

AGENT TRAINING MANUAL
SCHOOL NAME
SCHOOL LOCATION

In accepting employment as an agent for the above listed school and address, I have received and read Sections 5004 and 5005 of the Education Law and Sections 126.12, 126.14 and 126.15 of the Regulations of the Commissioner of Education. By affixing my signature to this form. I formally accept the position of agent for the above school and address. I further indicate my understanding of the above cited laws and regulations.

Agent's Signature

Agent's Name (PRINTED)

Date

§ 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. 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 or registration requirements of this article. Persons who are paid to procure, solicit or enroll students on the premises of schools required to be licensed or registered shall not be exempt from the provisions of this section. The certification requirements of this section shall not apply to persons receiving gifts or other non-monetary considerations valued at not more than twenty-five dollars from a school from which they have graduated or are currently enrolled for each student referred for enrollment at the school.

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 two years from the date of issuance. Certificates which have been renewed shall be valid for a period of two 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 one hundred dollars.

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 indemnify, save harmless, and reimburse that person for the fine and shall pay to the commissioner an additional fine of an equal amount.

§ 5005. Disclosure to students. The school shall disseminate to all prospective and enrolled students through an enrollment contract or agreement or other appropriate publications or documents, and in appropriate languages as required by the commissioner in regulation:

- a. information concerning the school, including but not limited to:
 - (1) a description of the courses offered;
 - (2) program objectives and the length of the program;
 - (3) a schedule of tuition payments, fees and all other charges and expenses necessary for completion of the course or program;
 - (4) the tuition refund and contract cancellation policies;
 - (5) a description of the faculty and other instructional personnel and their qualifications;
 - (6) the names of associates, agencies or governmental bodies which accredit, approve or license the school;
 - (7) a description of any special facilities and services available to handicapped students; and
 - (8) any other items identified by the commissioner in regulation following consultation with the advisory council;
- b. if the school advertises job placement rates as means of attracting students to enroll in the school, the most recent available data on employment and graduation statistics for students who have attended that school;
- c. information concerning any student financial assistance, including a description of the procedures and forms, student eligibility requirements and the rights and responsibilities of students receiving financial aid;
- d. the pass rate of graduates of the program for the most recent calendar year on any licensure or certification examination required by the state for employment in the particular vocational, trade, or career field;
- e. the process for obtaining a tuition refund from the tuition reimbursement fund and the availability of loan forgiveness in the event the school closes while the student is in attendance;
- f. a sample enrollment contract, a sample cancellation form developed by the department in consultation with the advisory council and a tuition reimbursement fund claim form; and
- g. a description of the complaint procedures established pursuant to this article.

126.12 Private school agent's certificate.

(a) No person shall receive any form of compensation or remuneration from any representative, agent, employee or officer of a licensed private school or registered business school/computer training facility for the purpose of soliciting, procuring, or enrolling students, unless such person is a salaried employee of the school and holds a valid private school agent's certificate. Each agent shall produce his or her agent certificate upon the request of the commissioner, the commissioner's designee, or any prospective student. A school shall submit an application for licensure for an agent on or before the first day of employment of such individual. Upon submission of a complete initial agent application for licensure, the commissioner shall issue a temporary approval certificate within five days of receipt of the application by mail, or on the same day at offices and times designated by the commissioner. Upon receipt of a temporary

approval certificate, an applicant may procure, solicit or enroll any student. A temporary approval certificate shall be effective for up to 60 days, as determined by the commissioner, and shall be destroyed by the school upon the issuance or denial of the applicant's two-year certificate. *An initial agent application shall mean an application submitted on behalf of an individual having never held an agent's certificate for the submitting school.*

(b) Application for a certificate shall be made on forms furnished by the commissioner. It may be made only by the school or schools which the agent is to represent. If an agent represents more than one school, each school must apply for a certificate. If the school employs more than one agent, a separate application must be filed for each agent. The application shall request such information as the commissioner may require, including information about whether the applicant has ever been convicted of a crime or whether criminal charges are now pending. The application must be accompanied by: two full-face photographs which are a good likeness of the applicant and are one inch by one inch in dimension; certification by two persons other than employers or coworkers attesting to the good moral character of the applicant; and a nonrefundable \$100 check or money order payable to the Education Department. In making application for an agent's certificate, the school shall certify that through the medium of sales manuals, bulletins or other similar means, the agent is fully informed as to its courses, services, charges, enrollment conditions and operating policies, including the refund policy. The school must further certify that it assumes full responsibility for the actions, statements and conduct of its agent, acting in its behalf, and that it uses an acceptable plan for the selection, training and supervision of the agent.

(c) Application for the renewal of an agent's certificate shall be filed by mail no later than 30 days before the expiration of the current certificate at an office designated by the commissioner. *A renewal application shall mean an application submitted prior to the expiration date of the current certificate.* All other applications shall be filed as new applications. Certificates which have been renewed shall be valid for a period of two years from the expiration date of the certificate which has been renewed. It shall be accompanied by a nonrefundable \$100 check or money order payable to the Education Department.

(d) In the event of the dismissal or resignation of an agent, the school shall notify the commissioner in writing within 10 days thereof. The agent's certificate shall be returned with such notification.

(e) Agents shall not identify themselves or be identified as counselors or by other titles which mislead or tend to mislead the prospective student.

(f) No school may procure, solicit or enroll students unless at least one salaried employee of the school is in receipt of an agent's certificate pursuant to this section.

126.14 Disciplinary actions and penalties.

(a) Disciplinary action against schools. In determining the penalty to be imposed upon a finding that disciplinary action against a school is warranted, in accordance with the provisions of Education Law, section 5003, the commissioner shall take into account the effect of the conduct which formed the basis for the disciplinary proceeding upon the students attending the school, the general public and any other affected individual or group. Prior to initiating action against schools during the initial two year licensing period, the commissioner shall take into consideration the factors as set forth under section 5003(1)(d) of the Education Law.

(b) Disciplinary actions against private school agents.

(1) The commissioner, after affording a certified private school agent notice and an opportunity to be heard, may fine such agent, or suspend or revoke such agent's

certificate at any time for failure to comply with the requirements of the Education Law or of this Part or for any other good cause.

(2) Revocation or suspension of a private school agent's certificate. Where the commissioner seeks to revoke or suspend a private school agent's certificate, the certificate holder shall be given reasonable notice of the nature of the proceeding and a statement sufficiently particular to give notice of the transactions and occurrences involved and the material elements of each cause of action against the certificate holder. The certificate holder shall also be given notice of an opportunity for a hearing in accordance with subparagraph (i) of this paragraph.

(i) If a hearing is requested, the certificate holder shall be given reasonable notice of the time, place and nature of the hearing. The certificate holder may appear in person or may be represented at the hearing by an attorney, may respond and present evidence and argument on the issues involved, and may cross-examine witnesses. The hearing, at which a verbatim record shall be taken, shall be held before a hearing officer designated by the commissioner, who shall have the powers of a presiding officer in accordance with section 304 of the State Administrative Procedure Act. The strict rules of evidence shall not apply to such hearings, but the decision of the hearing officer shall be supported by substantial evidence in the record. Disposition may be made in any hearing by stipulation, agreed settlement, consent order, default or other informal method. The decision of the hearing officer shall be delivered or mailed forthwith to the certificate holder and to his or her attorney of record.

(ii) If a hearing is not requested, the commissioner shall issue a determination based upon the evidence submitted in support of the charges and any additional evidence submitted by the certificate holder.

(3) Fines. Where the commissioner seeks to impose a fine on a certified private school agent for misconduct not warranting a more severe disciplinary penalty, the department shall serve notice of the charges upon the certificate holder either by personal service or certified mail. Such notice shall specify the basis for the charges with sufficient particularity to apprise the certificate holder of the nature of the incidents or transactions leading to the charges, and shall contain a statement that unless an answer to the charges is received by the department within 20 days after personal service of the notice or within 25 days after service by certified mail, the charges will be deemed to be true and a fine will be imposed. The certificate holder may answer the charges and may submit evidence in written form, including affidavits, in support of such answer. If the commissioner finds that the charges of misconduct are supported by substantial evidence, the commissioner shall impose an appropriate fine and shall notify the certificate holder of such determination by mail. Failure to pay such a fine within four months after receipt of such notice shall constitute good cause for suspension or revocation of a private school agent's certificate.

(4) Indemnification. No employer of a private school agent other than a school may indemnify or otherwise reimburse an agent for fines imposed on the agent pursuant to this subdivision and Education Law, section 5004(7). If the agent demonstrates, to the

satisfaction of the commissioner, that the action for which the agent was fined was undertaken because of explicit instructions from the school owner, director, or other school administrator, the commissioner shall take appropriate disciplinary action against the school in accordance with Education Law, section 5003, to require the school to indemnify or reimburse the agent the amount of the fine and pay to the commissioner an additional fine of an equal amount.

(c) Pursuant to section 5001(9) of the Education Law, any annual assessment fees submitted by the schools to the department after the due date shall be subject to an interest penalty. The commissioner shall calculate the amount of the interest penalty as follows:

(1) For payments received within the first 30 days after the due date the interest penalty shall be the product of the amount due multiplied by one twelfth of the sum of one plus the prevailing prime rate of interest on the due date as determined by the commissioner.

(2) For payments received more than 30 days after the due date the interest penalty shall be compounded daily for each day the payment is late at a rate of interest equal to the sum of one plus the prevailing prime rate of interest on the due date as determined by the commissioner.

(3) Interest penalties not paid within 15 days of notification of the amount of the penalty shall be increased in accordance with the method used by the commissioner to compute the interest penalty in the first instance.

126.15 Disclosure to students.

(a) For all prospective or enrolled students, schools shall provide the following information:

(1) all items required pursuant to section 5005 of the Education Law;

(2) pursuant to section 5005 of the Education Law, the materials required to be disseminated to all prospective or enrolled students shall be written in the language principally used in the sales presentation, the language of instruction as approved by the commissioner and English; and

(3) a statement, approved by the commissioner, which indicates that a student should review the approved school catalog to determine factual information about the school.