

1 which is not exempted hereunder shall be operated by any person or
2 persons, firm, corporation, or private organization for the purpose of
3 teaching or giving instruction in any subject or subjects, unless it is
4 licensed [or registered] by the department. As used in this article, the
5 following terms shall have the following meanings:

6 a. ["Licensed] "LICENSED private CAREER school" OR "LICENSED PRIVATE
7 SCHOOL" shall mean any entity offering to instruct or teach any subject
8 by any plan or method including written, visual or audio-visual methods,
9 AND SHALL INCLUDE ANY INSTITUTION LICENSED OR REGISTERED AS A REGISTERED
10 BUSINESS SCHOOL OR COMPUTER TRAINING FACILITY ON THE EFFECTIVE DATE OF
11 THE CHAPTER OF THE LAWS OF TWO THOUSAND NINE WHICH AMENDED THIS SUBDIVI-
12 SION. FOLLOWING SUCH EFFECTIVE DATE, THERE SHALL BE NO DISTINCTION
13 BETWEEN INSTITUTIONS PREVIOUSLY DEFINED AS "REGISTERED BUSINESS SCHOOLS"
14 OR "COMPUTER TRAINING FACILITIES" AND OTHER LICENSED PRIVATE SCHOOLS,
15 AND ANY REFERENCE IN LAW TO A REGISTERED BUSINESS SCHOOL OR COMPUTER
16 TRAINING FACILITY SHALL BE DEEMED A REFERENCE TO A LICENSED PRIVATE
17 CAREER SCHOOL. INSTITUTIONS HOLDING A VALID BUSINESS SCHOOL REGISTRATION
18 ON SUCH EFFECTIVE DATE, INCLUDING COMPUTER-TRAINING FACILITIES, SHALL
19 HAVE SUCH REGISTRATIONS REPLACED BY THE COMMISSIONER, AT NO COST, WITH
20 LICENSES VALID UNTIL THE EXPIRATION DATE LISTED ON SUCH PREVIOUS REGIS-
21 TRATION.

22 b. ["Registered business school" shall mean a school in which a
23 curriculum primarily provides a sequence of courses that may include
24 accounting or bookkeeping, marketing, business arithmetic, business law,
25 business English, shorthand, typing, computer business
26 applications/programming, or substantially all said courses, for the
27 purpose of preparing an individual to pursue a business occupation;
28 provided, however, that a registered business school program may include
29 instruction in English as a second language at a beginning or basic
30 level, provided such instruction shall not constitute more than fifty
31 percent of such program. Such authorization shall apply to all students
32 who commence instruction in a registered business school program prior
33 to July first, nineteen hundred ninety-one. A business school registered
34 under this section shall employ only teachers licensed by the depart-
35 ment, whose qualifications are substantially equivalent to those
36 required of teachers of equivalent subjects in public secondary schools.

37 c. "Computer training facility" shall mean any entity primarily
38 engaged in providing training on the use, language, programs, applica-
39 tion, networking and technical repair of computers.] "CERTIFIED ENGLISH
40 AS A SECOND LANGUAGE SCHOOL" OR "CERTIFIED ESL SCHOOL" SHALL MEAN A
41 LANGUAGE SCHOOL CONDUCTED FOR-PROFIT WHICH PROVIDES INSTRUCTION IN
42 ENGLISH AS A SECOND LANGUAGE AND WHICH ACCEPTS NO PUBLIC FUNDS AND IS
43 CERTIFIED PURSUANT TO PARAGRAPH F OF SUBDIVISION FOUR OF THIS SECTION.

44 2. Exempt schools. The following schools are exempted from the licens-
45 ing requirement of this section:

46 a. institutions authorized to confer degrees in this state;

47 b. schools[, other than correspondence schools,] providing kindergar-
48 ten, nursery, elementary or secondary education, except schools
49 conducted for profit which provide instruction in English as a second
50 language or preparation for high school equivalency examinations to
51 out-of-school youth or adults;

52 c. schools operated by governmental agencies or authorities;

53 d. schools which engage exclusively in training of students with disa-
54 bilities as defined in section forty-four hundred one of this chapter;

55 e. schools conducted on a not-for-profit basis by firms or organiza-
56 tions for the training of their own employees only, provided that such

1 instruction is offered at no charge to such employees, or by a fraternal
2 society or benevolent order for its members or their immediate relatives
3 only;
4 f. schools which provide instruction in the following subjects only:
5 religion, dancing, music, painting, drawing, sculpture, poetry, dramatic
6 art, languages, reading comprehension, mathematics, recreation and
7 athletics;
8 g. schools in which the course of instruction is licensed, registered
9 or approved under any other section of this chapter or by any other
10 department or agency of the state;
11 h. schools which provide instruction designed solely for giving flight
12 training and/or related ground school instruction;
13 i. schools in which instruction designed solely to prepare applicants
14 for admission to professional licensing examinations administered by the
15 department pursuant to title eight of this chapter, and applicants for
16 examination for admission to the practice of law;
17 j. schools which offer continuing education courses exclusively for
18 individuals licensed by the department pursuant to title eight of this
19 chapter and for individuals admitted to the practice of law;
20 k. schools which provide instruction given exclusively to employees of
21 a person or organization which has contracted with another person or
22 organization to provide such instruction at no cost to the employees;
23 l. conferences, trade shows, workshops, seminars, institutes or cours-
24 es of study offered and sponsored either jointly or individually by
25 recognized trade, business or professional organizations for the benefit
26 of their membership; [or those offered to the general public by individ-
27 uals, firms or organizations which neither conduct such activities for a
28 duration of more than five consecutive days nor more frequently than
29 twice in any one calendar year;]
30 m. SCHOOLS THAT LIMIT THEIR TOTAL CONFERENCES, TRADE SHOWS, WORK-
31 SHOPS, SEMINARS, INSTITUTES OR OTHER COURSE OFFERINGS TO NO MORE THAN
32 TWICE IN ONE CALENDAR YEAR WITH EACH OF THOSE OFFERINGS FOR NO MORE THAN
33 FIVE DAYS;
34 N. schools which provide instruction exclusively to persons employed
35 full-time or part-time in the field in which instruction is being
36 offered, where the instruction is provided to meet continuing education
37 standards required for professional licensure as defined by law in this
38 state; AND
39 O. SCHOOLS IN CANDIDACY STATUS PURSUANT TO SUBPARAGRAPH (III) OF PARA-
40 GRAPH B OF SUBDIVISION FOUR OF THIS SECTION.
41 2-a. Schools exempted pursuant to subdivision two of this section may
42 waive such exemption and apply for a license [or registration];
43 provided, however, that the review of such applications shall be left to
44 the discretion of the commissioner.
45 2-b. Programs offered by licensed private CAREER schools [or regis-
46 tered business schools to private businesses where there is no tuition
47 liability] TO EMPLOYEES OF A PERSON OR ORGANIZATION WHICH HAS CONTRACTED
48 WITH ANOTHER PERSON OR ORGANIZATION TO PROVIDE SUCH INSTRUCTION AT NO
49 COST to the employees shall be exempt from the requirements of this
50 article, provided that the following requirements are met:
51 a. Only employees of the [private business] EMPLOYER for which the
52 program is being offered may enroll in classes that make up the program.
53 b. Certificates or diplomas awarded to students in the program may not
54 reference in any way the department.
55 c. Prior to the commencement of the program, such schools shall submit
56 to the department a disclosure form, prescribed by the commissioner,

1 copies of which shall be provided to all students in such exempt
2 program, which shall include but not be limited to the following infor-
3 mation:

- 4 (i) a description of the location and time period in which the program
5 will be offered;
- 6 (ii) a statement that the students enrolled in the program shall not
7 be subject to any tuition liability for the program, even if such
8 students do not complete the program;
- 9 (iii) a statement that the program being provided to the [private
10 business] EMPLOYER has not been approved by the department and is not
11 under the department's jurisdiction and that the students in the program
12 have been advised of the fact; and
- 13 (iv) the signatures of the school director or owner of the school and
14 the representative of the [private business] EMPLOYER for which the
15 program is being offered certifying the accuracy of the statements on
16 the form.

17 d. Any additional student openings in a program deemed exempt by the
18 department may be made available to students not affiliated with the
19 [private business] EMPLOYER on the condition that such students execute
20 a disclosure form as prescribed in paragraph c of this subdivision. Such
21 admitted students shall only constitute up to ten percent of the exempt
22 program's total capacity.

23 4. Application, renewal application and application fees. a. Applica-
24 tion and renewal application for a license as a private CAREER school
25 [or registration as a business school] required by the commissioner
26 shall be filed on forms prescribed and provided by the department.
27 Except as provided in subparagraph (iii) of paragraph e of this subdivi-
28 sion, each renewal application for [a private business school registered
29 pursuant to this section or for] a private CAREER school licensed pursu-
30 ant to this section shall include an audited financial statement audited
31 according to generally accepted auditing standards by an independent
32 certified public accountant or an independent public accountant and
33 statistical reports certified by the owner or operator of the school, as
34 required by the commissioner; provided, however, that the commissioner
35 shall accept a copy of a current financial statement previously filed by
36 a school with any other governmental agency in compliance with the
37 provisions of any federal or state laws, or rules or regulations if such
38 statement contains all of the information required under this subdivi-
39 sion and conforms to this subdivision's requirements of auditing, review
40 and certification. Any required audit of the financial statement shall
41 be a condition of licensure [or registration] and shall be paid for by
42 the school, and the results of the audit shall be forwarded to the
43 commissioner. Applications not accompanied by the audits and reports
44 required pursuant to this subdivision shall not be considered for
45 approval by the commissioner. Initial applications shall be accompanied
46 by financial reports as required by the commissioner. [The commissioner
47 shall act on an initial application for a license or registration within
48 one hundred twenty days of receipt of a complete application.] The
49 applicant shall receive a written approval or denial together with the
50 reasons for a denial of such application.

51 b. (i) An initial license [or registration] issued pursuant to the
52 provisions of this article shall be valid for a period of two years. A
53 renewal of license [or registration] issued pursuant to the provisions
54 of this article shall be valid for a period of four years. [All license
55 and registration fees for a renewal shall be double the amounts listed
56 in paragraph g of this subdivision.]

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

5 (III) A SCHOOL WHICH HAS APPLIED FOR A PRIVATE CAREER SCHOOL LICENSE
6 MAY REQUEST CANDIDACY STATUS FOR ONE TIME ONLY. CANDIDACY STATUS WILL
7 NOT BE ISSUED TO SCHOOLS OFFERING PROGRAMS TO TRAIN STUDENTS TO PASS
8 LICENSURE EXAMINATIONS SUCH AS APPEARANCE ENHANCEMENT TESTS, ACHIEVE
9 NURSE AIDE OR NURSE ASSISTANT CERTIFICATION, OR PASS EXAMINATIONS LEAD-
10 ING TO LICENSURE IN ANY OTHER PROFESSION OR OCCUPATION DETERMINED BY THE
11 COMMISSIONER TO REQUIRE FULL LICENSURE STATUS. CANDIDACY STATUS SHALL
12 ALLOW A SCHOOL TO OPERATE UNLICENSED FOR AN INITIAL PERIOD OF TWELVE
13 MONTHS DURING THE LICENSURE APPLICATION PROCESS, WHICH MAY BE EXTENDED
14 TO A MAXIMUM, NON-RENEWABLE PERIOD OF EIGHTEEN MONTHS, UNDER THE FOLLOW-
15 ING CONDITIONS:

16 (1) THE PROSPECTIVE SCHOOL SUBMITS A CANDIDATE SCHOOL APPLICATION FEE,
17 SEPARATE FROM THE SCHOOL APPLICATION FEE, OF FIVE THOUSAND DOLLARS WHICH
18 SHALL ACCRUE TO THE CREDIT OF THE PROPRIETARY VOCATIONAL SCHOOL SUPER-
19 VISION ACCOUNT;

20 (2) THE SCHOOL MAY IN NO WAY REPRESENT THAT IT IS LICENSED OR THAT ITS
21 PROGRAMS ARE APPROVED THROUGH THE DEPARTMENT;

22 (3) TO EVERY PROSPECTIVE STUDENT, THE SCHOOL MUST DISSEMINATE A STATE-
23 MENT, PROVIDED BY THE DEPARTMENT, THAT THE FACILITIES, INSTRUCTORS, AND
24 PROGRAMS BEING PROVIDED HAVE NOT BEEN APPROVED AND ARE NOT UNDER THE
25 DEPARTMENT'S JURISDICTION DURING THE CANDIDACY PERIOD. SUCH STATEMENT
26 SHALL INDICATE THAT STUDENTS ATTENDING CANDIDATE SCHOOLS WILL HAVE NO
27 RECOURSE THROUGH THE DEPARTMENT'S STUDENT COMPLAINT PROCESS NOR HAVE ANY
28 RESTITUTION AVAILABLE FROM THE TUITION REIMBURSEMENT ACCOUNT. STUDENTS
29 MUST SIGN AN ATTESTATION TO THE RECEIPT OF THIS STATEMENT. THE SCHOOL
30 MUST RETAIN THE SIGNED ATTESTATION AND PROVIDE THE STUDENT WITH A COPY
31 OF THAT SIGNED STATEMENT;

32 (4) THE SCHOOL MUST DEMONSTRATE FINANCIAL VIABILITY THROUGH MEANS
33 DEEMED APPROPRIATE BY THE COMMISSIONER. SUCH MEANS MAY INCLUDE SUBMIT-
34 TING AN AUDITED FINANCIAL STATEMENT BASED ON THE MOST RECENTLY COMPLETED
35 FISCAL YEAR; SECURING AND MAINTAINING A PERFORMANCE BOND, PAYABLE TO THE
36 COMMISSIONER, IN AN AMOUNT APPROPRIATE TO ELIMINATE ANY LIABILITY TO THE
37 TUITION REIMBURSEMENT ACCOUNT IN THE EVENT THE SCHOOL CEASES OPERATION;
38 LIMITING THE COLLECTION OF TUITION FUNDS UNTIL EACH STUDENT COMPLETES
39 THE PROGRAM OF STUDY; OR OTHER MEANS ACCEPTABLE TO THE COMMISSIONER; AND

40 (5) ANY BREACH OF THE ABOVE CONDITIONS WILL RESULT IN THE DISAPPROVAL
41 OF THE SCHOOL'S LICENSURE APPLICATION AND THE FORFEITURE OF CANDIDATE
42 STATUS. CONTINUED OPERATION AFTER THIS DISAPPROVAL WILL SUBJECT THE
43 SCHOOL TO THE DISCIPLINARY ACTION PRESCRIBED UNDER PARAGRAPH B OF SUBDI-
44 VISION SIX OF SECTION FIVE THOUSAND THREE OF THIS ARTICLE.

45 (6) ON OR BEFORE THE END OF THE INITIAL TWELVE-MONTH PERIOD OF CANDI-
46 DACY STATUS, THE COMMISSIONER SHALL REVIEW THE SCHOOL'S APPLICATION FOR
47 LICENSURE AND DOCUMENTATION RELATING TO THE SCHOOL'S CANDIDACY STATUS
48 AND DETERMINE WHETHER SUCH CANDIDACY STATUS SHOULD BE EXTENDED TO THE
49 FULL EIGHTEEN MONTHS AND WHETHER THE SCHOOL MAY CONTINUE TO ENROLL
50 STUDENTS BEYOND THE EIGHTEEN-MONTH PERIOD OR THE SCHOOL'S APPLICATION
51 FOR LICENSURE WILL BE INITIALLY DISAPPROVED FOR FAILURE TO MEET REQUIRED
52 STANDARDS.

53 c. An application for renewal of any license [or registration] shall
54 be submitted at least one hundred twenty days prior to the expiration
55 date of the current authorization to operate accompanied by the nonre-

1 fundable application fee and such certified statistical reports and
2 annual financial statements required pursuant to this subdivision.

3 d. When complete and timely application has been made for renewal of
4 any license [or registration], the school shall receive a written
5 approval or denial, together with the reasons for denial of renewal,
6 from the commissioner no less than thirty days prior to the date such
7 license [or registration] expires.

8 e. Financial statements and statistical reports. (i) Licensed private
9 CAREER schools and [registered business] CANDIDATE schools shall submit
10 such certified statistical reports and annual financial statements as
11 required by the commissioner. The commissioner may require audited
12 statistical reports upon a determination that a school has provided
13 false or inaccurate certified statistical reports. The financial state-
14 ments shall be based on the fiscal year of the school and shall also
15 include an itemized account of tuition refunds due and owing to past or
16 presently enrolled students. Statistical reports shall include, but not
17 be limited to, enrollment, completion and placement data. The commis-
18 sioner shall use such financial statements and statistical reports
19 submitted for the purposes of licensure [and registration] of schools,
20 establishing fees or assessments pursuant to this article and determin-
21 ing standards pursuant to paragraph b of subdivision five of section
22 five thousand two of this article. The attorney general, the comptroller
23 and the president of the higher education services corporation shall
24 have access to this information when it is necessary to perform their
25 duties as required by state law.

26 (ii) [Any school which received in excess of two hundred fifty thou-
27 sand dollars in gross tuition in a school fiscal year] SCHOOLS shall be
28 required to submit TO THE COMMISSIONER an annual audited financial
29 statement [to the commissioner] PREPARED IN ACCORDANCE WITH GENERALLY
30 ACCEPTED ACCOUNTING PRINCIPLES for [that] EACH fiscal year. [In addi-
31 tion, any school which has a gross tuition of two hundred fifty thousand
32 dollars or less in a school fiscal year but whose combined state and
33 federal student financial aid in such year exceeds one hundred thousand
34 dollars shall also submit an annual audited financial statement to the
35 commissioner for that fiscal year.]

36 (iii) [Schools] NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (II) OF
37 THIS PARAGRAPH, FOR FISCAL YEARS RELATING TO THE INITIAL TWO YEAR LICEN-
38 SURE PERIOD, ANY SCHOOLS HAVING AN ANNUAL GROSS TUITION INCOME OF TWO
39 HUNDRED FIFTY THOUSAND DOLLARS OR LESS MAY SUBMIT A REVIEWED FINANCIAL
40 STATEMENT RATHER THAN AN AUDITED FINANCIAL STATEMENT. IN ADDITION, ANY
41 SCHOOL LICENSED PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS
42 OF TWO THOUSAND NINE WHICH AMENDED THIS SUBPARAGRAPH, whose gross
43 tuition is two hundred fifty thousand dollars or less in a school fiscal
44 year and which receive less than one hundred thousand dollars in state
45 and federal student financial aid in a school fiscal year shall BE
46 PERMITTED TO CONTINUE TO file with the commissioner an unaudited finan-
47 cial statement in a format prescribed by the commissioner, provided,
48 however, that any such school [with gross tuition in excess of fifty
49 thousand dollars shall have filed at least one audited financial state-
50 ment after the first year of its operation. The statement shall be
51 signed by the president or chief executive officer and the chief fiscal
52 officer of the school who shall certify that the statements are true and
53 accurate] SHALL BEGIN FILING AUDITED FINANCIAL STATEMENTS AS OF THE
54 SCHOOL'S FISCAL YEAR ENDING THREE YEARS OR MORE AFTER THE EFFECTIVE DATE
55 OF THE CHAPTER OF THE LAWS OF TWO THOUSAND NINE WHICH AMENDED THIS
56 SUBPARAGRAPH. 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.

f. Alternate licensing provision. The commissioner shall issue regulations which define alternate licensing OR CERTIFICATION requirements for the following:

(1) correspondence schools in which all approved programs and courses are under three hundred hours;

(2) schools which are eligible for exemption under this section but which elect to be licensed;

(3) non-profit schools exempt from taxation under section 501(c)(3) of the internal revenue code whose programs are funded entirely through donations from individuals or philanthropic organizations, or endowments, and interest accrued thereon; and

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

g. Application fee. (I) Every applicant and renewal applicant shall pay to the department a nonrefundable, nontransferable APPLICATION fee. THE APPLICATION FEE FOR NEW SCHOOLS SHALL BE FIVE THOUSAND DOLLARS, OF WHICH THREE THOUSAND DOLLARS SHALL ACCRUE TO THE CREDIT OF THE PROPRIETARY VOCATIONAL SCHOOL SUPERVISION ACCOUNT AND TWO THOUSAND DOLLARS SHALL ACCRUE TO THE TUITION REIMBURSEMENT ACCOUNT. FOR ADDITIONAL LICENSED LOCATIONS OF CURRENTLY OPERATING SCHOOLS, THE APPLICATION FEE SHALL BE TWO THOUSAND FIVE HUNDRED DOLLARS, WHICH SHALL ACCRUE TO THE CREDIT OF THE PROPRIETARY VOCATIONAL SCHOOL SUPERVISION ACCOUNT.

(II) FOR RENEWAL APPLICATIONS, THE FEE SHALL BE based on gross annual tuition income as determined by the annual financial statements required in paragraph a of this subdivision for the most recent school fiscal year, according to the following schedule:

GROSS ANNUAL TUITION INCOME	FEE
0-\$199,999	\$[250.00] 750.00
\$200,000-\$499,999	\$[500.00] 1,500.00
\$500,000-\$999,999	\$[750.00] 2,250.00
\$1,000,000-\$4,999,999	\$[1,500.00] 4,500.00
\$5,000,000-\$9,999,999	\$[3,000.00] 9,000.00
\$10,000,000 or above	\$[6,000.00] 18,000.00

Such RENEWAL fees shall accrue to the credit of the proprietary vocational school supervision account. If the evaluation of a particular course or facility requires the services of an expert not employed by the department, the department shall retain such expert and the school shall reimburse the department for the reasonable cost of such services.

5. Required disclosure for licensure. a. The commissioner shall require that each applicant for a license for the operation of a private [vocational or business] CAREER school disclose the following information:

(1) Whether the applicant, or any corporation, partnership, association or organization or person holding an ownership or control interest in such school, or any employee responsible in a supervisory capacity for the administration of student funds or governmental funds, has been convicted of a crime defined in this article, or any other crime involving the operation of any educational or training program, or, in connection with the operation of any such program, a crime involving the

1 unlawful acquisition, use, payment or expenditure of educational or
2 training program funds; and

3 (2) Whether the applicant, or any corporation, partnership, associ-
4 ation or organization or person holding an ownership or control interest
5 in such school, or any employee responsible in a supervisory capacity
6 for the administration of student funds or governmental funds has been
7 convicted:

8 (A) in this state of any of the following felonies defined in the
9 penal law: bribery involving public servants; commercial bribery; perju-
10 ry in the second degree; rewarding official misconduct; larceny, in
11 connection with the provision of services or involving the theft of
12 governmental funds; offering a false instrument for filing, falsifying
13 business records; tampering with public records; criminal usury; scheme
14 to defraud; or defrauding the government; or

15 (B) in any other jurisdiction of an offense which is substantially
16 similar to any of the felonies defined in clause (A) of this subpara-
17 graph and for which a sentence to a term of imprisonment in excess of
18 one year was authorized and is authorized in this state regardless of
19 whether such sentence was imposed; and

20 (3) Whether the applicant, or any corporation, partnership, associ-
21 ation or organization or person holding an ownership or control interest
22 in such school, or any employee responsible in a supervisory capacity
23 for the administration of student funds or governmental funds, has been
24 finally determined in any administrative or civil proceeding to have
25 committed a violation of any provision of this article or any rules and
26 regulations promulgated pursuant thereto, or any related order or deter-
27 mination of the commissioner, or of any similar statute, rule, regu-
28 lation, order or determination of another jurisdiction pertaining to the
29 licensure and operation of any educational or training program; and

30 (4) Whether any school owned or operated by the applicant closed or
31 ceased operation and, if so, whether at the time of the closing the
32 applicant was subject to a pending disciplinary action, disallowance,
33 fine or other penalty and whether it owed refunds to any government
34 agency or students.

35 b. No application for any license pursuant to this article shall be
36 denied by reason of disclosure pursuant to this subdivision of the
37 applicant, or any corporation, partnership, association or organization
38 or person holding an ownership or control interest in such school, or
39 any employee responsible in a supervisory capacity for the adminis-
40 tration of student funds or governmental funds unless the commissioner
41 makes a written determination that there is a direct relationship
42 between one or more of such previous offenses and the license sought, or
43 that issuance of the license would create an unreasonable risk to prop-
44 erty or to the safety, education or welfare of specific individuals or
45 the general public. In making such determination, the commissioner shall
46 be guided by the factors set forth in section seven hundred fifty-three
47 of the correction law. For purposes of this subdivision, "ownership or
48 control interest" means: with respect to a school that is organized as
49 or owned by a corporation, a position as an officer or director of such
50 corporation; or, with respect to a school that is organized as or owned
51 by a partnership, a position as a partner; or any other interest total-
52 ing ten percent or more, whether direct or indirect, in the total equity
53 or assets of such school.

54 c. The commissioner may deny, suspend, revoke or decline to renew any
55 license: (1) if the significance of the convictions or administrative
56 violations warrant such action; or (2) if the commissioner determines

1 that a school did not make any disclosure required by this subdivision;
2 OR (3) IF THE COMMISSIONER DETERMINES THAT A SCHOOL'S FINANCIAL CONDI-
3 TION MAY RESULT IN THE INTERRUPTION OR CESSATION OF INSTRUCTION OR JEOP-
4 ARDIZE STUDENT TUITION FUNDS.

5 6. If, during the [two year] period for which a license [or registra-
6 tion] is granted, the commissioner determines that a school's financial
7 condition may result in the interruption or cessation of instruction or
8 jeopardize student tuition funds, the commissioner may, upon notice to
9 the school, place the school on probation for a period of no more than
10 [thirty days] ONE YEAR, during which time the school and the department
11 must make efforts to resolve the problems at the school. THE SCHOOL
12 SHALL SUBMIT A REPORT ON ITS FINANCIAL CONDITION TO THE COMMISSIONER
13 WITHIN THE TIME PRESCRIBED BY THE COMMISSIONER. SUCH REPORT SHALL BE IN
14 THE FORM AND SHALL INCLUDE CONTENT PRESCRIBED BY THE COMMISSIONER AND
15 SHALL BE REVIEWED BY THE COMMISSIONER TO DETERMINE THE SCHOOL'S FINAN-
16 CIAL VIABILITY. THE COMMISSIONER MAY SUSPEND OR REVOKE THE SCHOOL'S
17 LICENSE, AS WELL AS REQUIRE THE CESSATION OF STUDENT ENROLLMENT, UPON A
18 DETERMINATION THAT THE SCHOOL'S FINANCIAL CONDITION CONTINUES TO THREAT-
19 EN ITS ABILITY TO EDUCATE STUDENTS AND/OR THE STUDENT TUITION FUNDS.
20 ALTERNATIVES FOR THE SCHOOL TO DEMONSTRATE A FISCALLY SOUND OPERATION
21 MAY INCLUDE SECURING AND MAINTAINING A PERFORMANCE BOND, PAYABLE TO THE
22 COMMISSIONER, IN AN APPROPRIATE AMOUNT TO ELIMINATE ANY LIABILITY TO THE
23 TUITION REIMBURSEMENT ACCOUNT SHOULD THE SCHOOL CEASE OPERATION, LIMIT-
24 ING THE COLLECTION OF TUITION FUNDS UNTIL EACH STUDENT COMPLETES THE
25 PROGRAM OF STUDY, OR OTHER MEANS ACCEPTABLE TO THE COMMISSIONER. If no
26 resolution can be attained, a hearing, pursuant to subdivisions two and
27 three of section five thousand three of this article will be scheduled.
28 Such probation may include additional monitoring, inspections, limita-
29 tions on enrollment, teaching out some or all of a school's present
30 students or temporary cessation of instruction.

31 7. No license [or registration] granted under this section shall be
32 transferable or assignable without the approval of the commissioner.
33 [Any] UPON transfer or assignment of any interest totaling [ten] TWEN-
34 TY-FIVE percent or more, whether direct or indirect, in the total equity
35 or assets of a school, SUCH SCHOOL shall be deemed a [transfer of such
36 school's license or registration. The commissioner shall approve or deny
37 a transfer or assignment based on the requirements set forth in subdivi-
38 sions three and four of this section. Such approval or denial, together
39 with the reasons for denial, shall be transmitted in writing within
40 ninety days of the receipt of the complete application by the commis-
41 sioner. Upon a showing of good cause as to why the applicant could not
42 obtain the commissioner's approval prior to a transfer or assignment,
43 the commissioner shall temporarily approve the transfer or assignment
44 for a period not to exceed forty-five days and for such additional peri-
45 ods as the commissioner may deem appropriate] NEW SCHOOL REQUIRED TO
46 SUBMIT A NEW SCHOOL APPLICATION AND OBTAIN A NEW LICENSE PURSUANT TO
47 THIS ARTICLE. PROVIDED, HOWEVER THAT UPON SUCH A SUBSTANTIAL CHANGE IN
48 INTEREST, THE PREVIOUS SCHOOL LICENSE SHALL REMAIN IN EFFECT UNTIL THE
49 NEW LICENSE IS ISSUED OR DENIED OR THE PREVIOUS LICENSE EXPIRES OR IS
50 REVOKED, WHICHEVER OCCURS FIRST.

51 8. No licensed [or registered] school shall discontinue operation or
52 surrender its license [or registration] unless thirty days written
53 notice of its intention to do so and a plan for maintenance of safe
54 keeping of the records of the school is provided to the commissioner.
55 However, upon good cause shown, the commissioner may waive the thirty
56 days notice requirement.

1 9. Annual supervision fund and tuition reimbursement [fund] ACCOUNT
2 assessment. a. The commissioner shall annually assess each school a
3 total percentage of that school's gross tuition pursuant to subdivision
4 three of section five thousand two of this article, as determined by the
5 annual [financial statement or annual] audited financial statement
6 required by this article. This assessment shall be based upon each
7 school's gross tuition from the previous year, and shall be payable to
8 the commissioner in equal quarterly installments which shall be due on
9 June first, September first, December first and March first.

10 b. (i) [Beginning April first, nineteen hundred ninety-one, such] SUCH
11 annualized assessment shall be one percent FOR SCHOOLS WHICH HAVE PAID
12 LESS THAN SIXTEEN QUARTERS OF ASSESSMENTS, BUT SUCH ANNUAL ASSESSMENT
13 SHALL NOT FALL BELOW FIVE HUNDRED DOLLARS.

14 (ii) [Beginning July first, nineteen hundred ninety-four, such] SUCH
15 annualized assessment shall be [nine-tenths] EIGHT-TENTHS of one percent
16 FOR SCHOOLS WHICH HAVE PAID SIXTEEN OR MORE QUARTERS OF ASSESSMENTS, BUT
17 SUCH ANNUAL ASSESSMENT SHALL NOT FALL BELOW FIVE HUNDRED DOLLARS.

18 [(iii) Beginning April first, nineteen hundred ninety-five, and in
19 each succeeding year, such annualized assessment shall be eight-tenths
20 of one percent.]

21 c. (i) Of the total assessment provided for herein, FIVE-TENTHS OF ONE
22 PERCENT SHALL ACCRUE TO THE CREDIT OF THE TUITION REIMBURSEMENT ACCOUNT
23 PURSUANT TO SECTION FIVE THOUSAND SEVEN OF THIS ARTICLE FOR THOSE
24 SCHOOLS WHICH HAVE PAID LESS THAN SIXTEEN QUARTERS OF ASSESSMENTS. OF
25 THE TOTAL ASSESSMENT PROVIDED FOR SCHOOLS WHICH HAVE PAID SIXTEEN OR
26 MORE QUARTERS OF ASSESSMENTS, three-tenths of one percent shall accrue
27 to the credit of the tuition reimbursement [fund] ACCOUNT pursuant to
28 section five thousand seven of this article. FOR SCHOOLS PAYING THE
29 MINIMUM FIVE HUNDRED DOLLARS ANNUAL ASSESSMENT, NONE SHALL ACCRUE TO THE
30 TUITION REIMBURSEMENT ACCOUNT.

31 (ii) The balance of the total assessment provided for herein shall be
32 dedicated to fund the department's supervision and regulation of
33 licensed private schools [and registered business schools] pursuant to
34 an annual appropriation and an annual plan of expenditure prepared by
35 the commissioner and approved by the director of the budget. [Following
36 the close of each fiscal year, the commissioner, in consultation with
37 the director of the budget, shall determine if the balance in the
38 proprietary vocational school supervision fund for such fiscal year
39 exceeded the amount required for the support of the department's super-
40 visory activities taking into account projected revenues and expendi-
41 tures for the subsequent fiscal year. To the extent that a surplus is
42 identified, the commissioner, with the approval of the director of the
43 budget, shall direct the transfer of such surplus to the tuition
44 reimbursement fund.]

45 d. Payments made within thirty days following the due date shall be
46 subject to interest at one percent above the prevailing prime rate.
47 Thereafter, late payments may result in suspension of licensure by the
48 commissioner. Payments required by this subdivision shall be considered
49 a condition of licensure [or registration].

50 S 3. Section 5002 of the education law, as added by chapter 887 of the
51 laws of 1990, subparagraph 3 of paragraph b and paragraph d of subdivi-
52 sion 1, subparagraph 2 of paragraph g of subdivision 3 and subdivision 6
53 as amended and paragraph c of subdivision 1 and paragraph d of subdivi-
54 sion 2 as added by chapter 604 of the laws of 1993, paragraph c of
55 subdivision 2, paragraph a of subdivision 4 and subdivision 7 as amended
56 and paragraph e of subdivision 4 and paragraph c of subdivision 6 as

added by chapter 434 of the laws of 1999, paragraph f of subdivision 4 as added by chapter 457 of the laws of 2003 and subparagraph 2 of paragraph b of subdivision 5 as amended by chapter 301 of the laws of 1996, is amended to read as follows:

S 5002. Standards for licensed private CAREER schools [and registered business schools]. Any school licensed [or registered] pursuant to section five thousand one of this article shall be organized and conducted only as a school and shall be subject to the jurisdiction of the department exclusively, or in conjunction with such other state agency or department or district attorney upon which jurisdiction has also been conferred by law. Such schools shall be subject to and comply with the provisions of this section.

1. Standards. a. No program of such schools shall be conducted in a factory or commercial establishment, except where the use of facilities or equipment of such factory or commercial establishment is permitted for necessary or desirable educational purposes and objectives.

b. For every such school, the commissioner shall set forth in regulation standards governing all of the following:

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

(2) the standards and the methods of instruction;

(3) the equipment available for instruction with the maximum enrollment that such equipment and physical plant will accommodate;

(4) the qualifications and experience of teaching and management personnel;

(5) the form and content of the student enrollment agreement or contract, provided that such agreement or contract shall be written in the same language as that principally used in the sales presentation;

(6) the methods of collecting tuition;

(7) eligibility criteria for programs that will require licensure;

(8) the sufficiency and suitability of the resources available for the support of such school; and

(9) counseling provided to students.

B-1. STUDENT LOANS AND FINANCIAL AID. (1) STUDENT LOANS OR OTHER FINANCIAL AID FUNDS RECEIVED FROM FEDERAL, STATE, OR LOCAL GOVERNMENTS OR ADMINISTERED UNDER THE FEDERAL STUDENT FINANCIAL ASSISTANCE PROGRAMS GOVERNED BY TITLE IV OF THE HIGHER EDUCATION ACT OF NINETEEN HUNDRED SIXTY-FIVE, 20 U.S.C. SECTION 1070 ET SEQ., AS AMENDED, MUST BE COLLECTED AND APPLIED IN THE MANNER AS CONTROLLED BY THE APPLICABLE FEDERAL, STATE OR LOCAL REGULATIONS.

(2) STUDENT LOANS OR OTHER FINANCIAL AID FUNDS RECEIVED FROM PRIVATE ENTITIES INCLUDING, BUT NOT LIMITED TO, BANKS, FINANCING COMPANIES, AND OTHER LENDING SOURCES MUST BE COLLECTED OR DISBURSED IN THE FOLLOWING MANNER:

(A) LOANS OR OTHER FINANCIAL AID PAYMENTS FOR AMOUNTS OF FIVE THOUSAND DOLLARS OR LESS MAY BE DISBURSED AS A SINGLE DISBURSEMENT, REGARDLESS OF COURSE LENGTH.

(B) LOANS OR OTHER FINANCIAL AID PAYMENTS FOR AMOUNTS GREATER THAN FIVE THOUSAND DOLLARS THAT REFLECT A CLASS TERM OF LESS THAN SIX MONTHS SHALL HAVE TWO EQUAL DISBURSEMENTS. THE DISBURSEMENT SCHEDULE FOR SUCH LOANS OR PAYMENTS SHALL BE AS FOLLOWS: ONE-HALF OF THE TUITION AMOUNT

1 RELEASED INITIALLY, AND THE REMAINDER RELEASED HALFWAY THROUGH THE
2 COURSE TERM.

3 (C) LOANS OR OTHER FINANCIAL AID PAYMENTS FOR AMOUNTS GREATER THAN
4 FIVE THOUSAND DOLLARS THAT REFLECT A CLASS TERM OF GREATER THAN SIX
5 MONTHS, BUT LESS THAN TWELVE MONTHS MUST HAVE THREE EQUAL DISBURSEMENTS.
6 THE DISBURSEMENT SCHEDULE FOR SUCH LOANS OR PAYMENTS SHALL BE AS
7 FOLLOWS: ONE-THIRD OF THE TUITION AMOUNT RELEASED INITIALLY, THE SECOND
8 DISBURSEMENT SHALL BE RELEASED ONE-THIRD OF THE WAY THROUGH THE LENGTH
9 OF THE TRAINING, AND THE REMAINDER RELEASED TWO-THIRDS OF THE WAY
10 THROUGH THE COURSE TERM.

11 (D) LOANS OF OTHER FINANCIAL AID PAYMENTS FOR AMOUNTS GREATER THAN
12 FIVE THOUSAND DOLLARS THAT REFLECT A CLASS TERM GREATER THAN TWELVE
13 MONTHS SHALL HAVE FOUR EQUAL DISBURSEMENTS. THE DISBURSEMENT SCHEDULE
14 FOR SUCH LOANS OR PAYMENTS SHALL BE AS FOLLOWS: ONE-QUARTER OF THE
15 TUITION AMOUNT RELEASED INITIALLY, THE SECOND DISBURSEMENT SHALL BE
16 RELEASED ONE QUARTER OF THE WAY THROUGH THE LENGTH OF THE TRAINING; THE
17 THIRD DISBURSEMENT SHALL BE RELEASED HALFWAY THROUGH THE LENGTH OF THE
18 TRAINING, AND THE REMAINDER SHALL BE RELEASED THREE-QUARTERS OF THE WAY
19 THROUGH THE TRAINING.

20 (3) NO SCHOOL MAY ENTER INTO ANY CONTRACT OR AGREEMENT WITH, OR
21 RECEIVE ANY STUDENT LOAN OR FINANCIAL AID FUNDS FROM, PRIVATE ENTITIES
22 INCLUDING, BUT NOT LIMITED TO, BANKS, FINANCING COMPANIES, AND ANY OTHER
23 PRIVATE LENDING SOURCES UNLESS THE PRIVATE ENTITY HAS A DISBURSEMENT
24 POLICY THAT, AT A MINIMUM, MEETS THE REQUIREMENTS OF SUBPARAGRAPH TWO OF
25 THIS PARAGRAPH.

26 c. Notwithstanding any other provisions of this article to the contra-
27 ry, the commissioner shall define alternative educational and curriculum
28 standards for any program of less than forty hours designed exclusively
29 for non-occupational, personal enrichment purposes.

30 d. Admission of students under the ability to benefit provision.

31 (1) Certification. Each school admitting students who do not possess
32 at least a high school diploma or its equivalent shall certify to the
33 satisfaction of the commissioner that such prospective students have
34 been administered and passed an examination which has been approved by
35 the commissioner to determine their ability to benefit from the chosen
36 curriculum prior to admission to the curriculum or course of study. Such
37 examination shall, whenever possible, be a nationally recognized test
38 appropriate for the course of instruction which has been approved by the
39 commissioner. The examination results of each such student who is admit-
40 ted shall be made available to the commissioner at a time prescribed by
41 the commissioner and, together with the student's original answer sheet,
42 shall be maintained by the school in the student's permanent record. For
43 any student failing to achieve the necessary score on such examination
44 for enrollment, the school shall be required to provide such student
45 with a listing of appropriate counseling and educational opportunities
46 available to the student at no cost, as determined by the commissioner.
47 WHERE APPROPRIATE, THE COMMISSIONER MAY ACCEPT SUCH OTHER ENTRANCE
48 REQUIREMENT DOCUMENTATION SUCH AS PREREQUISITE COURSEWORK, PROFESSIONAL
49 OR VENDOR CERTIFICATIONS, PERSONAL INTERVIEWS, AND/OR ATTESTATIONS OF
50 EQUIVALENT KNOWLEDGE IN LIEU OF THE EXAMINATION REQUIREMENT.

51 (2) Counseling. Each school [admitting] OFFERING CURRICULA WHICH ADMIT
52 students who do not possess a high school diploma or its equivalent
53 shall develop a plan to be approved by the commissioner for the coun-
54 seling of such students on an individual basis on matters including but
55 not limited to the student's ability to progress in the curriculum, the
56 student's financial aid rights and responsibilities, the availability of

1 programs to earn a high school equivalency diploma, including programs
2 provided at no cost to the student, and the potential of the training to
3 prepare the student for available employment opportunities within the
4 region.

5 (3) Compliance. (A) The commissioner shall monitor compliance with
6 this paragraph and verify the examination and counseling process and
7 student examination scores. Such procedures may include but not be
8 limited to an annual, statistically significant, random sampling of the
9 examinations taken by prospective students of each school administering
10 such examinations.

11 (B) [Such procedures shall provide that the examinations of each
12 school be inspected on site at least once annually.

13 (C)] In the event that the commissioner determines that the school is
14 out of compliance with the examination process and counseling, the
15 commissioner shall require that examinations and counseling for students
16 admitted under the ability to benefit provision and the counseling
17 required by subparagraph two of this paragraph be conducted off the
18 premises of the school by an entity approved by the commissioner for
19 such period of time as the commissioner deems appropriate, the cost of
20 which shall be incurred by the school.

21 2. Inspections. a. Every school licensed pursuant to this article
22 shall maintain adequate and accurate records for a period of not less
23 than [six] SEVEN years at its principal place of business within this
24 state. Such records shall be maintained in a manner and form prescribed
25 by the commissioner and shall be made available to the department and
26 the higher education services corporation upon request.

27 b. In addition to other requirements in this article, the information
28 to be made a part of the record shall include, but not be limited to:

29 (1) names and addresses of each enrolled student;

30 (2) the course of study offered by the institution;

31 (3) the name and address of its faculty, together with a record of the
32 educational qualifications of each;

33 (4) the graduation date of each student; and

34 (5) for each student who fails to complete his or her program, the
35 student's last date of attendance and, if applicable, the amount of any
36 refund paid to, or on behalf of, the student and the date the refund was
37 made.

38 c. The commissioner shall conduct periodic unscheduled inspections of
39 licensed private CAREER schools [and registered business schools] to
40 monitor compliance with the provisions of this article or the rules or
41 regulations promulgated thereunder or any final order or decision of the
42 commissioner made pursuant to this article. The department shall conduct
43 an inspection of each school at least once every [three years. The
44 department shall annually inspect schools: (1) having a high percentage
45 of students admitted under ability to benefit criteria as determined by
46 the commissioner; (2) having a high student loan default rate as deter-
47 mined by the commissioner in a manner consistent with federal standards;
48 or (3) which are the subject of a high volume of complaints by students
49 or other parties] LICENSURE PERIOD. All schools shall provide upon
50 request of the department, any and all records necessary to review
51 compliance with the provisions of this article.

52 d. Student permanent records, as defined in the regulations of the
53 commissioner, shall be maintained for a period of twenty years.

54 3. Tuition liability. a. The tuition charge for programs approved for
55 participation in student financial aid general award programs pursuant
56 to articles thirteen and fourteen of this chapter shall be apportioned

1 on the basis of terms, quarters or semesters. For the purposes of this
2 section, the terms "term", "quarter" and "semester" shall be defined in
3 regulations by the commissioner.

4 b. The tuition refund policy for the first term or quarter of any
5 program at schools licensed [or registered] pursuant to section five
6 thousand one of this article shall be as follows:

7 (1) For programs which are divided into quarters of up to fourteen
8 weeks, the school shall evenly divide the total tuition charges among
9 the number of quarters. After instruction is begun in a school, if a
10 student withdraws or is discontinued, the school may retain no more
11 than:

12 (i) zero percent of the quarter's tuition if the termination is during
13 the first week of instruction; or

14 (ii) twenty-five percent of the quarter's tuition if the termination
15 is during the second week of instruction; or

16 (iii) fifty percent of the quarter's tuition if the termination is
17 during the third week of instruction; or

18 (iv) seventy-five percent of the quarter's tuition if the termination
19 is during the fourth week of instruction; or

20 (v) one hundred percent of the quarter's tuition if the termination
21 occurs after the fourth week of instruction.

22 (2) For programs organized by terms of fifteen, sixteen, seventeen or
23 eighteen weeks apiece, the school shall evenly divide the total tuition
24 charges among the number of terms. After instruction is begun in a
25 school, if a student withdraws or is discontinued, the school may retain
26 no more than:

27 (i) zero percent of the term's tuition if the termination is during
28 the first week of instruction; or

29 (ii) twenty percent of the term's tuition if the termination is during
30 the second week of instruction; or

31 (iii) thirty-five percent of the term's tuition if the termination is
32 during the third week of instruction; or

33 (iv) fifty percent of the term's tuition if the termination is during
34 the fourth week of instruction; or

35 (v) seventy percent of the term's tuition if the termination is during
36 the fifth week of instruction; or

37 (vi) one hundred percent of the term's tuition if the termination
38 occurs after the completion of the fifth week of instruction.

39 c. (1) The tuition refund policy for the second term or quarter of any
40 program at schools licensed [or registered] pursuant to section five
41 thousand one of this article shall be as follows:

42 (A) For programs which are divided into quarters of up to fourteen
43 weeks, the school shall evenly divide the total tuition charges among
44 the number of quarters. After instruction is begun in a school, if a
45 student withdraws or is discontinued, the school may retain no more
46 than:

47 (i) twenty-five percent of the quarter's tuition if the termination is
48 during the first week of instruction; or

49 (ii) fifty percent of the quarter's tuition if the termination is
50 during the second week of instruction; or

51 (iii) seventy-five percent of the quarter's tuition if the termination
52 is during the third week of instruction; or[.]

53 (iv) one hundred percent of the quarter's tuition if the termination
54 occurs after the third week of instruction.

55 (B) For programs organized by terms of fifteen, sixteen, seventeen or
56 eighteen weeks apiece, the school shall evenly divide the total tuition

1 charges among the number of terms. After instruction is begun in a
2 school, if a student withdraws or is discontinued, the school may retain
3 no more than:

4 (i) twenty percent of the term's tuition if the termination is during
5 the first week of instruction; or
6 (ii) thirty-five percent of the term's tuition if the termination is
7 during the second week of instruction; or
8 (iii) fifty percent of the term's tuition if the termination is during
9 the third week of instruction; or
10 (iv) seventy percent of the term's tuition if the termination is
11 during the fourth week of instruction; or
12 (v) one hundred percent of the term's tuition if the termination
13 occurs after the completion of the fourth week of instruction.

14 (2) Notwithstanding the provisions of subparagraph one of this para-
15 graph, the tuition refund policy set forth in paragraph b of this subdivi-
16 sion shall apply unless the school demonstrates that there are no
17 significant educational changes in the educational program of the
18 student, such changes as defined in regulations of the commissioner.

19 d. The tuition refund policy for the third and any subsequent term or
20 quarter of any program licensed [or registered] pursuant to section five
21 thousand one of this article shall be the policy set forth in subpara-
22 graph one of paragraph c of this subdivision.

23 e. No program shall have a term in excess of eighteen weeks.

24 f. The amount of the refund shall be calculated based on the last day
25 of student attendance.

26 g. (1) Any refund due to a student shall be paid by the school within
27 forty-five days of the date on which the student withdraws from the
28 program. For the purposes of this article, such date shall be the earli-
29 est of (i) the date on which the student gives written notice to the
30 school or (ii) the date on which the student is deemed to have withdrawn
31 pursuant to subparagraph two of this paragraph.

32 (2) If a student has failed to attend classes for a period of thirty
33 calendar days, the school shall send by regular mail a notice to the
34 student that the student shall be deemed to have withdrawn from the
35 program if the student does not notify the school to the contrary within
36 twelve days from the date on which the letter is sent. If the student
37 fails to respond within such twelve-day period, the student shall be
38 deemed to have withdrawn and the school shall notify the higher educa-
39 tion services corporation that the student has withdrawn and the date of
40 the withdrawal.

41 h. SCHOOLS SHALL SUBMIT, FOR APPROVAL BY THE COMMISSIONER, THE SCHOOL
42 CATALOG WITH A WEEKLY TUITION LIABILITY CHART FOR EACH PROGRAM THAT
43 INDICATES THE AMOUNT OF REFUND DUE THE STUDENT IN THE EVENT OF WITH-
44 DRAWAL.

45 I. Upon payment of a refund to a lender, the school shall forthwith
46 send a notice to a person designated by the president of the higher
47 education services corporation upon a form approved by the president
48 that such refund was made.

49 [i.] J. If the higher education services corporation fails to receive
50 the notice required by paragraph [h] I of this subdivision, it shall
51 forthwith notify the student of his or her right to a refund and the
52 commissioner of such failure. Upon receipt of such notification, the
53 commissioner shall take appropriate action against the school.

54 4. Curriculum approval. a. An application AND FEE shall be made for
55 the initial approval of a curriculum or course and shall include such
56 information as the commissioner may require by regulation. Approval

1 shall be valid for a period not to exceed four years. THE APPLICATION
2 FEE FOR ANY CURRICULUM OF ONE HUNDRED CLOCK HOURS OR MORE SHALL BE TWO
3 HUNDRED FIFTY DOLLARS. THE APPLICATION FEE FOR ANY COURSE OF LESS THAN
4 ONE HUNDRED CLOCK HOURS SHALL BE ONE HUNDRED DOLLARS. SUCH APPLICATION
5 FEES SHALL ACCRUE TO THE CREDIT OF THE PROPRIETARY VOCATIONAL SCHOOL
6 SUPERVISION ACCOUNT.

7 b. In approving curriculum, the commissioner shall take into consider-
8 ation the following:

9 (1) that the entrance requirements demonstrate that students possess
10 the skills, competencies and prerequisite knowledge needed to progress
11 in the curriculum;

12 (2) that the content will enable the student to develop those skills
13 and competencies required for employment in the occupational area for
14 which the curriculum was developed;

15 (3) that the school will utilize appropriate instructional methods;
16 [and]

17 (4) that the instructional equipment used within the curriculum is
18 comparable to the equipment currently used by business or industry in
19 the occupational area for which the curriculum was developed; AND

20 (5) THAT A CURRICULUM MAY INCLUDE INSTRUCTION IN ENGLISH AS A SECOND
21 LANGUAGE AT A BEGINNING OR BASIC LEVEL, PROVIDED SUCH INSTRUCTION SHALL
22 NOT CONSTITUTE MORE THAN FIFTY PERCENT OF SUCH PROGRAM.

23 c. (1) If the evaluation of a particular course or facility requires
24 the services of an expert not employed by the department, the department
25 shall retain such expert [and the school shall reimburse the department
26 for the reasonable cost of such services] AT THE SCHOOL'S EXPENSE IN
27 ADDITION TO THE APPLICATION FEES PRESCRIBED IN PARAGRAPH A OF THIS
28 SUBDIVISION.

29 (2) If, in the interest of expediting the approvals, a school requests
30 the department to employ an outside consultant, the school shall [reim-
31 burse the department for] PAY the [reasonable] cost of such services IN
32 ADDITION TO THE APPLICATION FEES PRESCRIBED IN PARAGRAPH A OF THIS
33 SUBDIVISION.

34 d. The commissioner shall act on applications for approval of a course
35 or curriculum within one hundred twenty days of receipt of a complete
36 application and, in the case of a denial, shall set forth in writing the
37 reasons for such denial.

38 e. Notwithstanding paragraphs b, c and d of this subdivision, curric-
39 ulum certified by a nationally recognized vendor as defined in commis-
40 sioner's regulations shall be recognized by the department in lieu of an
41 expert evaluation when such curriculum is adopted by a school in the
42 original format provided by the vendor as long as the proposed curric-
43 ulum is a stand alone program and not part of a larger comprehensive
44 course.

45 f. Notwithstanding any other provision of the law, a [not-for-profit
46 registered business] school[, that is eligible for participation in the
47 tuition assistance program and] which has national accreditation, may,
48 for the purpose of calculation of federal financial aid amounts only,
49 measure students' academic progress in an approved curriculum in non-de-
50 gree granting credit hours, based upon a national accrediting agency's
51 conversion and approval of clock hours to non-degree credit hours. For
52 the purposes of this paragraph, "national accreditation" shall mean
53 accreditation by a national accrediting agency as defined in the commis-
54 sioner's regulations.

55 5. Application for reapproval. a. An application AND FEE shall be made
56 for reapproval of a curriculum or course. Such application shall be

1 considered timely if submitted at least one hundred twenty days prior to
2 the expiration of the current approval. THE APPLICATION FEE FOR ANY
3 CURRICULUM OF ONE HUNDRED CLOCK HOURS OR MORE SHALL BE TWO HUNDRED FIFTY
4 DOLLARS. THE APPLICATION FEE FOR ANY COURSE OF LESS THAN ONE HUNDRED
5 CLOCK HOURS SHALL BE ONE HUNDRED DOLLARS, PROVIDED THAT NO FEE SHALL BE
6 ASSESSED FOR THE SUBMISSION OF A REAPPROVAL APPLICATION WITHOUT CHANGE.
7 SUCH APPLICATION FEES SHALL ACCRUE TO THE CREDIT OF THE PROPRIETARY
8 VOCATIONAL SCHOOL SUPERVISION ACCOUNT.

9 b. Curriculum reapproval standards. (1) The commissioner shall
10 prescribe by regulation, standards for reapproval after the first year
11 of licensure, of any curriculum or course based upon factors including
12 but not limited to the following, as appropriate:

13 (i) for each curriculum or course, the percentage of students who have
14 dropped out;

15 (ii) the acquisition of a specified minimum level of skills by the
16 students; and

17 (iii) for each curriculum or course, the percentage of students placed
18 in occupations related to the instruction, where applicable.

19 (2) Such standards shall be consistent with those applied to all non-
20 degree career education programs.

21 c. Reapproval contingency. Reapproval of a curriculum or course shall
22 be contingent upon a demonstration by the applicant that the curriculum
23 or course has met the curriculum reapproval standards set forth in this
24 subdivision. Except as otherwise provided in paragraph d of this subdivi-
25 sion, no such curriculum or course or substantially similar curriculum
26 or course may be given without reapproval by the commissioner.

27 d. When timely and complete application is made for the reapproval of
28 a curriculum or course, and no written denial is made thirty days prior
29 to the date of expiration of the existing approval, the curriculum or
30 course shall be deemed to be approved for the period of the curriculum.
31 If the application is denied, the commissioner shall set forth in writ-
32 ing the reasons for such denial.

33 e. The commissioner may provide in regulations for reapproval proce-
34 dures, consistent with this subdivision, for applications submitted less
35 than one hundred twenty days from the expiration date.

36 f. The commissioner shall act upon enrollment agreements and catalogs
37 within ninety days of receipt, and, in the case of denial, shall set
38 forth in writing the reasons for such denial. If the commissioner fails
39 to act within ninety days, a catalog shall be deemed approved for one
40 year and an enrollment agreement shall be deemed approved until the
41 commissioner acts upon it.

42 6. a. Teachers and directors. No person shall be employed by a private
43 CAREER school as a director or teacher who is not licensed in such
44 capacity by the department pursuant to regulations of the commissioner,
45 which shall take into consideration such factors as moral character,
46 educational qualifications and practical experience. The application
47 shall include a statement, signed by the president or chief executive
48 officer of the school, certifying that to the best of his or her know-
49 ledge, the applicant is able to meet the educational qualifications and
50 practical experience set forth in the commissioner's regulations. Such
51 application shall be considered timely if mailed to the commissioner and
52 postmarked four days prior to employment at the school and must be
53 completed within twenty days thereafter; provided, however, that the
54 commissioner may, for good cause shown, extend the time within which to
55 complete the application. When a complete application is made, the
56 commissioner shall act upon such application within thirty days. If no

1 written denial is made within the thirty days, the application shall be
2 deemed to be approved until the commissioner acts upon it or until the
3 end of the term or semester, whichever occurs first. If a written denial
4 is made after the thirty day period, the commissioner may allow the
5 applicant to teach at the school for the remainder of the term or semes-
6 ter if the commissioner determines that the removal of the teacher would
7 not be in the best educational interest of the students. This subdivi-
8 sion shall not apply to directors or teachers employed on or before July
9 first, nineteen hundred seventy-two. Teachers' licenses issued on or
10 after [January first, nineteen hundred eighty-seven] THE EFFECTIVE DATE
11 OF THE CHAPTER OF THE LAWS OF TWO THOUSAND NINE WHICH AMENDED THIS PARA-
12 GRAPH shall be valid at all [registered business] LICENSED PRIVATE
13 CAREER schools for the courses, curricula, or occupations indicated on
14 the license. TEACHERS HOLDING VALID PRIVATE SCHOOL TEACHER LICENSES
15 VALID AT ONLY ONE SCHOOL LOCATION SHALL HAVE THEM REPLACED, AT NO COST,
16 WITH LICENSES VALID AT ANY LICENSED SCHOOL IN THE SAME SUBJECT OR
17 SUBJECTS AND WITH THE SAME EXPIRATION DATE AS WAS LISTED ON THE PREVIOUS
18 TEACHING LICENSE.

19 b. A school director shall have access to all student and school
20 records which shall be maintained in accordance with this article and
21 the regulations of the commissioner and shall make such records avail-
22 able to the commissioner or the commissioner's designee upon request
23 during an on-site school inspection.

24 c. Notwithstanding paragraph a of this subdivision, a teacher who has
25 been certified as an instructor by a nationally recognized vendor as
26 defined in commissioner's regulations may be deemed qualified as an
27 instructor by the department, provided such teacher shall only provide
28 instruction in the course or courses for which he or she holds vendor's
29 certification. A teacher authorized by this paragraph will be subject to
30 all licensing fees required by the department for licensed teachers.

31 7. Advertising. a. The commissioner is authorized to commence a disci-
32 plinary proceeding pursuant to this article for false, misleading,
33 deceptive or fraudulent advertising pursuant to regulations promulgated
34 by the commissioner which shall be consistent with article twenty-two-A
35 of the general business law. The department shall issue guidelines as to
36 appropriate advertising content. In developing such guidelines, the
37 department shall consider advertising for similar programs offered by
38 various educational institutions. In a disciplinary action or other
39 proceeding, such guidelines shall not be presumptive evidence that
40 particular advertising is appropriate.

41 b. Beginning on January first, two thousand, all schools shall include
42 in their advertising, promotional material, or letterhead the statement
43 "Licensed by the State of New York" [or "Registered by the State of New
44 York", as appropriate], and an accompanying symbol to indicate such
45 status, issued by the commissioner pursuant to section five thousand
46 nine of this article.

47 8. The higher education services corporation shall adopt rules and
48 regulations to effectuate the cessation of collection activities by
49 lenders or by the corporation in cases in which a licensed private
50 [vocational] CAREER school [or a registered business school] at which
51 the student enrolled has closed or ceased its teaching activities during
52 the academic period for which the loan was made or guaranteed.

53 S 4. Section 5003 of the education law, as added by chapter 887 of the
54 laws of 1990, subparagraph 1 of paragraph c of subdivision 1 and para-
55 graphs d and e of subdivision 6 as amended by chapter 604 of the laws of
56 1993, paragraphs b and f of subdivision 6 as amended and paragraph d of

1 subdivision 1 as added by chapter 434 of the laws of 1999, is amended to
2 read as follows:

3 S 5003. Disciplinary actions, hearings and penalties. 1. Disciplinary
4 action. a. The commissioner for good cause, after affording a school an
5 opportunity for a hearing, may take disciplinary action as hereinafter
6 provided against any school authorized to operate under this article.

7 b. Good cause shall include, but not be limited to, any of the follow-
8 ing:

9 (1) fraudulent statements or representations to the department, the
10 public or any student in connection with any activity of the school;

11 (2) violation of any provision of this article or regulation of the
12 commissioner;

13 (3) conviction or a plea of no contest on the part of any owner, oper-
14 ator, director or teacher:

15 (A) of any of the following felonies defined in the penal law: bribery
16 involving public servants; commercial bribery; perjury in the second
17 degree; rewarding official misconduct; larceny, in connection with the
18 provision of services or involving the theft of governmental funds;
19 offering a false instrument for filing, falsifying business records;
20 tampering with public records; criminal usury; scheme to defraud; or
21 defrauding the government; or

22 (B) in any other jurisdiction of an offense which is substantially
23 similar to any of the felonies defined in clause (A) of this subpara-
24 graph and for which a sentence to a term of imprisonment in excess of
25 one year was authorized and is authorized in this state regardless of
26 whether such sentence was imposed; or

27 (4) incompetence of any owner or operator to operate a school.

28 c. (1) Any person who believes he or she has been aggrieved by a
29 violation of this section, EXCEPT A PERSON AGGRIEVED BY THE ACTIONS OR
30 OMISSIONS OF A CANDIDATE SCHOOL, shall have the right to file a written
31 complaint within: (A) two years of the alleged violation; or (B) one
32 year of receiving notification from the higher education services corpo-
33 ration or any other guarantee agency that the student has defaulted on a
34 student loan payment; provided, however, that no complaint may be filed
35 after three years from the date of the alleged violation. The commis-
36 sioner shall maintain a written record of each complaint that is made.
37 The commissioner shall also send to the complainant a form acknowledging
38 the complaint and requesting further information if necessary and shall
39 advise the director of the school that a complaint has been made and,
40 where appropriate the nature of the complaint.

41 (2) The commissioner shall within [twenty] THIRTY days of receipt of
42 such written complaint commence an investigation of the alleged
43 violation and shall within [ninety] ONE HUNDRED TWENTY days of the
44 receipt of such written complaint, issue a written finding. The commis-
45 sioner shall furnish such findings to the person who filed the complaint
46 and to the chief operating officer of the school cited in the complaint.
47 If the commissioner finds that there has been a violation of this
48 section, the commissioner shall take appropriate action.

49 (3) The commissioner may initiate an investigation without a
50 complaint.

51 [d. During the initial two year licensing period, before the commis-
52 sioner may bring enforcement proceedings against a licensed entity, the
53 following shall be taken into consideration:

54 (1) whether such entity has demonstrated that the regulations promul-
55 gated under this chapter are unduly burdensome given the nature of the
56 instruction provided by such entity;

1 (2) whether such entity has identified potential areas of noncompli-
2 ance with this chapter and any such regulation within sixty days of the
3 licensing or registration date of such entity;

4 (3) whether such entity has engaged in good faith discussions with the
5 department to resolve such violations and/or promulgate regulations
6 which further the goals of this chapter.]

7 (4) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH ONE OF THIS PARA-
8 GRAPH OR ANY OTHER PROVISION OF THIS ARTICLE TO THE CONTRARY, A STUDENT
9 AT A CANDIDATE SCHOOL SHALL HAVE THE RIGHT TO FILE A WRITTEN COMPLAINT
10 FROM AN ALLEGED VIOLATION OF THE PROVISIONS OF CLAUSE THREE OF SUBPARA-
11 GRAPH (III) OF PARAGRAPH B OF SUBDIVISION FOUR OF SECTION FIVE THOUSAND
12 ONE OF THIS ARTICLE THAT REQUIRE DISCLOSURE OF CANDIDACY STATUS AND ITS
13 IMPLICATIONS AND A SIGNED ATTESTATION BY THE STUDENT, WITHIN TWO YEARS
14 OF SUCH VIOLATION. UPON A FINDING THAT SUCH A VIOLATION HAS OCCURRED,
15 THE CANDIDATE SCHOOL SHALL BE REQUIRED TO PROVIDE A REFUND OF ALL MONIES
16 AND FEES RECEIVED FROM OR ON BEHALF OF THE STUDENT. APPROPRIATE ACTION
17 SHALL ALSO BE TAKEN AGAINST THE CANDIDATE SCHOOL PURSUANT TO THE
18 PROVISIONS OF SUBPARAGRAPH (III) OF PARAGRAPH B OF SUBDIVISION FOUR OF
19 SECTION FIVE THOUSAND ONE OF THIS ARTICLE.

20 2. Hearing procedures. a. Upon a finding that there is good cause to
21 believe that a CANDIDATE SCHOOL UNDER THE PROVISIONS OF SUBPARAGRAPH
22 (III) OF PARAGRAPH B OF SUBDIVISION FOUR OF SECTION FIVE THOUSAND ONE OF
23 THIS ARTICLE, OR A LICENSED school, or an officer, agent, employee,
24 partner or teacher, has committed a violation of this article, the
25 commissioner shall initiate proceedings by serving a notice of hearing
26 upon each and every such party subject to the administrative action. The
27 school or such party shall be given reasonable notice of hearing,
28 including the time, place, and nature of the hearing and a statement
29 sufficiently particular to give notice of the transactions or occur-
30 rences intended to be proved, the material elements of each cause of
31 action and the civil penalties and/or administrative sanctions sought.

32 b. Opportunity shall be afforded to the party to respond and present
33 evidence and argument on the issues involved in the hearing including
34 the right of cross examination. In a hearing, the school or such party
35 shall be accorded the right to have its representative appear in person
36 or by or with counsel or other representative. Disposition may be made
37 in any hearing by stipulation, agreed settlement, consent order, default
38 or other informal method.

39 c. (1) The commissioner shall designate an impartial hearing officer
40 to conduct the hearing, who shall be empowered to:

41 (A) administer oaths and affirmations; and

42 (B) regulate the course of the hearings, set the time and place for
43 continued hearings, and fix the time for filing of briefs and other
44 documents; and

45 (C) direct the school or such party to appear and confer to consider
46 the simplification of the issues by consent; and

47 (D) grant a request for an adjournment of the hearing only upon good
48 cause shown.

49 (2) The strict legal rules of evidence shall not apply, but the deci-
50 sion shall be supported by substantial evidence in the record.

51 3. Decision after hearing. The hearing officer shall make written
52 findings of fact and conclusions of law, and shall also recommend in
53 writing to the commissioner a final decision including penalties. The
54 hearing officer shall mail a copy of his OR HER findings of fact,
55 conclusions of law and recommended penalty to the party and his or her
56 attorney, or representative. The commissioner shall make the final

1 decision, which shall be based exclusively on evidence and other materi-
2 als introduced at the hearing. If it is determined that a party has
3 committed a violation, the commissioner shall issue a final order and
4 shall impose penalties in accordance with this section. The commissioner
5 shall send by certified mail, return receipt requested, a copy of the
6 final order to the party and his or her attorney, or representative. The
7 commissioner shall, at the request of the school or such party, furnish
8 a copy of the transcript or any part thereof upon payment of the cost
9 thereof.

10 4. Judicial review. Any order imposed under this section shall be
11 subject to judicial review under article seventy-eight of the civil
12 practice law and rules, but no such determination shall be stayed or
13 enjoined except upon application to the court after notice to the
14 commissioner.

15 5. Enforcement proceedings. The attorney general, in his or her own
16 capacity, or at the request of the commissioner, may bring an appropri-
17 ate action or proceeding in any court of competent jurisdiction to
18 recover a fine or otherwise enforce any provision of this article.

19 6. Civil penalties and administrative sanctions. a. A hearing officer
20 may recommend, and the commissioner may impose, a civil penalty not to
21 exceed [two] THREE thousand five hundred dollars for any violation of
22 this article. In the case of a second or further violation committed
23 within [the previous] five years OF THE PREVIOUS VIOLATION, the liabil-
24 ity shall be a civil penalty not to exceed [five] SEVEN thousand FIVE
25 HUNDRED dollars for each such violation.

26 b. Notwithstanding the provisions of paragraph a of this subdivision,
27 a hearing officer may recommend, and the commissioner may impose a civil
28 penalty not to exceed [fifty] SEVENTY-FIVE thousand dollars OR DOUBLE
29 THE DOCUMENTED AMOUNT FROM WHICH THE SCHOOL BENEFITED, WHICHEVER IS
30 GREATER, for any of the following violations: (1) operation of a school
31 without a license in violation of section five thousand one of this
32 article; (2) operation of a school knowing that the school's license has
33 been suspended or revoked; (3) use of false, misleading, deceptive or
34 fraudulent advertising; (4) employment of recruiters on the basis of a
35 commission, bonus or quota, except as authorized by the commissioner;
36 (5) directing or authorizing recruiters to offer guarantees of jobs upon
37 completion of a course; (6) failure to make a tuition refund when such
38 failure is part of a pattern of misconduct; (7) the offering of a course
39 or program that has not been approved by the commissioner; (8) FAILURE
40 TO OFFER A COURSE OR PROGRAM AS APPROVED BY THE COMMISSIONER; (9) admit-
41 ting students, who subsequently drop out, who were admitted in violation
42 of the admission standards established by the commissioner, where such
43 admissions constitute a pattern of misconduct and where the drop out
44 resulted at least in part from such violation; [(9)] (10) failure to
45 provide the notice of discontinuance and the plan required by subdivi-
46 sion seven of section five thousand one of this article; or [(10)] (11)
47 violation of any other provision of this article, or any rule or regu-
48 lation promulgated pursuant thereto, when such violation constitutes
49 part of a pattern of misconduct which significantly impairs the educa-
50 tional quality of the program or programs being offered by the school.
51 For each enumerated offense, a second or further violation committed
52 within [the previous] five years, shall be subject to a civil penalty
53 not to exceed [seventy-five thousand dollars] ONE AND ONE-HALF TIMES THE
54 AMOUNT OF THE PREVIOUS VIOLATION for each such violation.

55 c. In addition to the penalties authorized in paragraphs a and b of
56 this subdivision, a hearing officer may recommend and the commissioner

1 may impose any of the following administrative sanctions: (1) a cease
2 and desist order; (2) a mandatory direction; (3) a suspension or revoca-
3 tion of a license; (4) a probation order; or (5) an order of restitu-
4 tion.

5 d. Penalty factors. In the recommendation of any penalty, a hearing
6 officer shall, at a minimum, give due consideration, where applicable,
7 to the good faith of the violator; [the performance of the school with
8 respect to student placement and retention rates, and students' acquisi-
9 tion of skills;] AND the gravity of the violation[; and the harm caused
10 to the student].

11 e. The commissioner may suspend a license [or registration] upon the
12 failure of a school to pay any fee, fine, penalty, settlement or assess-
13 ment as required by this article unless such failure is determined by
14 the commissioner to be for good cause.

15 f. All civil penalties, fines and settlements received after April
16 first, nineteen hundred ninety shall accrue to the credit of the tuition
17 reimbursement account established pursuant to section ninety-seven-hh of
18 the state finance law.

19 7. Criminal penalties. In addition to any other penalties elsewhere
20 prescribed:

21 a. Any person who knowingly violates any of the provisions of this
22 article shall be guilty of a class B misdemeanor punishable in accord-
23 ance with the penal law. If the conviction is for a second offense
24 committed within five years of the first conviction under this para-
25 graph, such person shall be guilty of a class A misdemeanor punishable
26 in accordance with the penal law.

27 b. Any person who knowingly (1) falsifies or destroys school or other
28 business records relating to the operation of the school with intent to
29 defraud; (2) fails to make a tuition refund as required by section five
30 thousand two of this article with the intent to defraud more than one
31 person; or (3) operates a school without a valid license required by
32 section five thousand one of this article shall be guilty of a class A
33 misdemeanor punishable in accordance with the penal law.

34 c. Any person who, having been convicted within the past five years of
35 failing to make a tuition refund in violation of subparagraph two of
36 paragraph b of this subdivision, knowingly and intentionally engages in
37 a scheme constituting a systematic ongoing course of conduct involving
38 the wrongful withholding of refunds in violation of section five thou-
39 sand two of this article with the intent to defraud ten or more persons,
40 and so withholds tuition refunds in excess of one thousand dollars,
41 shall be guilty of a class E felony punishable in accordance with the
42 penal law.

43 d. Upon a determination that there exist reasonable grounds to believe
44 that a violation of this article has been committed, or that any other
45 crime has been committed in connection with the operation of a school
46 required to be licensed pursuant to this article, the commissioner shall
47 refer such determination, and the information upon which it is based, to
48 the attorney general or to the appropriate district attorney. The attor-
49 ney general or a district attorney may bring an action on his or her own
50 initiative.

51 8. Private right of action. A student injured by a violation of this
52 article may bring an action against the owner or operator of a licensed
53 private CAREER school [or registered business school] for actual damages
54 or one hundred dollars, whichever is greater. A court may, in its
55 discretion, award reasonable attorney's fees to a prevailing plaintiff.

1 S 5. Subdivisions 3 and 4 of section 5004 of the education law, as
2 amended by chapter 604 of the laws of 1993, are amended and a new subdivi-
3 sion 4-a is added to read as follows:

4 3. Exempted from the requirements of this section are persons acting
5 solely for schools which are not required to be licensed or are specif-
6 ically exempted from the licensing [or registration] requirements of
7 this article. Persons who are paid to procure, solicit or enroll
8 students on the premises of schools required to be licensed [or regis-
9 tered] shall not be exempt from the provisions of this section. The
10 certification requirements of this section shall not apply to persons
11 receiving gifts or other non-monetary considerations valued at not more
12 than [twenty-five] SEVENTY-FIVE dollars from a school from which they
13 have graduated or are currently enrolled for each student referred for
14 enrollment at the school.

15 4. Application and renewal application for a private school agent's
16 certificate shall be filed on forms to be prescribed and provided by the
17 commissioner. Said certificate shall be valid for [two] THREE years from
18 the date of issuance. Certificates which have been renewed shall be
19 valid for a period of [two] THREE years from the expiration date of the
20 certificate which has been renewed. Every applicant and renewal appli-
21 cant shall pay to the department a fee of [one] TWO hundred dollars.

22 4-A. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION FOUR OF THIS
23 SECTION, THE SCHOOL DIRECTOR MAY APPLY FOR A PRIVATE SCHOOL AGENT'S
24 CERTIFICATE ON FORMS TO BE PRESCRIBED AND PROVIDED BY THE COMMISSIONER
25 WITHOUT INCURRING THE AGENT APPLICATION FEE.

26 S 6. Section 5006 of the education law, as added by chapter 887 of the
27 laws of 1990, is amended to read as follows:

28 S 5006. Teachout plans. 1. A school may submit a teachout plan to the
29 commissioner for approval pursuant to regulations established by the
30 commissioner. A teachout plan shall consist of a contract between a
31 [registered business or] licensed private CAREER school, with another
32 school, hereinafter called the teachout school, so that in the event
33 that the [registered business or] licensed private CAREER school ceases
34 instruction, the teachout school will provide the necessary instruction
35 specified in a student's original enrollment agreement with the school
36 ceasing instruction. A teachout plan may employ more than one teachout
37 school to provide instruction to students in the school ceasing instruc-
38 tion. Schools under common ownership but having separate licenses [or
39 registrations] may, subject to the approval of the commissioner, enter
40 into teachout agreements. A TEACHOUT PLAN MAY BE CONTRACTED BETWEEN THE
41 COMMISSIONER AND ONE OR MORE TEACHOUT SCHOOLS IN THE EVENT THAT THE
42 CLOSING SCHOOL IS UNABLE OR UNWILLING TO DO SO.

43 2. A teachout plan shall include the following provisions: (a) the
44 teachout school must offer courses of study that are substantially simi-
45 lar to those offered in the school ceasing instruction;

46 (b) teachout schools must be located in the geographic area in which
47 the school ceasing instruction was located UNLESS THE SCHOOL CEASING
48 INSTRUCTION PROVIDED DISTANCE LEARNING OR ON-LINE TRAINING;

49 (c) all provisions for a teachout plan must be included in the enroll-
50 ment agreement signed by the student; and

51 (d) the teachout school shall agree to fulfill the enrollment agree-
52 ment signed by the student at the school ceasing instruction.

53 3. The [registered business or] licensed school shall provide to the
54 teachout school and to the department [immediately upon closure] the
55 following information PRIOR TO CLOSURE:

1 (a) Copies of the academic and financial records for all students in
2 attendance at the school at the projected time of closure;

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

7 4. The department will provide to the teachout school, immediately
8 upon notification of a school closing, a copy of each approved curric-
9 ulum that the closing school is presently offering.

10 5. The commissioner shall require all teachout schools to address the
11 following issues:

12 (a) Integration of students into a curriculum which may be different
13 from the curriculum in which they are currently receiving instruction;

14 (b) Assessments of students' progress so that they may be placed into
15 an appropriate course;

16 (c) Provision of remedial instruction to students who are found to be
17 deficient in one or more course areas upon their initial assessment;

18 (d) Provision by the teachout school to adhere to the required
19 student/teacher ratios and room capacities; and

20 (e) Compliance with statutory and regulatory requirements during the
21 teachout.

22 6. The student shall not be subject to any costs beyond the total
23 costs identified in the original enrollment agreement.

24 7. A student may decline to pursue instruction at the teachout school
25 and may instead seek a refund pursuant to section five thousand seven of
26 this article.

27 S 7. Section 5007 of the education law, as added by chapter 887 of the
28 laws of 1990, the section heading, subdivision 1, and subdivision 10 as
29 amended by chapter 434 of the laws of 1999, paragraph a of subdivision
30 3, paragraphs c and d of subdivision 4, subparagraphs 1 and 3 of para-
31 graph a and paragraph b of subdivision 5, paragraph b of subdivision 9
32 as amended and paragraphs e and f of subdivision 4 as added by chapter
33 604 of the laws of 1993, is amended to read as follows:

34 S 5007. Tuition reimbursement account. 1. Except as otherwise provided
35 in subdivision six of this section, the portion of the annual assessment
36 of schools [registered and] licensed pursuant to section five thousand
37 one of this article as prescribed in subdivision eight of such section
38 and all fines, penalties and settlements received pursuant to this arti-
39 cle shall be transferred upon receipt into the tuition reimbursement
40 account.

41 3. a. The commissioner shall develop a complaint form and provide such
42 form to students. In order to claim a refund, a student shall apply to
43 the fund with a complaint form pursuant to the requirements of section
44 five thousand three of this article. Except as otherwise provided in
45 this article, the commissioner shall compute the refund, if any, using
46 the refund formula established by subdivision three of section five
47 thousand two of this article.

48 b. Claimants who had been enrolled in schools which have not closed or
49 ceased operation shall be required to show in a manner determined by the
50 commissioner that:

51 (1) the student is eligible for a refund;

52 (2) the student has made a request to the school for a refund; and

53 (3) the school has failed to make the refund within the time period
54 required by this article.

55 c. The commissioner shall act on each refund request within [thirty]
56 FORTY-FIVE business days of such request.

1 4. Students may be eligible for refunds under this section as follows:

2 a. A student who is offered a teachout plan for the curriculum in
3 which the student was enrolled at the time the school closed or ceased
4 operation, which has been approved by the department, may elect to
5 continue instruction pursuant to the teachout plan or may decline to
6 continue instruction and may instead apply for a full refund OF ALL
7 TUITION, FEES AND BOOK CHARGES PAID FOR BY OR ON BEHALF OF THE STUDENT
8 IN CASH OR IN LOANS, EXCLUDING FUNDING PROVIDED BY ANY GOVERNMENT AGEN-
9 CIES under this section. The option to apply for a refund shall extend
10 to the end of the first week of instruction at the teachout school.

11 b. A student who was enrolled in a school which has not closed or
12 ceased operation is entitled to a refund computed in accordance with the
13 refund policy established by subdivision three of section five thousand
14 two of this article.

15 c. A student who was enrolled in a school at the time the school clos-
16 es or ceases operation is entitled to a refund of the full amount of
17 prepaid tuition. In addition, commencing September first, nineteen
18 hundred ninety-three, a student who drops out of a school, where such
19 school closes within [fourteen] THIRTY days of the student's termination
20 and prior to completion of such student's program as specified in the
21 enrollment agreement, shall be entitled to a FULL refund of [the full
22 amount of prepaid tuition] ALL TUITION, FEES AND BOOK CHARGES PAID FOR
23 BY OR ON BEHALF OF THE STUDENT IN CASH OR IN LOANS, EXCLUDING FUNDING
24 PROVIDED BY ANY GOVERNMENT AGENCIES.

25 d. A student who was enrolled in a school which has not closed or
26 ceased operation, and who has dropped out, is entitled to a full refund
27 of all tuition, fees and other required costs paid by the student if the
28 student has submitted a complaint form to the commissioner and the
29 commissioner has determined that a violation of this article has
30 occurred which warrants a refund. The commissioner shall promulgate
31 regulations identifying those violations that warrant a refund.

32 e. Commencing September first, nineteen hundred ninety-three, a
33 student who drops out of a school, which subsequently closes, and who is
34 owed a refund for the failure of such school to follow the provisions
35 enumerated in subdivision three of section five thousand two of this
36 article shall be eligible for a refund from the tuition reimbursement
37 fund according to the provisions of subdivision three of section five
38 thousand two of this article.

39 f. Commencing September first, nineteen hundred ninety-three, any
40 student enrolled in a school based upon an ability to benefit examina-
41 tion shall be eligible for a full refund, regardless of whether the
42 student is currently enrolled, graduated or dropped out, if the school
43 enrolled the student contrary to the provisions of the approved entrance
44 requirements and the student complies with the requirements of subdivi-
45 sion one of section five thousand three of this article.

46 5. a. For a student who had been enrolled in a school that has not
47 closed or ceased operation, the refund shall be paid as follows:

48 (1) guaranteed student loans, if any, in which case the commissioner
49 shall notify the student of such payment and shall be paid directly to
50 the lender or guarantee agency where appropriate;

51 (2) actual personal tuition expenditures, if any; and

52 (3) tuition assistance program awards and other governmental aid.

53 b. For schools that have closed or ceased operation, the commissioner
54 shall refund actual personal tuition, FEES AND BOOK expenditures to the
55 student. The repayment of any loans incurred by the student as part of

1 the actual personal tuition, FEES AND BOOK expenditures shall be paid
2 directly to the lender or the guarantee agency where appropriate.

3 6. a. Where a claim is paid to a student of an operating school, the
4 commissioner shall immediately notify the school.

5 b. Within ten days of the receipt of the notice, the school shall
6 either request a hearing to challenge the commissioner's determination
7 that a refund was owed to the student or reimburse the fund the amount
8 paid to the claimant plus a penalty up to two times such amount. This
9 payment shall also incur interest for each day it remains unpaid at an
10 annual interest rate of one percent above the prime rate. The commis-
11 sioner may promulgate streamlined procedures for conducting hearings
12 pursuant to this paragraph. Any penalty assessed under this paragraph
13 shall be in addition to any other penalties assessed pursuant to this
14 article. Notwithstanding any other provision of law, penalties and
15 interest paid pursuant to this paragraph shall accrue to the credit of
16 the proprietary vocational school supervision account to support the
17 costs associated with the hearings authorized in this subdivision.

18 7. Notwithstanding the notice procedures described in subdivision
19 three of this section, in the event of a school closing, the commission-
20 er on his or her own initiative may take appropriate action in accord-
21 ance with this section to process refund claims on behalf of all of the
22 students of the closed school.

23 8. Assignment of rights. Persons and entities receiving refunds under
24 this section shall be deemed to have assigned or subrogated their
25 tuition reimbursement rights to the commissioner on behalf of the
26 tuition reimbursement fund only for the amount refunded by the tuition
27 reimbursement fund. Within [thirty] NINETY days of any refund made
28 pursuant to this section, the commissioner or the attorney general shall
29 take appropriate action to recover the total amount of the refunds made,
30 plus administrative costs, from the school.

31 9. a. A student whose loan liability is exempted pursuant to section
32 six hundred eighty-three of this chapter and is entitled to or owed a
33 refund shall transfer to the higher education services corporation the
34 right to claim the refund owed and due from the tuition reimbursement
35 fund. In such event, the corporation shall be entitled to receive a
36 refund for that portion of the claim not paid to the corporation by the
37 United States Secretary of Education pursuant to the federal guaranteed
38 loan program.

39 b. Any amounts remaining in the tuition reimbursement fund as of June
40 first, nineteen hundred ninety-three and on every March thirty-first
41 thereafter, shall be made available to the higher education services
42 corporation for payment of student loans on which collection activity
43 has ceased pursuant to the provisions of subdivision six of section six
44 hundred eighty-three of this chapter. No amounts shall be paid to the
45 higher education services corporation for loans on which collection
46 activity has ceased because of the operation of section 437 of the High-
47 er Education Act of 1965, as amended.

48 10. Management of the tuition reimbursement account. a. As used in
49 this subdivision, net balance is defined as the actual cash balance of
50 the account as determined by the commissioner on June thirtieth, nine-
51 teen hundred ninety-three and every three months thereafter. For the
52 purpose of calculating the net balance, the commissioner shall not take
53 into consideration any refunds made from the account pursuant to para-
54 graphs d and f of subdivision four of this section for the year imme-
55 diately preceding the date on which the calculation is made.

1 b. In the event that the account has accumulated a net balance in
2 excess of one million eight hundred thousand dollars, the commissioner
3 shall, with the approval of the director of the budget, waive an amount
4 not to exceed the amount due for the next quarterly assessment pursuant
5 to this section and subdivision nine of section five thousand one of
6 this article FOR SCHOOLS WHICH HAVE PAID SIXTEEN QUARTERS OR MORE OF
7 ASSESSMENTS ONLY. In such event, payment of future quarterly assess-
8 ments shall be suspended FOR SCHOOLS WHICH HAVE PAID SIXTEEN QUARTERS OR
9 MORE OF ASSESSMENTS until the net balance of the account falls below one
10 million three hundred thousand dollars.

11 c. In the event the net balance of the account falls below one million
12 three hundred thousand dollars, if the quarterly assessment has been
13 suspended FOR SCHOOLS WHICH HAVE PAID SIXTEEN QUARTERS OR MORE OF
14 ASSESSMENTS pursuant to paragraph b of this subdivision, it shall be
15 reinstated for the next quarterly assessment and all subsequent quarter-
16 ly assessments until the account has accumulated a net balance in excess
17 of one million eight hundred thousand dollars.

18 d. [Notwithstanding the provisions of paragraph b of this subdivision,
19 in the event that the balance of the account is in excess of one million
20 three hundred thousand dollars, all schools licensed after June thirti-
21 eth, nineteen hundred ninety-nine shall be required to pay into the
22 account the equivalence of three years of annual assessments over a five
23 year period.

24 e. Notwithstanding the provisions of paragraph b of this subdivision
25 all schools licensed after June thirtieth, nineteen hundred ninety-three
26 and before July first, nineteen hundred ninety-nine will be required to
27 pay into the account the equivalence of three years of annual assess-
28 ments within four years of the effective date of this paragraph. This
29 amount to be assessed shall be determined based upon the school's gross
30 tuition in its first three years of licensure.

31 g. In the event that the balance of the tuition reimbursement account
32 is equal to or in excess of one million five hundred thousand dollars,
33 the amounts assessed the schools in accordance with the provisions of
34 paragraphs d and e of this subdivision shall be deposited directly to
35 the proprietary vocational school supervision account] IN THE EVENT THE
36 ACCOUNT HAS ACCUMULATED A NET BALANCE IN EXCESS OF TWO MILLION DOLLARS,
37 ANY FUNDS IN THE TUITION REIMBURSEMENT FUND IN EXCESS OF TWO MILLION
38 DOLLARS SHALL BE TRANSFERRED TO THE PROPRIETARY SCHOOL SUPERVISION
39 ACCOUNT.

40 E. THE COMMISSIONER MAY ANNUALLY APPORTION FROM THE ACCOUNT AN AMOUNT
41 UP TO TWO HUNDRED THOUSAND DOLLARS FOR THE PURPOSE OF SECURING, SCANNING
42 AND OTHERWISE MAKING STUDENT RECORDS FROM CLOSED SCHOOLS AVAILABLE TO
43 STUDENTS WHO ATTENDED SUCH SCHOOLS. PROVIDED, HOWEVER, THAT IN NO CASE
44 SHALL SUCH APPORTIONMENT CAUSE THE ACCOUNT TO FALL BELOW THE BALANCE SET
45 FORTH IN PARAGRAPH C OF THIS SUBDIVISION, NOR SHALL SUCH APPORTIONMENT
46 CAUSE SCHOOLS WHOSE QUARTERLY ASSESSMENTS HAVE BEEN SUSPENDED TO PAY
47 ADDITIONAL QUARTERLY ASSESSMENTS.

48 11. Fund audit. The state comptroller shall [annually] audit or cause
49 to be audited the tuition reimbursement fund ONCE EVERY TWO YEARS and
50 produce an [annual] AUDITED financial statement according to generally
51 accepted accounting principles.

52 12. New schools. Within the first [six months] YEAR that a school
53 begins LICENSED operation, the commissioner shall assess such school an
54 amount to be deposited into the fund in an amount to be determined by
55 the commissioner.

1 S 8. Section 5008 of the education law, as added by chapter 887 of the
2 laws of 1990, is amended to read as follows:

3 S 5008. Trust accounts. 1. If the commissioner determines that a
4 school has demonstrated a pattern or practice of failing to make tuition
5 refunds in a timely manner consistent with this article AND/OR THE
6 SCHOOL'S FINANCIAL CONDITION MAY RESULT IN THE INTERRUPTION OR CESSATION
7 OF INSTRUCTION OR JEOPARDIZE STUDENT TUITION FUNDS, the commissioner
8 shall require a school to establish a trust account in a form or manner
9 which the commissioner[, after consultation with the advisory council,]
10 shall [prescribe in regulations] DETERMINE TO BE APPROPRIATE. The assets
11 or funds contained in the trust account shall be maintained for the sole
12 and exclusive benefit of the students.

13 2. In making this determination, the commissioner shall consider the
14 following factors: the number of refunds not paid by the school in a
15 timely manner; the number of claims made to, or paid by, the tuition
16 reimbursement [fund] ACCOUNT; [and] a pattern of misconduct which
17 substantially affects the financial interests of students or the state,
18 POTENTIAL LIABILITY TO THE TUITION REIMBURSEMENT ACCOUNT, CURRENT ASSETS
19 AS OPPOSED TO CURRENT LIABILITIES, AND SUCH OTHER MEASURES AS MAY BE
20 APPROPRIATE.

21 S 9. Section 5009 of the education law, as amended by chapter 434 of
22 the laws of 1999, is amended to read as follows:

23 S 5009. Duties of the commissioner. In addition to all other duties
24 assigned in this article, the duties of the commissioner shall include,
25 but not be limited to:

26 [(a) submitting a report to the governor, the temporary president of
27 the senate, the speaker of the assembly, the minority leader of the
28 senate and the minority leader of the assembly beginning the fifteenth
29 day of January after this section shall have become effective, and annu-
30 ally thereafter on that date, on the implementation and enforcement of
31 this article, which shall include but not be limited to (i) curriculum
32 approval and reapproval standards, (ii) student complaints, (iii) the
33 resolution of disciplinary actions brought by the department or other
34 appropriate state agency, (iv) the audited financial statements submit-
35 ted by the schools, (v) tuition reimbursement account activity, (vi)
36 data regarding retention and completion rates for students enrolled in
37 nondegree, appropriate degree or certificate programs of two years or
38 less at registered business schools, licensed private schools, proprie-
39 tary degree-granting schools and independent and public colleges, (vii)
40 the extent to which the department has met the timelines mandated by
41 this article, (viii) entrance standards, (ix) the number of schools
42 inspected annually, and (x) the number of trust accounts imposed.

43 (b)] 1. ensuring that up-to-date, accurate information is available to
44 the public, via the internet and other appropriate media, regarding
45 every duly licensed proprietary school in this state, as well as disci-
46 plinary actions decided by the state.

47 [(c)] 2. developing and issuing to duly licensed [and registered]
48 proprietary schools a symbol to indicate such status; provided that such
49 symbol shall be developed and made available to such schools no later
50 than September thirtieth, nineteen hundred ninety-nine.

51 [(d)] 3. administering a public information campaign aimed at increas-
52 ing awareness about the importance of attending licensed [or registered]
53 proprietary vocational schools. Such campaign shall be targeted to popu-
54 lations at risk of enrolling in unlicensed [or unregistered] schools,
55 and shall be conducted using means including, but not limited to, public

1 service announcements on commercial radio and television stations,
2 public access television, and print media.

3 [(e)] 4. providing for the orderly maintenance of any student records
4 which may be transferred to the department pursuant to any school's plan
5 developed pursuant to subdivision eight of section five thousand one of
6 this article; including responding to student requests for transcripts
7 and records within twenty days of receiving a request. The commissioner
8 is hereby authorized to impose an appropriate fee for such transcripts
9 pursuant to a schedule approved by the director of the budget.

10 S 10. Section 5010 of the education law, as added by chapter 887 of
11 the laws of 1990, subdivision 1 as amended and subdivision 4 as added by
12 chapter 604 of the laws of 1993 and subdivision 5 as added by chapter
13 434 of the laws of 1999, is amended to read as follows:

14 S 5010. Advisory council. 1. An advisory council for [registered busi-
15 ness and] licensed [trade] PRIVATE CAREER schools is hereby created for
16 the purpose of advising the board of regents and the commissioner as
17 provided herein. The council shall be composed of eleven members
18 appointed by the governor, two of whom shall be upon the recommendation
19 of the temporary president of the senate, two of whom shall be upon the
20 recommendation of the speaker of the assembly, one of whom shall be upon
21 the recommendation of the minority leader of the senate and one of whom
22 shall be upon the recommendation of the minority leader of the assembly.
23 Of the five remaining members, one shall be an owner or director of a
24 school regulated pursuant to this article, [one shall be a currently
25 enrolled student at the time of appointment or a graduate of such a
26 school who graduated within three years of appointment] and one shall be
27 a student advocate. The governor shall designate a chairperson from such
28 members. The commissioner [of education], the president of the higher
29 education services corporation, the chair of the consumer protection
30 board, the comptroller, the director of the division of the budget, and
31 the executive director of the job training partnership council, or their
32 designees, shall serve as ex-officio, non-voting members of the council.

33 2. The council shall meet no less than four times a year. Members of
34 the council shall receive no compensation for their services but shall
35 be reimbursed for reasonable expenses actually and necessarily incurred
36 by them in the performance of their duties. COUNCIL MEMBER TERMS OF
37 OFFICE SHALL BE LIMITED TO THREE YEARS, PROVIDED THAT MEMBERS MAY BE
38 REAPPOINTED. ALL APPOINTMENTS TO THE COUNCIL TO FILL VACANCIES IN EXIST-
39 ENCE ON THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND
40 NINE WHICH AMENDED THIS SUBDIVISION SHALL BE MADE WITHIN NINETY DAYS OF
41 SUCH EFFECTIVE DATE.

42 3. The council shall advise the commissioner on [the following] SUCH
43 matters[:]

- 44 (a) trust accounts;
- 45 (b) performance standards;
- 46 (c) the effectiveness and utilization of the tuition reimbursement
47 fund;
- 48 (d) the efficacy of instituting a fee-for-service system;
- 49 (e) the effectiveness of the timelines mandated by this article;
- 50 (f) the impact of assessments on schools;
- 51 (g) recruitment bonuses; and
- 52 (h) such other matters] as the council determines are appropriate.

53 [4. The proprietary school advisory council shall conduct a study
54 concerning the methodologies used to determine student refunds. Such
55 study shall include, but not be limited to, refund policies promulgated
56 pursuant to federal statute or regulation, state statute or regulation

1 and the policies of national accrediting organizations as they relate to
2 term-based and clock hour-based programs. Not later than July first,
3 nineteen hundred ninety-four, the advisory council shall make recommen-
4 dations to the commissioner and the board of regents for any changes in
5 legislation, regulations, policy or practice needed to improve and
6 simplify the student refund process. The commissioner shall submit a
7 report of the findings of the advisory council together with the recom-
8 mendations of the department to the legislature and the governor not
9 later than the first day of October, nineteen hundred ninety-four.

10 5. The advisory council shall report to the governor, the temporary
11 president of the senate, the speaker of the assembly, and the commis-
12 sioner on the status of unlicensed proprietary schools in this state.
13 The report shall also contain a statement on the effectiveness of the
14 change in the tuition reimbursement fund and any recommendations for an
15 extension of the changes or the consideration of different changes when
16 such changes are repealed. Such report is to be delivered on April
17 first, two thousand two.]

18 S 11. This act shall take effect on the one hundred twentieth day
19 after it shall have become a law; provided that subparagraph (iii) of
20 paragraph b of subdivision 4 of section 5001 of the education law, as
21 added by section two of this act, shall expire and be deemed repealed
22 three years after the effective date of section two of this act;
23 provided, further, that effective immediately, the commissioner of
24 education is authorized and directed to promulgate any regulations need-
25 ed to implement the provisions of this act on such effective date; and
26 provided, however, that the amendments to paragraph g of subdivision 10
27 of section 5007 of the education law made by section seven of this act
28 shall not affect the expiration of such paragraph and shall be deemed
29 repealed therewith.