

# STATE OF NEW YORK

2186

2019-2020 Regular Sessions

## IN ASSEMBLY

January 22, 2019

Introduced by M. of A. KIM, BRAUNSTEIN -- read once and referred to the Committee on Education

AN ACT to amend the education law and the general business law, in relation to supplemental educational and learning programs

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The education law is amended by adding a new section 817 to  
2 read as follows:

3 § 817. Supplemental educational and learning programs; registration.  
4 1. Any person or entity that seeks to offer or provide educational  
5 services, such as tutoring, test-preparatory or supplemental learning or  
6 instruction, outside of the regular public or private school curriculum  
7 to three or more unrelated children of compulsory school age shall  
8 register with the superintendent of the local school district or, in the  
9 city school district of the city of New York, the superintendent of the  
10 community school district, in which the educational services or instruc-  
11 tion will be provided. No person or entity may offer or provide the  
12 services described in this section without obtaining a registration from  
13 the superintendent.

14 2. In order to be registered, the person or entity shall submit to the  
15 appropriate superintendent an application containing the following  
16 information, accompanied by a reasonable application fee to be deter-  
17 mined by the superintendent:

18 a. the name and address of the applicant. If the applicant is an enti-  
19 ty or corporation, the name and address of its chief executive officer  
20 and other officers;

21 b. the address of the building, house, premises or principal place of  
22 business where the services or instruction will be provided;

23 c. a statement identifying the specific objectives of the program or  
24 services;

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

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1 d. a detailed outline or description of the curriculum, classes,  
2 subjects, instruction or programs to be provided;

3 e. the instructional plan, including curriculum materials, textbooks,  
4 electronic devices and software;

5 f. the names of the instructors and their qualifications;

6 g. hours of instruction;

7 h. the tuition and other fees, and the tuition refund policy, approved  
8 by the superintendent; and

9 i. any other information or requirements requested by the superinten-  
10 dent.

11 3. Within fourteen days of the receipt of the application, the super-  
12 intendent shall interview the applicant and inspect the premises where  
13 the supplemental educational services and learning are to be offered or  
14 provided in order to determine whether the applicant is qualified to  
15 provide the educational services and programs described in its applica-  
16 tion.

17 4. If the superintendent is satisfied that the applicant is qualified  
18 to offer or provide the educational services, learning or instruction, a  
19 registration shall be issued for a period of no more than two years. The  
20 superintendent shall visit and inspect the registrant at least once  
21 every three months.

22 5. a. Any person or, if the person is a child of compulsory school  
23 age, the child's parent or legal guardian, who believes that the regis-  
24 trant has engaged in the following actions shall have the right to file  
25 a complaint within one year of the alleged violation to the appropriate  
26 superintendent:

27 (i) operating without a valid registration;

28 (ii) use of false, misleading, deceptive or fraudulent advertising;

29 (iii) making fraudulent statements or representations to any student,  
30 a student's parent or legal guardian, or the public in connection with  
31 any activity of the registrant;

32 (iv) failure to make a tuition refund, pursuant to a refund policy  
33 approved by the superintendent;

34 (v) violation of any provisions of this section, or any other  
35 provisions of law, rules or regulations when such violation constitutes  
36 a pattern of misconduct which significantly impairs the learning objec-  
37 tives of the registrant's instructional program; or

38 (vi) the incompetence or lack of qualifications of the registrant, any  
39 teacher, or operator of the program.

40 b. The superintendent of the school district in which the registrant  
41 is located may initiate an investigation without a complaint.

42 6. a. The superintendent shall within ten days of receipt of the writ-  
43 ten complaint commence an investigation of the alleged misconduct or  
44 violation, and shall within thirty days of such receipt issue a written  
45 finding.

46 b. The superintendent may impose a civil penalty not to exceed seven-  
47 ty-five thousand dollars or double the documented amount from which the  
48 registrant or an officer or employee thereof benefited. In addition to  
49 the civil penalty, any person who knowingly violates any provisions of  
50 this section, including knowingly operating without a valid registra-  
51 tion, shall be guilty of a class A misdemeanor, punishable in accordance  
52 with the penal law. The superintendent shall refer such determination to  
53 the attorney general or to the appropriate district attorney for appro-  
54 priate action. The attorney general or a district attorney may bring an  
55 action on his or her own initiative.

1     7. Any person injured by a violation of this section may bring an  
2     action against the registrant or any officers of the registrant for  
3     actual damages or ten thousand dollars, whichever is greater. A court  
4     may, in its discretion, award reasonable attorney's fees to a prevailing  
5     plaintiff.

6     § 2. Section 349 of the general business law is amended by adding a  
7     new subdivision (i) to read as follows:

8     (i) Where the deceptive acts and practices involve the offer or  
9     provision of supplemental educational, learning or instructional  
10    services or activities to children of compulsory age outside of the  
11    regular curriculum of a public or private school, including but not  
12    limited to: 1. offering or providing educational or learning services  
13    without official approval or registration as required by law; 2. making  
14    fraudulent statements or representations to the student, a student's  
15    parent or legal guardian or to the public in connection with any service  
16    or activity provided by the person, firm or corporation; or 3. using  
17    false, misleading, deceptive or fraudulent advertising, the attorney  
18    general may seek a civil penalty not to exceed seventy-five thousand  
19    dollars or double the amount from which the person, firm or corporation  
20    benefited, whichever is greater. In addition to the civil penalty, any  
21    person who knowingly violates any provisions of this subdivision shall  
22    be guilty of a class A misdemeanor, punishable in accordance with the  
23    penal law.

24    § 3. This act shall take effect immediately.