

S T A T E O F N E W Y O R K

7859--A

2011-2012 Regular Sessions

I N A S S E M B L Y

May 19, 2011

Introduced by M. of A. GLICK -- (at request of the State Education Department) -- read once and referred to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to the licensure of private proprietary schools; and providing for the repeal of certain provisions upon the expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The article heading of article 101 of the education law is
2 amended to read as follows:
3 LICENSED PRIVATE [TRADE AND
4 CORRESPONDENCE] CAREER SCHOOLS AND CERTIFIED
5 ENGLISH AS A SECOND LANGUAGE SCHOOLS
6 S 2. Legislative intent. The legislature hereby finds and declares
7 that there is a growing need to protect students enrolled in certain
8 non-degree granting proprietary schools from inadequate job training and
9 school closure, which disrupts the academic progress of these students
10 and jeopardizes their tuition funds. Given the growing needs and demands
11 of business and industry, the legislature further finds and declares it
12 necessary to align the state education department's current oversight of
13 these schools with these significantly increasing needs. The legislature
14 finds it necessary for the department to review these schools' curric-
15 ulums and instruction to help ensure students receive adequate training
16 to obtain employment and to successfully perform their occupation in the
17 workplace. It also finds it necessary for the department to intervene in
18 certain school closures where teach out plans may not be efficiently
19 implemented and students may not complete training.
20 The legislature also finds it necessary for the department to review
21 these schools for financial viability to prevent school closure, which
22 will, in turn, preserve tuition funds and federal and state funding

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD08579-13-1

1 sources. This act is also necessary to increase the accountability and
2 transparency of these schools by allowing students to check on whether a
3 school is approved or whether a teacher at such school is licensed.

4 The legislature intends for this act to increase competition among
5 these schools, which will, in turn, improve the quality of training
6 offered at these schools and the quality of student performance in the
7 workplace. This act will provide the department with the tools and
8 resources necessary to effectively supervise these schools for compli-
9 ance and to reimburse students for tuition and other related costs when
10 these schools close as a result of fiscal failure or noncompliance,
11 which will overall strengthen student protection.

12 S 3. Section 5001 of the education law, as added by chapter 817 of the
13 laws of 1972, the section heading, subdivision 1, paragraph h of subdivi-
14 sion 2 and paragraph b of subdivision 4 as amended and paragraphs i,
15 j, k, l and m of subdivision 2 and subdivisions 2-a and 2-b as added by
16 chapter 434 of the laws of 1999, paragraph b of subdivision 2 as amended
17 and subdivisions 5, 6, 7, 8 and 9 as added by chapter 887 of the laws of
18 1990, paragraph d of subdivision 2 and subdivision 4 as amended, para-
19 graphs a, b, c and d of subdivision 9 as added and subdivisions 5, 6, 7,
20 8 and 9 as renumbered by chapter 604 of the laws of 1993, paragraph e of
21 subdivision 2 as amended by chapter 439 of the laws of 1980, and para-
22 graph f of subdivision 2 as amended by chapter 13 of the laws of 2010,
23 is amended to read as follows:

24 S 5001. Licensed private CAREER schools [and registered business
25 schools/computer training facilities]. 1. Schools required to be
26 licensed [or registered]. No private school [or computer training facil-
27 ity] which charges tuition or fees [for] RELATED TO instruction and
28 which is not exempted hereunder shall be operated by any person or
29 persons, firm, corporation, or private organization for the purpose of
30 teaching or giving instruction in any subject or subjects, unless it is
31 licensed [or registered] by the department. As used in this article[,
32 the following terms shall have the following meanings]:

33 a. ["Licensed] "LICENSED private CAREER school" OR "LICENSED PRIVATE
34 SCHOOL" shall mean any entity offering to instruct or teach any subject
35 by any plan or method including written, visual or audio-visual meth-
36 ods[.], AND SHALL INCLUDE ANY INSTITUTION LICENSED OR REGISTERED AS A
37 REGISTERED BUSINESS SCHOOL OR COMPUTER TRAINING FACILITY ON THE EFFEC-
38 TIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND TWELVE WHICH
39 AMENDED THIS SUBDIVISION. FOLLOWING SUCH EFFECTIVE DATE, THERE SHALL BE
40 NO DISTINCTION BETWEEN INSTITUTIONS PREVIOUSLY DEFINED AS "REGISTERED
41 BUSINESS SCHOOLS" OR "COMPUTER TRAINING FACILITIES" AND OTHER LICENSED
42 PRIVATE SCHOOLS, AND ANY REFERENCE IN LAW TO A REGISTERED BUSINESS
43 SCHOOL OR COMPUTER TRAINING FACILITY SHALL BE DEEMED A REFERENCE TO A
44 LICENSED PRIVATE CAREER SCHOOL. INSTITUTIONS HOLDING A VALID BUSINESS
45 SCHOOL REGISTRATION ON SUCH EFFECTIVE DATE, INCLUDING COMPUTER-TRAINING
46 FACILITIES, SHALL HAVE SUCH REGISTRATIONS REPLACED BY THE COMMISSIONER,
47 AT NO COST, WITH LICENSES VALID UNTIL THE EXPIRATION DATE LISTED ON SUCH
48 PREVIOUS REGISTRATION; AND

49 b. ["Registered business school" shall mean a school in which a
50 curriculum primarily provides a sequence of courses that may include
51 accounting or bookkeeping, marketing, business arithmetic, business law,
52 business English, shorthand, typing, computer business
53 applications/programming, or substantially all said courses, for the
54 purpose of preparing an individual to pursue a business occupation;
55 provided, however, that a registered business school program may include
56 instruction in English as a second language at a beginning or basic

level, provided such instruction shall not constitute more than fifty percent of such program. Such authorization shall apply to all students who commence instruction in a registered business school program prior to July first, nineteen hundred ninety-one. A business school registered under this section shall employ only teachers licensed by the department, whose qualifications are substantially equivalent to those required of teachers of equivalent subjects in public secondary schools.

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

2. Exempt schools. The following schools are exempted from the licensing requirement of this section:

a. institutions authorized to confer degrees in this state;

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

c. schools operated by governmental agencies or authorities;

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

e. schools conducted on a not-for-profit basis by firms or organizations for the training of their own employees only, provided that such instruction is offered at no charge to such employees, or by a fraternal society or benevolent order for its members or their immediate relatives only;

f. schools which provide instruction in the following subjects only: religion, dancing, music, painting, drawing, sculpture, poetry, dramatic art, languages, reading comprehension, mathematics, recreation, yoga, martial arts, PILATES and athletics, including the training of students to teach such subjects, PROVIDED, HOWEVER, THAT SCHOOLS CONDUCTED FOR THE PURPOSE OF TRAINING PERSONAL TRAINERS SHALL BE EXCLUDED FROM THIS EXEMPTION AND SHALL BE REQUIRED TO OBTAIN LICENSURE;

g. schools in which the course of instruction is licensed, registered or approved under any other section of this chapter or by any other department or agency of the state;

h. schools which provide instruction designed solely for giving flight training and/or related ground school instruction;

i. schools in which instruction designed solely to prepare applicants for admission to professional licensing examinations administered by the department pursuant to title eight of this chapter, and applicants for examination for admission to the practice of law;

j. schools which offer continuing education courses exclusively for individuals licensed by the department pursuant to title eight of this chapter and for individuals admitted to the practice of law;

k. schools which provide instruction given exclusively to employees of a person or organization which has contracted with another person or organization to provide such instruction at no cost to the employees;

l. conferences, trade shows, workshops, seminars, institutes or courses of study offered and sponsored either jointly or individually by recognized trade, business or professional organizations for the benefit of their membership; [or those offered to the general public by individ-

1 uals, firms or organizations which neither conduct such activities for a
2 duration of more than five consecutive days nor more frequently than
3 twice in any one calendar year;]

4 m. SCHOOLS THAT LIMIT THEIR TOTAL CONFERENCES, TRADE SHOWS, WORKSHOPS,
5 SEMINARS, INSTITUTES OR OTHER COURSE OFFERINGS TO NO MORE THAN TWICE IN
6 ONE CALENDAR YEAR WITH EACH OF THOSE OFFERINGS FOR NO MORE THAN FIVE
7 DAYS;

8 N. schools which provide instruction exclusively to persons employed
9 full-time or part-time in the field in which instruction is being
10 offered, where the instruction is provided to meet continuing education
11 standards required for professional licensure as defined by law in this
12 state; AND

13 O. SCHOOLS IN CANDIDACY STATUS PURSUANT TO SUBPARAGRAPH (IV) OF PARA-
14 GRAPH B OF SUBDIVISION FOUR OF THIS SECTION.

15 2-a. Schools exempted pursuant to subdivision two of this section may
16 waive such exemption and apply for a license [or registration];
17 provided, however, that the review of such applications shall be left to
18 the discretion of the commissioner.

19 2-b. Programs offered by licensed private CAREER schools [or regis-
20 tered business schools to private businesses where there is no tuition
21 liability] TO EMPLOYEES OF A PERSON OR ORGANIZATION WHICH HAS CONTRACTED
22 WITH ANOTHER PERSON OR ORGANIZATION TO PROVIDE SUCH INSTRUCTION AT NO
23 COST to the employees shall be exempt from the requirements of this
24 article, provided that the following requirements are met:

25 a. Only employees of the [private business] EMPLOYER for which the
26 program is being offered may enroll in classes that make up the program.

27 b. Certificates or diplomas awarded to students in the program may not
28 reference in any way the department.

29 c. Prior to the commencement of the program, such schools shall submit
30 to the department a disclosure form, prescribed by the commissioner,
31 copies of which shall be provided to all students in such exempt
32 program, which shall include but not be limited to the following infor-
33 mation:

34 (i) a description of the location and time period in which the program
35 will be offered;

36 (ii) a statement that the students enrolled in the program shall not
37 be subject to any tuition liability for the program, even if such
38 students do not complete the program;

39 (iii) a statement that the program being provided to the [private
40 business] EMPLOYER has not been approved by the department and is not
41 under the department's jurisdiction and that the students in the program
42 have been advised of the fact; and

43 (iv) the signatures of the school director or owner of the school and
44 the representative of the [private business] EMPLOYER for which the
45 program is being offered certifying the accuracy of the statements on
46 the form.

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

53 4. Application, renewal application and application fees. a. Applica-
54 tion and renewal application for a license as a private CAREER school
55 [or registration as a business school] required by the commissioner
56 shall be filed on forms prescribed and provided by the department.

1 Except as provided in subparagraph (iii) of paragraph e of this subdivi-
 2 sion, each renewal application for [a private business school registered
 3 pursuant to this section or for] a private CAREER school licensed pursu-
 4 ant to this section shall include an audited financial statement audited
 5 according to generally accepted auditing standards by an independent
 6 certified public accountant or an independent public accountant and
 7 statistical reports certified by the owner or operator of the school, as
 8 required by the commissioner; provided, however, that the commissioner
 9 shall accept a copy of a current financial statement previously filed by
 10 a school with any other governmental agency in compliance with the
 11 provisions of any federal or state laws, or rules or regulations if such
 12 statement contains all of the information required under this subdivi-
 13 sion and conforms to this subdivision's requirements of auditing, review
 14 and certification. Any required audit of the financial statement shall
 15 be a condition of licensure [or registration] and shall be paid for by
 16 the school, and the results of the audit shall be forwarded to the
 17 commissioner. Applications not accompanied by the audits and reports
 18 required pursuant to this subdivision shall not be considered for
 19 approval by the commissioner. Initial applications shall be accompanied
 20 by financial reports as required by the commissioner. [The commissioner
 21 shall act on an initial application for a license or registration within
 22 one hundred twenty days of receipt of a complete application.] The
 23 applicant shall receive a written approval or denial together with the
 24 reasons for a denial of such application.

25 b. (i) An initial license [or registration] issued pursuant to the
 26 provisions of this article shall be valid for a period of two years. A
 27 renewal of license [or registration] issued pursuant to the provisions
 28 of this article shall be valid for a period of four years. [All license
 29 and registration fees for a renewal shall be double the amounts listed
 30 in paragraph g of this subdivision.]

31 (ii) EVERY APPLICANT AND RENEWAL APPLICANT SHALL PAY TO THE DEPARTMENT
 32 A NONREFUNDABLE, NONTRANSFERABLE APPLICATION FEE. THE INITIAL APPLICA-
 33 TION FEE FOR NEW SCHOOLS SHALL BE FIVE THOUSAND DOLLARS, OF WHICH THREE
 34 THOUSAND DOLLARS SHALL ACCRUE TO THE CREDIT OF THE PROPRIETARY VOCA-
 35 TIONAL SCHOOL SUPERVISION ACCOUNT AND TWO THOUSAND DOLLARS SHALL ACCRUE
 36 TO THE TUITION REIMBURSEMENT ACCOUNT. FOR ADDITIONAL LICENSED LOCATIONS
 37 OF CURRENTLY OPERATING SCHOOLS, THE APPLICATION FEE SHALL BE TWO THOU-
 38 SAND FIVE HUNDRED DOLLARS, WHICH SHALL ACCRUE TO THE CREDIT OF THE
 39 PROPRIETARY VOCATIONAL SCHOOL SUPERVISION ACCOUNT. FOR RENEWAL APPLICA-
 40 TIONS, THE FEE SHALL BE BASED ON GROSS ANNUAL TUITION INCOME AS DETER-
 41 MINED BY THE ANNUAL FINANCIAL STATEMENTS REQUIRED IN PARAGRAPH A OF THIS
 42 SUBDIVISION FOR THE MOST RECENT SCHOOL FISCAL YEAR, ACCORDING TO THE
 43 FOLLOWING SCHEDULE:

44	GROSS ANNUAL TUITION INCOME	FEE
45	0-\$199,999	\$ 750.00
46	\$200,000-\$499,999	\$ 1,500.00
47	\$500,000-\$999,999	\$ 2,225.00
48	\$1,000,000-\$4,999,999	\$ 4,500.00
49	\$5,000,000-\$9,999,999	\$ 9,000.00
50	\$10,000,000 OR ABOVE	\$18,000.00

51 SUCH RENEWAL FEES SHALL ACCRUE TO THE CREDIT OF THE PROPRIETARY VOCA-
 52 TIONAL SCHOOL SUPERVISION ACCOUNT. IF THE EVALUATION OF A PARTICULAR
 53 COURSE OR FACILITY REQUIRES THE SERVICES OF AN EXPERT NOT EMPLOYED BY

1 THE DEPARTMENT, THE DEPARTMENT SHALL RETAIN SUCH EXPERT AND THE SCHOOL
2 SHALL REIMBURSE THE DEPARTMENT FOR THE REASONABLE COST OF SUCH SERVICES.

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

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

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

22 (2) THE SCHOOL SHALL NOT REPRESENT THAT IT IS LICENSED OR THAT ITS
23 PROGRAMS ARE APPROVED THROUGH THE DEPARTMENT;

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

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

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

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

55 c. An application for renewal of any license [or registration] shall
56 be submitted at least one hundred twenty days prior to the expiration

1 date of the current authorization to operate accompanied by the nonre-
2 fundable application fee and such certified statistical reports and
3 annual financial statements required pursuant to this subdivision.

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

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

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

38 (iii) Schools whose gross tuition is [two hundred fifty] LESS THAN
39 FIVE HUNDRED thousand dollars [or less] in a school fiscal year and
40 which receive less than one hundred thousand dollars in state and feder-
41 al student financial aid in a school fiscal year shall file with the
42 commissioner an unaudited financial statement in a format prescribed by
43 the commissioner, provided, however, that any such school [with gross
44 tuition in excess of fifty thousand dollars shall have filed at least
45 one audited financial statement after the first year of its operation.
46 The statement shall be signed by the president or chief executive offi-
47 cer and the chief fiscal officer of the school who shall certify that
48 the statements are true and accurate] SHALL FILE AN AUDITED FINANCIAL
49 STATEMENT THE FISCAL YEAR AFTER A REVIEWED FINANCIAL STATEMENT IS
50 SUBMITTED. FOR SUCH SCHOOLS, AUDITED FINANCIAL STATEMENTS ARE REQUIRED
51 EVERY TWO YEARS, AT MINIMUM, WITH REVIEWED FINANCIAL STATEMENTS ALLOWED
52 DURING THE ALTERNATE YEAR. Upon a determination by the commissioner that
53 a school has submitted false or inaccurate statements or that a signif-
54 icant, unsubstantiated decline in gross tuition has occurred, the
55 commissioner may require any such school to file an audited financial

statement pursuant to this paragraph EVEN DURING ALTERNATE YEARS WHEN REVIEWED STATEMENTS WOULD ORDINARILY BE ALLOWED.

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. Every applicant and renewal applicant shall pay to the department a nonrefundable, nontransferable fee 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
\$200,000-\$499,999	\$ 500.00
\$500,000-\$999,999	\$ 750.00
\$1,000,000-\$4,999,999	\$1,500.00
\$5,000,000-\$9,999,999	\$3,000.00
\$10,000,000 or above	\$6,000.00

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

(2) 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:

(A) in this state of any of the following felonies defined in the penal law: bribery involving public servants; commercial bribery; perjury in the second degree; rewarding official misconduct; larceny, in

1 connection with the provision of services or involving the theft of
2 governmental funds; offering a false instrument for filing, falsifying
3 business records; tampering with public records; criminal usury; scheme
4 to defraud; or defrauding the government; or

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

10 (3) Whether the applicant, or any corporation, partnership, associ-
11 ation or organization or person holding an ownership or control interest
12 in such school, or any employee responsible in a supervisory capacity
13 for the administration of student funds or governmental funds, has been
14 finally determined in any administrative or civil proceeding to have
15 committed a violation of any provision of this article or any rules and
16 regulations promulgated pursuant thereto, or any related order or deter-
17 mination of the commissioner, or of any similar statute, rule, regu-
18 lation, order or determination of another jurisdiction pertaining to the
19 licensure and operation of any educational or training program; and

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

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

44 c. The commissioner may deny, suspend, revoke or decline to renew any
45 license: (1) if the significance of the convictions or administrative
46 violations warrant such action [or]; (2) if the commissioner determines
47 that a school did not make any disclosure required by this subdivision;
48 OR (3) IF THE COMMISSIONER DETERMINES THAT A SCHOOL'S FINANCIAL CONDI-
49 TION MAY RESULT IN THE INTERRUPTION OR CESSATION OF INSTRUCTION OR JEOP-
50 ARDIZE STUDENT TUITION FUNDS.

51 6. If, during the [two year] period for which a license [or registra-
52 tion] is granted, the commissioner determines that a school's financial
53 condition may result in the interruption or cessation of instruction or
54 jeopardize student tuition funds, the commissioner may, upon notice to
55 the school, place the school on probation for a period of no more than
56 [thirty days] ONE YEAR, during which time the school and the department

1 must make efforts to resolve the problems at the school. THE SCHOOL
2 SHALL SUBMIT A REPORT ON ITS FINANCIAL CONDITION TO THE COMMISSIONER
3 WITHIN THE TIME PRESCRIBED BY THE COMMISSIONER. SUCH REPORT SHALL BE IN
4 THE FORM AND SHALL INCLUDE CONTENT PRESCRIBED BY THE COMMISSIONER AND
5 SHALL BE REVIEWED BY THE COMMISSIONER TO DETERMINE THE SCHOOL'S FINAN-
6 CIAL VIABILITY. THE COMMISSIONER MAY SUSPEND OR REVOKE THE SCHOOL'S
7 LICENSE, AS WELL AS REQUIRE THE CESSATION OF STUDENT ENROLLMENT, UPON A
8 DETERMINATION THAT THE SCHOOL'S FINANCIAL CONDITION CONTINUES TO THREAT-
9 EN ITS ABILITY TO EDUCATE STUDENTS AND/OR THE STUDENT TUITION FUNDS.
10 ALTERNATIVES FOR THE SCHOOL TO DEMONSTRATE A FISCALLY SOUND OPERATION
11 MAY INCLUDE SECURING AND MAINTAINING A PERFORMANCE BOND, PAYABLE TO THE
12 COMMISSIONER, IN AN APPROPRIATE AMOUNT TO ELIMINATE ANY LIABILITY TO THE
13 TUITION REIMBURSEMENT ACCOUNT SHOULD THE SCHOOL CEASE OPERATION, LIMIT-
14 ING THE COLLECTION OF TUITION FUNDS UNTIL EACH STUDENT COMPLETES THE
15 PROGRAM OF STUDY, OR OTHER MEANS ACCEPTABLE TO THE COMMISSIONER. If no
16 resolution can be attained, a hearing, pursuant to subdivisions two and
17 three of section five thousand three of this article will be scheduled.
18 Such probation may include additional monitoring, inspections, limita-
19 tions on enrollment, teaching out some or all of a school's present
20 students or temporary cessation of instruction.

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

41 8. No licensed [or registered] school shall discontinue operation or
42 surrender its license [or registration] unless thirty days written
43 notice of its intention to do so and a plan for maintenance of safe
44 keeping of the records of the school is provided to the commissioner.
45 However, upon good cause shown, the commissioner may waive the thirty
46 days notice requirement.

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

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

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

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

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

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

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

41 S 4. Section 5002 of the education law, as added by chapter 887 of the
42 laws of 1990, subparagraph 3 of paragraph b and paragraph d of subdivi-
43 sion 1, subparagraph 2 of paragraph g of subdivision 3 and subdivision 6
44 as amended and paragraph c of subdivision 1 and paragraph d of subdivi-
45 sion 2 as added by chapter 604 of the laws of 1993, paragraph c of
46 subdivision 2, paragraph a of subdivision 4 and subdivision 7 as amended
47 and paragraph e of subdivision 4 and paragraph c of subdivision 6 as
48 added by chapter 434 of the laws of 1999, paragraph f of subdivision 4
49 as added by chapter 457 of the laws of 2003 and subparagraph 2 of para-
50 graph b of subdivision 5 as amended by chapter 301 of the laws of 1996,
51 is amended to read as follows:

52 S 5002. Standards for licensed private CAREER schools [and registered
53 business schools]. Any school licensed [or registered] pursuant to
54 section five thousand one of this article shall be organized and
55 conducted only as a school and shall be subject to the jurisdiction of
56 the department exclusively, or in conjunction with such other state

1 agency or department or district attorney upon which jurisdiction has
2 also been conferred by law. Such schools shall be subject to and comply
3 with the provisions of this section.

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

8 b. For every such school, the commissioner shall set forth in regu-
9 lation standards governing all of the following:

10 (1) criteria for admission, which shall provide that students at least
11 possess a high school diploma or its equivalent or demonstrate the abil-
12 ity to benefit from the instruction, except that in the case of students
13 who do not possess a high school diploma or its equivalent, certif-
14 ication of the students' ability to benefit from instruction shall be
15 provided to the commissioner as provided in paragraph c of this subdivi-
16 sion;

17 (2) the standards and the methods of instruction;

18 (3) the equipment available for instruction with the maximum enroll-
19 ment that such equipment and physical plant will accommodate;

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

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

25 (6) the methods of collecting tuition;

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

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

29 (9) counseling provided to students.

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

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

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

43 (B) LOANS OR OTHER FINANCIAL AID PAYMENTS FOR AMOUNTS GREATER THAN
44 FIVE THOUSAND DOLLARS THAT REFLECT A CLASS TERM OF LESS THAN SIX MONTHS
45 SHALL HAVE TWO EQUAL DISBURSEMENTS. THE DISBURSEMENT SCHEDULE FOR SUCH
46 LOANS OR PAYMENTS SHALL BE AS FOLLOWS: ONE-HALF OF THE TUITION AMOUNT
47 RELEASED INITIALLY, AND THE REMAINDER RELEASED HALFWAY THROUGH THE
48 COURSE TERM.

49 (C) LOANS OR OTHER FINANCIAL AID PAYMENTS FOR AMOUNTS GREATER THAN
50 FIVE THOUSAND DOLLARS THAT REFLECT A CLASS TERM OF GREATER THAN SIX
51 MONTHS, BUT LESS THAN TWELVE MONTHS MUST HAVE THREE EQUAL DISBURSEMENTS.
52 THE DISBURSEMENT SCHEDULE FOR SUCH LOANS OR PAYMENTS SHALL BE AS
53 FOLLOWS: ONE-THIRD OF THE TUITION AMOUNT RELEASED INITIALLY, THE SECOND
54 DISBURSEMENT SHALL BE RELEASED ONE-THIRD OF THE WAY THROUGH THE LENGTH
55 OF THE TRAINING, AND THE REMAINDER RELEASED TWO-THIRDS OF THE WAY
56 THROUGH THE COURSE TERM.

1 (D) LOANS OF OTHER FINANCIAL AID PAYMENTS FOR AMOUNTS GREATER THAN
2 FIVE THOUSAND DOLLARS THAT REFLECT A CLASS TERM GREATER THAN TWELVE
3 MONTHS SHALL HAVE FOUR EQUAL DISBURSEMENTS. THE DISBURSEMENT SCHEDULE
4 FOR SUCH LOANS OR PAYMENTS SHALL BE AS FOLLOWS: ONE-QUARTER OF THE
5 TUITION AMOUNT RELEASED INITIALLY, THE SECOND DISBURSEMENT SHALL BE
6 RELEASED ONE QUARTER OF THE WAY THROUGH THE LENGTH OF THE TRAINING; THE
7 THIRD DISBURSEMENT SHALL BE RELEASED HALFWAY THROUGH THE LENGTH OF THE
8 TRAINING, AND THE REMAINDER SHALL BE RELEASED THREE-QUARTERS OF THE WAY
9 THROUGH THE TRAINING.

10 (3) NO SCHOOL MAY ENTER INTO ANY CONTRACT OR AGREEMENT WITH OR RECEIVE
11 ANY STUDENTS LOAN OR FINANCIAL AID FUNDS FROM PRIVATE ENTITIES, INCLUD-
12 ING, BUT NOT LIMITED TO, BANKS, FINANCING COMPANIES, AND ANY OTHER
13 PRIVATE LENDING SOURCES UNLESS THE PRIVATE ENTITY HAS A DISBURSEMENT
14 POLICY THAT, AT A MINIMUM, MEETS THE REQUIREMENTS OF SUBPARAGRAPH TWO OF
15 THIS PARAGRAPH.

16 (4) THE TERM PRIVATE ENTITY REFERENCED IN SUBPARAGRAPHS TWO AND THREE
17 OF THIS PARAGRAPH SHALL NOT BE CONSTRUED TO INCLUDE A FRIEND OR FAMILY
18 MEMBER OF THE STUDENT WHO IS NOT IN THE ROUTINE BUSINESS OF PROVIDING
19 STUDENT LOANS OR FINANCIAL AID FUNDS. THE PROVISION OF SUCH A LOAN OR
20 FUND BY A PRIVATE ENTITY SHALL ALSO NOT INCLUDE THE PAYMENT OF THE
21 STUDENT'S TUITION OR FEES BY USE OF A CREDIT CARD.

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

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

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

47 (2) Counseling. Each school [admitting] OFFERING CURRICULA WHICH ADMIT
48 students who do not possess a high school diploma or its equivalent
49 shall develop a plan to be approved by the commissioner for the coun-
50 seling of such students on an individual basis on matters including but
51 not limited to the student's ability to progress in the curriculum, the
52 student's financial aid rights and responsibilities, the availability of
53 programs to earn a high school equivalency diploma, including programs
54 provided at no cost to the student, and the potential of the training to
55 prepare the student for available employment opportunities within the
56 region.

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

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

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

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

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

- 25 (1) names and addresses of each enrolled student;
26 (2) the course of study offered by the institution;
27 (3) the name and address of its faculty, together with a record of the
28 educational qualifications of each;
29 (4) the graduation date of each student; and
30 (5) for each student who fails to complete his or her program, the
31 student's last date of attendance and, if applicable, the amount of any
32 refund paid to, or on behalf of, the student and the date the refund was
33 made.

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

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

50 3. Tuition liability. a. The tuition charge for programs approved for
51 participation in student financial aid general award programs pursuant
52 to articles thirteen and fourteen of this chapter shall be apportioned
53 on the basis of terms, quarters or semesters. For the purposes of this
54 section, the terms "term", "quarter" and "semester" shall be defined in
55 regulations by the commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (i) twenty percent of the term's tuition if the termination is during
2 the first week of instruction; or
3 (ii) thirty-five percent of the term's tuition if the termination is
4 during the second week of instruction; or
5 (iii) fifty percent of the term's tuition if the termination is during
6 the third week of instruction; or
7 (iv) seventy percent of the term's tuition if the termination is
8 during the fourth week of instruction; or
9 (v) one hundred percent of the term's tuition if the termination
10 occurs after the completion of the fourth week of instruction.
11 (2) Notwithstanding the provisions of subparagraph one of this para-
12 graph, the tuition refund policy set forth in paragraph b of this subdivi-
13 sion shall apply unless the school demonstrates that there are no
14 significant educational changes in the educational program of the
15 student, such changes as defined in regulations of the commissioner.
16 d. The tuition refund policy for the third and any subsequent term or
17 quarter of any program licensed [or registered] pursuant to section five
18 thousand one of this article shall be the policy set forth in subpara-
19 graph one of paragraph c of this subdivision.
20 e. No program shall have a term in excess of eighteen weeks.
21 f. The amount of the refund shall be calculated based on the last day
22 of student attendance.
23 g. (1) Any refund due to a student shall be paid by the school within
24 forty-five days of the date on which the student withdraws from the
25 program. For the purposes of this article, such date shall be the earli-
26 est of (i) the date on which the student gives written notice to the
27 school or (ii) the date on which the student is deemed to have withdrawn
28 pursuant to subparagraph two of this paragraph.
29 (2) If a student has failed to attend classes for a period of thirty
30 calendar days, the school shall send by regular mail a notice to the
31 student that the student shall be deemed to have withdrawn from the
32 program if the student does not notify the school to the contrary within
33 twelve days from the date on which the letter is sent. If the student
34 fails to respond within such twelve-day period, the student shall be
35 deemed to have withdrawn and the school shall notify the higher educa-
36 tion services corporation that the student has withdrawn and the date of
37 the withdrawal.
38 h. SCHOOLS SHALL SUBMIT, FOR APPROVAL BY THE COMMISSIONER, THE SCHOOL
39 CATALOG WITH A WEEKLY TUITION LIABILITY CHART FOR EACH PROGRAM THAT
40 INDICATES THE AMOUNT OF REFUND DUE THE STUDENT IN THE EVENT OF WITH-
41 DRAWAL.
42 I. Upon payment of a refund to a lender, the school shall forthwith
43 send a notice to a person designated by the president of the higher
44 education services corporation upon a form approved by the president
45 that such refund was made.
46 [i.] J. If the higher education services corporation fails to receive
47 the notice required by paragraph [h] I of this subdivision, it shall
48 forthwith notify the student of his or her right to a refund and the
49 commissioner of such failure. Upon receipt of such notification, the
50 commissioner shall take appropriate action against the school.
51 4. Curriculum approval. a. An application AND FEE shall be made for
52 the initial approval of a curriculum or course and shall include such
53 information as the commissioner may require by regulation. Approval
54 shall be valid for a period not to exceed four years. THE APPLICATION
55 FEE FOR ANY CURRICULUM OF ONE HUNDRED CLOCK HOURS OR MORE SHALL BE TWO
56 HUNDRED FIFTY DOLLARS. THE APPLICATION FEE FOR ANY COURSE OF LESS THAN

1 ONE HUNDRED CLOCK HOURS SHALL BE ONE HUNDRED DOLLARS. SUCH APPLICATION
2 FEES SHALL ACCRUE TO THE CREDIT OF THE PROPRIETARY VOCATIONAL SCHOOL
3 SUPERVISION ACCOUNT.

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

6 (1) that the entrance requirements demonstrate that students possess
7 the skills, competencies and prerequisite knowledge needed to progress
8 in the curriculum;

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

12 (3) that the school will utilize appropriate instructional methods;
13 [and]

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

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

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

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

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

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

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

52 5. Application for reapproval. a. An application AND FEE shall be made
53 for reapproval of a curriculum or course. Such application shall be
54 considered timely if submitted at least one hundred twenty days prior to
55 the expiration of the current approval. THE APPLICATION FEE FOR ANY
56 CURRICULUM OF ONE HUNDRED CLOCK HOURS OR MORE SHALL BE TWO HUNDRED FIFTY

1 DOLLARS. THE APPLICATION FEE FOR ANY COURSE OF LESS THAN ONE HUNDRED
2 CLOCK HOURS SHALL BE ONE HUNDRED DOLLARS, PROVIDED THAT NO FEE SHALL BE
3 ASSESSED FOR THE SUBMISSION OF A REAPPROVAL APPLICATION WITHOUT CHANGE.
4 SUCH APPLICATION FEE SHALL ACCRUE TO THE CREDIT OF THE PROPRIETARY VOCA-
5 TIONAL SCHOOL SUPERVISION ACCOUNT.

6 b. Curriculum reapproval standards. (1) The commissioner shall pre-
7 scribe by regulation, standards for reapproval after the first year of
8 licensure, of any curriculum or course based upon factors including but
9 not limited to the following, as appropriate:

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

12 (ii) the acquisition of a specified minimum level of skills by the
13 students; and

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

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

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

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

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

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

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

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

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

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

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

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

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

50 S 5. Section 5003 of the education law, as added by chapter 887 of the
51 laws of 1990, subparagraph 1 of paragraph c of subdivision 1 and para-
52 graphs d and e of subdivision 6 as amended by chapter 604 of the laws of
53 1993, paragraph d of subdivision 1 as added and paragraphs b and f of
54 subdivision 6 as amended by chapter 434 of the laws of 1999, is amended
55 to read as follows:

1 S 5003. Disciplinary actions, hearings and penalties. 1. Disciplinary
2 action. a. The commissioner for good cause, after affording a school an
3 opportunity for a hearing, may take disciplinary action as hereinafter
4 provided against any school authorized to operate under this article.
5 b. Good cause shall include, but not be limited to, any of the follow-
6 ing:
7 (1) fraudulent statements or representations to the department, the
8 public or any student in connection with any activity of the school;
9 (2) violation of any provision of this article or regulation of the
10 commissioner;
11 (3) conviction or a plea of no contest on the part of any owner, oper-
12 ator, director or teacher:
13 (A) of any of the following felonies defined in the penal law: bribery
14 involving public servants; commercial bribery; perjury in the second
15 degree; rewarding official misconduct; larceny, in connection with the
16 provision of services or involving the theft of governmental funds;
17 offering a false instrument for filing, falsifying business records;
18 tampering with public records; criminal usury; scheme to defraud; or
19 defrauding the government; or
20 (B) in any other jurisdiction of an offense which is substantially
21 similar to any of the felonies defined in clause (A) of this subpara-
22 graph and for which a sentence to a term of imprisonment in excess of
23 one year was authorized and is authorized in this state regardless of
24 whether such sentence was imposed; or
25 (4) incompetence of any owner or operator to operate a school.
26 c. (1) Any person who believes he or she has been aggrieved by a
27 violation of this section, EXCEPT A PERSON AGGRIEVED BY THE ACTIONS OR
28 OMISSIONS OF A CANDIDATE SCHOOL, shall have the right to file a written
29 complaint within: (A) two years of the alleged violation; or (B) one
30 year of receiving notification from the higher education services corpo-
31 ration or any other guarantee agency that the student has defaulted on a
32 student loan payment; provided, however, that no complaint may be filed
33 after three years from the date of the alleged violation. The commis-
34 sioner shall maintain a written record of each complaint that is made.
35 The commissioner shall also send to the complainant a form acknowledging
36 the complaint and requesting further information if necessary and shall
37 advise the director of the school that a complaint has been made and,
38 where appropriate the nature of the complaint.
39 (2) The commissioner shall within twenty days of receipt of such writ-
40 ten complaint commence an investigation of the alleged violation and
41 shall within ninety days of the receipt of such written complaint, issue
42 a written finding. The commissioner shall furnish such findings to the
43 person who filed the complaint and to the chief operating officer of the
44 school cited in the complaint. If the commissioner finds that there has
45 been a violation of this section, the commissioner shall take appropri-
46 ate action.
47 (3) The commissioner may initiate an investigation without a
48 complaint.
49 [d. During the initial two year licensing period, before the commis-
50 sioner may bring enforcement proceedings against a licensed entity, the
51 following shall be taken into consideration:
52 (1) whether such entity has demonstrated that the regulations promul-
53 gated under this chapter are unduly burdensome given the nature of the
54 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 (IV) 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 (IV) 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 (IV) 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, INCLUDING A SCHOOL'S FAILURE TO OFFER A COURSE OR PROGRAM
23 AS APPROVED BY THE COMMISSIONER. In the case of a second or further
24 violation committed within [the previous] five years OF THE PREVIOUS
25 VIOLATION, the liability shall be a civil penalty not to exceed [five]
26 SEVEN thousand FIVE HUNDRED dollars for each such violation.

27 b. Notwithstanding the provisions of paragraph a of this subdivision,
28 a hearing officer may recommend, and the commissioner may impose a civil
29 penalty not to exceed [fifty] SEVENTY-FIVE thousand dollars OR DOUBLE
30 THE DOCUMENTED AMOUNT FROM WHICH THE SCHOOL BENEFITED, WHICHEVER IS
31 GREATER, for any of the following violations: (1) operation of a school
32 without a license in violation of section five thousand one of this
33 article; (2) operation of a school knowing that the school's license has
34 been suspended or revoked; (3) use of false, misleading, deceptive or
35 fraudulent advertising; (4) employment of recruiters on the basis of a
36 commission, bonus or quota, except as authorized by the commissioner;
37 (5) directing or authorizing recruiters to offer guarantees of jobs upon
38 completion of a course; (6) failure to make a tuition refund when such
39 failure is part of a pattern of misconduct; (7) the offering of a course
40 or program that has not been approved by the commissioner; (8) admitting
41 students, who subsequently drop out, who were admitted in violation of
42 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) failure to provide
45 the notice of discontinuance and the plan required by subdivision seven
46 of section five thousand one of this article; or (10) violation of any
47 other provision of this article, or any rule or regulation promulgated
48 pursuant thereto, when such violation constitutes part of a pattern of
49 misconduct which significantly impairs the educational quality of the
50 program or programs being offered by the school. For each enumerated
51 offense, a second or further violation committed within [the previous]
52 five years, shall be subject to a civil penalty not to exceed [seventy-
53 five thousand dollars] ONE AND ONE-HALF TIMES THE AMOUNT OF THE PREVIOUS
54 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 6. 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 7. 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 ONLINE 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 8. 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] NINE of such
38 section and all fines, penalties and settlements received pursuant to
39 this article shall be transferred upon receipt into the tuition
40 reimbursement 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 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 under this
7 section. The option to apply for a refund shall extend to the end of the
8 first week of instruction at the teachout school.

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

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

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

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

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

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

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

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

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

51 b. For schools that have closed or ceased operation, the commissioner
52 shall refund actual personal tuition, FEES AND BOOK expenditures to the
53 student. The repayment of any loans incurred by the student as part of
54 the actual personal tuition, FEES AND BOOK expenditures shall be paid
55 directly to the lender or the guarantee agency where appropriate.

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

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

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

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

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

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

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

54 b. In the event that the account has accumulated a net balance in
55 excess of one million eight hundred thousand dollars, the commissioner
56 shall, with the approval of the director of the budget, waive an amount

1 not to exceed the amount due for the next quarterly assessment pursuant
2 to this section and subdivision nine of section five thousand one of
3 this article FOR SCHOOLS WHICH HAVE PAID SIXTEEN QUARTERS OR MORE OF
4 ASSESSMENTS ONLY. In such event, payment of future quarterly assessments
5 shall be suspended FOR SCHOOLS WHICH HAVE PAID SIXTEEN QUARTERS OR MORE
6 OF ASSESSMENTS until the net balance of the account falls below one
7 million three hundred thousand dollars.

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

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

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

28 g. In the event that the balance of the tuition reimbursement account
29 is equal to or in excess of [one] TWO million [five hundred thousand]
30 dollars, the amounts assessed the schools in accordance with the
31 provisions of paragraphs d and e of this subdivision shall be deposited
32 directly to the proprietary vocational school supervision account.

33 H. THE COMMISSIONER MAY ANNUALLY APPORTION FROM THE ACCOUNT AN AMOUNT
34 UP TO TWO HUNDRED THOUSAND DOLLARS FOR THE PURPOSE OF SECURING, SCANNING
35 AND OTHERWISE MAKING STUDENT RECORDS FROM CLOSED SCHOOLS AVAILABLE TO
36 STUDENTS WHO ATTENDED SUCH SCHOOLS. PROVIDED, HOWEVER, THAT IN NO CASE
37 SHALL SUCH APPORTIONMENT CAUSE THE ACCOUNT TO FALL BELOW THE BALANCE SET
38 FORTH IN PARAGRAPH C OF THIS SUBDIVISION, NOR SHALL SUCH APPORTIONMENT
39 CAUSE SCHOOLS WHOSE QUARTERLY ASSESSMENTS HAVE BEEN SUSPENDED TO PAY
40 ADDITIONAL QUARTERLY ASSESSMENTS.

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

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

49 S 9. Section 5008 of the education law, as added by chapter 887 of
50 the laws of 1990, is amended to read as follows:

51 S 5008. Trust accounts. 1. If the commissioner determines that a
52 school has demonstrated a pattern or practice of failing to make tuition
53 refunds in a timely manner consistent with this article AND/OR THE
54 SCHOOL'S FINANCIAL CONDITION MAY RESULT IN THE INTERRUPTION OR CESSATION
55 OF INSTRUCTION OR JEOPARDIZE STUDENT TUITION FUNDS, the commissioner
56 shall require a school to establish a trust account in a form or manner

1 which the commissioner[, after consultation with the advisory council,]
2 shall [prescribe in regulations] DETERMINE TO BE APPROPRIATE. The assets
3 or funds contained in the trust account shall be maintained for the sole
4 and exclusive benefit of the students.

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

13 S 10. Section 5009 of the education law, as amended by chapter 434 of
14 the laws of 1999, is amended to read as follows:

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

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

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

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

43 [(d)] 3. administering a public information campaign aimed at increas-
44 ing awareness about the importance of attending licensed [or registered]
45 proprietary vocational schools. Such campaign shall be targeted to popu-
46 lations at risk of enrolling in unlicensed [or unregistered] schools,
47 and shall be conducted using means including, but not limited to, public
48 service announcements on commercial radio and television stations,
49 public access television, and print media.

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

1 S 11. Section 5010 of the education law, as added by chapter 887 of
2 the laws of 1990, subdivision 1 as amended by section 23 of part A of
3 chapter 62 of the laws of 2011, subdivision 4 as added by chapter 604 of
4 the laws of 1993, and subdivision 5 as added by chapter 434 of the laws
5 of 1999, is amended to read as follows:

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

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

34 3. The council shall advise the commissioner on [the following] SUCH
35 matters[:]

- 36 (a) trust accounts;
- 37 (b) performance standards;
- 38 (c) the effectiveness and utilization of the tuition reimbursement
39 fund;
- 40 (d) the efficacy of instituting a fee-for-service system;
- 41 (e) the effectiveness of the timelines mandated by this article;
- 42 (f) the impact of assessments on schools;
- 43 (g) recruitment bonuses; and
- 44 (h) such other matters] as the council determines are appropriate.

45 [4. The proprietary school advisory council shall conduct a study
46 concerning the methodologies used to determine student refunds. Such
47 study shall include, but not be limited to, refund policies promulgated
48 pursuant to federal statute or regulation, state statute or regulation
49 and the policies of national accrediting organizations as they relate to
50 term-based and clock hour-based programs. Not later than July first,
51 nineteen hundred ninety-four, the advisory council shall make recommen-
52 dations to the commissioner and the board of regents for any changes in
53 legislation, regulations, policy or practice needed to improve and
54 simplify the student refund process. The commissioner shall submit a
55 report of the findings of the advisory council together with the recom-

1 mendations of the department to the legislature and the governor not
2 later than the first day of October, nineteen hundred ninety-four.

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

11 S 12. This act shall take effect on the one hundred twentieth day
12 after it shall have become a law; provided, however, that subparagraph
13 (iv) of paragraph b of subdivision 4 of section 5001 of the education
14 law, as added by section three of this act, shall expire and be deemed
15 repealed three years after such effective date; and provided, further,
16 that paragraph g of subdivision 10 of section 5007 of the education law,
17 as amended by section eight of this act shall not affect the repeal of
18 such paragraph and shall be deemed repealed therewith; and provided,
19 further, that effective immediately, the commissioner of education is
20 authorized and directed to promulgate any regulations needed to imple-
21 ment the provisions of this act on such effective date.