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

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

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

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

(2) the standards and the methods of instruction;

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

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

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

(6) the methods of collecting tuition;

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

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

(9) counseling provided to students.

b-1. (1) Student loans or other financial aid funds received from

federal, state, or local governments or administered under the federal student financial assistance programs governed by Title IV of the Higher Education Act of nineteen hundred sixty-five, 20 U.S.C. section 1070 et seq., as amended, must be collected and applied in the manner as controlled by the applicable federal, state or local regulations.

(2) Student loans or other financial aid funds received from private entities, including, but not limited to, banks, financing companies, and other lending sources must be collected or disbursed in the following manner:

(A) Loans or other financial aid payments for amounts of five thousand dollars or less may be disbursed as a single disbursement, regardless of course length.

(B) Loans or other financial aid payments for amounts greater than five thousand dollars that reflect a class term of less than six months shall have two equal disbursements. The disbursement schedule for such loans or payments shall be as follows: one-half of the tuition amount released initially, and the remainder released halfway through the course term.

(C) Loans or other financial aid payments for amounts greater than five thousand dollars that reflect a class term of greater than six months, but less than twelve months must have three equal disbursements. The disbursement schedule for such loans or payments shall be as follows: one-third of the tuition amount released initially, the second disbursement shall be released one-third of the way through the length of the training, and the remainder released two-thirds of the way through the course term.

(D) Loans of other financial aid payments for amounts greater than five thousand dollars that reflect a class term greater than twelve months shall have four equal disbursements. The disbursement schedule for such loans or payments shall be as follows: one-quarter of the tuition amount released initially, the second disbursement shall be released one quarter of the way through the length of the training; the third disbursement shall be released halfway through the length of the training, and the remainder shall be released three-quarters of the way through the training.

(3) No school may enter into any contract or agreement with or receive any students loan or financial aid funds from private entities,

including, but not limited to, banks, financing companies, and any other private lending sources unless the private entity has a disbursement policy that, at a minimum, meets the requirements of subparagraph two of this paragraph.

(4) The term private entity referenced in subparagraphs two and three of this paragraph shall not be construed to include a friend or family member of the student who is not in the routine business of providing student loans or financial aid funds. The provision of such a loan or fund by a private entity shall also not include the payment of the student's tuition or fees by use of a credit card.

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

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

(1) Certification. Each school admitting students who do not possess at least a high school diploma or its equivalent shall certify to the satisfaction of the commissioner that such prospective students have been administered and passed an examination which has been approved by the commissioner to determine their ability to benefit from the chosen curriculum prior to admission to the curriculum or course of study. Such examination shall, whenever possible, be a nationally recognized test appropriate for the course of instruction which has been approved by the commissioner. The examination results of each such student who is admitted shall be made available to the commissioner at a time prescribed by the commissioner and, together with the student's original answer sheet, shall be maintained by the school in the student's permanent record. For any student failing to achieve the necessary score on such examination for enrollment, the school shall be required to provide such student with a listing of appropriate counseling and educational opportunities available to the student at no cost, as determined by the commissioner. Where appropriate, the commissioner may accept such other entrance requirement documentation such as prerequisite coursework, professional or vendor certifications, personal interviews, and/or attestations of equivalent knowledge in lieu of the

examination requirement.

(2) Counseling. Each school offering curricula which admit students who do not possess a high school diploma or its equivalent shall develop a plan to be approved by the commissioner for the counseling of such students on an individual basis on matters including but not limited to the student's ability to progress in the curriculum, the student's financial aid rights and responsibilities, the availability of programs to earn a high school equivalency diploma, including programs provided at no cost to the student, and the potential of the training to prepare the student for available employment opportunities within the region.

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

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

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

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

(1) names and addresses of each enrolled student;

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

(3) the name and address of its faculty, together with a record of the

educational qualifications of each;

(4) the graduation date of each student; and

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

c. The commissioner shall conduct periodic unscheduled inspections of licensed private career schools to monitor compliance with the provisions of this article or the rules or regulations promulgated thereunder or any final order or decision of the commissioner made pursuant to this article. The department shall conduct an inspection of each school at least once every licensure period. All schools shall provide upon request of the department, any and all records necessary to review compliance with the provisions of this article.

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

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

b. The tuition refund policy for the first term or quarter of any program at schools licensed 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 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:

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

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

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

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

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

(2) Notwithstanding the provisions of subparagraph one of this paragraph, the tuition refund policy set forth in paragraph b of this subdivision shall apply unless the school demonstrates that there are no significant educational changes in the educational program of the student, such changes as defined in regulations of the commissioner.

d. The tuition refund policy for the third and any subsequent term or quarter of any program licensed pursuant to section five thousand one of this article shall be the policy set forth in subparagraph one of paragraph c of this subdivision.

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

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

g. (1) Any refund due to a student shall be paid by the school within forty-five days of the date on which the student withdraws from the

program. For the purposes of this article, such date shall be the earliest of (i) the date on which the student gives written notice to the school or (ii) the date on which the student is deemed to have withdrawn pursuant to subparagraph two of this paragraph.

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

h. Schools shall submit, for approval by the commissioner, the school catalog with a weekly tuition liability chart for each program that indicates the amount of refund due the student in the event of withdrawal.

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

j. If the higher education services corporation fails to receive the notice required by paragraph i of this subdivision, it shall forthwith notify the student of his or her right to a refund and the commissioner of such failure. Upon receipt of such notification, the commissioner shall take appropriate action against the school.

4. Curriculum approval. a. An application and fee shall be made for the initial approval of a curriculum or course and shall include such information as the commissioner may require by regulation. Approval shall be valid for a period not to exceed four years. The application fee for any curriculum of one hundred clock hours or more shall be two hundred fifty dollars. The application fee for any course of less than one hundred clock hours shall be one hundred dollars. Such application

fees shall accrue to the credit of the proprietary vocational school supervision account.

b. In approving curriculum, the commissioner shall take into consideration the following:

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

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

(3) that the school will utilize appropriate instructional methods;

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

(5) that a curriculum may include 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.

c. (1) 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 at the school's expense in addition to the application fees prescribed in paragraph a of this subdivision.

(2) If, in the interest of expediting the approvals, a school requests the department to employ an outside consultant, the school shall pay the cost of such services in addition to the application fees prescribed in paragraph a of this subdivision.

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

e. Notwithstanding paragraphs b, c and d of this subdivision, curriculum certified by a nationally recognized vendor as defined in commissioner's regulations shall be recognized by the department in lieu of an expert evaluation when such curriculum is adopted by a school in

the original format provided by the vendor as long as the proposed curriculum is a stand alone program and not part of a larger comprehensive course.

f. Notwithstanding any other provision of the law, a not-for-profit licensed career school, that is eligible for participation in the tuition assistance program and which has national accreditation, may, for the purpose of calculation of federal financial aid amounts only, measure students' academic progress in an approved curriculum in non-degree granting credit hours, based upon a national accrediting agency's conversion and approval of clock hours to non-degree credit hours. For the purposes of this paragraph, "national accreditation" shall mean accreditation by a national accrediting agency as defined in the commissioner's regulations.

5. Application for reapproval. a. An application and fee shall be made for reapproval of a curriculum or course. Such application shall be considered timely if submitted at least one hundred twenty days prior to the expiration of the current approval. The application fee for any curriculum of one hundred clock hours or more shall be two hundred fifty dollars. The application fee for any course of less than one hundred clock hours shall be one hundred dollars, provided that no fee shall be assessed for the submission of a reapproval application without change. Such application fee shall accrue to the credit of the proprietary vocational school supervision account.

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

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

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

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

(2) Such standards shall be consistent with those applied to all

non-degree career education programs.

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

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

e. The commissioner may provide in regulations for reapproval procedures, consistent with this subdivision, for applications submitted less than one hundred twenty days from the expiration date.

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

6. a. Teachers and directors. No person shall be employed by a private career school as a director or teacher who is not licensed in such capacity by the department pursuant to regulations of the commissioner, which shall take into consideration such factors as moral character, educational qualifications and practical experience. The application shall include a statement, signed by the president or chief executive officer of the school, certifying that to the best of his or her knowledge, the applicant is able to meet the educational qualifications and practical experience set forth in the commissioner's regulations.

Such application shall be considered timely if mailed to the commissioner and postmarked four days prior to employment at the school and must be completed within twenty days thereafter; provided, however, that the commissioner may, for good cause shown, extend the time within which to complete the application. When a complete application is made, the commissioner shall act upon such application within thirty days. If no written denial is made within the thirty days, the application shall be deemed to be approved until the commissioner acts upon it or until the end of the term or semester, whichever occurs first. If a written denial is made after the thirty day period, the commissioner may allow the applicant to teach at the school for the remainder of the term or semester if the commissioner determines that the removal of the teacher would not be in the best educational interest of the students. This subdivision shall not apply to directors or teachers employed on or before July first, nineteen hundred seventy-two. Teachers' licenses issued on or after the effective date of the chapter of the laws of two thousand twelve which amended this paragraph shall be valid at all licensed private career schools for the courses, curricula, or occupations indicated on the license. Teachers holding valid private school teacher licenses valid at only one school location shall have them replaced, at no cost, with licenses valid at any licensed school in the same subject or subjects and with the same expiration date as was listed on the previous teaching license.

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

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

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

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

8. The higher education services corporation shall adopt rules and regulations to effectuate the cessation of collection activities by lenders or by the corporation in cases in which a licensed private career school at which the student enrolled has closed or ceased its teaching activities during the academic period for which the loan was made or guaranteed.