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

b. Good cause shall include, but not be limited to, any of the following:

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

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

(3) conviction or a plea of no contest on the part of any owner, operator, director or teacher:

(A) 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; or

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

c. (1) Any person who believes he or she has been aggrieved by a violation of this section, except a person aggrieved by the actions or omissions of a candidate school, shall have the right to file a written complaint within: (A) two years of the alleged violation; or (B) one year of receiving notification from the higher education services corporation or any other guarantee agency that the student has defaulted on a student loan payment; provided, however, that no complaint may be filed after three years from the date of the alleged violation. The commissioner shall maintain a written record of each complaint that is made. The commissioner shall also send to the complainant a form

acknowledging the complaint and requesting further information if necessary and shall advise the director of the school that a complaint has been made and, where appropriate the nature of the complaint.

(2) The commissioner shall within twenty days of receipt of such written complaint commence an investigation of the alleged violation and shall within ninety days of the receipt of such written complaint, issue a written finding. The commissioner shall furnish such findings to the person who filed the complaint and to the chief operating officer of the school cited in the complaint. If the commissioner finds that there has been a violation of this section, the commissioner shall take appropriate action.

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

(4) Notwithstanding the provisions of subparagraph one of this paragraph or any other provision of this article to the contrary, a student at a candidate school shall have the right to file a written complaint from an alleged violation of the provisions of clause three of subparagraph (iv) of paragraph b of subdivision four of section five thousand one of this article that require disclosure of candidacy status and its implications and a signed attestation by the student, within two years of such violation. Upon a finding that such a violation has occurred, the candidate school shall be required to provide a refund of all monies and fees received from or on behalf of the student. Appropriate action shall also be taken against the candidate school pursuant to the provisions of subparagraph (iv) of paragraph b of subdivision four of section five thousand one of this article.

(5) No owner, operator, licensed personnel, or agent thereof of a licensed private career school shall discriminate, intimidate, or retaliate against any person who files a written complaint pursuant to this paragraph.

2. Hearing procedures. a. Upon a finding that there is good cause to believe that a candidate school under the provisions of subparagraph (iv) of paragraph b of subdivision four of section five thousand one of this article, or a licensed school, or an officer, agent, employee, partner or teacher, has committed a violation of this article, the commissioner shall initiate proceedings by serving a notice of hearing

upon each and every such party subject to the administrative action. The school or such party shall be given reasonable notice of hearing, including the time, place, and nature of the hearing and a statement sufficiently particular to give notice of the transactions or occurrences intended to be proved, the material elements of each cause of action and the civil penalties and/or administrative sanctions sought.

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

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

(A) administer oaths and affirmations; and

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

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

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

(2) The strict legal rules of evidence shall not apply, but the decision shall be supported by substantial evidence in the record.

3. Decision after hearing. The hearing officer shall make written findings of fact and conclusions of law, and shall also recommend in writing to the commissioner a final decision including penalties. The hearing officer shall mail a copy of his or her findings of fact, conclusions of law and recommended penalty to the party and his or her attorney, or representative. The commissioner shall make the final decision, which shall be based exclusively on evidence and other materials introduced at the hearing. If it is determined that a party

has committed a violation, the commissioner shall issue a final order and shall impose penalties in accordance with this section. The commissioner shall send by certified mail, return receipt requested, a copy of the final order to the party and his or her attorney, or representative. The commissioner shall, at the request of the school or such party, furnish a copy of the transcript or any part thereof upon payment of the cost thereof.

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

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

6. Civil penalties and administrative sanctions. a. A hearing officer may recommend, and the commissioner may impose, a civil penalty not to exceed three thousand five hundred dollars for any violation of this article, including a school's failure to offer a course or program as approved by the commissioner. In the case of a second or further violation committed within five years of the previous violation, the liability shall be a civil penalty not to exceed seven thousand five hundred dollars for each such violation.

b. Notwithstanding the provisions of paragraph a of this subdivision, a hearing officer may recommend, and the commissioner may impose a civil penalty not to exceed seventy-five thousand dollars or double the documented amount from which the school benefited, whichever is greater, for any of the following violations: (1) operation of a school without a license in violation of section five thousand one of this article; (2) operation of a school knowing that the school's license has been suspended or revoked; (3) use of false, misleading, deceptive or fraudulent advertising; (4) employment of recruiters on the basis of a

commission, bonus or quota, except as authorized by the commissioner; (5) directing or authorizing recruiters to offer guarantees of jobs upon completion of a course; (6) failure to make a tuition refund when such failure is part of a pattern of misconduct; (7) the offering of a course or program that has not been approved by the commissioner; (8) admitting students, who subsequently drop out, who were admitted in violation of the admission standards established by the commissioner, where such admissions constitute a pattern of misconduct and where the drop out resulted at least in part from such violation; (9) failure to provide the notice of discontinuance and the plan required by subdivision seven of section five thousand one of this article; or (10) violation of any other provision of this article, or any rule or regulation promulgated pursuant thereto, when such violation constitutes part of a pattern of misconduct which significantly impairs the educational quality of the program or programs being offered by the school. For each enumerated offense, a second or further violation committed within five years, shall be subject to a civil penalty not to exceed one and one-half times the amount of the previous violation for each such violation.

c. In addition to the penalties authorized in paragraphs a and b of this subdivision, a hearing officer may recommend and the commissioner may impose any of the following administrative sanctions: (1) a cease and desist order; (2) a mandatory direction; (3) a suspension or revocation of a license; (4) a probation order; or (5) an order of restitution.

d. Penalty factors. In the recommendation of any penalty, a hearing officer shall, at a minimum, give due consideration, where applicable, to the good faith of the violator and the gravity of the violation.

e. The commissioner may suspend a license upon the failure of a school to pay any fee, fine, penalty, settlement or assessment as required by this article unless such failure is determined by the commissioner to be for good cause.

f. All civil penalties, fines and settlements received after April first, nineteen hundred ninety shall accrue to the credit of the tuition

reimbursement account established pursuant to section ninety-seven-hh of the state finance law.

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

a. Any person who knowingly violates any of the provisions of this article shall be guilty of a class B misdemeanor punishable in accordance with the penal law. If the conviction is for a second offense committed within five years of the first conviction under this paragraph, such person shall be guilty of a class A misdemeanor punishable in accordance with the penal law.

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

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

d. Upon a determination that there exist reasonable grounds to believe that a violation of this article has been committed, or that any other crime has been committed in connection with the operation of a school required to be licensed pursuant to this article, the commissioner shall refer such determination, and the information upon which it is based, to the attorney general or to the appropriate district attorney. The

attorney general or a district attorney may bring an action on his or her own initiative.

8. Private right of action. A student injured by a violation of this article may bring an action against the owner or operator of a licensed private career school for actual damages or one hundred dollars, whichever is greater. A court may, in its discretion, award reasonable attorney's fees to a prevailing plaintiff. No owner, operator, licensed personnel, or agent thereof of a licensed private career school shall discriminate, intimidate, or retaliate against any student who brings a private right of action against the owner or operator of a licensed private career school pursuant to this subdivision.