

RULES AND REGULATIONS

Title 22—EDUCATION

STATE BOARD OF PRIVATE LICENSED SCHOOLS

[22 PA. CODE CH. 73]

General Provisions

The State Board of Private Licensed Schools (Board), under the Private Licensed Schools Act (24 P. S. §§ 6501—6518), amends Chapter 73 (relating to general provisions) to read as set forth in Annex A.

A. *Effective Date*

The final-form rulemaking is effective upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information, contact Patricia Landis, Chief, Private Licensed Schools Division, Department of Education, 333 Market Street, Harrisburg, PA 17126, (717) 783-8228, TTY (717) 783-8445.

C. *Background and Need for the Final-Form Rulemaking*

The final-form rulemaking governs the operation of private licensed schools, including the licensing and enforcement procedures of the Board. Several amendments are proposed to clarify certain provisions. The main substantive changes are contraction of the definition of "student record," a new requirement for annual consolidation of student records, a new requirement for attendance at new school seminars and the limitation of new school applicants to one program approval for their new school application fee. These amendments will assist the Board in licensing and monitoring schools and will aid the Board in providing for the continuous regulatory supervision of private licensed and registered schools that enroll students from this Commonwealth.

D. *Statutory Authority*

Section 4 of act (24 P. S. § 6504) authorizes the Board to promulgate regulations regarding the approval or disapproval of initial and renewal licensure or registry, or both, of schools; the suspension or revocation of the licensure or registry, or both, of schools; the approval or disapproval of the licensing of in-State and out-of-State admissions representatives; and the establishment of qualifications for instructors, administrators and supervisors.

E. *Description of Amendments*

Section 73.1 (relating to definitions) has been amended to add a definition for "quarter credit hour" and remove the term "entry level" from the definition of "seminars."

Sections 73.21, 73.22a and 73.23 (relating to contents of student records; annual consolidation of student transcripts; and retention of transcript of academic performance) specify the content of student records and eliminate the distinction between long-term and short-term retention of records. The sections also require the annual consolidation of student records and relieve the schools of the requirement to maintain the enrollment agreement, financial records and financial aid documentation for 5 years following graduation, withdrawal or termination.

Section 73.25 (relating to content of disposition statement) has been amended to prescribe the content of the disposition of records agreement. The amendment in-

cludes a reference to the contents of the student records defined in § 73.21 to improve clarity.

Section 73.51(b) (relating to general requirements) has been amended to require applicants for licensure to attend a new school orientation. Section 73.51(d) has been amended to remove the requirement that the Board provide a signed receipt for all materials.

Section 73.52 (relating to contents of application) has been amended to authorize the Board to refuse to issue a license if the name of the proposed school or program is misleading.

Section 73.54 (relating to surety) has been amended to mandate that surety be maintained throughout the period of licensure.

Section 73.71 (relating to license required) has been amended to clarify the licensure requirement for admissions representatives.

Section 73.81 (relating to application requirements) has been amended to include the appropriate reference to credit hours and quarter credits and authorize the Board to refuse to approve a program if the name of the proposed program is misleading.

Section 73.104 (relating to instructor) has been amended to eliminate the maintenance of attendance records from the responsibilities of instructors.

Section 73.136 (relating to period of refund) has been amended to include a student's failure to return from a leave of absence under the conditions for which a refund must be made within 30 days.

Section 73.141 (relating to issuance) has been amended to include authorization for the Board to refuse to issue a license if the name of the school is misleading.

Section 73.151 (relating to fees) has been amended to specify that only one program approval is included under the \$1,500 initial license application fee paid by a new school. Applicants with multiple programs will henceforth be required to pay a \$700 program application fee for each additional program to be offered.

Section 73.173 (relating to advertisements and representations) has been amended to include the general public under sectors that may not be misled by advertisements or representations on behalf of a licensed school. The amendment broadens the prohibition against misleading advertising and representations to include the general public instead of prospective students only.

F. *Summary of Comments and Responses on the Proposed Rulemaking and Changes in the Final-Form Rulemaking*

§ 73.22a. *(regarding the consolidation and storage of student records)*

The Pennsylvania Association of Private School Administrators noted that these sections required clarification regarding the consolidation and electronic storage of student records. Thus, the Board added § 73.22a, which requires schools to consolidate copies of transcripts on an annual basis and store them in either a hard-copy file format or as a printable electronic record.

§ 73.51(b) *(regarding the orientation seminar requirement)*

The Independent Regulatory Review Commission (IRRC) suggested that the Board should add language

that states how often orientation seminars are held and the location of the seminars. The Board agrees, and the final-form rulemaking has been revised to state that orientation seminars will be conducted monthly at the Department of Education.

§ 73.54 (relating to surety)

IRRC suggested that the proposed language in subsection (b)(5) was unrelated to the other provisions under subsection (b), and therefore should be a separate item. IRRC recommended that it be moved to subsection (c) and that all of the subsequent sections be renamed. The Board agrees that it should be included in a separate section. However, the Board chose to put it under subsection (f) rather than subsection (c). This placement did not substantively affect IRRC's suggestion.

§ 73.151 (relating to fees)

IRRC recommended that the Board more clearly delineate the "\$1,500 annually" language to make it consistent with subsection (a)(3). The Board agrees and has amended the section to clarify that the fee for an original school license or registration includes the user fee for the application for approval of one new program, and that each additional new program application submitted with a license application must be accompanied by an additional program approval fee.

G. Fiscal Impact

The final-form rulemaking creates minimal fiscal impact. The revenues generated by the orientation seminar and additional program application fees are estimated at \$44,100 per year and will cover staff and Board costs for the review of these applications, which is not currently recovered. The costs of complying with the changes to the requirements for records compilation and storage are estimated at \$1 per student for copying, materials, storage and staff time. This cost will be assumed by the school and recovered through student fees and tuition. This activity will not generate any revenue for the State.

H. Paperwork Requirement

The amendments to §§ 73.21—73.23 will relieve the regulated community of paperwork requirements regarding the maintenance of student records. The amendment to § 73.51 relieves the Board of the paperwork requirement of providing a signed receipt for all application materials received. The amendment to § 73.104 will relieve the schools of the additional paperwork to maintain student attendance records. No additional forms or reporting are required by the regulated schools or the State.

I. Sunset Date

The act requires that the Board monitor its revenues and costs on a biennial basis and revise its regulations as necessary. Therefore, no sunset date has been assigned.

J. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 21, 2004, the Board submitted a copy of the notice of proposed rulemaking, published at 33 Pa.B. 2885 (June 21, 2003), to IRRC and the Chairpersons of the House and Senate Committees on Education for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing

the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on February 9, 2005, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on February 10, 2005, and approved the final-form rulemaking.

K. Findings

The Board finds that:

(1) Public notice of the proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 33 Pa.B. 2885.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in Part C of this preamble.

L. Order

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 22 Pa. Code Chapter 73, are amended by amending §§ 73.1, 73.21, 73.23, 73.25, 73.51, 73.52, 73.54, 73.71, 53.81, 73.104, 73.136, 73.141, 73.151 and 73.173, by deleting § 73.22 and by adding § 73.22a to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order takes effect on publication in the *Pennsylvania Bulletin*.

PATRICIA A. LANDIS,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 35 Pa.B. 1487 (February 26, 2004).)

Fiscal Note: Fiscal Note 6-286 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 22. EDUCATION

PART III. STATE BOARD OF PRIVATE LICENSED SCHOOLS

CHAPTER 73. GENERAL PROVISIONS

DEFINITIONS

§ 73.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Quarter credit hour—A unit of curricular material which normally can be taught in a minimum of 10 clock hours of lecture. For laboratory and shop instruction, a quarter credit hour represents a minimum of 20 clock hours. For externship/internship experiences, a quarter credit hour represents a minimum of 30 clock hours.

* * * * *

Seminar—Training or instruction that is one of the following:

(i) Noncumulative short-term training of no more than 15 hours duration, not scheduled in a regular calendar format and offered as an introduction or orientation to an occupation.

(ii) Instruction for an occupation offered at a total contract price, of less than \$300, which includes all costs charged to students, including tuition, fees, books and supplies, provided that the total contract price for all courses to any enrolled student is less than \$300 in any one calendar year.

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STUDENT RECORDS

§ 73.21. Contents of student records.

Student records must contain a transcript of academic performance, which includes student name, identifying number, program or course attended, grades for all subjects taken, date of entrance, date of graduation or withdrawal and the award received upon completion.

§ 73.22. (Reserved).

§ 73.22a. Annual consolidation of student transcripts.

Annually, a school shall consolidate copies of all transcripts of academic performance for all students who have graduated, terminated or withdrawn during the previous calendar year. These transcripts of academic performance, for each year, shall be stored separately in a hard copy file or printable electronic record.

§ 73.23. Retention of transcript of academic performance.

A school shall provide for a method of maintenance of and access to the transcript of academic performance for 50 years after graduation, termination or withdrawal.

§ 73.25. Content of disposition statement.

(a) The statement must include the name and address of the depository, agreement of the depository and terms of the agreement.

(b) Proper disposition of student records shall be subject to approval of the Board and shall include a means of access by the student for copies of records as defined in § 73.21 (relating to contents of school records).

APPLICATION FOR SCHOOL LICENSE OR REGISTRATION

§ 73.51. General requirements.

(a) A school may not advertise, solicit students, collect fees or conduct courses or programs unless licensed or registered.

(b) A person, partnership or corporation desiring to operate a private licensed school in this Commonwealth shall attend a new school orientation seminar conducted by Board staff in Harrisburg and shall file an application for licensure or registration with the Board in the manner

prescribed by the Board. Orientation seminars will be conducted monthly at the Department.

(c) A person, partnership or corporation operating a school located outside this Commonwealth which employs an admissions representative to enroll students from inside this Commonwealth shall file an application for registration with the Board in the manner and form prescribed by the Board.

(d) Original letters, proof of surety, forms and applications sent to the Board shall become the property of the Board, constitute records of the Board and may be retained by the Board.

(e) A license will not be issued to a franchised school unless the franchise agreement contains a provision that the school may not be terminated by the franchisor until sufficient arrangements have been made to assure approved teachout arrangements. This requirement is in addition to other license requirements described in this section.

§ 73.52. Contents of application.

An application for an original license or registration shall contain, at a minimum, the following prepared in a manner and form prescribed by the Board:

(1) Draft copies of student information publications in accordance with §§ 73.61 and 73.62 (relating to general student information publications; program and course brochures; supplements; and nonresident instruction publications).

(2) The name of the school, ownership or governing body and officials. A copy of a fictitious name registration, articles of incorporation or charter. School names which the applicant wishes to appear on the license or registration shall be submitted, along with a fictitious name registration for each name. The Board may refuse to issue a license, when, in the Board's judgment, a name chosen by the applicant appears to be misleading to the public regarding the nature or scope of the school.

(3) The schedule of tuition and fees.

(4) The enrollment agreement or an alternative under § 73.122 (relating to contents of enrollment agreement).

(5) The address of the school, certificate of occupancy or equivalent statement, designation of available space, facilities and equipment of the school under §§ 73.91 and 73.92 (relating to equipment; and facilities).

(6) Descriptions of proposed courses or programs of instruction prepared under §§ 73.81—73.83 (relating to approval of programs). The Board may refuse to approve a program, when, in the Board's judgment, the name of the program chosen by the applicant appears to be misleading to the public regarding the nature or scope of the program.

(7) The maximum enrollment to be accommodated on equipment available in each program.

(8) A listing of the names of administrative, supervisory and instructional staff and evidence that their qualifications meet the requirements of §§ 73.102—73.105.

(9) If a school offers a program where graduates will find employment in a trade or activity whose employees are required by law to be free of contagious, infectious and communicable diseases, the school shall file a statement that students in these programs have provided a

bona fide health certificate as a prerequisite of enrollment.

(10) A signed statement on reasonable service and business ethics in accordance with §§ 73.111 and 73.112 (relating to statement requirement; and statement of reasonable service and business ethics).

(11) A signed statement regarding disposition of student records as set forth in §§ 73.23—73.25 (relating to long-term retention of transcript of academic performance; disposition of student records statement; and content of disposition statement).

(12) A financial report under § 73.53 (relating to financial resources).

(13) Evidence of surety under § 73.54 (relating to surety).

(14) The appropriate fee as stipulated in § 73.151 (relating to fees).

§ 73.54. Surety.

(a) *Forms of surety.* A school applying for a license or registration or for renewal shall include with its application evidence of surety, the purpose of which is to reimburse the unearned tuition due students whenever the licensed or registered school closes. Schools may select one of the following forms of surety or a combination thereof, in sufficient amount to meet the requirements of subsection (b):

(1) Surety bond.

(2) Participation in a Board-approved private surety fund.

(b) *Levels of surety.* Regardless of the form of surety selected by the school, surety shall be demonstrated to exist at the following levels:

(1) For a prospective licensee applying for an original license, the required minimum surety level is \$10,000.

(2) For a licensee applying for a renewal license, the required minimum surety level is \$10,000 for licensees with gross tuition collected during the previous fiscal year of \$500,000 or less. For licensees with gross tuition collected during the previous fiscal year in excess of \$500,000, the minimum surety level is \$10,000 for each \$500,000 or portion thereof of gross tuition collected during the previous fiscal year.

(3) For a licensee applying for a renewal license, the maximum surety level is \$100,000.

(4) For a registered school, the minimum surety level is \$10,000, with subsequent surety levels to be based on tuition generated by residents of this Commonwealth. The maximum required amount is \$100,000.

(c) *Approval.* The form and level of surety established by a school are subject to the approval of the Board. Board approval constitutes a condition precedent to the granting or renewal of a license or registration.

(d) *Alteration by school.* A school may apply to the Board for alteration of its approved form or level of surety. An application for alteration of surety will be approved by the Board prior to its taking effect.

(e) *Alteration by Board.* The Board may direct that a school alter its approved form or level of surety with cause. A school which fails, within 30 days, to comply

with a directive of the Board may be subject to suspension or revocation of its license or registration.

(f) Schools are required to maintain surety at the levels under subsection (b) throughout the period of licensure.

ADMISSIONS REPRESENTATIVES

§ 73.71. License required.

A person may not solicit or procure through an enrollment agreement off the premises of the school, a prospective student within this Commonwealth to enroll in a licensed or registered school unless the person has been licensed as an admissions representative of the school.

APPROVAL OF PROGRAMS

§ 73.81. Application requirements.

A school seeking original licensure or registration shall submit programs to the Board for approval in the manner and form established by the Board. This section applies to licensed or registered schools wishing to offer new programs.

(1) Minimum requirements for program approval include the following:

(i) Courses of study shall conform to the standards and training practices of the occupational fields for which students are being prepared.

(ii) Each program—curriculum—shall be outlined in detail showing the courses, major subjects, hours/lessons (in clock hours, credit hours or quarter credit hours) devoted to each subject and the award at completion of the program. The school shall provide a list of instructional equipment.

(iii) Entrance requirements and occupational objectives of each program.

(iv) A method of recording, evaluating and reporting to every student his academic progress. These reports shall be individualized. Schools shall provide prompt, accurate and educationally beneficial correction of tests, lessons and other assignments.

(v) Prerequisite requirements for individual courses.

(vi) Course content shall include instruction in hygiene and safety, where applicable, in the field for which training is offered.

(vii) Programs may be offered at a branch facility or remote training facility only if the facility is approved.

(viii) Instructional materials used shall be current, accurate, comprehensive and at a reading level adapted to the ability of the average student enrollee.

(2) Programs shall be approved by the Board before they can be advertised or offered.

(i) Schools proposing to offer nonresident programs shall submit detailed outlines of the programs and a detailed list of instructional materials plus the lessons in typed draft form. Schools shall make individual arrangements with the staff within a month of approval if they require these materials to be returned.

(ii) Schools offering resident programs shall submit detailed outlines of the programs, complete descriptions of each course which include prerequisites, course objectives, a summary of content and a detailed equipment list.

(iii) Schools shall submit documentation that qualified instructors as defined in § 73.104 (relating to instructor) are assigned to teach each course.

(iv) If the name that is proposed for the program may be misleading in regard to the program's nature and scope, the Board may refuse to approve the program.

ADMINISTRATORS, SUPERVISORS AND INSTRUCTORS

§ 73.104. Instructor.

(a) *Duties.* The primary duties of an instructor involve teaching, advising students and maintaining accurate academic records.

(b) *Qualifications.* An instructor shall have one of the following:

(1) A baccalaureate degree with a major in the specific field of instruction.

(2) At least 2 years' work experience in the specific field of instruction which is acceptable to the Director.

(3) Two years' teaching experience in the specific field of instruction.

(4) A journeyman's license relevant to the specific field of instruction.

(5) Demonstrated competency in the specific field for which training is offered.

(6) Vocational education certification in the specific field of instruction.

TUITION AND FEES; REFUND AND WITHDRAWAL POLICIES; SCHOLARSHIP

§ 73.136. Period of refund.

Refunds shall be made within 30-calender days of the date the student fails to enter, leaves the program or fails to return from a leave of absence.

ISSUANCE AND RENEWAL OF SCHOOL LICENSE OR REGISTRATION

§ 73.141. Issuance.

The Department will issue an original school license or registration to a school approved by the Board as meeting the requirements of the act and this chapter. The Board may refuse to issue a license when the Board determines that the applicant's school name appears to be misleading to the public concerning the nature or scope of the school.

FEES

§ 73.151. Fees.

(a) *License fees.* The fees for school and admissions representative licenses shall accompany both original and renewal license and registration applications. The fee schedule is:

(1) For an original school license or registration—\$1,500. The fee for an original school license or registration includes the user fee for the application for approval of one new program. Each additional new program application submitted with a new license application shall be accompanied by an additional new program approval fee as set forth in subsection (b)(1).

(2) For an original school license or registration of a school that only presents seminars—\$750.

(3) For a renewal school license or registration—biennial fee based on gross tuition revenue:

<i>Gross Tuition Revenue</i>	<i>Fee</i>
\$0—2,499	\$ 500
\$2,500—4,999	\$1,000
\$5,000—9,999	\$2,000
\$10,000—49,999	\$2,200
\$50,000—99,999	\$2,300
\$100,000—199,999	\$2,600
\$200,000—499,999	\$3,000
\$500,000—999,999	\$3,500
\$1,000,000—1,999,999	\$4,100
\$2,000,000 and over	\$4,400

(4) For an admission representative license—\$300 annually.

(b) *User fees.* Fees will also be assessed for other services provided by the Board, which services are in addition to the processing and issuance of original or renewal school licenses or registration and admissions representative licenses. These user fees are as follows:

(1) A \$700 fee shall accompany each application for approval of a new program.

(2) A \$1,200 fee shall accompany notification to the Board of a change in ownership of the school.

(3) A \$200 fee per participant will be charged for participation in new school orientation seminars.

(4) A \$500 fee will be charged for each site inspection of the following types: new school, change in location, expansion of instructional space, temporary relocation, branch facility and remote training facility. This fee shall be paid before commencement of the visit.

(5) The fee for a Board-directed visit is \$500 per day if the visit is conducted by staff; \$800 per day plus team member expenses for a visit conducted by a team with nonstaff members. The fee for a Board-directed visit shall be paid before commencement of the visit.

REQUIREMENTS FOR LICENSURE AND OPERATION

§ 73.173. Advertisements and representations.

(a) The advertising and representations made by a person representing the school may neither misrepresent facts relating to the school nor mislead prospective students or the general public.

(b) A school may not use a name, other than the name appearing on its license or registration, for advertising or publicity purposes. A school may not advertise or imply that it is supervised, recommended, endorsed, accredited or approved by the Department or the Board.

(c) A statement on licensure or registration shall read, "Licensed (Registered) by the Pennsylvania State Board of Private Licensed Schools."

(d) A school may not claim or imply that it is endorsed by colleges, universities or other institutions of higher learning.

(e) A school may not claim or imply that it will guarantee one of the following upon completion of its course or program:

(1) Admission to an educational institution.

(2) Employment.

(3) A specific wage.

(f) A school may not solicit prospective students to enroll in the school by means of blind advertisements or

advertisements in the help wanted or other employment columns of newspapers and other publications.

(g) A school may not use the words "college" or "university" in the school name or in another manner.

(h) A school is prohibited from bait and switch advertising or solicitation.

(i) The words "engineer" or "engineering" may not be used in a name or title that might lead to the assumption that a school prepares engineers or teaches engineering.

The words may be used as adjectives, such as engineering drafting, engineer's aide or engineering technology.

(j) A school may not use descriptive phrases in the superlative degree in advertising.

(k) A school may not offer premiums, special endorsements or discounts to prospective students.

(l) A school may not demean another school.

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