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RULE PROPOSALS

**LABOR AND WORKFORCE DEVELOPMENT
CENTER FOR OCCUPATIONAL EMPLOYMENT INFORMATION**

48 N.J.R. 1579(a)

Proposed Readoption: *N.J.A.C. 12:41*

Proposed Repeals and New Rules: *N.J.A.C. 12:41*

[Click here to view Interested Persons Statement](#)

Private Career Schools

Authorized By: Harold J. Wirths, Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 34:1-20, 34:1A-3(e), and 34:15C-10.1.*

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2016-127.

A **public hearing** on the proposed readoption, repeals, and new rules will be held on the following date at the following location:

Wednesday, September 14, 2016
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor and Workforce Development
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 292-2789 if you wish to be included on the list of speakers.

Submit written comments by October 14, 2016, to:

David Fish, Executive Director
Legal and Regulatory Services
PO Box 110, 13th Floor

Trenton, New Jersey 08625-0110
 Fax: (609) 292-8246

The agency proposal follows:

Summary

Pursuant to *N.J.S.A. 52:14B-5.1, N.J.A.C. 12:41*, concerning private career schools, is scheduled to expire on July 8, 2016. The chapter sets forth the procedures for obtaining a Certificate of Approval to operate a private career school in New Jersey. As part of the ongoing process of evaluating the chapter to determine whether it is necessary, reasonable, and proper for the purpose for which it was originally promulgated, the Department has concluded that it would be appropriate at this time to repeal existing *N.J.A.C. 12:41* and replace it with new rules. Those new rules would fully implement P.L. 2005, c. 354, codified in pertinent part at *N.J.S.A. 34:15C-10.1*. However, the process for repealing existing *N.J.A.C. 12:41* and replacing it with new rules, which is to say, the notice and comment rulemaking process governed by the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq., requires months to complete. With the July 8, 2016, expiration of the chapter fast approaching, the Department, through this notice, is concurrently proposing: (1) the readoption of *N.J.A.C. 12:41*, (2) the repeal of *N.J.A.C. 12:41*, and (3) the adoption of new rules at *N.J.A.C. 12:41*. Pursuant to *N.J.S.A. 52:14B-5.1.c(2)*, by filing a proposed readoption of *N.J.A.C. 12:41* prior to the chapter's July 8, 2016, expiration, the expiration date is automatically extended for 180 days, to January 4, 2017, which will ensure that the chapter does not expire. In the meantime, as mentioned above, the Department is concurrently proposing the repeal of *N.J.A.C. 12:41* and its replacement with new rules, with the expectation that it will be able to complete the notice and comment rulemaking process and adopt the new rules prior to the extended January 4, 2017, chapter expiration date. If the Department is able to do so, then it would have no need to take further action on the notice of proposed readoption following the publication of that notice in the New Jersey Register. However, in the event that the Department is ultimately unable to complete the notice and comment rulemaking process relative to the proposed repeal and new rules prior to January 4, 2017, then the Department would at that time file a notice of adoption readopting the existing chapter, thereby again ensuring that the chapter does not expire. In the latter circumstance, notwithstanding the readoption of *N.J.A.C. 12:41*, the Department would continue through the notice and comment rulemaking process to pursue the ultimate repeal of *N.J.A.C. 12:41* and its replacement with new rules, since it is the Department's belief that doing so is necessary in order to fully implement P.L. 2005, c. 354 (codified in pertinent part at *N.J.S.A. 34:15C-10.1*).

For purposes of the notice of proposed readoption of *N.J.A.C. 12:41*, a summary of the existing chapter follows:

N.J.A.C. 12:41-1 sets forth the purpose and scope of the chapter and contains definitions for words and terms used throughout the chapter.

N.J.A.C. 12:41-2 sets forth the authority for the Department to promulgate rules pertaining to private career schools, delineates the standards and procedure for obtaining a Certificate of Approval for a private career school, and addresses the appeal procedure when the holder of a Certificate of Approval wishes to contest the revocation or withholding of same.

N.J.A.C. 12:41-3 addresses the issuing of Certificates of Approval to "private vocational schools, out-of-State private vocational schools, and correspondence schools."

[page=1580] *N.J.A.C. 12:41-4* addresses the approval by the Commissioner of customized training providers.

N.J.A.C. 12:41-5 concerns the approval of "Chapter 531 private training providers."

For purposes of the proposed repeal of *N.J.A.C. 12:41* and the adoption of new rules at *N.J.A.C. 12:41*, a summary of the proposed new rules follows:

N.J.A.C. 12:41-1 would set forth the purpose and scope of the chapter and contained definitions for words and terms used throughout the chapter.

N.J.A.C. 12:41-2 would set forth the process for applying to be an approved private career school, including separate sections entitled, Certificate of Approval Required, *N.J.A.C. 12:41-2.1*, Application for Initial Approval of Private Career School, *N.J.A.C. 12:41-2.2*, Pre-approval facilities inspection, *N.J.A.C. 12:41-2.3*, Application for renewal of Certificate of Approval for private career schools, *N.J.A.C. 12:41-2.4*, Application for renewal of Certificate of Approval for private career school submitted after expiration of the existing Certificate of Approval, *N.J.A.C. 12:41-2.5*, and Application for approval of changes for private career schools, *N.J.A.C. 12:41-2.6*.

N.J.A.C. 12:41-3 would contain recordkeeping and reporting requirements for private career schools.

N.J.A.C. 12:41-4 would address operations requirements for private career schools, including a refund policy, a complaint resolution procedure, the creation and distribution to prospective students of a School and Program Information Form, a prohibition against deceptive marketing and recruiting practices, a continuing compliance obligation, a requirement that each private career school be open for monitoring and inspection by representatives or agents of the Department of Labor and Workforce Development and the Department of Education for the purpose of ensuring compliance with *N.J.S.A. 34:15C-10.1*, *N.J.A.C. 12:41* and 6A:19-7, and school closure procedures.

N.J.A.C. 12:41-5 would address both penalties for noncompliance and hearing rights.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to *N.J.A.C. 1:30-3.3(a)5*.

Social Impact

The proposed repeals and new rules and the resulting full implementation of P.L. 2005, c. 354 (codified in pertinent part at *N.J.S.A. 34:15C-10.1*), would provide much needed clarity to the private career schools which do business in New Jersey, to the many students throughout New Jersey who are attending or who will attend private career schools and, finally, to the State employees who evaluate and license private career schools. The proposed repeals and new rules would ensure that private career schools doing business in New Jersey are using standard academic and business procedures which are generally accepted and sound. For example, proposed *N.J.A.C. 12:41-3.1* would require, among other things, that each private career school submit to the Training Evaluation Unit within the Department of Labor and Workforce Development a record retention plan, which describes the manner in which student records, including transcripts, are maintained and distributed; proposed *N.J.A.C. 12:41-3.2* would require that each private career school submit an annual report to the Training Evaluation Unit, which includes each permanent student maintained by the private career school pursuant to proposed *N.J.A.C. 12:41-3.1(a)* and an electronic copy of each graduate's transcript; proposed *N.J.A.C. 12:41-4.1* would require that each private career school have an appropriate refund policy; proposed *N.J.A.C. 12:41-4.2* would require that each private career school have a student complaint resolution procedure; proposed *N.J.A.C. 12:41-4.3* would require each private career school to provide to each prospective student prior to enrollment, a School and Program Information Form, which includes at a minimum the name of the school, the titles of its approved program(s), the starting and ending dates of each program, the school's complaint resolution procedure, the school's tuition, fees, and refund policy, a listing of certificates, licenses, and other professional credentials available upon completion of each program, including the fees associated with obtaining each, the issuing authority, the qualifications needed for each, and a statement informing students that the school's post-training placement information is available at www.njtopps.com. These and the many similar provisions contained within the proposed new rules would inure to the benefit of students, private career schools, and employers alike, who would all benefit from the opportunity to participate in occupational training programs, services, and activities that are being held accountable to sound educational and business standards.

As to the concurrent proposed readoption of *N.J.A.C. 12:41*, a procedural necessity in light of the approaching expiration of the chapter and a contingency in the event that the Department is unable to complete the notice and comment rulemaking process prior to the extended January 4, 2017, chapter expiration date, although existing *N.J.A.C. 12:41*, inherited by the Department of Labor and Workforce Development from the Department of Education pursuant to P.L. 2005, c. 354, obviously does not contain the Department's preferred standards (those preferred standards reflected in the proposed new rules), they do contain the regulatory standards that have been used for over a decade to ensure the educational and business soundness of New Jersey's private career schools. Those existing standards would suffice until the Department can finalize new rules. As indicated above, the Department anticipates the filing of a notice of adoption for the repeal of existing *N.J.A.C. 12:41* and adoption of new rules prior to January 4, 2017, which would make moot the discussion of a possible readoption of the chapter.

Economic Impact

The proposed repeals and new rules would have a positive economic impact on the general public, in that they would provide the tools necessary to ensure that the State's workforce readiness system is effectively administered and adequate to provide a quality educational experience. Adult students who benefit from the services of approved private career schools; that is, those private career schools determined to have met the State's educational and operational standards, have the opportunity to improve their earning capacity through skills acquisition and upgrading. The pro-

posed repeals and new rules are also designed to prevent the misuse of both private and public funds on educationally and operationally unsound programs. When these ends are met; that is the acquisition and upgrading of skills by the State's workforce and the protection against misuse of private and public funds, the State's economy as a whole benefits.

Separate and apart from the larger economic impact of the proposed repeals and new rules on the citizens and businesses of New Jersey, there is the direct economic impact upon private career schools resulting from the charging of fees. Existing *N.J.A.C. 12:41-3.1(b)3* calls for the charging of registration and renewal fees, "as prescribed by *N.J.S.A. 18A:69-3* and 6.3." These education laws were repealed by P.L. 2005, c. 354, and replaced by *N.J.S.A. 34:15C-10.1*, which states in pertinent part that the Commissioner of the Department of Labor and Workforce Development shall adopt rules and regulations "as necessary to establish approval and renewal fees and to effectuate the provisions of [*N.J.S.A. 34:15C-10.1*]." The evaluation of private career schools from the perspective of curricula, staff qualifications, adequacy of facilities and financial soundness, not to mention ongoing oversight, which includes inspection and monitoring, is an extremely labor intensive and, consequently, costly undertaking. It is presumably for this reason that the Legislature expressly acknowledged within *N.J.S.A. 34:15C-10.1* the need to charge "approval and renewal fees." The fees charged for initial and renewal applications under the proposed new rules would be identical to the fees charged under the existing rules. That is, the fees charged under the existing rules are \$ 700.00 for an initial application and \$ 450.00 for a renewal application. The proposed new rules change the renewal cycle from one year to two years. Consequently, the fee to initially apply for a two-year Certificate of Approval would be \$ 1,150 (\$ 700.00 + \$ 450.00) and the fee to apply for a two-year renewal of the Certificate of Approval would be \$ 900.00 (\$ 450.00 + \$ 450.00). The charging of these fees would obviously have a direct negative impact upon private career schools. However, it represents no change from the existing fee structure and would provide resources to the Department, which are desperately needed to achieve its statutory objective, thereby resulting in the larger positive economic impact on the State's citizenry and business community discussed earlier in this statement.

[page=1581] As to the concurrent proposed re adoption of *N.J.A.C. 12:41*, as indicated above, a procedural necessity in light of the approaching expiration of the chapter and a contingency in the event that the Department is unable to complete the notice and comment rulemaking process prior to the extended January 4, 2017, chapter expiration date, see the discussion within the Social Impact statement above.

Federal Standards Statement

The licensing of private career schools in New Jersey is governed entirely by *N.J.S.A. 34:15C-10.1*. However, in order for a private career school to be eligible for student financial assistance programs authorized under Title IV of the Higher Education Act of 1965 (HEA), 20 U.S.C. §§ 1001 et seq., it must meet the standards set forth within the HEA, which include, among other requirements, that the private career school provide not less than a one-year program of training to prepare students for gainful employment in a recognized occupation, that it be legally authorized within any State to provide a program of education beyond secondary education, and that it be accredited by a nationally recognized accrediting agency or association, or if not so accredited, that it be an institution that has been granted pre-accreditation status by such agency or association that has been recognized by the Secretary of the United States Department of Education for the granting of pre-accreditation status, and the Secretary of the United States Department of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time. Accreditation of an educational institution by a nationally recognized accrediting agency or association generally involves a higher standard than that applied by a State licensing body. This is presumably why the United States Department of Education requires as a pre-condition to eligibility for Title IV funding that a private career school obtain such accreditation above and beyond having received legal authorization from the State to provide a program of education beyond secondary education. Proposed new *N.J.A.C. 12:41* contains a uniform and reasonable Statewide standard for the licensing of private career schools. Neither proposed new *N.J.A.C. 12:41*, nor existing *N.J.A.C. 12:41*, proposed for re adoption, exceed the standards or requirements contained within the HEA, nor do they exceed any other Federal standards or requirements.

As to the concurrent proposed re adoption of *N.J.A.C. 12:41*, the existing rules also do not exceed Federal standards or requirements.

Jobs Impact

The Department does not anticipate that the proposed repeals and new rules or the existing rules proposed for re adoption would result in either the generation or loss of jobs.

Agriculture Industry Impact

The Department does not anticipate that the proposed repeals and new rules or the existing rules proposed for re-adoption would have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed new rules do contain reporting, recordkeeping, and other compliance requirements on small businesses as that term is defined within the Regulatory Flexibility Act (RFA), *N.J.S.A. 52:14B-16* et seq. That is, many private career schools doing business in New Jersey are: (1) resident in New Jersey, (2) independently owned and operated, (3) not dominant in their field, and (4) employ fewer than 100 full-time employees.

The proposed new rules contain recordkeeping requirements at *N.J.A.C. 12:41-3.1*, which would include that each private career school must maintain a permanent student record for each student enrolled, which record shall include the following information with regard to each student: name and complete contact information; Social Security number or, if the student does not have a Social Security number, an alternative identification code; gender; date of birth; date of enrollment; program information; payment information; date of completion/termination /withdrawal; grades and hours for each course; total completed hours and final grade for the program; date of start in a job; date of application for a license/certification; date of license/certification examination; result of license/certification examination; date of issuance of license/certification; credential issued; and School and Program Information Form. In addition, *N.J.A.C. 12:41-3.1* would require that each private career school submit to the Training Evaluation Unit, a record retention plan, which describes the manner in which students records, including transcripts, are maintained and distributed.

Proposed new *N.J.A.C. 12:41-3.2*, would require that each private career school must submit an annual report to the Training Evaluation Unit, which report shall include: (1) each permanent student record maintained pursuant to *N.J.A.C. 12:41-3.1(a)* and (2) an electronic copy of each graduate's transcript. *N.J.A.C. 12:41-3.2* would also state that each private career school may be required by the Training Evaluation Unit to submit additional reports on a more frequent basis.

As to other compliance requirements, the proposed new rules would require each private career school to meet the initial application and application renewal standards set forth at *N.J.A.C. 12:41-2*. The proposed new rules would also require each private career school to meet the operations requirements set forth at *N.J.A.C. 12:41-4*, which include maintaining an appropriate refund policy, maintaining a student complaint resolution procedure, developing and providing to each prospective student a School and Program Information Form, refraining from engaging in any deceptive marketing or recruiting practices, ensuring on a continuing basis between certificate renewal cycles that the school adheres to all of the requirements set forth within *N.J.A.C. 12:41-2* and throughout the chapter, opening the school for monitoring and inspection by representatives or agents of the Department of Labor and Workforce Development and the Department of Education, and adhering to the school closure procedures set forth at proposed *N.J.A.C. 12:41-4.7*.

Each of the above-listed reporting, recordkeeping, and other compliance requirements is absolutely vital to the Department of Labor and Workforce Development's and Department of Education's efforts to meet their statutory charge under *N.J.S.A. 34:15C-10.1*, which makes no distinction between large and small businesses. Consequently, the Department will be enforcing each of the above-listed reporting, recordkeeping, and other compliance requirements uniformly without regard to business size. One way in which the proposed new rules have been designed to minimize adverse impact on affected businesses, large and small, is the earlier referenced change to the Certificate of Approval renewal cycle from one year to two years. This change should lessen the administrative burden on private career schools, including those which are small businesses.

Housing Affordability Impact Analysis

Neither the proposed repeals and new rules, nor the rules proposed for re-adoption, would evoke a change in the average costs associated with housing or have an effect on the affordability of housing. The basis for this finding is that both the proposed repeals and new rules and the rules proposed for re-adoption, pertain to the licensing of private career schools. Neither the proposed repeals and new rules, nor the rules proposed for re-adoption, pertain in any way to housing.

Smart Growth Development Impact Analysis

Neither the proposed repeals and new rules, nor the rules proposed for readoption, would evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that both the proposed repeals and new rules and the rules proposed for readoption pertain to the licensing of private career schools. Neither the proposed repeals and new rules, nor the rules proposed for readoption, pertain to housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey.

Full text of the rules proposed for repeal and readoption may be found in the New Jersey Administrative Code at *N.J.A.C. 12:41*.

Full text of the proposed new rules follows:

[page=1582] CHAPTER 41
PRIVATE CAREER SCHOOLS

SUBCHAPTER 1. GENERAL PROVISIONS

12:41-1.1 Purpose and scope

(a) The purpose of this chapter is to establish rules to effectuate *N.J.S.A. 34:15C-10.1*, which empowers the Commissioner of the Department of Labor and Workforce Development and the Commissioner of the Department of Education to issue certificates of approval to "qualifying schools" (referred to throughout this chapter as and defined therein as synonymous with the term, "private career schools"); to "maintain rules governing curricula, qualifications of instructors and supervisors, facilities, recordkeeping (and reporting) requirements, and any other matter essential to the maintenance of quality instruction and the business integrity" of private career schools; to oversee the proper conduct of private career schools, including the monitoring and inspection of approved private career schools and the conducting of examinations of all facilities and methods of operation of private career schools; and, to revoke, suspend, or place reasonable conditions upon the continued approval of a private career school where reasonable cause exists to believe that the private career school is guilty of violating *N.J.S.A. 34:15C-10.1*, *N.J.A.C. 6A:19-7*, or this chapter or is found to be "financially unsound."

(b) The chapter is applicable to all private career schools.

(c) The chapter does not apply to private career schools for which a cognizant New Jersey or Federal government agency other than the Department of Labor and Workforce Development or the Department of Education is responsible for evaluating and approving both facilities, business, administrative, and financial aspects of the training provider and curricula and staff qualifications of the training provider.

12:41-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise.

"Business Name" means the name of the private career school listed on the "Business Registration Application" or "NJ REG" form, which was submitted by the private career school to the New Jersey Division of Revenue, in the Department of the Treasury, in order to obtain a Business Registration Certificate.

"Business Registration Certificate" means the certificate, issued by the New Jersey Division of Revenue, which constitutes proof of a valid business registration in the State of New Jersey.

"Center for Occupational Employment Information" or "COEI" means the Center for Occupational Employment Information established by *N.J.S.A. 34:1A-86*.

"Chapter 531 provider" means a private business, nonprofit agency, private organization, or community-based organization that serves solely the needs of eligible recipients of Federal- or State-supported training programs based on eco-

conomic need and which had been approved by the Department of Labor and Workforce Development pursuant to P.L. 1981, c. 531 (*N.J.S.A. 44:12-2*, repealed in pertinent part by P.L. 2005, c. 354).

"Commissioner of the Department of Education" means the Commissioner of the New Jersey Department of Education or his or her designee.

"Commissioner of the Department of Labor and Workforce Development" means the Commissioner of the New Jersey Department of Labor and Workforce Development or his or her designee.

"Course of instruction" means an organization of subject matter and related learning experiences designed to meet an occupational objective offered for the instruction of students on a systematic basis. It does not mean workshops, seminars, or conferences that last no longer than three days and, although designed to teach specific skills that may be applicable in a work setting and may incidentally lead to or enhance employment opportunities, are not sufficient in themselves to be considered a component of an instructional program.

"Department of Education" means the New Jersey Department of Education.

"Department of Labor and Workforce Development" means the New Jersey Department of Labor and Workforce Development.

"Instructional program" means the planned sequence of courses, services, or activities designed to meet educational and employment objectives.

"Private career school" means "qualifying school" as that term is defined at *N.J.S.A. 34:15C-1f*. The term private career school shall include Chapter 531 providers.

"Record retention plan" means a written document that describes, at a minimum, the method by which a student or other legitimate requestor may obtain a copy of the permanent record verifying attendance and academic achievement of a student at the school. The plan shall identify the organization or individual responsible for maintaining and responding to requests for and distributing records in the event that the school ceases operation or closes.

SUBCHAPTER 2. APPLICATION PROCESS

12:41-2.1 Certificate of Approval required

(a) No private career school shall be permitted to operate in New Jersey, unless it has been issued a Certificate of Approval jointly by the Commissioner of the Department of Labor and Workforce Development and the Commissioner of the Department of Education pursuant to *N.J.S.A. 34:15C-10.1*, *N.J.A.C. 6A:19-7*, and this chapter.

(b) The Certificate of Approval shall be issued to the applicant owner of the private career school and is non-transferrable.

(c) The Certificate of Approval shall be prominently displayed, so that it is visible to the general public and shall be valid for two years from the date of issuance.

(d) In the event that the holder of a Certificate of Approval fails to submit a completed Application for Renewal of a Private Career School Certificate of Approval, including all information and documents required thereunder, not less than 90 calendar days prior to expiration of the existing Certificate of Approval in accordance with *N.J.A.C. 12:41-2.4(b)*, the private career school shall be prohibited from accepting any new students for the period beginning 90 days prior to the expiration of the existing Certificate of Approval and ending upon submission of a completed Application for Renewal of a Private Career School Certificate of Approval, including all information and documents required thereunder.

1. The acceptance of a Certificate of Approval by a private career school owner under this chapter shall be with the understanding that the Department of Labor and Workforce Development and the Department of Education have issued the Certificate of Approval with the express condition set forth within this subsection.
2. The express condition set forth within this subsection shall apply uniformly to all holders of a Certificate of Approval and shall not be subject to appeal.
3. When a completed Application for Renewal of a Private Career School Certificate of Approval has been submitted after expiration of the existing Certificate of Approval, *N.J.A.C. 12:41-2.5* shall govern.

(e) Each Chapter 531 provider that had, prior to (the effective date of this chapter), been approved by the Department of Labor and Workforce Development under repealed *N.J.A.C. 12:41-5.1* shall by (90 days after the effective date of this chapter) be required to submit an Application for Initial Approval of a Private Career School under *N.J.A.C. 12:41-2.2* and submit to a pre-approval facilities inspection by the Training Evaluation Unit under *N.J.A.C. 12:41-2.3*.

12:41-2.2 Application for initial approval of a private career school

(a) Any private career school that seeks to apply for a Certificate of Approval under *N.J.S.A. 34:15C-10.1* shall make a written Application for Initial Approval of a Private Career School to the Department of Labor and Workforce Development.

1. The Application for Initial Approval of a Private Career School shall have two components: one component pertaining to facilities, business operations, and financial aspects of the applicant private career school, which shall be reviewed and evaluated by the Training Evaluation Unit, and the other component pertaining to program and course curricula and administrator and instructor credentials, which shall be reviewed and evaluated by the Department of Education.

(b) The information and documents to be submitted for review and evaluation by the Training Evaluation Unit shall include the following:

[page=1583] 1. A completed application form provided by the Department of Labor and Workforce Development;

2. A signed and notarized Statement of Assurances, which attests to the accuracy and truthfulness of the representations made in the Application for Initial Approval of a Private Career School;

3. An organizational chart outlining the school's ownership hierarchy;

4. Proof of a designated business account separate from the owner's or owners' personal financial account(s) or the account(s) of any other business(es);

5. An initial tuition performance bond in the amount of \$ 20,000 payable to the Commissioner of the Department of Labor and Workforce Development. The tuition performance bond shall include the following information:

i. School name;

ii. Physical address of the school;

iii. Bond number;

iv. Amount of bond;

v. Issue and expiration dates;

vi. Bond company address and phone number; and

vii. Within the bond agreement between the school and the bond issuer, a requirement that the bond issuer shall notify the Training Evaluation Unit in the event that the bond terminates for any reason.

6. Proof of authority to conduct business in New Jersey, which shall consist of the following:

i. For a corporation formed within New Jersey, a Certificate of Incorporation or Good Standing Certificate and a Business Registration Certificate, both issued by the New Jersey Division of Revenue;

ii. For a corporation formed outside of New Jersey, a Certificate of Authority and a Business Registration Certificate, both issued by the New Jersey Division of Revenue;

iii. For a sole proprietorship or partnership, proof of registration with the local county clerk and a Business Registration Certificate issued by the New Jersey Division of Revenue;

7. Proof of liability insurance;

8. Proof of workers' compensation insurance;

9. Proof of compliance with the Uniform Construction Code for fire, health, and occupancy, as appropriate;

10. If the facility is leased or rented, a copy of a signed lease or rental agreement for a period of no less than one year;

11. If the facility is owned, proof of ownership;

12. A copy of the facility floor plan, indicating, at a minimum, the location of the following:

i. Fire exits;

ii. Classrooms/labs;

iii. Restrooms; and

iv. File cabinets containing student records;

13. School catalog including, at a minimum, the following:

i. Names of school administrators with contact information;

ii. School calendar and class schedules;

iii. Requirements for admission;

iv. Attendance requirements;

v. Requirements for leave of absence;

vi. Policy for make-up work;

vii. Students' code of conduct;

viii. Conditions for dismissal and re-entry policy;

ix. Complaint resolution procedure;

x. Withdrawal from school policy;

- xi. Refund policy;
 - xii. Policy for maintenance of student records, including transcripts;
 - xiii. Tuition and fees charged;
 - xiv. Grants, loans, and scholarships;
 - xv. Accreditation information, if applicable;
 - xvi. Facility information;
 - xvii. Explanation of grading system;
 - xviii. List of programs and program descriptions;
 - xix. Student and instructor evaluation policy;
 - xx. Policy on credit for previous training;
 - xxi. Policy on probation for below average grades; and
 - xxii. Credit disclaimer statement;
14. Student contract, which includes, at a minimum, the following information:
- i. Student's name and contact information;
 - ii. Program title exactly as it appears on State-approval documents;
 - iii. Program starting and ending dates;
 - iv. Charges for administration fee, tuition, books, materials, tools, supplies, certification/licensure examinations, and total program costs;
 - v. Payments made by the student or on behalf of the student, including balance due and payment plan, if applicable;
 - vi. Refund policy;
 - vii. Right to cancel policy;
 - viii. Complaint resolution policy; and
 - ix. Signature and date lines for school representative and student;
15. Student transcript, which includes, at a minimum, the following information:
- i. Student's name and Social Security number or other student identifier;
 - ii. Program title exactly as it appears on State-approval documents;
 - iii. Program starting and ending dates;
 - iv. Course titles within the program;

- v. Grades and hours for each course; and
 - vi. Total completed hours and final grade for the program;
16. Record retention plan;
 17. A copy of the school advertising materials; and
 18. Proof of appropriate school entry standards.

(c) Requirements for the component reviewed and evaluated by the Department of Education shall be governed by N.J.A.C. 6A:19-7.

(d) Each applicant private career school shall pay an initial, non-refundable, application fee of \$ 1,150, payable to the State Treasurer.

12:41-2.3 Pre-approval facilities inspection

(a) For each private career school, with the exception of those private career schools that offer instruction solely through correspondence, Internet, or other distance learning, the Training Evaluation Unit and the Department of Education shall, prior to the issuance of a Certificate of Approval, conduct a site visit(s) to the school's facility to verify the following:

1. That the facility is clean, well-maintained, and provides good lighting and ventilation;
2. That the school has arranged classrooms, equipment, and demonstration areas within the facility to enhance instruction, provide sufficient storage, use prescribed containers for hazardous materials, and provide for safe and orderly classroom management for the type of educational programs offered;
3. That the school maintains appropriate signage at the facility using the school name, which is listed on the Application for Initial Approval of a Private Career School and on all business registration documents filed with the New Jersey Division of Revenue;
4. That the facility complies with all State and municipal health, fire, and construction codes; and
5. That the facility meets the criteria set forth at *N.J.A.C. 6A:19-7.4*.

12:41-2.4 Application for Renewal of Certificate of Approval for private career schools

(a) Any private career school that seeks to apply for renewal of a Certificate of Approval shall make a written Application for Renewal of a Private Career School Certificate of Approval.

1. The Application for Renewal of a Private Career School Certificate of Approval shall have two components as described in *N.J.A.C. 12:41-2.2(a)1*.

(b) A completed Application for Renewal of a Private Career School Certificate of Approval, including all information and documents required thereunder, shall be submitted by the approved private career school to the Training Evaluation Unit not less than 90 calendar days prior to expiration of the existing Certificate of Approval.

(c) The approved private career school applying to renew its Certificate of Approval shall pay a non-refundable renewal application fee of \$ 900.00, payable to the State Treasurer.

(d) The information and documents to be submitted by the private career school for review and evaluation by the Training Evaluation Unit for renewal of a Certificate of Approval shall include the following:

- [page=1584] 1. A completed application form provided by the Department of Labor and Workforce Development;
2. A signed and notarized Statement of Assurances, which attests to the accuracy and truthfulness of the representations made in the Application for Renewal of a Private Career School Certificate of Approval;
3. The following financial documents to support tuition income and financial soundness of the school, which shall be no more than 12 months old:
- i. Financial statement audited by an independent certified public accountant (if the New Jersey school is part of a larger organization, then the audited financial statement shall include a statement detailing tuition income for the New Jersey school location(s));
 - ii. Financial statement compiled or reviewed by an independent certified public accountant (if the New Jersey school is part of a larger organization, then the compiled or reviewed financial statement shall include a statement detailing tuition income for the New Jersey school location(s));
 - iii. For sole proprietors, a signed copy of Form 1040, U.S. individual income tax return and Schedule C(s);
 - iv. For partnerships, a signed copy of the complete Form 1065, U.S. Return of Partnership Income, including all schedules;
 - v. For S Corporations, a signed copy of the complete Form 1120S, U.S. income tax return for an S Corporation, including all schedules; or
 - vi. For corporations, a signed copy of the complete Form 1120, U.S. corporation income tax return, including all schedules;
4. Current tuition performance bond, which includes the information set forth at *N.J.A.C. 12:41-2.2(a)5i* through vii, payable to the Commissioner of the Department of Labor and Workforce Development in the amount of \$ 20,000 or five percent of the average gross tuition income for the past three years, whichever is greater;
5. Proof of continued liability insurance and workers' compensation insurance;
6. Current fire inspection certificate;
7. Current health inspection certificate, if appropriate;
8. Verification that the school complied with the annual reporting requirement, contained within *N.J.A.C. 12:41-3.2*, for the immediately preceding fiscal year; and
9. Modifications to any documentation provided as part of the Application for Initial Approval of a Private Career School.

(e) Requirements for the component reviewed and evaluated by the Department of Education shall be governed by *N.J.A.C. 6A:19-7*.

12:41-2.5 Application for renewal of Certificate of Approval for private career school submitted after expiration of the existing Certificate of Approval

(a) A private career school that submits its application for renewal of its existing Certificate of Approval after the expiration of its existing Certificate of Approval shall be required to pay the \$ 1,150 non-refundable application fee for initial application set forth at *N.J.A.C. 12:41-2.2(d)*, but shall be required to submit the information and documentation for renewal of a Certificate of Approval, which is set forth at *N.J.A.C. 12:41-2.4(d)* and (e).

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(b) In the event that the private career school applying for a Certificate of Approval under (a) above ultimately receives a Certificate of Approval, it shall reissue credentials following its receipt of the Certificate of Approval to each student who completed a program and was issued a credential during the period between expiration of the private career school's prior Certificate of Approval and the renewal of its Certificate of Approval.

(c) The prohibition against enrollment of new students contained within *N.J.A.C. 12:41-2.1(d)* continues for the private career school that is applying for a Certificate of Approval under (a) above, until its Certificate of Approval is renewed.

(d) A private career school that fails to submit an application for renewal within 30 days after the expiration of its existing Certificate of Approval shall be considered closed, shall immediately adhere to the school closure procedures set forth at *N.J.A.C. 12:41-4.7*, and shall be prohibited from operating until it has been issued a Certificate of Approval under (a) above.

12:41-2.6 Application for approval of changes for private career schools

(a) Each private career school shall submit to either the Training Evaluation Unit or the Department of Education, as appropriate, those documents required for changes not less than 60 calendar days prior to the effective date of any of the following changes:

1. Change in ownership;
2. Change in school name;
3. Change in corporate location;
4. Change in training location;
5. Change in facility;
6. Change in staff;
7. Change in program(s), program(s) titles, program description, and/or CIP code;
8. Change in tuition;
9. Change in fee; or
10. Addition of a new school location or a satellite classroom.

(b) All approved changes in tuition or fees for already approved programs shall not be applied by the private career school until the next program cycle; students under contract are not subject to fee or tuition changes.

SUBCHAPTER 3. RECORDKEEPING AND REPORTING REQUIREMENTS

12:41-3.1 Recordkeeping

(a) Each private career school shall maintain a permanent student record for each student enrolled, which shall include the following information with regard to each student:

1. Name and complete contact information;
2. Social Security number or, if the student does not have a Social Security number, an alternative identification code;
3. Gender;

4. Date of birth;
5. Date of enrollment;
6. Program information, including, but not limited to, program title exactly as it appears on State-approval documents, program starting and ending dates, and course titles within the program;
7. Payment information;
8. Date of completion/termination/withdrawal;
9. Grades and hours for each course;
10. Total completed hours and final grade for the program;
11. Date of start in a job, if applicable;
12. Date of application for a license/certification, if applicable;
13. Date of license/certification examination, if applicable;
14. Result of license/certification examination, if applicable;
15. Date of issuance of license/certification, if applicable;
16. Credential issued; and
17. School and Program Information Form (See N.J.A.C. 12:41-4.3) signed by school representative and student.

12:41-3.2 Reporting requirements

(a) Each private career school shall submit an annual report to the Training Evaluation Unit, which shall include the following:

1. Each permanent student record maintained pursuant to *N.J.A.C. 12:41-3.1(a)*;
2. An electronic copy of each graduate's transcript; and
3. Any additional information requested by the Department of Labor and Workforce Development.

(b) The annual report referred to in (a) above shall be for the period of July 1 through June 30 of the preceding year.

(c) The annual report referred to in (a) above shall be submitted by each private career school no later than 30 calendar days after the close of the reporting period, using the annual reporting form made available by the Department of Labor and Workforce Development.

(d) Each private career school may be required by the Training Evaluation Unit to submit additional reports on a more frequent basis.

[page=1585] SUBCHAPTER 4. SCHOOL OPERATIONS REQUIREMENTS

12:41-4.1 Refund policy

(a) Regarding each student who withdraws from or is terminated by a private career school, the private training school shall adhere to the following refund policy:

1. The school may retain all or part of the registration fee;
2. The school may require that the student retain all books, equipment, and tools purchased from the school and issued to the student. The school may refund a portion of the monies paid if the books, equipment, and tools are in proper condition for resale;
3. For courses of 300 hours or less, the school may retain the registration fee plus a pro-rata portion of the tuition calculated on a weekly basis;
4. For full-time attendance in courses exceeding 300 hours in length, but not exceeding 1,200 hours, the school may retain the registration fee plus:
 - i. Ten percent of the total tuition, if withdrawal occurs in the first week;
 - ii. Twenty percent of the total tuition, if withdrawal occurs in the second or third week;
 - iii. Forty-five percent of the total tuition, if withdrawal occurs after the third week, but prior to the completion of 25 percent of the course; and
 - iv. Seventy percent of the total tuition, if withdrawal occurs after 25 percent, but not more than 50 percent of the course;
5. For part-time attendance in courses over 300 hours in length, calculation of the amount the school may retain in addition to the registration fee shall be:
 - i. Ten percent of the total tuition, if withdrawal occurs in the first 25 hours of scheduled attendance;
 - ii. Twenty percent of the total tuition, if withdrawal occurs between 26 and 75 hours of scheduled attendance; or
 - iii. Calculated on the same basis as for full-time attendance pursuant to (a)4iii through iv above after 75 hours of scheduled attendance;
6. In cases where other fees have been charged, the refund shall be based upon the extent to which the student has benefited. For example, the graduation fee shall be refunded; the activity fee shall be pro-rated;
7. Refunds shall be made payable to the student or any local, state, or Federal agency that paid tuition or paid for fees, books, materials, or supplies on behalf of the student;
8. Refunds shall be issued by check within 10 business days of the date of withdrawal or termination of the student;
9. Each refund shall be accompanied by a "Refund Calculation Form," which form shall be signed by a school representative (the form will be made available by the Department of Labor and Workforce Development); and
10. The refund policy shall be published in the school catalog, student contract, and School and Program Information Form (See N.J.A.C. 12:41-4.3).

12:41-4.2 Complaint resolution procedure

- (a) Each private career school shall have a student complaint resolution procedure, which shall include, at a minimum:
1. A method for students to file a complaint;
 2. A staff person designated as responsible for overseeing complaints;
 3. A set length of time permitted for the school to respond to complaint; and

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4. A method for students to file an appeal.

(b) Each complaint filed by a student shall be documented in writing by the school and retained in the student's file.

(c) Each private career school shall publish its complaint resolution procedure in the school catalog and in the School and Program Information Form (See N.J.A.C. 12:41-4.3).

12:41-4.3 School and Program Information Form

(a) Each private career school shall provide to each prospective student, prior to his or her enrollment, a School and Program Information Form, which shall include, at a minimum:

1. Name of the private career school and titles of approved program(s);
2. Starting and ending dates of each program;
3. School's complaint resolution procedure;
4. School's tuition, fees, and refund policy;
5. Listing of certificates, licenses, and other professional credentials available upon completion of each program; and
6. A statement informing prospective students that the school's post-training placement information is available at www.njtopps.com.

(b) The School and Program Information Form shall be signed and dated by a representative of the private career school.

12:41-4.4 Deceptive marketing and recruiting practices prohibited

(a) A private career school shall not make any false or untrue statement in an effort to enroll students, whether that statement is made verbally, in a written advertisement, in an internet advertisement, or in any other media.

(b) All statements made by private career school staff to students regarding licensure, certifications, job placement, salaries to be earned upon completion of training, or any other promise from the school to a student, shall be made in writing.

(c) Each private career school is expressly prohibited from making any false or untrue statement regarding the school's State approval status.

(d) Each private career school is prohibited from including the following words within its business name: "college," "university," "State," or "New Jersey."

(e) Each private career school is prohibited from issuing "diplomas" pursuant to *N.J.S.A. 18A:68-3(a)*.

12:41-4.5 Continuing compliance obligation

Each private career school shall be under a continuing obligation between certificate renewal cycles to ensure compliance with the requirements of *N.J.S.A. 34:15C-10.1*, this chapter, and N.J.A.C. 6A:19-7.

12:41-4.6 Monitoring and inspection

Each private career school shall be open for monitoring and inspection by any officer, representative, or agent of the Department of Labor and Workforce Development or the Department of Education, for the purpose of ensuring compliance with *N.J.S.A. 34:15C-10.1*, N.J.A.C. 6A:19-7, and this chapter.

12:41-4.7 School closure

(a) At least 60 calendar days prior to closure of the school or the cessation of instructional activity at the school, the school owner shall submit to the Training Evaluation Unit a completed Close-Out Form made available by the Department of Labor and Workforce Development.

(b) The Close-Out Form referred to in (a) above, shall include the closing school owner's plan to protect the educational and financial interests of students enrolled at the school.

1. For example, regarding protection of the educational interest of students, the closing school owner may submit a teach-out plan, which details how the closing school owner will ensure the completion of the educational programs of enrollees, whether by completion of the program(s) by the closing school following official closure of the school or by finding another private career school(s) to accept the enrollees as students for the purpose of completing the program(s) for which they were enrolled at the closing school.

(c) The closing school owner shall submit to the Training Evaluation Unit with the Close-Out Form, an electronic version of each enrolled student's transcript.

(d) The closing school owner shall complete a Refund Calculation Form for each enrolled student affected by the school closure.

(e) The closing school owner shall provide a completed Refund Calculation Form, signed and dated by a school representative, to the Training Evaluation Unit and to each student affected by the school closure.

SUBCHAPTER 5. PENALTIES AND HEARINGS

12:41-5.1 Penalties

(a) A Certificate of Approval may be suspended, revoked, or made conditional, if it is determined that the approved private career school has violated any of the provisions of *N.J.S.A. 34:15C-10.1*, this chapter, or N.J.A.C. 6A:19-7, or is found to be financially unsound.

[page=1586] (b) In assessing a suspension, revocation, or placement of conditions upon the continued possession of a Certificate of Approval under this chapter, the Commissioners of the Department of Labor and Workforce Development and the Department of Education, shall consider the following factors, where applicable:

1. The seriousness of the violation;
2. The past history of previous violations by the private career school or by the owner of the private career school;
3. The good faith of the private career school; and
4. Any other factors which the Commissioners of the Department of Labor and Workforce Development and the Department of Education deem to be appropriate under the circumstances.

12:41-5.2 Commissioners' order to show cause

(a) Where the Commissioners of the Departments of Labor and Workforce Development and Education become aware of any violation(s) of any of the provisions of *N.J.S.A. 34:15C-10.1*, this chapter, or N.J.A.C. 6A:19-7, or that the private career school is financially unsound, which, if true, would entitle the Commissioners to revoke, suspend, or place condition(s) on the continued possession of a Certificate of Approval, the Commissioners may accord the private career

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school an opportunity to present its views preliminary to imposing such sanction by issuing an order directing the private career school to show cause why such sanction should not be imposed. A statement of the factual details and investigative findings supporting the charge shall accompany the order. This procedure shall not be in lieu of a contested case hearing under N.J.A.C. 12:41-5.3, and the right to a contested case hearing is independent of, and in addition to, this step.

(b) Where it is determined by the Commissioners that the private career school and its owner(s) have failed to show cause why the sanction sought by the Commissioners should not be imposed, such sanction shall immediately be imposed.

(c) Where a sanction is imposed immediately under (b) above based upon the private career school's failure to show cause why the sanction should not be imposed, the Commissioners shall, within five business days, issue to the private career school the written notice required under N.J.A.C. 12:41-5.3(a), which shall notify the private career school of the reasons for the suspension, revocation, or placement of conditions on continued approval and which shall provide the opportunity for a hearing, in accordance with the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq., and *52:14F-1* et seq., and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*.

(d) Where the Certificate of Approval of a private career school is revoked or suspended immediately under (b) above based upon the private career school's failure to show cause why such sanction should not be imposed, the private career school shall, within 10 business days, surrender its Certificate of Approval by way of certified mail to the address listed at N.J.A.C. 12:41-5.3(b)1.

12:41-5.3 Contested case hearings

(a) Whenever the Department of Labor and Workforce Development and the Department of Education shall jointly find cause to suspend or revoke a Certificate of Approval or to place condition(s) upon continued approval of a private career school, they shall notify the private career school of the reasons for the suspension, revocation, or placement of conditions on continued approval, in writing, and provide the opportunity for a hearing in accordance with the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq., and *52:14F-1* et seq., and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*.

(b) All requests for hearings shall be filed with the Training Evaluation Unit within 10 business days from the date of receipt of the notice.

1. All requests for hearings shall be in writing and shall be directed to the following address:

NJ Department of Labor and Workforce Development
Center for Occupational Employment Information
Training Evaluation Unit
PO Box 057
Trenton, NJ 08625-0057

OR

NJ Department of Labor and Workforce Development
Center for Occupational Employment Information
Training Evaluation Unit
John Fitch Way, 5th Floor
Trenton, NJ 08625

(c) In the absence of a timely request for a hearing, pursuant to (b) above, the joint determination of the Commissioners of the Department of Labor and Workforce Development and the Department of Education under N.J.A.C. 12:41-5.2(b) shall be deemed the final administrative action in the given matter.

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(d) Where the Commissioners of the Department of Labor and Workforce Development and the Department of Education have notified a private career school that it has found cause to suspend or revoke its Certificate of Approval and where, further, the private career school has failed to request a hearing within the 10-business day time limit prescribed in (b) above, the private career school shall, within 20 business days of having received notice of the suspension or revocation, surrender its Certificate of Approval by way of certified mail to the address listed in (b)1 above.

(e) Where a hearing with regard to a suspension or revocation of a Certificate of Approval is requested and where, further, the Commissioners of the Department of Labor and Workforce Development and the Department of Education ultimately determine, following a hearing, that cause has been established to suspend or revoke the Certificate of Approval, the private career school shall, within 10 business days of receipt of the joint final order of the Commissioners of the Department of Labor and Workforce Development and the Department of Education, surrender the Certificate of Approval by way of certified mail to the address listed at (b)1 above.

(f) All requests for hearings shall be reviewed by the Training Evaluation Unit and the Department of Education in order to determine whether the dispute can be resolved at an informal settlement conference. If the review indicates that an informal settlement conference is warranted, such conference shall be scheduled. If a settlement cannot be reached, the case shall be forwarded to the Office of Administrative Law for a formal hearing.