§ 5001. Licensed private career schools. 1. Schools required to be licensed. No private school which charges tuition or fees related to instruction and which is not exempted hereunder shall be operated by any person or persons, firm, corporation, or private organization for the purpose of teaching or giving instruction in any subject or subjects, unless it is licensed by the department. As used in this article:

a. "licensed private career school" or "licensed private school" shall mean any entity offering to instruct or teach any subject by any plan or method including written, visual or audio-visual methods, and shall include any institution licensed or registered as a registered business school or computer training facility on the effective date of chapter three hundred eighty-one of the laws of two thousand twelve. Following such effective date, there shall be no distinction between institutions previously defined as "registered business schools" or "computer training facilities" and other licensed private schools, and any reference in law to a registered business school or computer training facility shall be deemed a reference to a licensed private career school. Institutions holding a valid business school registration on such effective date, including computer-training facilities, shall have such registrations replaced by the commissioner, at no cost, with licenses valid until the expiration date listed on such previous registration;

b. "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; and

c. "online education marketplace" shall mean a website or other internet-based online technology tool with which a licensed private career school or certified ESL school contracts for marketing or advertising services, or services in connection with the collection of tuition and/or fees, to the extent authorized in subdivision three of section five thousand four of this article.

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 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;

m. schools that limit their total conferences, trade shows, workshops, seminars, institutes or other course offerings to no more than twice in one calendar year with each of those offerings for no more than five days;

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

o. schools in candidacy status pursuant to subparagraph (iv) of paragraph b of subdivision four of this section; and

p. schools which provide instruction in photography exclusively for non-occupational purposes.

2-a. Schools exempted pursuant to subdivision two of this section may waive such exemption and apply for a license; provided, however, that

the review of such applications shall be left to the discretion of the commissioner.

2-b. Programs offered by licensed private career schools 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 shall be exempt from the requirements of this article, provided that the following requirements are met:

a. Only employees of the employer for which the program is being offered may enroll in classes that make up the program.

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

c. Prior to the commencement of the program, such schools shall submit to the department a disclosure form, prescribed by the commissioner, copies of which shall be provided to all students in such exempt program, which shall include but not be limited to the following information:

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

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

(iii) a statement that the program being provided to the employer has not been approved by the department and is not under the department's jurisdiction and that the students in the program have been advised of the fact; and

(iv) the signatures of the school director or owner of the school and the representative of the employer for which the program is being offered certifying the accuracy of the statements on the form.

d. Any additional student openings in a program deemed exempt by the department may be made available to students not affiliated with the employer on the condition that such students execute a disclosure form as prescribed in paragraph c of this subdivision. Such admitted students

shall only constitute up to ten percent of the exempt program's total capacity.

4. Application, renewal application and application fees. a. Application and renewal application for a license as a private career school required by the commissioner shall be filed on forms prescribed and provided by the department. Except as provided in subparagraph (iii) of paragraph e of this subdivision, each renewal application for a private career school licensed pursuant to this section shall include an audited financial statement audited according to generally accepted auditing standards by an independent certified public accountant or an independent public accountant and statistical reports certified by the owner or operator of the school, as required by the commissioner; provided, however, that the commissioner shall accept a copy of a current financial statement previously filed by a school with any other governmental agency in compliance with the provisions of any federal or state laws, or rules or regulations if such statement contains all of the information required under this subdivision and conforms to this subdivision's requirements of auditing, review and certification. Any required audit of the financial statement shall be a condition of licensure and shall be paid for by the school, and the results of the audit shall be forwarded to the commissioner. Applications not accompanied by the audits and reports required pursuant to this subdivision shall not be considered for approval by the commissioner. Initial applications shall be accompanied by financial reports as required by the commissioner. The applicant shall receive a written approval or denial together with the reasons for a denial of such application.

b. (i) An initial license issued pursuant to the provisions of this article shall be valid for a period of two years. A renewal of license issued pursuant to the provisions of this article shall be valid for a period of four years.

(ii) Every applicant and renewal applicant shall pay to the department a nonrefundable, nontransferable application fee. The initial application fee for new schools shall be five thousand dollars, of which three thousand dollars shall accrue to the credit of the proprietary

vocational school supervision account and two thousand dollars shall accrue to the tuition reimbursement account. For additional licensed locations of currently operating schools, the application fee shall be two thousand five hundred dollars, which shall accrue to the credit of the proprietary vocational school supervision account. For renewal applications, the fee shall be based on gross annual tuition income as determined by the annual financial statements required in paragraph a of this subdivision for the most recent school fiscal year, according to the following schedule:

GROSS ANNUAL TUITION INCOME	FEE
0-$199,999	$ 750.00
$200,000-$499,999	$ 1,500.00
$500,000-$999,999	$ 2,225.00
$1,000,000-$4,999,999	$ 4,500.00
$5,000,000-$9,999,999	$ 9,000.00
$10,000,000 or above	$18,000.00

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

(iii) Each school shall display, near the entrance to the school, the license which has been issued to it. Such authorization shall be displayed only during the period of its validity.

c. An application for renewal of any license shall be submitted at least one hundred twenty days prior to the expiration date of the current authorization to operate accompanied by the nonrefundable application fee and such certified statistical reports and annual financial statements required pursuant to this subdivision.

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

e. Financial statements and statistical reports. (i) Licensed private career schools and candidate schools shall submit such certified statistical reports and annual financial statements as required by the commissioner. The commissioner may require audited statistical reports upon a determination that a school has provided false or inaccurate certified statistical reports. The financial statements shall be based on the fiscal year of the school and shall also include an itemized account of tuition refunds due and owing to past or presently enrolled students. Statistical reports shall include, but not be limited to, enrollment, completion and placement data. The commissioner shall use such financial statements and statistical reports submitted for the purposes of licensure of schools, establishing fees or assessments pursuant to this article and determining standards pursuant to paragraph b of subdivision five of section five thousand two of this article. The attorney general, the comptroller and the president of the higher education services corporation shall have access to this information when it is necessary to perform their duties as required by state law.

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

(iii) Schools whose gross tuition is less than five hundred thousand dollars in a school fiscal year and which receive less than one hundred thousand dollars in state and federal student financial aid in a school fiscal year shall file with the commissioner an unaudited financial statement in a format prescribed by the commissioner, provided, however, that any such school shall file an audited financial statement the fiscal year after a reviewed financial statement is submitted. For such schools, audited financial statements are required every two years, at minimum, with reviewed financial statements allowed during the alternate year. Upon a determination by the commissioner that a school has submitted false or inaccurate statements or that a significant,

unsubstantiated decline in gross tuition has occurred, the commissioner may require any such school to file an audited financial statement pursuant to this paragraph even during alternate years when reviewed statements would ordinarily be allowed.

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.

5. Required disclosure for licensure. a. The commissioner shall require that each applicant for a license for the operation of a private 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 connection with the provision of services or involving the theft of governmental funds; offering a false instrument for filing, falsifying business records; tampering with public records; criminal usury; scheme to defraud; or defrauding the government; or

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

(3) 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 finally determined in any administrative or civil proceeding to have committed a violation of any provision of this article or any rules and regulations promulgated pursuant thereto, or any related order or determination of the commissioner, or of any similar statute, rule, regulation, order or determination of another jurisdiction pertaining to the licensure and operation of any educational or training program; and

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

b. No application for any license pursuant to this article shall be denied by reason of disclosure pursuant to this subdivision of 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 unless the commissioner makes a written determination that there is a direct relationship between one or more of such previous offenses and the license sought, or that issuance of the license would create an unreasonable risk to property or to the safety, education or welfare of

specific individuals or the general public. In making such determination, the commissioner shall be guided by the factors set forth in section seven hundred fifty-three of the correction law. For purposes of this subdivision, "ownership or control interest" means: with respect to a school that is organized as or owned by a corporation, a position as an officer or director of such corporation; or, with respect to a school that is organized as or owned by a partnership, a position as a partner; or any other interest totaling ten percent or more, whether direct or indirect, in the total equity or assets of such school.

c. The commissioner may deny, suspend, revoke or decline to renew any license: (1) if the significance of the convictions or administrative violations warrant such action; (2) if the commissioner determines that a school did not make any disclosure required by this subdivision; or (3) if the commissioner determines that a school's financial condition may result in the interruption or cessation of instruction or jeopardize student tuition funds.

6. If, during the period for which a license is granted, the commissioner determines that a school's financial condition may result in the interruption or cessation of instruction or jeopardize student tuition funds, the commissioner may, upon notice to the school, place the school on probation for a period of no more than one year, during which time the school and the department must make efforts to resolve the problems at the school. The school shall submit a report on its financial condition to the commissioner within the time prescribed by the commissioner. Such report shall be in the form and shall include content prescribed by the commissioner and shall be reviewed by the commissioner to determine the school's financial viability. The commissioner may suspend or revoke the school's license, as well as require the cessation of student enrollment, upon a determination that the school's financial condition continues to threaten its ability to educate students and/or the student tuition funds. Alternatives for the school to demonstrate a fiscally sound operation may include securing and maintaining a performance bond, payable to the commissioner, in an appropriate amount to eliminate any liability to the tuition reimbursement account should the school cease operation, limiting the

collection of tuition funds until each student completes the program of study, or other means acceptable to the commissioner. If no resolution can be attained, a hearing, pursuant to subdivisions two and three of section five thousand three of this article will be scheduled. Such probation may include additional monitoring, inspections, limitations on enrollment, teaching out some or all of a school's present students or temporary cessation of instruction.

7. No license granted under this section shall be transferable or assignable without the approval of the commissioner. Upon transfer or assignment of any interest totaling twenty-five percent or more, whether direct or indirect, in the total equity or assets of a school, such school shall be deemed a new school required to submit a new school application and obtain a new license pursuant to this article. Provided, however, that upon such a substantial change in interest, the previous school license shall remain in effect until the new license is issued or denied or the previous license expires or is revoked, whichever occurs first.

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

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

b. (i) Such annualized assessment shall be one percent for schools which have paid less than sixteen quarters of assessments, but such

annual assessment shall not fall below five hundred dollars.

(ii) Such annualized assessment shall be eight-tenths of one percent for schools which have paid sixteen or more quarters of assessments, but such annual assessment shall not fall below five hundred dollars.

c. (i) Of the total assessment provided for herein, five-tenths of one percent shall accrue to the credit of the tuition reimbursement account pursuant to section five thousand seven of this article for those schools which have paid less than sixteen quarters of assessments. Of the total assessment provided for schools which have paid sixteen or more quarters of assessments, three-tenths of one percent shall accrue to the credit of the tuition reimbursement account pursuant to section five thousand seven of this article. For schools paying the minimum five hundred dollars annual assessment, none shall accrue to the tuition reimbursement account.

(ii) The balance of the total assessment provided for herein shall be dedicated to fund the department's supervision and regulation of licensed private schools pursuant to an annual appropriation and an annual plan of expenditure prepared by the commissioner and approved by the director of the budget.

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