§ 5004. Private school agent's certificate. 1. a. No party may, for a consideration or remuneration procure, solicit or enroll any student for instruction in or given by any school within or without the state of New York, unless (i) the party is a salaried employee of the school and (ii) the party shall have secured a private school agent's certificate from the department pursuant to regulations of the commissioner.

b. Upon submission of a complete new application for licensure, an applicant may procure, solicit or enroll any student for instruction; provided, however, that such applicant be in possession at all times during the procurement, solicitation or enrollment processes of a temporary approval certificate which the commissioner shall issue within five days of receipt by mail or on the same day at designated offices. A school shall submit such application for licensure on or before the first day of employment of such individual.

c. No consideration or remuneration shall be paid in the form of a fee per student enrolled by a private school agent except pursuant to the following limitations:

(1) a school may pay twenty-five percent of the consideration or remuneration after the student has completed three weeks of the program;

(2) a school may pay the remainder of the consideration or remuneration after the student has completed eight weeks of the program;

(3) the total amount of the consideration or remuneration paid per student may not exceed one percent of the annual salary paid to the agent.

d. In promulgating regulations in relation to the issuance of such certificates and the conduct of the holders of such certificates, the commissioner shall give consideration to:

(1) good moral character of the candidate for such certificate;

(2) the use of ethical and fair practices in the presentation of the school's offerings; and

(3) whether the prospective agent has within five years of the date of the application violated any provision of this article or the regulations of the commissioner adopted pursuant to this article.

2. Instruction, as contemplated by this section, shall be any plan or method for teaching any subject or subjects in any form or manner, including correspondence or home study.

3. a. Exempted from the requirements of this section are persons acting solely for schools which are not required to be licensed or are specifically exempted from the licensing requirements of this article.

b. (i) Also exempted from the requirements of this section is an online education marketplace as defined in paragraph c of subdivision one of section five thousand one of this article, provided that the online education marketplace complies with each of the following:

(1) An online education marketplace shall not solicit, procure, or enroll any student for instruction in a licensed private career school or certified ESL school, as defined by the commissioner in regulations.

(2) Upon receipt of any monies collected by an online education marketplace from a prospective student for payment of tuition and/or fees, the prospective student and the licensed private career school or certified ESL school shall execute an enrollment agreement in accordance with regulations of the commissioner. If an enrollment agreement is not executed, the monies shall be promptly returned to the prospective student in a timeframe and manner prescribed by the commissioner in regulations.

(3) If an enrollment agreement is executed, the online education marketplace shall forward the monies received from the prospective student to the licensed private career school or certified ESL school in a timeframe and manner prescribed by the commissioner in regulations.

(4) An online education marketplace shall not receive from a student an amount greater than the tuition or fees to be charged by the licensed private career school or certified ESL school to the student, and shall separately account for monies received from the prospective student to be thereafter transferred to a licensed private career school or certified ESL school in payment of tuition or fees, and any remuneration and/or compensation received by the online education marketplace from a licensed private career school or certified ESL school in payment for services rendered to such school by the online education marketplace. The licensed private career school or certified ESL school shall also

separately account for tuition or fees transferred to the school by an online education marketplace on behalf of a student in payment of tuition or fees, and payments made by the school to an online education marketplace for services rendered to the school by the online education marketplace.

(5) The commissioner may take disciplinary action against an online education marketplace pursuant to section five thousand three of this article, to the extent such provisions are deemed applicable by the commissioner in regulations.

(6) An online education marketplace is prohibited from offering advertising/marketing services to an unlicensed private career school or uncertified ESL school.

(ii) Any licensed private career school or certified ESL school that contracts with an online education marketplace shall comply with the provisions of this subdivision and the regulations of the commissioner or they may be subject to disciplinary action pursuant to section five thousand three of this article.

c. Persons who are paid to procure, solicit or enroll students on the premises of schools required to be licensed shall not be exempt from the provisions of this section.

4. Application and renewal application for a private school agent's certificate shall be filed on forms to be prescribed and provided by the commissioner. Said certificate shall be valid for three years from the date of issuance. Certificates which have been renewed shall be valid for a period of three years from the expiration date of the certificate which has been renewed. Every applicant and renewal applicant shall pay to the department a fee of two hundred dollars.

4-a. Notwithstanding the provisions of subdivision four of this section, the school director may apply for a private school agent's certificate on forms to be prescribed and provided by the commissioner without incurring the agent application fee.

5. No recovery shall be had against any student or enrollee and full recovery shall be made on any contract for or in connection with any

instruction if the student or enrollee was procured, solicited or enrolled outside or on the school premises by a person paid to procure, solicit or enroll students but not having a valid private school agent's certificate pursuant to the provisions of this section at the time that the contract was negotiated or executed or the sale of the instruction was made, or by a person who holds such a certificate but has made fraudulent or improper claims. Each enrollment agreement shall include, where applicable the name of the agent responsible for procuring, soliciting or enrolling the student or enrollee.

6. The issuance of such a private school agent's certificate shall not be deemed to constitute approval of any course or of the person or institution offering, conducting or administering the same.

7. The commissioner, after giving to the certificate holder due notice and opportunity to be heard, may fine a private school agent, suspend or revoke a private school agent's certificate at any time for failure to comply with the provisions of the law or the regulations of the commissioner or for any other good cause.

8. No employer of a private school agent other than a school may indemnify, save harmless or otherwise reimburse any agent for the amount of any fines imposed pursuant to this section. If a person fined pursuant to this section can demonstrate to the satisfaction of the commissioner that the action for which the fine was imposed was undertaken pursuant to explicit instructions from the employer, the employer shall idemnify, save harmless, and reimburse that person for the fine and shall pay to the commissioner an additional fine of an equal amount.