze the statistical data submitted by certified English as a Second Language (ESL) Schools pursuant to paragraph (2) of subdivision (a) of this section and shall also calculate the completion rate for all ESL curricula. The completion rate shall be calculated as follows: the number of students who successfully completed the program during the reporting period divided by the number of students enrolled in a program with a contracted program end date within the reporting period.

(3) The commissioner may post on the department's website in a form and manner determined by the commissioner, a summary report for each school that includes but is not limited to the data collected pursuant to this section, determined by the commissioner to be useful for consumers to make informed decisions regarding such schools.

(4) The school owner of each school shall be responsible for reporting data for each school curriculum pursuant to paragraphs (1) and (2) of this subdivision, except for non-occupational courses as defined in subdivision (t) of section 126.1 of this Part, clearly and prominently on the school's website, the school catalog, and any advertising or promotional materials that reference such data. Schools may not satisfy the required disclosure of department calculated completion and job placement rates, or any other data required to be reported under this section, with alternate measures or methods that may be required by accreditors or other regulatory bodies. In instances where accreditors or other regulatory bodies require public disclosure but will not accept department calculated or reported measures, both data shall be reported in the sources identified above. The data shall include:

(i) the most recent department-calculated completion rates;

(ii) the most recent department-calculated job-placement rates;

(iii) the total costs of program completion, including tuition and fees; and

(iv) the normal time to program completion.

(5) The commissioner shall review and consider the data reported by schools and the corresponding completion and job placement rates calculated by the department pursuant to this section in making a determination to approve or deny an application for school licensure or certification pursuant to 126.10(a), 126.10(b), and 126.10(j)(2) of this Part.

(6) The commissioner shall review and consider all of the data reported by schools and the completion and job placement rates calculated by the department pursuant to this section in making a determination of whether or to reapprove or deny a curriculum, and in making a determination of whether to approve or deny similar curricula proposed or offered by the school.

(c) Data, reports, and correspondence with other oversight entities. Schools shall submit, upon request from the commissioner, any data, reports, information, or correspondence to or from a school's accrediting body or other entity from which the school receives authorization, funding, or oversight, that the commissioner deems necessary to the Department's oversight of the school. Information requested by the commissioner shall be provided no later than five business days from the date of the request.

ASSESSMENT OF PUBLIC COMMENT

Following the publication of the notice of proposed rulemaking in the State Register on June 23, 2021, the State Education Department received the following public comments:

1. COMMENT:

A commenter asked for clarification on the applicability of the satisfactory academic progress (SAP) provision set forth in §126.4(2)(iv) of the Commissioner's regulations, for programs that are shorter than two weeks in length.

DEPARTMENT RESPONSE

The SAP provision set forth in §126.4(2)(iv) of the Commissioner's regulations is applicable to all programs, regardless of their duration. If adopted, the Department will be providing guidance and technical assistance on the SAP provisions. No change to the proposed rule is needed.

2. COMMENT:

A commenter asked whether the requirement to obtain student and director signatures on SAP evaluations as set forth in §126.4(2)(xi) applied only to instances of academic probation and SAP disqualification. Further, the commenter responded that having students and director sign all of the evaluation documents poses an administrative and logistical dilemma, particularly due to the number of programs and students, which may cause delays in servicing students and an excessive filing burden for record keeping purposes.

DEPARTMENT RESPONSE:

The non-substantive revision to §126.4(e)(2)(xi) of the Commissioner's regulations addresses this comment and clarifies that student's and director's signature are required only in cases where a student fails to meet SAP standards. Students who meet SAP standards shall still be provided written notice, but such notice will not require student and director signatures.

3. COMMENT:

A commenter seeks clarification that the annual statistical reporting requirements set forth in §126.19 of the Commissioner's regulations will not change the current Occupational and Educational Data Survey (OEDS) reporting process and that the purpose of the amendment is to incorporate the statistical report into the regulations. In addition, the commenter would like to know when these changes will take effect.

DEPARTMENT RESPONSE:

The data reporting process set forth in §126.19 is intended to codify in regulation, the OEDS reporting process. The data reporting processes are not different from nor additional to the current OEDS reporting processes, although §126.19 does set forth new data definitions and new data elements such as completion rate and job-placement rate. The new data reporting process set forth in §126.19 will be in effect April 1, 2023 and each year thereafter. No change to the proposed rule is needed.

126.19

4. COMMENT:

A commenter stated that “[i]t looks like the State is adopting the Federal regulatory standards for Financial Reporting, however the proposed State amendments for student academic standing are not 100% consistent with the Federal requirements. In fact, the State proposed amendments are more strict than the Federal requirement in

terms of having a fixed cumulative GPA of 70% percent throughout the program. The federal regulation allows “Having a standing consistent with the requirement for graduation means you could use an escalating GPA instead of a fixed one. For example, if your school uses a 4-point scale, it could require students to have a 2.0 average by graduation but allow their average to be lower earlier in their program.” Please consider giving institutions an option to use an escalating GPA scale which would be more helpful for the student.”

DEPARTMENT RESPONSE:

The requirement for a student to maintain a cumulative GPA of 70% or higher throughout the program is a reasonable expectation and an important consumer protection. No change to the proposed rule is needed.

5. COMMENT:

A commenter raised a question as to whether the “Director’s Signatures” on the academic standing evaluation meant School Director, or Financial Aid Director. The commenter also raised a question as to whether it can be up to the school to decide.

DEPARTMENT RESPONSE:

For the purposes of implementing §126.4(2)(xi), the signatory will be an individual possessing a Director’s license or permit pursuant to §126.6 of Commissioner’s regulations. No change to the proposed rule is needed.

6. COMMENT:

A commenter stated that “[a]dding a date of birth to the academic evaluation form seems like an overload of student PII especially since the student’s social security number is already on the form.”

DEPARTMENT RESPONSE:

Record of a student's date of birth and a student's social security number are existing requirements of §126.7(b)(5). The proposed amendment to §126.7(b)(5) of Commissioner's regulations removes the requirement for a student's social security number, and thus provides better data privacy for students. No change to the proposed rule is needed.

7. COMMENT:

A commenter stated that "120 days after fiscal year end is a very limited amount of time to get audited financials completed especially when the US Dept of Education and Accrediting Agencies allow 6 months (even longer for non-profit institutions). The proposed amendment states that an extension may be available. What is the criteria for an extension and how do we go about requesting an extension if needed?"

DEPARTMENT RESPONSE:

The proposed regulation permits the Commissioner to provide an extension of up to 60 days for good cause, which is determined by the Commissioner on a case by case basis. No change to the proposed rule is needed.