

# PROPOSED RULEMAKINGS

## STATE BOARD OF PRIVATE LICENSED SCHOOLS

[ 22 PA. CODE CH. 73 ]

### General Provisions

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

#### Description of Proposed Amendments

The proposed amendment to § 73.54(b) (relating to surety) raises the minimum surety from \$10,000 to \$25,000 with the maximum surety raised from \$100,000 to \$250,000. Rising tuition costs and school closure rates require higher surety levels to protect students when schools close without delivering the instruction for which the students have paid.

The proposed amendment to § 73.104(b) (relating to instructor) deletes “Demonstrated competency in the specific field for which training is offered” as a basis to determine that an instructor is qualified. This qualification enabled a school to subjectively determine that an instructor is qualified to teach any course, which has resulted in substantiated student complaints regarding instructor quality. The proposed amendment also updates and tightens the instructor qualification language by substituting “program” for “field” and changing “journeyman’s license” to “industry-recognized certification.”

The proposed amendment to § 73.112 (relating to statement of reasonable service and business ethics) clarifies that failure to abide by the ethics agreement is a violation of Chapter 73.

The proposed amendment to § 73.135 (relating to termination date) clarifies options for a school to determine a student’s last date of recorded attendance.

The proposed amendment to § 73.136 (relating to period of refund) clarifies that the date to be used for purposes of calculating the refund due to a student is the same date to be used to determine the beginning of the time period during which the refund shall be made. The proposed amendment also extends the length of time that a school has to make a refund from 30 days to a more reasonable time frame of 45 days, thereby allowing for greater compliance.

The proposed amendment to § 73.173(k) (relating to advertisements and representations) changes “endorsements” to “inducements,” which is a correction of a mistake in the original language.

The proposed amendment to § 73.189(b) (relating to guidelines for civil penalties) deletes tiered fines for first, second and third violations and establishes fines at the statutory limit of \$1,000 per violation, thereby bringing the regulations into line with the maximum fine allowed under the Board’s statutory authority.

#### Fiscal Impact

There is minimal fiscal impact from the proposed rulemaking. The schools that currently maintain surety at a level below the proposed new levels will be required to pay the additional costs associated with increasing the coverage.

Minimal additional revenues may be generated by the deletion of the tiered fine structure depending on the number of successful enforcement actions brought before the Board. These additional revenues are estimated to be approximately \$4,000, again depending on the number of actual violations. The increased fines are designed as a deterrent to statutory and regulatory violations, rather than a revenue enhancement.

#### Paperwork Requirement

Changes are not anticipated in paperwork requirements. Additional forms or reporting are not required by the regulated schools or the Commonwealth.

#### Effective Date

This proposed rulemaking will take effect upon final-form publication in the *Pennsylvania Bulletin*. The Board’s objective was to have the amendments to Chapter 73 in effect by July 1, 2012.

#### Sunset Date

The act requires that the Board monitor its revenues and costs on a biennial basis and revise its regulations as necessary. Therefore, a sunset date has not been assigned.

#### Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 27, 2012, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

#### Public Comments and Contact Person

Interested persons are invited to submit to the Board written comments, suggestions or objections regarding this proposed rulemaking within 30 days following publication in the *Pennsylvania Bulletin*. Written comments, suggestions or objections for Board consideration should be sent to Patricia A. Landis, Coordinating Secretary, State Board of Private Licensed Schools, 333 Market Street, Harrisburg, PA 17126-0333, (717) 783-8228, TTY (717) 783-8445.

PATRICIA A. LANDIS,  
*Coordinating Secretary*

**Fiscal Note:** 6-324. No fiscal impact; (8) recommends adoption.

### Annex A

### TITLE 22. EDUCATION

### PART III. STATE BOARD OF PRIVATE LICENSED SCHOOLS

### CHAPTER 73. GENERAL PROVISIONS

### APPLICATION FOR SCHOOL LICENSE OR REGISTRATION

#### § 73.54. Surety.

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(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 ] \$25,000.

(2) For a licensee applying for a renewal license, the required minimum surety level is [ \$10,000 ] \$25,000 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 ] \$25,000 plus \$25,000 for each \$500,000 or portion thereof of gross tuition in excess of \$500,000 collected during the previous fiscal year. Licensees licensed prior to January 1, 2012, with tuition revenue of \$500,000 per year or less may remain licensed with a minimum surety level of \$10,000.

(3) For a licensee applying for a renewal license, the maximum surety level is [ \$100,000 ] \$250,000.

(4) For a registered school, the minimum surety level is [ \$10,000 ] \$25,000, with subsequent surety levels to be based on tuition generated by residents of this Commonwealth in accordance with the formula in paragraph (2). The maximum required amount is [ \$100,000 ] \$250,000.

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ADMINISTRATORS, SUPERVISORS AND INSTRUCTORS

§ 73.104. Instructor.

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

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

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

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

(4) [ A journeyman's ] An industry-recognized certification or license relevant to the specific [ field ] program of instruction.

(5) [ Demonstrated competency in the specific field for which training is offered. ] Competency in the specific program of instruction and the ability to teach the program in accordance with Board policy.

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

REASONABLE SERVICE AND BUSINESS ETHICS

§ 73.112. Statement of reasonable service and business ethics.

(a) A school shall sign and submit the following statement:

“Recognizing that a strong private school system is an important part of the educational continuum and that a unique relationship is established between student and school, I/we agree to the following:

In addition to my/our compliance in all respects with the provisions of Act 174, Private Licensed Schools Act and the regulations of the State Board of Private Licensed Schools, I/we will:

Develop and present an educational program which affords students the opportunity to develop program competencies.

Provide a place of instruction, equipment adequate to the number of students enrolled and other facilities which will support the educational objectives of the school.

Maintain school facility in compliance with all applicable health and safety regulations.

Recruit and support a faculty and staff which is committed to student development and learning and supply this faculty and staff with the resources necessary to satisfy student learning objectives.

Honestly promote the school and its programs by ensuring that all student publications, advertising and printed materials contain full and accurate information and that all admissions representatives are completely trained and familiar with the school and its programs.

[ Monitor ] Ensure that the activities of admissions representatives [ on a regular basis ] comply with all requirements of the regulations and accurately and honestly represent the school and its programs.

Adhere to all legal requirements concerning the student's education.

Ensure the delivery of the educational program contracted for as long as students fulfill their contracted obligations to the school.

Cooperate with the State Board of Private Licensed Schools and the Pennsylvania Department of Education to promote and advance the quality of education offered by all schools.

“I/We \_\_\_\_\_, \_\_\_\_\_ do hereby (names) (titles)

affirm \_\_\_\_\_ (name of school)

adherence to the State Board of Private Licensed School's Policy on Reasonable Service and Business Ethics set forth above.”

(b) Failure to comply with the terms of the ethics statement constitutes a violation of this chapter.

TUITION AND FEES; REFUND AND WITHDRAWAL POLICIES; SCHOLARSHIP

§ 73.135. Termination date.

The termination date for refund computation purposes is the last date of recorded attendance of the resident student or the date the nonresident student requests cancellation. Recorded attendance may be documented by attendance records or a test, quiz, homework or lab assignment, tutoring session or other academic record. If a resident student fails to enter the program, the termination date is the date the program begins.

§ 73.136. Period of refund.

Refunds shall be made within [ 30-calender ] 45-calendar days of the termination date [ the student fails to enter, leaves the program or fails to return from a leave of absence ].

REQUIREMENTS FOR LICENSURE AND OPERATION

§ 73.173. Advertisements and representations.

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

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ENFORCEMENT, REFUSAL, SUSPENSION OR REVOCATION OF LICENSE

§ 73.189. Guidelines for civil penalties.

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(b) [ For a first violation, a penalty of not more than \$500 may be assessed. For a second violation within 3 years, a penalty of not more than \$750 may be assessed. For a third violation within 3 years, a penalty of not more than \$1,000 may be assessed. ] The Board may levy a fine up to \$1,000 per student per day for each instance of a violation.

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[Pa.B. Doc. No. 12-1795. Filed for public inspection September 14, 2012, 9:00 a.m.]