

CHAPTER 807. CAREER SCHOOLS AND COLLEGES

PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

ON SEPTEMBER 27, 2011, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **October 14, 2011**

Estimated End of Comment Period: **November 14, 2011**

The Texas Workforce Commission (Commission) proposes amendments to the following sections of Chapter 807, relating to Career Schools and Colleges:

- Subchapter A. General Provisions, §807.2
- Subchapter D. Representatives, §807.51
- Subchapter F. Instructors, §807.82
- Subchapter H. Courses of Instruction, §807.134
- Subchapter N. Cancellation and Refund Policy, §§807.261 - 807.264
- Subchapter P. Complaints, §807.302

The Commission proposes the following new sections of Chapter 807, relating to Career Schools and Colleges:

- Subchapter A. General Provisions, §807.8
- Subchapter B. Certificates of Approval, §807.17
- Subchapter D. Representatives, §807.54
- Subchapter O. Records, §807.284

The Commission proposes the repeal of the following sections of Chapter 807, relating to Career Schools and Colleges:

- Subchapter B. Certificates of Approval, §807.17
- Subchapter O. Records, §807.284

The Commission proposes the repeal of the following subchapters of Chapter 807, relating to Career Schools and Colleges, in their entirety:

- Subchapter S. Cease and Desist Orders, §§807.361 - 807.366
- Subchapter T. Career Schools Hearings, §§807.381 - 807.395

The Commission proposes the following new subchapters of Chapter 807, relating to Career Schools and Colleges:

- Subchapter S. Sanctions, §§807.351 - 807.353
- Subchapter T. Cease and Desist Orders, §§807.361 - 807.366
- Subchapter U. Career Schools Hearings, §807.381 and §§807.383 - 807.395

PART I. PURPOSE, BACKGROUND, AND AUTHORITY
PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
PART III. IMPACT STATEMENTS
PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Texas law charges the Commission with exercising jurisdiction and control of the oversight of career schools and colleges operating in Texas. The Commission's Career Schools and Colleges department (department) licenses and regulates most private postsecondary career schools and colleges that offer vocational training or continuing education to Texas residents. In Texas, the number of licensed career schools and colleges has grown from 418 schools on August 31, 2007, to 530 schools on May 31, 2011. In the three years between Fiscal Year 2007 (FY'07) and FY'10, the number of students enrolled in vocational programs has increased 33 percent. Consequently, the Commission currently regulates more than 500 career schools and colleges that provide vocational training to more than 180,000 students annually.

Recent legislation has provided changes to regulatory requirements in several key areas. House Bill (HB) 736 requires improved and coordinated dissemination of online information regarding the operation and performance of career schools or colleges. House Bill 2784 strengthens refund provisions. In addition, HB 2538 specifies that student-level data is confidential and not subject to disclosure under Texas Government Code, Chapter 552. These proposed rules implement these bills passed by the 82nd Texas Legislature, Regular Session (2011).

Texas law requires the Commission to administer the provisions of Texas Education Code, Chapter 132, enforce minimum standards for approval and regulation of career schools and colleges, and adopt policies and rules necessary for carrying out the responsibilities of Chapter 132. To fulfill this role, the Commission investigates complaints about schools, monitors schools to ensure regulatory compliance, arranges for the disposition of students affected by a school closure, and administers the Tuition Trust Account to pay tuition refunds to students when a school closes. In carrying out its regulatory duties, the department seeks to:

- hold all businesses meeting the definition as a career school or college to meet consistent standards of quality, performance, and regulatory oversight;
- provide consumer protection for Texas students; and
- ensure students receive quality training to meet the needs of Texas employers.

To support the Commission's ability to effectively and efficiently protect students, regulate career schools and colleges, and meet employer needs, and to implement recent legislation, the Commission proposes amendments in several key areas. The amendments enumerate the Commission's expectations and use of its regulatory authority in areas where recent violations and possible abuses have been identified. In addition, the amendments are intended to increase the transparency of the regulatory requirements and the overall performance of career schools and colleges.

Further, to support the Commission's ability to effectively and efficiently respond to the needs of schools, students, and consumers and to provide direction to career schools and colleges regulated by the Commission, the Chapter 807 amendments:

--require training of registered representatives on key compliance topics, such as legal and ethical advertising, solicitation and enrollment of students as outlined in Texas Education Code, Chapter 132, Career Schools and Colleges (the Act), administrative rules, and Commission policies and procedures;

--explain the consequences for violations of statute and rules by representatives, including assessment of sanctions up to and including revocation of approval to serve as a representative in Texas and establish a corrective action matrix for violations by representatives;

--specify a student has the right to cancel enrollment and receive a full refund in certain circumstances;

--require schools to provide a tour on or before the first scheduled class day;

--modernize career school and college reporting by requiring electronic submission of all data and reports; clarify what data must be reported; specify what constitutes verifiable documentation; and add specific reference to the department's authority with regard to data monitoring and auditing;

--specify the corrective actions to be taken if a career school program does not meet performance expectations;

--allow for public dissemination of appropriate data reported by career schools and colleges, including student outcomes and regulatory and compliance information associated with a school regulated by the Commission;

--clarify the complaint-handling process, including establishing a two-year time frame for filing a complaint;

--specify that complaints must be filed within two years with an allowance for exceptions, and that there must be adequate information to support investigation;

--develop a comprehensive strategy, in coordination with the Texas Higher Education Coordinating Board, to improve and coordinate dissemination of online information regarding the operation and performance of career schools or colleges (HB 736);

--establish a penalty matrix for violations of career schools and colleges statutes and rules, with penalty amounts, not to exceed the \$1,000 statutory cap, based on the seriousness of the violation;

--provide information regarding refunds, when they may be required, and how to find provisions in statute (HB 2784); and

--specify that student-level data is confidential and not subject to disclosure under Texas Government Code, Chapter 552 (HB 2538).

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§807.2. Definitions

New §807.2(8), formerly §807.382(1), defines "Agency" as the unit of state government established under Texas Labor Code, Chapter 301, that is presided over by the Commission and administered by the executive director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended. The definition of Agency shall apply to all uses of the term in rules contained in this chapter.

New §807.2(9), formerly §807.382(2), defines "appellant" as the party or the party's authorized hearing representative who files an appeal from an appealable determination or decision.

New §807.2(12), formerly §807.382(3), defines "Commission" as the body of governance of the Texas Workforce Commission composed of three members appointed by the governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers, and one representative of the public. The definition of Commission shall apply to all uses of the term in rules contained in this chapter.

New §807.2(16), formerly §807.382(4), defines "date of notice" as the date the notice is received, unless good cause exists for the hearing officer to determine otherwise.

New §807.2(17), formerly §807.382(5), defines "date of request of hearing" as the date on which the appellant or the hearing representative filed a written notice of appeal with the Agency by hand delivery, facsimile, or mail. If an appeal is mailed to the Agency, then the appeal is perfected as of the postmark date on the envelope containing the appeal request, unless good cause exists for the hearing officer to determine otherwise. If an appeal is delivered by hand or facsimile after 5:00 p.m., the date of request shall be the next day.

New §807.2(21), formerly §807.2(16), defines "good reputation" and clarifies what is considered when determining whether school personnel meet the requirement to be of good reputation.

New §807.2(22), formerly §807.382(6), defines "hearing" as an informal, orderly, and readily available proceeding held before an impartial hearing officer. A party or hearing representative may present evidence to show that the Agency's determination should be reversed, affirmed, or modified.

New §807.2(23), formerly §807.382(7), defines "hearing officer" as an Agency employee designated to conduct impartial hearings and issue final administrative decisions.

New §807.2(24), formerly §807.382(8), defines "hearing representative" as any individual authorized by a party to assist the party in presenting the party's appeal. A hearing representative may be legal counsel or another individual. Each party may have a hearing representative to assist in presenting the party's appeal.

New §807.2(27), formerly §807.382(9), defines "party" as the person or entity with the right to participate in a hearing authorized in applicable statute or rule.

New §807.2(29) defines "refund" as the completed payment of a refund such that the refund instrument has been negotiated or credited into the proper account(s).

New §807.2(32) defines "sanctions" as administrative or civil actions, including, but not limited to, penalties, revocation of approvals, or cease and desist orders taken by the Agency against an entity in response to violations of the Act or this chapter.

New §807.2(43) amends the definition of "tour" to specify that a tour is a "required" and "in-person" inspection of the facilities and equipment pertaining to a course of instruction.

Certain paragraphs in this section have been renumbered to reflect additions or deletions.

§807.8. Confidentiality of Information

New §807.8 stipulates that student-specific information obtained from or about any school by the Agency is confidential information and not releasable, and is not public information under Texas Government Code, Chapter 552; however, it may be compiled and reported to the public at a summary level that does not include personally identifiable information about a student or identify a student through combination with other publically available information. The passage of HB 2538 clearly enumerated that student-level data held by the Agency is confidential and not subject to disclosure under Texas Government Code, Chapter 552.

SUBCHAPTER B. CERTIFICATES OF APPROVAL

The Commission proposes the following amendments to Subchapter B:

§807.17. Penalties and Sanctions Regarding Schools

Section 807.17, relating to Penalties and Sanctions Regarding Schools, is repealed and the contents are relocated to new §807.352, relating to Sanctions.

§807.17. Unlicensed Schools

New §807.17 states that if a career school or college, as defined in the Act, operates, solicits, or enrolls students for, or conducts any course of instruction before receiving a certificate of approval or an exemption from the Agency, the Agency may:

- (1) assess a penalty;
- (2) require full refunds to all students; or
- (3) issue a cease and desist order.

SUBCHAPTER D. REPRESENTATIVES

The Commission proposes the following amendments to Subchapter D:

§807.51. Representative Requirements

Section 807.51(c) is amended to clarify that the release from obligations to which students are entitled if solicited or enrolled by an unregistered representative applies only to obligations to the school.

New §807.51(d) states that the Agency shall require representatives registered with the Agency to take training that covers the Act and Commission rules relative to representatives, admissions, advertising, and any other topics as required by the Agency to support the legal and ethical solicitation and enrollment of students.

§807.54. Representative Compliance

New §807.54 provides, consistent with §132.059 and §132.151 of the Texas Education Code, that representatives may be held liable for violations of statute and Commission rules, policies, and procedures notwithstanding §807.51(b). Further, the section explains that such violations may result in sanctions up to and including revocation of the individual's status as an approved career school and college representative in Texas in accordance with the matrix of corrective actions and violations, as identified in statute and rule, set forth in this section.

SUBCHAPTER F. INSTRUCTORS

The Commission proposes the following amendments to Subchapter F:

§807.82. Temporary Instructors

Section 807.82(c) removes the term "penalties" and replaces it with the term "sanctions" to align with new §807.2(32), which includes penalties in the definition of sanctions.

Section 807.82(f) removes the term "penalties" and replaces it with the term "sanctions" to align with new §807.2(32), which includes penalties in the definition of sanctions, and to clarify that sanctions and refunds can both be applied.

SUBCHAPTER H. COURSES OF INSTRUCTION

The Commission proposes the following amendments to Subchapter H:

§807.134. Sanctions Relating to Courses of Instruction

Section 807.134 replaces the title "Penalties Relating to Courses of Instruction" with "Sanctions Relating to Courses of Instruction," to align with new §807.2(32), which includes penalties in the definition of sanctions.

Section 807.134(e)(3) clarifies that false, misleading, or deceptive advertising on a school's behalf includes using words that are "commonly associated with" a degree other than degrees approved by the Texas Higher Education Coordinating Board.

SUBCHAPTER N. CANCELLATION AND REFUND POLICY

The Commission proposes the following amendments to Subchapter N:

§807.261. Requirement for Tour

Section 807.261 replaces the title "Right to Cancel after Tour" with "Requirement for Tour" to more closely align with the contents of this section.

New §807.261(a) adds that, notwithstanding subsection (b) of this section, schools are required to provide a tour on or before the first scheduled class day.

Section 807.261(c) clarifies that students must sign and date an acknowledgement form certifying the completion of the tour.

The section removes the requirement for a school to provide a potential student who was not given an opportunity to tour the school before signing an enrollment contract an additional three days, excluding Saturdays, Sundays, and legal holidays, following a tour to cancel enrollment and request a full refund and release from all obligations. New §807.261(a) clarifies that schools are required to provide a tour on or before the first scheduled class day.

Certain subsections in this section have been relettered to reflect additions or deletions.

§807.262. Completion of Refund

Section 807.262 replaces the title "Consummation of Refund" with "Completion of Refund" to provide more precise terminology.

Section 807.262(a) - (c) also replaces the terms "consummation" and "consummate" with "completion" and "complete," respectively, to provide more precise terminology.

§807.263. Refund Requirements

Section 807.263(a) sets forth the critical types of violations--mentioned elsewhere in this chapter but not previously detailed in this section, that entitle a student to a refund. Remittance of refunds does not limit a school's liability for other sanctions available to the Agency under the Act and Commission rules.

Section 807.263(a)(1)(A) - (C) is reorganized, and states that students are entitled to a full refund for classes attended if the school does not provide a class with:

- (A) an approved instructor;
- (B) an instructor for whom an application has been properly submitted to the Agency; or
- (C) a temporary instructor for whom the school submitted notice to the Agency.

New §807.263(a)(2) - (6) adds that students are entitled to a full refund for classes attended if the school:

- (2) fails to maintain the instructors, facilities, equipment, or courses of instruction on the basis of which Agency approval was issued or student enrollment was obtained;
- (3) violates any provision of this chapter in the process of soliciting and enrolling the student;

- (4) fails to adhere to applicable academic, attendance, and refund policies that meet state requirements and apply to the course enrolled in, as published at the time of the student's enrollment in the course;
- (5) fails to furnish the student, upon satisfactory completion of the program, with a certificate of completion. A school may withhold the transcript or certificate until the student has paid outstanding financial obligations to the school; or
- (6) does not have course approval or the required certificate of approval from the Agency.

Section 807.263(b) removes the phrase "a class has no instructor for" and replaces it with the phrase "any of the violations in subsection (a)(1) - (6) of this section" to specify that if the violations apply to more than one class period, students are entitled to a full refund for each such class attended.

Section 807.263(e) specifies that for schools other than seminars, a student may cancel enrollment, request a full refund, and request a release from any obligations to the school within the first three scheduled class days.

New §807.263(f) provides guidance on where additional information may be obtained regarding refunds due to a student who withdraws or is discontinued from a program prior to completion. The new subsection states that the refund is calculated in accordance with the school's policy, which must be at least equivalent to the refund policy outlined in §132.061 of the Act. The passage of HB 2784 revised the refund policy required for residence programs and synchronous distance education programs detailed in §132.061(4) of the Act. This policy is simpler to calculate and more advantageous to students than the previous policy, basing refunds on a straight proportion of the remaining portion of the clock hours for which the student has been charged, up to the point at which 75 percent of the period has been completed.

§807.264. Penalties Relating to Refunds

Section 807.264 removes the term "consummated" and replaces it with "completed" to provide more precise terminology.

SUBCHAPTER O. RECORDS

The Commission proposes the following amendments to Subchapter O:

§807.284. Employment Records

Section 807.284 is repealed. It contains out-of-date references and lacks information on a number of issues important to the reporting of data by schools to the Agency and the Agency's use and reporting of the data.

§807.284. Reporting

New §807.284 sets forth the data reporting requirements and report formats necessary for the Agency to administer the Act and this chapter. The language provides direction and allows for better information to the public and the Agency. It also provides flexibility to accommodate future changes in technology. Some of the provisions contained in new §807.284 are in response to the passage of HB 736.

New §807.284(a) requires schools to report to the Agency, as directed, the facts and information about their programs and operations deemed necessary for the proper administration of the Act and any rules adopted under the Act.

New §807.284(a)(1)(A) - (C) specifies that the data to be reported by a school shall include student enrollment information for all programs; completion, employment, and job placement information for all programs approved for an occupational objective; and any other information that is required.

New §807.284(a)(2) requires schools to submit the required data to the Agency on or before the specified date.

New §807.284(a)(3) mandates that schools shall provide the data in an electronic format prescribed by the Agency unless a different format is approved in writing by the Agency.

New §807.284(a)(4) allows that, when good cause is shown, the Agency may extend the deadline for submission of the data required under this section; however, the extension shall be effective only if authorized in writing.

New §807.284(a)(5) states that the Agency may require schools to store on file the verifiable documentation supporting the data reported and make it available to the Agency upon request.

New §807.284(b) states that the Agency shall develop data monitoring and audit protocols for the data reported under subsection (a) of this section for use in assessing the accuracy of the information.

New §807.284(c) states that the Agency may impose penalties or sanction, or both, for failure to submit data under subsection (a) of this section by the due dates required, or for submission of data that is shown to contain inaccuracies.

New §807.284(d) establishes the corrective actions that will be taken for career school programs that do not meet the minimum employment rate as referenced in §807.131(b).

New §807.284(d)(1) states that a program that does not meet the minimum employment rate for the first year will be required to develop and submit a performance improvement plan that is determined acceptable by the Agency.

New §807.284(d)(2) states that a program that does not meet the minimum employment rate for the second consecutive year, but has shown at least a 50% improvement from the previous year and toward the minimum employment rate, will be required to submit modifications to the performance improvement plan that are determined acceptable by the Agency. For example, in order to fall in this category, a program reporting a 20% employment rate in year one must report at least a 40% employment rate in the subsequent year if the employment minimum is 60%.

New §807.284(d)(3)(A) - (B) states that a program that does not meet the minimum employment rate for the second consecutive year and that has not shown at least a 50% improvement toward

the minimum employment rate will result in conditions placed on the school's certificate that require submission of a modified performance improvement plan and the suspension of new enrollment of students in the program who are funded by Local Workforce Development Board–allocated funds. Thus, if the program described in subsection (d)(2) did not meet at least a 40% employment rate, the program would fall in this corrective action category.

New §807.284(d)(4) states that the Agency will revoke its approval of a program that does not meet the minimum employment rate for three consecutive years.

New §807.284(e)(1) - (2) provides that the Agency shall publish on its website information compiled from:

- (1) data reported under subsection (a) of this section; and
- (2) any other information about schools and programs that is deemed appropriate and useful to the public and that:
 - (A) assists a person in deciding whether to enroll in a school or in identifying or choosing which postsecondary institution, school, or college to attend; and
 - (B) addresses regulatory compliance and performance of schools.

New §807.284(e)(3) provides that the Agency, to the extent practical, shall present the published information in a manner that is consistent among institutions, schools, and colleges; easy to understand; and accessible to the public.

Certain subparagraphs in this section have been relettered to reflect additions or deletions.

SUBCHAPTER P. COMPLAINTS

The Commission proposes the following amendments to Subchapter P:

§807.302. Complaints and Investigations

New §807.302(a) ensures that the Agency shall investigate or refer to other authorities with jurisdiction to investigate all complaints received about licensed and unlicensed schools.

Section 807.302(b) removes the phrase "may investigate a complaint about a school." New §807.302(a) clarifies the Commission's intent to respond to complaints about licensed and unlicensed schools.

Section 807.302(b)(5) adds "the feasibility of investigations" as a factor the Agency may consider in determining the extent of investigation needed.

Section 807.302(c) adds language addressing the adequacy of information about a violation that may be required in order to initiate a complaint investigation. It also stipulates that, notwithstanding subsection (a) of this section, anonymous complaints will not be investigated, but rather reviewed for potential action.

New §807.302(d) stipulates that a complaint is timely if it has been filed with the Agency while a student who files the complaint is enrolled or within two years of the date the student withdraws,

terminates, or graduates from the program that is the subject of the complaint unless good cause exists. Good cause includes, but is not limited to, fraud.

Certain subsections and paragraphs in this section have been relettered and renumbered to reflect additions or deletions.

SUBCHAPTER S. SANCTIONS

The Commission proposes new Subchapter S:

New Subchapter S centralizes the rules regarding sanctions. Specifically, the new subchapter addresses the requirements for notice and administration of sanctions, sanctions for violations, and the assessment of administrative penalties in accordance with a matrix contained in the rule.

§807.351. Notice and Administration of Sanctions

New §807.351(a) clarifies the Agency's authority under §132.152 of the Act to impose administrative penalties or other sanctions on an entity for violations of §132.151 of the Act or this chapter.

New §807.351(b) provides that the Agency shall serve notice of a sanction, with determination of the violation on which it is based, by both U.S. mail and certified mail, return receipt requested, mailed to the owner's address of record as listed on the application for certificate of approval. Notice is presumed received five days from the date it is mailed by the Agency unless there is other evidence of receipt.

New §807.351(c)(1) - (3) stipulates that in imposing administrative penalties or other sanctions, the Agency shall consider all the factors that it deems relevant, including, but not limited to, the following:

- (1) The amount of administrative penalty or level of sanction necessary to ensure immediate and continued compliance with statutes and regulations;
- (2) The conduct of the entity in taking all reasonable steps or procedures necessary and appropriate to comply with statutes and regulations and to correct the violation; and
- (3) The entity's prior violations of statutes, regulations, or orders administered, adopted, or issued by the Commission.

New §807.351(d) provides that notwithstanding subsections (a) - (c) of this section, the Commission shall order refunds pursuant to applicable statute and rules.

§807.352. Sanctions

New §807.352(a)(1) - (17) retains the provisions of repealed §807.17, and sets forth sanctions for violations, which may include:

- (1) administrative penalties outlined in §807.353;
- (2) collecting a late renewal fee from the school;
- (3) denying the school's application for a certificate of approval;
- (4) revoking the school's certificate of approval;
- (5) placing conditions on the school's certificate of approval;
- (6) suspending the admission of students to the school or a program;

- (7) denying a program approval;
- (8) revoking a program approval;
- (9) denying or revoking approval of an owner, school director, instructor, or other staff member whose approval may be required;
- (10) denying, suspending, or revoking the registration of the school's representatives;
- (11) assessing a late refund penalty;
- (12) charging the school an investigation fee to resolve a complaint against the school;
- (13) charging the school interest and penalties on late payments of fee installments;
- (14) applying for an injunction against the school;
- (15) asking the Attorney General to collect a civil penalty from any person who violates the Act or this chapter;
- (16) ordering a peer review of the school; and
- (17) issuing a cease and desist order to an unlicensed school.

New §807.352(b) stipulates that notwithstanding subsection (a)(1) - (17) of this section, the Agency shall order refunds pursuant to applicable statutes and rules.

§807.353. Administrative Penalties

Section 132.152 of the Texas Education Code authorizes the Commission to assess an administrative penalty in an amount not to exceed \$1,000 and requires the Commission to consider the seriousness of the violation in determining the amount of the penalty. Consistent with this authority and direction, requirements for assessing administrative penalties for violations are established, including the use of a penalty matrix, which establishes penalty amounts for violations of career schools and colleges statutes and rules, based on the seriousness of the violation and potential harm to consumers, up to the \$1,000 statutory cap. Consideration is given to the number of instances of violations and whether a violation is a repeat violation.

New §807.353(a) - (e) details requirements for assessing administrative penalties for violations:

- (a) Unless otherwise provided by statute, an administrative penalty shall not exceed \$1,000 for each instance of a violation.
- (b) The administrative penalty for repeat violations shall be up to the maximum penalty amount of \$1,000 per violation.
- (c) The total amount of an administrative penalty shall be calculated as the product of the penalty dollar amount and the number of instances of violation.
- (d) The assessment of an administrative penalty shall not preclude the Agency from administering other sanctions, up to and including revocation of a school's certificate of approval.
- (e) The Agency shall, for purposes of determining and assessing an administrative penalty, use the penalty matrix set out in this section, which assigns a penalty for violations identified in statute and rule, based on the seriousness of the violation or the potential to cause harm to consumers. The absence of a listing for a specific violation in the matrix does not preclude the Agency from assessing an administrative penalty.

SUBCHAPTER S. CEASE AND DESIST ORDERS

The Commission proposes the repeal of Subchapter S in its entirety. The contents of this subchapter are proposed as new Subchapter T.

- §807.361. Statement of Charges and Notice of Hearing on Cease and Desist Orders
- §807.362. Contents of Statement of Charges and Notice of Hearing
- §807.363. Service of Statement and Charges and Hearing Notice for the Issuance of Cease and Desist Orders
- §807.364. Ex Parte Consultations
- §807.365. Hearing Decision and Final Review by the Commission
- §807.366. Cease and Desist Order

SUBCHAPTER T. CAREER SCHOOLS HEARINGS

The Commission proposes the repeal of Subchapter T in its entirety. Section 807.382, Definitions, is proposed as new in §807.2; the remaining sections are proposed as new Subchapter U.

- §807.381. Purpose
- §807.382. Definitions
- §807.383. Information on Right of Appeal
- §807.384. Request for Hearing
- §807.385. Setting of Hearing
- §807.386. Hearing Officer Independence and Impartiality
- §807.387. Hearing Procedures
- §807.388. Postponements, Continuances, and Withdrawals
- §807.389. Evidence
- §807.390. Ex Parte Communications
- §807.391. Change in Determination
- §807.392. Hearing Decision
- §807.393. Motion for Reopening
- §807.394. Motion for Rehearing
- §807.395. Finality of Decision

To consolidate the definitions in this chapter in one section, §807.382, Definitions, is proposed as new in §807.2, as follows:

- Section 807.382(1), the definition of "Agency," is new §807.2(8).
- Section 807.382(2), the definition of "appellant," is new §807.2(9).
- Section 807.382(3), the definition of "Commission," is new §807.2(12).
- Section 807.382(4), the definition of "date of notice," is new §807.2(16).
- Section 807.382(5), the definition of "date of request of hearing," is new §807.2(17).
- Section 807.382(6), the definition of "hearing," is new §807.2(22).
- Section 807.382(7), the definition of "hearing officer," is new §807.2(23).
- Section 807.382(8), the definition of "hearing representative," is new §807.2(24).
- Section 807.382(9), the definition of "party," is new §807.2(28).

SUBCHAPTER T. CEASE AND DESIST ORDERS

The Commission proposes new Subchapter T as follows:

New Subchapter T, regarding Cease and Desist Orders, retains the provisions of repealed

Subchapter S, Cease and Desist Orders, in its entirety:

§807.361. Statement of Charges and Notice of Hearing on Cease and Desist Orders

§807.362. Contents of Statement of Charges and Notice of Hearing

§807.363. Service of Statement and Charges and Hearing Notice for the Issuance of Cease and Desist Orders

§807.364. Ex Parte Consultations

§807.365. Hearing Decision and Final Review by the Commission

§807.366. Cease and Desist Order

The subchapter is relettered to accommodate the insertion of new Subchapter S, Sanctions.

SUBCHAPTER U. CAREER SCHOOLS HEARINGS

The Commission proposes new Subchapter U as follows:

New Subchapter U, regarding Career Schools Hearings, retains the following sections of repealed Subchapter T, Career Schools Hearings, in their entirety:

§807.381. Purpose

§807.383. Information on Right of Appeal

§807.384. Request for Hearing

§807.385. Setting of Hearing

§807.386. Hearing Officer Independence and Impartiality

§807.387. Hearing Procedures

§807.388. Postponements, Continuances, and Withdrawals

§807.389. Evidence

§807.390. Ex Parte Communications

§807.391. Change in Determination

§807.392. Hearing Decision

§807.393. Motion for Reopening

§807.394. Motion for Rehearing

§807.395. Finality of Decision

The subchapter is relettered to accommodate the insertion of new Subchapter S, Sanctions.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to the costs or revenues of the state or local governments as a result of enforcing or administering the rules.

There are no significant, probable economic costs to persons required to comply with the rules.

There is no estimated adverse economic effect on small businesses.

There is no significant, estimated adverse economic effect on small businesses as a result of adopting the rules.

Richard C. Froeschle, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Laurence M. Jones, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to clarify regulatory requirements for career schools and colleges, to clarify regulatory requirements for career schools and colleges, assist the Agency to exercise its regulatory authority as efficiently as possible, and provide career school and college students with enhanced information about institutions' performance and recourse for complaints.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas's 28 Local Workforce Development Boards. The Commission provided a concept paper regarding these rule amendments to the Boards for consideration and review on June 28, 2011.

During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us.

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

CHAPTER 807. CAREER SCHOOLS AND COLLEGES

SUBCHAPTER A. GENERAL PROVISIONS

§807.2. Definitions.

In addition to the definitions contained in §800.2 of this title, the following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

- (1) Academic quarter--A period of instruction that includes at least ten weeks of instruction, unless otherwise approved by the Agency~~Commission~~.
- (2) Academic semester--A period of instruction that includes at least 15 weeks of instruction, unless otherwise approved by the Agency~~Commission~~.
- (3) Academic term--An academic quarter, academic semester, or other progress evaluation period.
- (4) Academically related activity--An exam, tutorial, computer-assisted instruction, academic counseling, academic advisement, turning in a class assignment, or attending a study group that is assigned by the institution, or other activity as determined by the Agency~~Commission~~.
- (5) Accountant--An independent certified public accountant properly registered with the appropriate state board of accountancy.
- (6) Act--Texas Education Code, Chapter 132, Career Schools and Colleges.
- (7) Advertising--Any affirmative act designed to call attention to a school or program for the purpose of encouraging enrollment.
- (8) Agency--The unit of state government established under Texas Labor Code, Chapter 301, that is presided over by the Commission and administered by the executive director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended. The definition of Agency shall apply to all uses of the term in rules contained in this chapter.
- (9) Appellant--The party or the party's authorized hearing representative who files an appeal from an appealable determination or decision.
- (10)(8) Asynchronous distance education--Distance education training that the

Agency~~Commission~~ determines is not synchronous.

- (11)~~(9)~~ Class or course--An identifiable unit of instruction that is part of a program of instruction.
- (12) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers, and one representative of the public. The definition of Commission shall apply to all uses of the term in rules contained in this subchapter.
- (13)~~(10)~~ Coordinating Board--The Texas Higher Education Coordinating Board.
- (14)~~(11)~~ Course of instruction--A program or seminar.
- (15)~~(12)~~ Course time--A course or class period that is:
- (A) a 50-minute to 60-minute lecture, recitation, or class, including a laboratory class or shop training, in a 60-minute period;
 - (B) a 50-minute to 60-minute internship in a 60-minute period; or
 - (C) 60 minutes of preparation in asynchronous distance education.
- (16) Date of notice--The date the notice is received, unless good cause exists for the hearing officer to determine otherwise.
- (17) Date of request of hearing--The date on which the appellant or the hearing representative filed a written notice of appeal with the Agency by hand delivery, facsimile, or mail. If an appeal is mailed to the Agency, then the appeal is perfected as of the postmark date on the envelope containing the appeal request unless good cause exists for the hearing officer to determine otherwise. If an appeal is delivered by hand or facsimile after 5:00 p.m., the date of request shall be the next day.
- (18)~~(13)~~ Distance education course--Either a seminar or a program that is offered to non-residence school students via correspondence or other media from a remote site on a self-paced schedule, excluding programs using interactive instruction.
- (19)~~(14)~~ Distance education school--A school that offers only distance education courses.
- (20)~~(15)~~ Employment--A graduating or graduate student's employment in the same

or substantially similar occupation for which the student was trained.

- ~~(21)~~(16) Good reputation--The possession of honesty and truthfulness, trustworthiness and reliability, and a professional commitment to the educational process and the training or preparing of a person for a field of endeavor in a business, trade, technical, or industrial occupation, as well as the condition of being regarded as possessing such qualities. In determining whether a person is of good reputation, the Agency is not limited to the following acts or omissions. The Agency may consider similar acts or omissions and rehabilitation efforts in response to prior convictions in making its determination. A person is considered to be of good reputation if the person:
- (A) ~~has never been convicted of a felony or any other crime related to the operation of a school, and the person has been rehabilitated, including completion of parole or probation, from any other convictions that would constitute risk of harm to the school or students as determined by the Agency Commission;~~
 - (B) ~~has not never been successfully sued for fraud or deceptive trade practices, or breach of contract, within the last 10 years;~~
 - (C) ~~does not own or administer a school currently in violation of legal requirements, has never owned or administered a school with repeated violations, and has never owned or administered a school that closed with violations including, but not limited to, unpaid refunds; or and~~
 - (D) ~~has not knowingly falsified or withheld information from the Agency Commission.~~
- ~~(22)~~ Hearing--An informal, orderly, and readily available proceeding held before an impartial hearing officer. A party or hearing representative may present evidence to show that the Agency's determination should be reversed, affirmed, or modified.
- ~~(23)~~ Hearing officer--An Agency employee designated to conduct impartial hearings and issue final administrative decisions.
- ~~(24)~~ Hearing representative--Any individual authorized by a party to assist the party in presenting the party's appeal. A hearing representative may be legal counsel or another individual. Each party may have a hearing representative to assist in presenting the party's appeal.
- ~~(25)~~(17) Job placement--An affirmative effort by the school to assist the student in obtaining employment in the same or substantially similar stated occupation for which the student was trained.

- ~~(26)~~(18) Master student registration list--A comprehensive list with an entry made for any person who signs an enrollment agreement, makes a payment to attend the school, or attends a class. The entry shall be made on the date the first of these events occurs.
- ~~(27)~~ Party--The person or entity with the right to participate in a hearing authorized in applicable statute or rule.
- ~~(28)~~(19) Program or program of instruction--A postsecondary program of organized instruction or study that may lead to an academic, professional, or vocational degree, certificate, or other recognized educational credential.
- ~~(29)~~ Refund--The completed payment of a refund such that the refund instrument has been negotiated or credited into the proper account(s).
- ~~(30)~~(20) Reimbursement contract basis--A school operating, or proposing to operate, under a contract with a state or federal entity in which the school receives payment upon completion of the training.
- ~~(31)~~(21) Residence school--A school that offers at least one program that includes classroom instruction or synchronous distance education.
- ~~(32)~~ Sanctions--Administrative or civil actions, including, but not limited to, penalties, revocation of approvals, or cease and desist orders taken by the Agency against an entity in response to violations of the Act or this chapter.
- ~~(33)~~(22) School--A "career school or career college," as defined in the Act, that includes each location where courses of instruction shall be offered.
- ~~(34)~~(23) Secondary education--Successful completion of public, private, or home schooling at the high school level or obtainment of a recognized high school equivalency credential.
- ~~(35)~~(24) Seminar--A course of instruction that enhances a student's career, as opposed to a program that teaches skills and fundamental knowledge required for a stated occupation. A seminar may include a workshop, an introduction to an occupation or cluster of occupations, a short course that teaches part of the skills and knowledge for a particular occupation, language training, continuing professional education, and review for postsecondary examination.
- ~~(36)~~(25) Seminar school--A school that offers only seminars.
- ~~(37)~~(26) Small school--A "small career school or college" as defined in the Act.

~~(38)(27)~~ Stated occupation--An occupation for which a program is offered that:

- (A) is recognized by a state or federal law or by a state or federal agency as existing or emerging;
- (B) is in demand; and
- (C) requires training to achieve entry-level proficiencies.

~~(39)(28)~~ Student--Any individual solicited, enrolled, or trained in Texas by a school.

~~(40)(29)~~ Suspension of enrollments--A ~~Commission~~ sanction that requires the school to suspend enrollments, re-enrollments, advertising, and solicitation, and to cease, in any way, advising prospective students, either directly or indirectly, of the available courses of instruction.

~~(41)(30)~~ Synchronous distance education--The ~~Agency~~~~Commission~~ may determine distance education to be synchronous under the following conditions:

- (A) The training is conducted simultaneously in real time, or the training is conducted so that the manner of delivery ensures that even if the instructor and student are separated by time, the course time of instruction that the student experiences can be determined; and
- (B) There is consistent interaction between the student(s) and the instructor on a schedule that includes a definite time for completion of the program and periodic verifiable student completion/performance measures that allow the application of the progress standards of Subchapter L and attendance standards of Subchapter M of this chapter.

~~(42)(31)~~ Title IV school--A career school or college that participates in student financial aid programs under Title IV, Higher Education Act of 1965 (20 U.S.C. Section 1070 et seq.).

~~(43)(32)~~ Tour--~~A required, in-person~~An inspection of the facilities and equipment pertaining to a course of instruction.

~~(44)(33)~~ Week--Seven consecutive calendar days.

§807.8. Confidentiality of Information.

All student-specific information obtained from or about any school by the Agency, including, but not limited to, data submitted under §807.284(a), is confidential information and not releasable, and is not public information under Texas Government

Code, Chapter 552, but may be compiled and reported to the public at a summary level of information that does not include the personally identifiable information of any student or allow for the identification of any student through combination with other publically available information.

SUBCHAPTER B. CERTIFICATES OF APPROVAL

~~§807.17. Penalties and Sanctions Regarding Schools.~~

~~The Commission may impose penalties or sanctions for violations of the Act or this chapter, including:~~

- ~~(1) collecting a late renewal fee from the school;~~
- ~~(2) denying the school's application for a certificate of approval;~~
- ~~(3) revoking the school's certificate of approval;~~
- ~~(4) placing restrictions on the school's certificate of approval;~~
- ~~(5) denying, suspending, or revoking the registration of the school's representatives;~~
- ~~(6) collecting a late refund penalty from the school;~~
- ~~(7) assessing an administrative penalty;~~
- ~~(8) applying for an injunction against the school;~~
- ~~(9) asking the Attorney General to collect a civil penalty from any person who violates the Act or this chapter;~~
- ~~(10) ordering a peer review of the school;~~
- ~~(11) revoking a program approval;~~
- ~~(12) denying a program approval;~~
- ~~(13) requiring full or partial refunds to students for program violations or deficiencies;~~
- ~~(14) suspending the admission of students to the school;~~
- ~~(15) charging the school an investigation fee to resolve a complaint against the school; and~~
- ~~(16) charging the school interest and penalties on late payments of fee installments.~~

§807.17. Unlicensed Schools.

If a career school or college, as defined in the Act, operates, solicits, or enrolls students, or conducts any course of instruction before receiving a certificate of approval or an exemption from the Agency, the Agency may:

- (1) assess a penalty;
- (2) require full refunds to all students; or
- (3) issue a cease and desist order.

SUBCHAPTER D. REPRESENTATIVES

§807.51. Representative Requirements.

- (a) The school shall apply annually to register representatives on forms provided by the Agency~~Commission~~ and with the appropriate fee.
- (b) A representative shall be of good reputation and under the control of the school and is deemed to be the agent of the school. The school is responsible for any representations or misrepresentations, expressed or implied, made by a representative.
- (c) Any student solicited or enrolled by an unregistered representative is entitled to a refund of all monies paid and a release from all obligations to the school. Any contract signed by a prospective student as a result of solicitation or enrollment by an unregistered representative is null and void and unenforceable.
- (d) Representatives shall participate in training approved by the Agency that covers the Act and Commission rules relative to representatives, admissions, advertising, and any other topics as required by the Agency to support the legal and ethical solicitation and enrollment of students.

§807.54. Representative Compliance.

The Agency may hold representatives liable for violations of statute, Commission rules, policies, and procedures notwithstanding §807.51(b) of this subchapter. Violations may result in sanctions up to and including revocation of approval to serve as a representative in Texas, in accordance with the matrix below:

<u>GRADUATED CORRECTIVE ACTIONS</u>	
	<u><i>Sanction to Representative</i></u> (to serve as a

	<u>representative in a school licensed in Texas)</u>
<u>Initial Violation</u>	<u>Conditional registration and retraining</u>
<u>Multiple Violations</u>	<u>Suspension of registration and retraining</u>
<u>Repeat Violation</u>	<u>Revocation or denial of registration</u>
<u>Felony Conviction</u>	<u>Denial, suspension, or revocation of registration</u>
<u>VIOLATIONS</u>	
<i><u>Representative Approval</u></i>	
<u>Soliciting or enrolling students without registration as a representative</u>	
<u>Failure to provide required or accurate information in the representative registration application</u>	
<u>Soliciting or enrolling students for multiple schools, without agreement of all school owners</u>	
<u>Soliciting or enrolling students without taking required training</u>	
<i><u>Representative Behavior</u></i>	
<u>Misrepresentation of the school's programs</u>	
<u>Providing incomplete or inaccurate information about the school (such as employment outcomes, extent of transferability of credits)</u>	
<u>Discrediting other schools</u>	
<u>Soliciting students in disallowed locations</u>	
<u>Soliciting or enrolling students into unapproved programs</u>	
<u>Offering students financial inducements to enroll</u>	
<u>Coercing students to enroll</u>	
<u>Administering entrance tests</u>	
<u>Advising students on financial aid</u>	
<u>Soliciting as, or on behalf of, an employment agency</u>	
<u>Failing to invite students to tour the school's facility and inspect the equipment</u>	
<u>Violating any other provision of statute or rule relating to career schools and colleges</u>	

SUBCHAPTER F. INSTRUCTORS

§807.82. Temporary Instructors.

- (a) The AgencyCommission may allow a school to use a previously unapproved instructor to teach temporarily for a reasonable amount of time in the case of an emergency, as determined by the AgencyCommission.
- (b) In such circumstances, the school shall provide written notice to the AgencyCommission delivered no later than the first day the temporary instructor begins teaching. The notice shall include:

- (1) the class to be taught;
 - (2) the name of the approved instructor;
 - (3) the name of the temporary instructor; and
 - (4) the reason for the temporary instructor.
- (c) Failure to properly notify the ~~Agency~~Commission shall result in ~~sanctions~~penalties for the use of an unapproved instructor.
 - (d) The temporary instructor shall have practical experience or education in the course area to be taught, and shall not have been previously disapproved to teach the class.
 - (e) There shall be no more than one temporary instructor per grading period in an individual class, unless specifically approved in advance by the ~~Agency~~Commission.
 - (f) Failure to comply with this section shall result in ~~sanctions, penalties, up to and including,~~a full refund to all students attending such classes, or both.

Subchapter H. COURSES OF INSTRUCTION

§807.134. ~~Sanctions~~Penalties Relating to Courses of Instruction.

- (a) If an approved course of instruction is discontinued for any reason, the ~~Agency~~Commission shall be notified within 72 hours of discontinuance and furnished with the names and addresses of any students who were prevented from completion of the course of instruction due to discontinuance. Should the school fail to make arrangements satisfactory to the students and the ~~Agency~~Commission for the completion of the course of instruction, the full amount of all tuition and fees paid by the students are then due and refundable. Any course of instruction discontinued will be removed from the list of approved courses of instruction.
- (b) The ~~Agency~~Commission may suspend enrollments in a particular course of instruction at any time the Commission finds cause. For purposes of this subsection, cause includes, but is not limited to:
 - (1) inadequate instruction;
 - (2) unapproved or inadequate curriculum;
 - (3) inadequate equipment; or
 - (4) inadequate facilities.
- (c) If a school begins teaching a course of instruction or revised course of instruction

that has not been approved by the ~~AgencyCommission~~, the ~~AgencyCommission~~ may require the school to refund to the enrolled students all or a portion of the tuition fees.

- (d) If upon review and consideration of an original, renewal, or revised application for course of instruction approval, the ~~AgencyCommission~~ determines that the applicant fails to meet the requirements in the Act or this chapter, the ~~AgencyCommission~~ shall notify the school, setting forth in writing the reasons for the denial. This may include summaries of peer evaluations from both educators and employers offering similar courses of instruction.
- (e) The ~~AgencyCommission~~ may revoke approval of a school's course of instruction at any time the ~~AgencyCommission~~ finds cause. For purposes of this subsection, cause includes, but is not limited to:
 - (1) any statement contained in the application for the course of instruction approval which is untrue;
 - (2) the school's failure to maintain the instructors, facilities, equipment, or courses of instruction, or course of instruction outcomes on the basis of which approval was issued;
 - (3) advertising made on behalf of the school which is false, misleading, or deceptive, including those that use the wordsword commonly associated with "associate" to describe a degree other than those approved by the Coordinating Board;
 - (4) courses of instruction without clearly stated limited transferability if there are no articulation agreements with other postsecondary institutions in the same geographic area;
 - (5) courses of instruction for which financial aid is advertised but is not available;
 - (6) repeated violations by the school that negatively impact the quality of a particular course of instruction; or
 - (7) violations by the school of any applicable provision of the Act or this chapter.
- (f) A school whose course of instruction approval is denied or revoked shall have the right to appeal. The ~~AgencyCommission~~ will conduct hearings in accordance with ~~AgencyCommission~~ policies and procedures applicable to the appeal.

SUBCHAPTER N. CANCELLATION AND REFUND POLICY

§807.261. Requirement for Tour~~Right to Cancel after Tour.~~

(a) Notwithstanding subsection (b) of this section, schools are required to provide a tour on or before the first scheduled class day.

(b)(a) Distance education, combination distance education-residence, and seminars are not required to provide the student a tour.

(c)(b) ~~Any potential student who has not been provided the opportunity to tour the school facilities and inspect the equipment before signing an enrollment contract has an additional three days, excluding Saturdays, Sundays, and legal holidays, following a tour and inspection to cancel enrollment and request a full refund of any money paid to the school and release from all obligations.~~ The student shall sign and date an acknowledgement form certifying the completion of the tour.

§807.262. Completion ~~Consummation~~ of Refund.

(a) A school shall document refunds by written record indicating the date of the refund transaction, the name of the student receiving the refund, the total amount refunded, and the specific reason for the refund. Proof of completion ~~consummation~~ shall be on file within 120 days of the effective date of termination and shall include:

- (1) copies of both sides of the cancelled check;
- (2) printed proof of completed transaction of electronic funds transfer or other similar electronic means; or
- (3) documentation of an awarded credit to a credit card or other similar account.

(b) To ensure a school's good faith effort to timely complete ~~consummate~~ a refund owed directly to a student, the student's file shall contain evidence of the following proof of a certified mailing of the refund to the:

- (1) student's last known address;
- (2) student's permanent address, if different from the student's last known address; or
- (3) address of the student's parent or legal guardian, if different from the student's last known and permanent addresses.

(c) If after making a good faith effort to timely complete ~~consummate~~ a refund, the school is unable to complete ~~consummate~~ the refund, the school shall forward to the Agency Commission the appropriate refund amount and any pertinent student information to assist the Agency Commission in locating the student.

§807.263. Refund Requirements.

- (a) Students are entitled to a full refund for classes attended if the school ~~does not provide a class with:~~
- (1) does not provide a class with:
 - (A)~~(1)~~ an approved instructor;
 - (B)~~(2)~~ an instructor for whom an application has been properly submitted to the Agency-Commission; or
 - (C)~~(3)~~ a temporary instructor for whom the school submitted notice to the Agency-Commission.
 - (2) fails to maintain the instructors, facilities, equipment, or courses of instruction on the basis of which Agency approval was issued or student enrollment was obtained;
 - (3) violates any provision of this chapter in the process of soliciting and enrolling the student;
 - (4) fails to adhere to applicable academic, attendance, and refund policies that meet state requirements and apply to the course enrolled in, as published at the time of the student's enrollment in the course;
 - (5) fails to furnish the student, upon satisfactory completion of the program, with a certificate of completion. A school may withhold the transcript or certificate until the student has paid outstanding financial obligations to the school; or
 - (6) does not have course approval or the required certificate of approval from the Agency.
- (b) If any of the violations in subsection (a)(1) - (6) of this section apply to a class has no instructor for more than one class period, students are entitled to a full refund for each such class attended.
- (c) The length of a program, for purposes of calculating refunds owed, is the shortest scheduled time period in which the program may be completed by continuous attendance of a full-time student.
- (d) A non-Title IV school, or a Title IV school voluntarily taking attendance, shall calculate refunds for students based upon scheduled hours of classes through the last date of attendance. A Title IV school shall calculate refunds for students based upon scheduled hours of classes through the last documented day of an academically related activity. Neither type of school shall count leaves of absence, suspensions,

school holidays, days when classes are not offered, and summer vacations for purposes of calculating a student's refund.

- (e) For all schools other than ~~distance education and seminars~~, a student may cancel enrollment, request a full refund, and request a release from any obligations to the school within the first three scheduled class days, ~~excluding Saturdays, Sundays, and legal holidays following:~~
 - (1) ~~the first day of the student's scheduled classes if the student is not provided an opportunity to tour the school facilities, which includes inspection of equipment, before signing an enrollment contract; or~~
 - (2) ~~the day the tour of the school facilities, including inspection of the equipment, is completed, when provided before the first day of the student's scheduled classes.~~
- (f) Students are entitled to a refund paid in accordance with the school's policy, which must provide for refunds at least equivalent to the provisions in §132.061 of the Act, if students withdraw or are discontinued from a program prior to completion.

§807.264. Penalties Relating to Refunds.

- (a) A penalty shall be paid on any refund not ~~completed~~consummated in a timely manner as required by the Act. The penalty assessment shall begin on the first day following the expiration of the statutorily defined refund period and end on the day preceding the date the refund is ~~completed~~consummated.
- (b) Penalties assessed on late refunds for grants shall be paid to the tuition trust account if the amount is \$15 or less. Any other penalty assessed on a school's late payment of student refunds shall be disbursed in the following order of priority:
 - (1) to the student's account at a lending institution for the balance of principal and interest on the student loan;
 - (2) to the student for tuition and fees paid directly by the student; and
 - (3) to the tuition trust account for any remaining balance of assessed penalty.
- (c) If the ~~Agency Commission~~ determines that the method used by the school to calculate refunds is in error or the school does not routinely pay refunds within the time required by the Act, the school shall submit an audited report conducted by an accountant of the refunds due former students that includes any penalty due as specified in the Act. An audit opinion letter shall accompany a schedule of student refunds due, which discloses the following information for the four years prior to the date of the ~~Agency's Commission's~~ request:

- (1) student information, including name, address, and Social Security ~~social security~~-number;
- (2) pertinent dates, including last date of attendance and date of termination; and
- (3) refund information, including amount of refund with principal, penalty, and any balance due separately stated, payee, and date and check number of payment if payment has been made.

SUBCHAPTER O. RECORDS

~~§807.284. Employment Records.~~

- ~~(a) A school offering programs approved for an occupational objective shall complete the labor market information survey on forms provided by the Commission and submit them on or before the date provided in the survey packet as requested by the Commission.~~
- ~~(b) A school shall report program completion, job placement, and employment data on an annual basis in each program approved for an occupational objective.~~
 - ~~(1) The school shall provide the data in a form acceptable to the Commission.~~
 - ~~(2) Verifiable documentation shall be made available for review to support data reported. The documentation shall include the names of graduates and the names, addresses, and telephone numbers of their employers.~~

§807.284. Reporting.

- (a) Schools shall report to the Agency, as directed, the facts and information about their programs and operations deemed necessary for the proper administration of the Act and any rules adopted under the Act.
 - (1) The data to be reported by a school shall include:
 - (A) student enrollment information for all programs;
 - (B) completion, employment, and job placement information for all programs approved for an occupational objective; and
 - (C) any other required information.
 - (2) The school shall submit the required data to the Agency on or before the specified date.

- (3) The school shall provide the data in an electronic format prescribed by the Agency unless a different format is approved in writing by the Agency.
- (4) When good cause is shown, the Agency may extend the deadline for submission of the data required under this section; however, the extension shall be effective only if authorized in writing.
- (5) The Agency may require schools to maintain on file the verifiable documentation supporting the data reported and make it available to the Agency upon request.
- (b) The Agency shall develop and apply data monitoring and audit protocols for the data reported under subsection (a) of this section, in a manner sufficient to reasonably determine the accuracy of the reported information.
- (c) The Agency may impose penalties or sanctions, or both, for failure to submit data under subsection (a) of this section by the due dates required, or for submission of data that is shown to contain inaccuracies.
- (d) For any programs not meeting a minimum employment rate for program graduates in jobs related to the stated occupation, as referenced in §807.131(b), the following graduated corrective actions will be taken:

 - (1) For a program not meeting the minimum employment rate for the first year, the school will be required to develop and submit a performance improvement plan acceptable to the Agency;
 - (2) For a program not meeting the minimum employment rate for the second consecutive year, but showing at least a 50% improvement toward the minimum employment rate of the previous year, the school will be required to reexamine and submit modifications to the performance improvement plan acceptable to the Agency;
 - (3) For a program not meeting the minimum employment rate for the second consecutive year and not showing at least a 50% improvement toward the minimum employment rate of the previous year, conditions will be placed on the school's certificate, which include:

 - (A) modification of the performance improvement plan; and
 - (B) suspension of new enrollment of students funded with Local Workforce Development Board–allocated funds in the program; and
 - (4) For a program not meeting the minimum employment rate for the third consecutive year, the Agency will revoke approval of the program.

- (e) The Agency shall publish on its website information compiled from:
- (1) data reported under subsection (a) of this section; and
 - (2) any other information collected about schools and programs deemed appropriate and useful to the public, which:
 - (A) assists a person in deciding whether to enroll in a school or in identifying or choosing which postsecondary institution, school, or college to attend; and
 - (B) addresses regulatory compliance and performance of schools.
 - (3) The Agency, to the extent practical, shall present the published information in a manner that is consistent among institutions, schools, and colleges; easy to understand; and accessible to the public.

SUBCHAPTER P. COMPLAINTS

§807.302. Complaints and Investigations.

- (a) The Agency shall investigate or refer to other authorities with jurisdiction to investigate, as appropriate, all complaints received about a school, whether licensed or unlicensed.
- ~~(b)~~(a) The ~~Agency Commission~~ may investigate a complaint about a school and may determine the extent of investigation needed by considering various factors, such as:
- (1) the seriousness of the alleged violation;
 - (2) the source of the complaint;
 - (3) the school's history of compliance and complaints;
 - (4) the timeliness of the complaint; ~~and~~
 - (5) the feasibility of investigations; and
 - ~~(6)~~(5) any other reasonable matter deemed appropriate.
- ~~(c)~~(b) The ~~Agency Commission~~ may require adequate documentation or other evidence of the violation before initiating a complaint investigation. Notwithstanding subsection (a) of this section, anonymous complaints will not be investigated but will be reviewed to identify any action needed.

(d) Unless good cause is shown, a complaint is timely only if it is filed with the Agency while the student who files the complaint is enrolled or within two years of the date the student withdraws, terminates, or graduates from the program that is the subject of the complaint. Good cause includes, but is not limited to, fraud.

(e)(e) The investigation fee authorized by the Act is based on a per site visit. The school director shall be notified that an on-site visit was conducted when the investigation results in assessment of a fee.

SUBCHAPTER S. SANCTIONS

§807.351. Notice and Administration of Sanctions.

(a) Pursuant to its authority under §132.152 of the Act, the Agency may impose administrative penalties or other sanctions on an entity for violations of §132.151 of the Act or this chapter.

(b) The Agency shall serve notice of a sanction, with determination of the violation on which it is based, by both U.S. mail and certified mail, return receipt requested, mailed to the owner's address of record as listed on the application for certificate of approval. Unless there is other evidence of receipt, notice is presumed received five days from the date it is mailed by the Agency.

(c) In imposing administrative penalties or other sanctions, the Agency shall consider all the factors that it deems relevant, including, but not limited to, the following:

(1) The amount of administrative penalty or level of sanction necessary to ensure immediate and continued compliance with statutes and regulations;

(2) The conduct of the entity in taking all reasonable steps or procedures necessary and appropriate to comply with statutes and regulations and to correct the violation; and

(3) The entity's prior violations of statutes, regulations, or orders administered, adopted, or issued by the Commission.

(d) Notwithstanding subsections (a) - (c) of this section, the Agency shall order refunds pursuant to applicable statute and rules.

§807.352. Sanctions.

(a) Sanctions may include:

(1) administrative penalties outlined in §807.353;

(2) collecting a late renewal fee from the school;

- (3) denying the school's application for a certificate of approval;
 - (4) revoking the school's certificate of approval;
 - (5) placing conditions on the school's certificate of approval;
 - (6) suspending the admission of students to the school or a program;
 - (7) denying a program approval;
 - (8) revoking a program approval;
 - (9) denying or revoking approval of an owner, school director, instructor, or other staff member whose approval may be required;
 - (10) denying, suspending, or revoking the registration of the school's representatives;
 - (11) assessing a late refund penalty;
 - (12) charging the school an investigation fee to resolve a complaint against the school;
 - (13) charging the school interest and penalties on late payments of fee installments;
 - (14) applying for an injunction against the school;
 - (15) asking the attorney general to collect a civil penalty from any person who violates the Act or this chapter;
 - (16) ordering a peer review of the school; and
 - (17) issuing a cease and desist order to an unlicensed school.
- (b) Notwithstanding subsection (a)(1) - (17) of this section, the Agency shall order refunds pursuant to violations of applicable statutes and rules.

§807.353. Administrative Penalties.

- (a) Unless otherwise provided by statute, an administrative penalty shall not exceed \$1,000 for each instance of a violation.
- (b) Regardless of the penalty amount for a particular violation contained in the penalty matrix, the administrative penalty for repeat violations shall be up to the maximum penalty amount of \$1,000 per violation.

- (c) The total amount of an administrative penalty shall be calculated as the product of the penalty dollar amount and the number of instances of violation.
- (d) The assessment of an administrative penalty shall not preclude the Agency from administering other sanctions, up to and including revocation of a school's certificate of approval.
- (e) For the purposes of determining and assessing an administrative penalty, the Agency shall use the penalty matrix below. The absence of a particular violation from the matrix shall not preclude the Agency from assessing an administrative penalty.

<u>Violation</u>	<u>Penalty</u>
<u>Small school transitioning to a large school:</u> <ul style="list-style-type: none"> • <u>Failure to notify Agency of the school's status change;</u> • <u>Failure to timely apply; or</u> • <u>Failure to remit increased fees.</u> 	<u>\$250</u>
<u>Failure to disclose tuition, fees, or other charges, including increases, to the Agency</u>	<u>\$250</u>
<u>Vacating the school facility without providing prior notification of a change of address</u>	<u>\$250</u>
<u>Failure to maintain records demonstrating compliance</u>	<u>\$250</u>
<u>Failure to provide complete and accurate information as required</u>	<u>\$250</u>
<u>Failure to ensure representatives have taken required training</u>	<u>\$500</u>
<u>Failure to provide instructors who meet necessary qualifications and notice requirements</u>	<u>\$500</u>
<u>Failure to make arrangements satisfactory to the Agency for the completion of a discontinued course of instruction</u>	<u>\$500</u>
<u>Failure to respond to requests or direction from the Agency</u>	<u>\$500</u>
<u>Making a false statement in an application to the Agency</u>	<u>\$500</u>
<u>Failure to maintain the instructors, facilities, equipment, or courses of instruction and outcomes on the basis of which approval was issued</u>	<u>\$500</u>
<u>Failure to disclose limitations on transferability of courses of instruction</u>	<u>\$500</u>

<u>Advertising the availability of financial aid for a program for which it is not available</u>	<u>\$500</u>
<u>Failure to establish that students met the approved admission requirements</u>	<u>\$750</u>
<u>Failure to submit the annual program completion, job placement, and employment data by the required due date</u>	<u>\$750</u>
<u>Failure to submit annual financial statements no later than 180 days from the close of the school's or college's fiscal year</u>	<u>\$750</u>
<u>Transfer of students from one school location to another school location, by an owner with multiple school locations</u>	<u>\$750</u>
<u>Suspension of all classes and dismissal of all students contrary to the school's class schedule as printed in the school catalog for reasons not approved by the Agency</u>	<u>\$750</u>
<u>Operating a school without a certificate</u>	<u>\$1,000</u>
<u>Teaching a course of instruction or revised course of instruction that has not been approved by the Agency</u>	<u>\$1,000</u>
<u>Using advertising that is false, misleading, or deceptive, including the misrepresentation of degrees other than those approved by the Coordinating Board</u>	<u>\$1,000</u>
<u>Failure to notify the Agency of the discontinuance of the course of instruction or the operation of a school or college within 72 hours of cessation of classes, and to make available accurate records as required</u>	<u>\$1,000</u>
<u>Solicitation of prospective students in violation of statutory and rule requirements</u>	<u>\$1,000</u>
<u>Misrepresentation</u>	<u>\$1,000</u>
<u>Failure to file a complete application for renewal at least 30 days before the expiration date of the certificate of approval</u>	<u>10% of renewal fee not less than \$200 and not more than \$1,000</u>
<u>Failure to pay any installment by the required due date</u>	<u>50% of the total amount of the fee</u>
<u>Paying refunds late</u>	<u>A rate established annually by the Commission</u>

SUBCHAPTER S. CEASE AND DESIST ORDERS

~~§807.361. Statement of Charges and Notice of Hearing on Cease and Desist Orders.~~

~~If the Agency believes a person is operating a career school or college without a certificate of approval in violation of §132.151 of the Act, the Agency may issue a statement of charges and notice of hearing to consider the issuance of a cease and desist order.~~

~~§807.362. Contents of Statement of Charges and Notice of Hearing.~~

~~The statement of charges and notice of hearing issued by the Agency shall contain the following information:~~

- ~~(1) The name and last known address of the person against whom the order may be entered;~~
- ~~(2) A short and plain statement of the reasons the Agency believes the person is operating a career school or college without a certificate of approval;~~
- ~~(3) A copy of the Commission's Career Schools and Colleges rules, Title 40, Chapter 807 of the Texas Administrative Code; and~~
- ~~(4) The date, time, and location of the hearing.~~

~~§807.363. Service of Statement and Charges and Hearing Notice for the Issuance of Cease and Desist Orders.~~

~~The statement of charges and notice of hearing to consider a cease and desist order shall be served by certified mail, return receipt requested, on the person against whom the order is entered. Notice is presumed received five days from the date it is mailed by the Agency.~~

~~§807.364. Ex Parte Consultations.~~

- ~~(a) A Commissioner or employee of the Agency assigned to render a decision or to make findings of fact and conclusions of law in a cease and desist proceeding shall not directly or indirectly communicate in connection with an issue of fact or law with the Commission, a person, a party, or a representative of those entities, except on notice and opportunity for each party to participate.~~
- ~~(b) A Commissioner or employee of the Agency assigned to render a decision or to make findings of fact and conclusions of law in a cease and desist hearing may communicate ex parte with an Agency employee who has not participated in a hearing in the case for the purpose of using the special skills or knowledge of the~~

~~agency and its staff in evaluating the evidence.~~

- ~~(c) This section shall be construed liberally to promote the effectiveness and efficiency of issuance of cease and desist orders.~~

~~§807.365. Hearing Decision and Final Review by the Commission.~~

- ~~(a) Within 10 days after the hearing is held, the hearing officer shall issue a written decision granting or denying the request for the issuance of a cease and desist order that includes findings of fact and conclusions of law. The hearing decision shall be mailed by certified mail, return receipt requested, and is presumed received five days from the date it is mailed. The hearing officer's decision becomes final the 15th day after receipt of the hearing decision unless an appeal is filed under subsection (b) of this section.~~
- ~~(b) A party that is not satisfied with the decision of the hearing officer may file a written appeal of the decision to the Commission for a final review no later than the 15th day after receipt of the hearing decision. The written appeal shall contain the party's arguments as to why the decision of the hearing officer should be reversed. A party may request oral argument on the written appeal before the Commission. If oral argument is approved, each party or its hearing representative may present argument in support of its position.~~
- ~~(c) Upon receipt of the written appeal of the hearing officer's decision, the Commission shall consider the appeal and issue a decision promptly. If in the written appeal, oral argument is requested by a party and approved, the Commission shall schedule and hold oral argument not later than 90 days of receipt of the written appeal. The Commission shall consider the appeal on the basis of the record made before the hearing officer. The decision of the Commission shall be mailed by certified mail, return receipt requested, and is presumed received 5 days from the date it is mailed.~~

~~§807.366. Cease and Desist Order.~~

- ~~(a) If the request for the issuance of a cease and desist order becomes final under the provisions of §807.365(a) or, if after an appeal the decision under §807.365(c) upholds the issuance of a cease and desist order by the Commission, the hearing officer shall issue a cease and desist order against the person that is found operating a career school or college without a certificate of approval in violation of §132.151 of the Act.~~
- ~~(b) The cease and desist order shall be delivered by certified mail, return receipt requested, and is presumed received five days from the date it is mailed.~~
- ~~(c) From the date of receipt of the issuance of the cease and desist order, the person must completely cease and desist operating the career school or college.~~

- ~~(d) The cease and desist order shall remain in effect until the person comes into complete compliance with the Act as determined by the Commission, or unless otherwise provided by the order of the Commission.~~

SUBCHAPTER T. CEASE AND DESIST ORDERS

§807.361. Statement of Charges and Notice of Hearing on Cease and Desist Orders.

If the Agency believes a person is operating a career school or college without a certificate of approval in violation of §132.151 of the Act, the Agency may issue a statement of charges and notice of hearing to consider the issuance of a cease and desist order.

§807.362. Contents of Statement of Charges and Notice of Hearing.

The statement of charges and notice of hearing issued by the Agency shall contain the following information:

- (1) The name and last known address of the person against whom the order may be entered;
- (2) A short and plain statement of the reasons the Agency believes the person is operating a career school or college without a certificate of approval;
- (3) A copy of the Commission's Career Schools and Colleges rules, Title 40, Chapter 807 of the Texas Administrative Code; and
- (4) The date, time, and location of the hearing.

§807.363. Service of Statement and Charges and Hearing Notice for the Issuance of Cease and Desist Orders.

The statement of charges and notice of hearing to consider a cease and desist order shall be served by certified mail, return receipt requested, on the person against whom the order is entered. Notice is presumed received five days from the date it is mailed by the Agency.

§807.364. Ex Parte Consultations.

- (a) A Commissioner or employee of the Agency assigned to render a decision or to make findings of fact and conclusions of law in a cease and desist proceeding shall not directly or indirectly communicate in connection with an issue of fact or law with the Commission, a person, a party, or a representative of those entities, except on notice and opportunity for each party to participate.

- (b) A Commissioner or employee of the Agency assigned to render a decision or to make findings of fact and conclusions of law in a cease and desist hearing may communicate ex parte with an Agency employee who has not participated in a hearing in the case for the purpose of using the special skills or knowledge of the Agency and its staff in evaluating the evidence.
- (c) This section shall be construed liberally to promote the effectiveness and efficiency of issuance of cease and desist orders.

§807.365. Hearing Decision and Final Review by the Commission.

- (a) Within 10 days after the hearing is held, the hearing officer shall issue a written decision granting or denying the request for the issuance of a cease and desist order that includes findings of fact and conclusions of law. The hearing decision shall be mailed by certified mail, return receipt requested, and is presumed received five days from the date it is mailed. The hearing officer's decision becomes final the 15th day after receipt of the hearing decision unless an appeal is filed under subsection (b) of this section.
- (b) A party that is not satisfied with the decision of the hearing officer may file a written appeal of the decision to the Commission for a final review no later than the 15th day after receipt of the hearing decision. The written appeal shall contain the party's arguments as to why the decision of the hearing officer should be reversed. A party may request oral argument on the written appeal before the Commission. If oral argument is approved, each party or its hearing representative may present argument in support of its position.
- (c) Upon receipt of the written appeal of the hearing officer's decision, the Commission shall consider the appeal and issue a decision promptly. If in the written appeal, oral argument is requested by a party and approved, the Commission shall schedule and hold oral argument not later than 90 days of receipt of the written appeal. The Commission shall consider the appeal on the basis of the record made before the hearing officer. The decision of the Commission shall be mailed by certified mail, return receipt requested, and is presumed received five days from the date it is mailed.

§807.366. Cease and Desist Order.

- (a) If the request for the issuance of a cease and desist order becomes final under the provisions of §807.365(a) or, if after an appeal the decision under §807.365(c) upholds the issuance of a cease and desist order by the Commission, the hearing officer shall issue a cease and desist order against the person who is found operating a career school or college without a certificate of approval in violation of §132.151 of the Act.

- (b) The cease and desist order shall be delivered by certified mail, return receipt requested, and is presumed received five days from the date it is mailed.
- (c) From the date of receipt of the issuance of the cease and desist order, the person must completely cease and desist operating the career school or college.
- (d) The cease and desist order shall remain in effect until the person comes into complete compliance with the Act as determined by the Commission, or unless otherwise provided by the order of the Commission.

~~—SUBCHAPTER T. CAREER SCHOOLS HEARINGS~~

~~§807.381. Purpose.~~

~~This subchapter provides a hearing process to the extent authorized by Chapter 132 of the Texas Education Code and the rules administered by the Agency.~~

~~§807.382. Definitions.~~

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

- (1) ~~Agency—The unit of state government established under Texas Labor Code Chapter 301 that is presided over by the Commission and administered by the Executive Director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended. The definition of "Agency" shall apply to all uses of the term in rules contained in this subchapter.~~
- (2) ~~Appellant—The party or the party's authorized hearing representative who files an appeal from an appealable determination or decision.~~
- (3) ~~Commission—The body of governance of the Texas Workforce Commission composed of three members appointed by the Governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers, and one representative of the public. The definition of "Commission" shall apply to all uses of the term in rules contained in this subchapter.~~
- (4) ~~Date of notice—The date the notice is received, unless good cause exists for the hearing officer to determine otherwise.~~
- (5) ~~Date of request of hearing—The date on which the appellant or the hearing~~

~~representative filed a written notice of appeal with the Agency by hand delivery, facsimile, or mail. If an appeal is mailed to the Agency, then the appeal is perfected as of the postmark date on the envelope containing the appeal request unless good cause exists for the hearing officer to determine otherwise. If an appeal is delivered by hand or facsimile after 5 p.m., the date of request shall be the next day.~~

- ~~(6) Hearing—An informal, orderly, and readily available proceeding held before an impartial hearing officer. A party or hearing representative may present evidence to show that the Agency's determination should be reversed, affirmed, or modified.~~
- ~~(7) Hearing officer—An Agency employee designated to conduct impartial hearings and issue final administrative decisions.~~
- ~~(8) Hearing representative—Any individual authorized by a party to assist the party in presenting the party's appeal. A hearing representative may be legal counsel or another individual. Each party may have a hearing representative to assist in presenting the party's appeal.~~
- ~~(9) Party—The person or entity with the right to participate in a hearing authorized in applicable statute or rule.~~

~~§807.383. Information on Right of Appeal.~~

~~An issuer of a determination shall inform the career school applicant or any party directly aggrieved by the determination of the right to a hearing. The notice shall explain the procedure for an appeal, the party's right of appeal, and the right to be represented by others, including legal counsel.~~

~~§807.384. Request for Hearing.~~

- ~~(a) The party seeking review of a determination under this subchapter relating to career schools hearings shall request a hearing in writing within 15 days after receipt of the notice of determination.~~
- ~~(b) The request shall be addressed as provided in the determination and state the nature of the determination, the name and identifying information of the requesting party, and a request that the determination be reviewed.~~
- ~~(c) The request may include an explanation of why the determination should be changed; however, this is not a jurisdictional requirement.~~

~~§807.385. Setting of Hearing.~~

- ~~(a) Upon receipt of request for a hearing, the Agency shall promptly mail a notice of~~

~~hearing that sets the hearing for a reasonable time and place within 30 days from receipt of the request for a hearing.~~

~~(b) The notice of hearing shall be in writing and include a:~~

~~(1) statement of the date, time, place, and nature of the hearing;~~

~~(2) statement of the legal authority under which the hearing is to be held; and~~

~~(3) short and plain statement of the issues to be considered during the hearing.~~

~~(c) The notice of hearing shall be issued at least 10 days before the date of the hearing unless a shorter period is permitted by statute.~~

~~(d) The hearing notice shall state whether the hearing shall be conducted by telephone or in person. The hearing notice shall also include the location of an in-person hearing.~~

~~(e) Parties needing special accommodations, including a bilingual or sign language interpreter, may request such before the setting of the hearing, if possible, or as soon as practical.~~

~~§807.386. Hearing Officer Independence and Impartiality.~~

~~(a) A hearing officer presiding over a hearing shall have all powers necessary and appropriate to conduct a full, fair, and impartial hearing. Hearing officers shall remain independent and impartial in all matters regarding the handling of any issues during the pendency of a case and in issuing their written decisions.~~

~~(b) A hearing officer shall be disqualified if the hearing officer has a personal interest in the outcome of the appeal or if the hearing officer directly or indirectly participated in the determination on appeal. Any party may present facts to the Agency in support of a request to disqualify a hearing officer.~~

~~(c) The hearing officer may withdraw from a hearing to avoid the appearance of impropriety or partiality.~~

~~(d) Following any disqualification or withdrawal of a hearing officer, the Agency shall assign an alternate hearing officer to the case. The alternate hearing officer shall not be bound by any findings or conclusions made by the disqualified or withdrawn hearing officer.~~

~~§807.387. Hearing Procedures.~~

~~(a) The hearing shall be conducted in person in Austin, Texas, unless the parties agree to a telephonic hearing or request a different location.~~

~~(b) The hearing shall be conducted informally and in such a manner as to ascertain the substantive rights of the parties. All issues relevant to the appeal shall be considered and addressed, and may include:~~

~~(1) Presentation of Evidence. The parties to an appeal may present evidence that is material and relevant, as determined by the hearing officer. In conducting a hearing, the hearing officer shall actively develop the record on the relevant circumstances and facts to resolve all issues. To be considered as evidence in a decision, any document or physical evidence must be entered as an exhibit at the hearing. A party has the right to object to evidence offered at the hearing by the hearing officer or other parties.~~

~~(2) Examination of Parties and Witnesses. After placing the witnesses under oath, the hearing officer shall examine parties and any witnesses and shall allow cross-examination to the extent the hearing officer deems necessary to afford the parties due process.~~

~~(3) Additional Evidence. The hearing officer, with or without notice to any of the parties, may take additional evidence as deemed necessary, provided that a party shall be given an opportunity to rebut the evidence if it is to be used against the party's interest.~~

~~(4) Appropriate Hearing Behavior. All parties shall conduct themselves in an appropriate manner. The hearing officer may expel any individual or party who fails to correct behavior the hearing officer identifies as disruptive. After expulsion, the hearing officer may proceed with the hearing and render a decision.~~

~~(c) Records~~

~~(1) The hearing record shall include the audio recording of the proceeding and any other relevant evidence relied on by the hearing officer, including documents and other physical evidence entered as exhibits.~~

~~(2) The hearing record shall be maintained in accordance with federal and state law.~~

~~(3) Confidentiality of information contained in the hearing record shall be maintained in accordance with federal and state law.~~

~~(4) Upon request, a party has the right to obtain a copy of the hearing record at no charge. However, a party requesting a transcript of the hearing record shall pay the costs of the transcription.~~

~~§807.388. Postponements, Continuances, and Withdrawals.~~

- ~~(a) The hearing officer may grant a postponement of a hearing for good cause at a party's request.~~
- ~~(b) A continuance of a hearing may be ordered at the discretion of the hearing officer in order to consider additional, necessary evidence or for any other reason the hearing officer deems appropriate.~~
- ~~(c) A party may withdraw an appeal at any time prior to the issuance of the final decision.~~

~~§807.389. Evidence.~~

- ~~(a) Evidence Generally. Evidence, including hearsay evidence, shall be admitted if it is relevant and if in the judgment of the hearing officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. However, the hearing officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues, or by reasonable concern for undue delay, waste of time, or needless presentation of cumulative evidence.~~
- ~~(b) Exchange of Exhibits. Any documentary evidence to be presented during a telephonic hearing shall be exchanged with all parties and a copy shall be provided to the hearing officer in advance of the hearing. Any documentary evidence to be presented at an in-person hearing shall be exchanged at the hearing.~~
- ~~(c) Stipulations. The parties, with the consent of the hearing officer, may agree in writing to relevant facts. The hearing officer may decide the appeal based on such stipulations or, at the hearing officer's discretion, may set the appeal for hearing and take such further evidence as the hearing officer deems necessary.~~
- ~~(d) Experts and Evaluations. If relevant and useful, testimony from an independent expert or a professional evaluation from a source satisfactory to the parties and the Agency may be ordered by hearing officers, on their own motion or at a party's request. The cost of any such expert or evaluation ordered by the hearing officer shall be borne equally by the parties.~~
- ~~(e) Subpoenas.
 - ~~(1) The hearing officer may issue subpoenas to compel the attendance of witnesses and the production of records. A subpoena may be issued either at the request of a party or on the hearing officer's own motion.~~
 - ~~(2) A party requesting a subpoena shall state the nature of the information desired, including names of any witnesses and the records that the requestor feels are necessary for the proper presentation of the case.~~~~

~~(3) The request shall be granted only to the extent the records or the testimony of the requested witnesses appears to be relevant to the issues on appeal.~~

~~(4) A denial of a subpoena request shall be made in writing or on the record, stating the reasons for such denial.~~

~~§807.390. Ex Parte Communications.~~

~~(a) The hearing officer shall not participate in ex parte communications, directly or indirectly, in any matter in connection with any substantive issue, with any interested person or party. Likewise, no person shall attempt to engage in ex parte communications with the hearing officer on behalf of any interested person or party.~~

~~(b) If the hearing officer receives any such ex parte communication, the other parties shall be given an opportunity to review any such ex parte communication.~~

~~(c) Nothing shall prevent the hearing officer from communicating with parties or their representatives about routine matters such as requests for continuances or opportunities to inspect the file.~~

~~(d) The hearing officer may initiate communications with an impartial Agency employee who has not participated in a hearing or any determination in the case for the limited purpose of using the special skills or knowledge of the Agency and its staff in evaluating the evidence.~~

~~§807.391. Change in Determination.~~

~~The issuer of the determination may change the determination any time before the hearing officer issues the decision. Despite the issuer changing the determination, the parties may proceed with the hearing.~~

~~§807.392. Hearing Decision.~~

~~(a) Following the conclusion of the hearing, the hearing officer shall promptly prepare a written decision on behalf of the Agency.~~

~~(b) The decision shall be based exclusively on the evidence of record in the hearing and on matters officially noticed in the hearing. The decision shall include:~~

~~(1) a list of the individuals who appeared at the hearing;~~

~~(2) the findings of fact and conclusions of law reached on the issues; and~~

~~(3) the affirmation, reversal, or modification of the determination.~~

~~(c) Unless a party files a timely motion for rehearing, the Agency may assume~~

~~continuing jurisdiction to modify or correct a hearing decision until the expiration of 30 calendar days from the mailing date of the hearing decision.~~

~~§807.393. Motion for Reopening.~~

- ~~(a) If a party does not appear for a hearing, the party may request the reopening of the hearing within 30 calendar days from the date the decision is mailed.~~
- ~~(b) The motion for reopening shall be in writing and detail the reason for failing to appear at the hearing.~~
- ~~(c) The Agency may schedule a hearing on whether to grant the reopening.~~
- ~~(d) The motion may be granted if the hearing officer determines that the party has shown good cause for failing to appear at the hearing.~~

~~§807.394. Motion for Rehearing.~~

- ~~(a) A party has 30 calendar days from the date the decision is mailed to file a motion for rehearing. A rehearing shall be granted only for the presentation of new evidence.~~
- ~~(b) A motion for rehearing shall be in writing and allege the new evidence to be considered. The party shall show a compelling reason why this evidence was not presented at the hearing.~~
- ~~(c) If the hearing officer determines that the alleged, new evidence warrants a rehearing, a hearing shall be scheduled at a reasonable time and place.~~
- ~~(d) The hearing officer shall issue a written decision in response to a timely filed motion for rehearing.~~
- ~~(e) The Agency may assume continuing jurisdiction to modify, correct, or reform a decision until the expiration of 30 calendar days from the date of mailing of the hearing decision.~~

~~§807.395. Finality of Decision.~~

- ~~(a) The decision of the hearing officer is the final decision of the Agency after the expiration of 30 calendar days from the mailing date of the decision unless within that time:
 - ~~(1) a request for reopening is filed with the Agency;~~
 - ~~(2) a request for rehearing is filed with the Agency; or~~
 - ~~(3) the Agency assumes continuing jurisdiction to modify or correct the decision.~~~~

- ~~(b) Any decision issued in response to a request for reopening or rehearing or a modification or correction issued by the Agency shall be final on the expiration of 30 calendar days from the mailing date of the decision, modification, or correction.~~

SUBCHAPTER U. CAREER SCHOOLS HEARINGS

§807.381. Purpose.

This subchapter provides a hearing process to the extent authorized by the Act and the rules administered by the Agency.

§807.383. Information on Right of Appeal.

An issuer of a determination shall inform the career school applicant or any party directly aggrieved by the determination of the right to a hearing. The notice shall explain the procedure for an appeal, the party's right of appeal, and the right to be represented by others, including legal counsel.

§807.384. Request for Hearing.

- (a) The party seeking review of a determination under this subchapter relating to career schools hearings shall request a hearing in writing within 15 days after receipt of the notice of determination.
- (b) The request shall be addressed as provided in the determination and state the nature of the determination, the name and identifying information of the requesting party, and a request that the determination be reviewed.
- (c) The request may include an explanation of why the determination should be changed; however, this is not a jurisdictional requirement.

§807.385. Setting of Hearing.

- (a) Upon receipt of request for a hearing, the Agency shall promptly mail a notice of hearing that sets the hearing for a reasonable time and place within 30 days from receipt of the request for a hearing.
- (b) The notice of hearing shall be in writing and include a:
- (1) statement of the date, time, place, and nature of the hearing;
 - (2) statement of the legal authority under which the hearing is to be held; and
 - (3) short and plain statement of the issues to be considered during the hearing.

- (c) The notice of hearing shall be issued at least 10 days before the date of the hearing unless a shorter period is permitted by statute.
- (d) The hearing notice shall state whether the hearing shall be conducted by telephone or in-person. The hearing notice shall also include the location of an in-person hearing.
- (e) Parties needing special accommodations, including a bilingual or sign language interpreter, may request such before the setting of the hearing, if possible, or as soon as practical.

§807.386. Hearing Officer Independence and Impartiality.

- (a) A hearing officer presiding over a hearing shall have all powers necessary and appropriate to conduct a full, fair, and impartial hearing. Hearing officers shall remain independent and impartial in all matters regarding the handling of any issues during the pendency of a case and in issuing their written decisions.
- (b) A hearing officer shall be disqualified if the hearing officer has a personal interest in the outcome of the appeal or if the hearing officer directly or indirectly participated in the determination on appeal. Any party may present facts to the Agency in support of a request to disqualify a hearing officer.
- (c) The hearing officer may withdraw from a hearing to avoid the appearance of impropriety or partiality.
- (d) Following any disqualification or withdrawal of a hearing officer, the Agency shall assign an alternate hearing officer to the case. The alternate hearing officer shall not be bound by any findings or conclusions made by the disqualified or withdrawn hearing officer.

§807.387. Hearing Procedures.

- (a) The hearing shall be conducted in person in Austin, Texas, unless the parties agree to a telephonic hearing or request a different location.
- (b) The hearing shall be conducted informally and in such a manner as to ascertain the substantive rights of the parties. All issues relevant to the appeal shall be considered and addressed, and may include:
 - (1) Presentation of Evidence. The parties to an appeal may present evidence that is material and relevant, as determined by the hearing officer. In conducting a hearing, the hearing officer shall actively develop the record on the relevant circumstances and facts to resolve all issues. To be considered as evidence in a decision, any document or physical evidence must be entered as an exhibit at the hearing. A party has the right to object to evidence offered at the hearing by the hearing officer or other parties.

- (2) Examination of Parties and Witnesses. After placing the witnesses under oath, the hearing officer shall examine parties and any witnesses and shall allow cross-examination to the extent the hearing officer deems necessary to afford the parties due process.
- (3) Additional Evidence. The hearing officer, with or without notice to any of the parties, may take additional evidence as deemed necessary, provided that a party shall be given an opportunity to rebut the evidence if it is to be used against the party's interest.
- (4) Appropriate Hearing Behavior. All parties shall conduct themselves in an appropriate manner. The hearing officer may expel any individual or party who fails to correct behavior the hearing officer identifies as disruptive. After expulsion, the hearing officer may proceed with the hearing and render a decision.

(c) Records

- (1) The hearing record shall include the audio recording of the proceeding and any other relevant evidence relied on by the hearing officer, including documents and other physical evidence entered as exhibits.
- (2) The hearing record shall be maintained in accordance with federal and state law.
- (3) Confidentiality of information contained in the hearing record shall be maintained in accordance with federal and state law.
- (4) Upon request, a party has the right to obtain a copy of the hearing record at no charge. However, a party requesting a transcript of the hearing record shall pay the costs of the transcription.

§807.388. Postponements, Continuances, and Withdrawals.

- (a) The hearing officer may grant a postponement of a hearing for good cause at a party's request.
- (b) A continuance of a hearing may be ordered at the discretion of the hearing officer in order to consider additional, necessary evidence or for any other reason the hearing officer deems appropriate.
- (c) A party may withdraw an appeal at any time prior to the issuance of the final decision.

§807.389. Evidence.

- (a) Evidence Generally. Evidence, including hearsay evidence, shall be admitted if it is relevant and if in the judgment of the hearing officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. However, the hearing officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues, or by reasonable concern for undue delay, waste of time, or needless presentation of cumulative evidence.
- (b) Exchange of Exhibits. Any documentary evidence to be presented during a telephonic hearing shall be exchanged with all parties and a copy shall be provided to the hearing officer in advance of the hearing. Any documentary evidence to be presented at an in-person hearing shall be exchanged at the hearing.
- (c) Stipulations. The parties, with the consent of the hearing officer, may agree in writing to relevant facts. The hearing officer may decide the appeal based on such stipulations or, at the hearing officer's discretion, may set the appeal for hearing and take such further evidence as the hearing officer deems necessary.
- (d) Experts and Evaluations. If relevant and useful, testimony from an independent expert or a professional evaluation from a source satisfactory to the parties and the Agency may be ordered by hearing officers, on their own motion or at a party's request. The cost of any such expert or evaluation ordered by the hearing officer shall be borne equally by the parties.
- (e) Subpoenas.
- (1) The hearing officer may issue subpoenas to compel the attendance of witnesses and the production of records. A subpoena may be issued either at the request of a party or on the hearing officer's own motion.
 - (2) A party requesting a subpoena shall state the nature of the information desired, including names of any witnesses and the records that the requestor feels are necessary for the proper presentation of the case.
 - (3) The request shall be granted only to the extent the records or the testimony of the requested witnesses appears to be relevant to the issues on appeal.
 - (4) A denial of a subpoena request shall be made in writing or on the record, stating the reasons for such denial.

§807.390. Ex Parte Communications.

- (a) The hearing officer shall not participate in ex parte communications, directly or indirectly, in any matter in connection with any substantive issue, with any interested person or party. Likewise, no person shall attempt to engage in ex parte

communications with the hearing officer on behalf of any interested person or party.

- (b) If the hearing officer receives any such ex parte communication, the other parties shall be given an opportunity to review any such ex parte communication.
- (c) Nothing shall prevent the hearing officer from communicating with parties or their representatives about routine matters such as requests for continuances or opportunities to inspect the file.
- (d) The hearing officer may initiate communications with an impartial Agency employee who has not participated in a hearing or any determination in the case for the limited purpose of using the special skills or knowledge of the Agency and its staff in evaluating the evidence.

§807.391. Change in Determination.

The issuer of the determination may change the determination any time before the hearing officer issues the decision. Despite the issuer changing the determination, the parties may proceed with the hearing.

§807.392. Hearing Decision.

- (a) Following the conclusion of the hearing, the hearing officer shall promptly prepare a written decision on behalf of the Agency.
- (b) The decision shall be based exclusively on the evidence of record in the hearing and on matters officially noticed in the hearing. The decision shall include:
 - (1) a list of the individuals who appeared at the hearing;
 - (2) the findings of fact and conclusions of law reached on the issues; and
 - (3) the affirmation, reversal, or modification of the determination.
- (c) Unless a party files a timely motion for rehearing, the Agency may assume continuing jurisdiction to modify or correct a hearing decision until the expiration of 30 calendar days from the mailing date of the hearing decision.

§807.393. Motion for Reopening.

- (a) If a party does not appear for a hearing, the party may request the reopening of the hearing within 30 calendar days from the date the decision is mailed.
- (b) The motion for reopening shall be in writing and detail the reason for failing to appear at the hearing.

- (c) The Agency may schedule a hearing on whether to grant the reopening.
- (d) The motion may be granted if the hearing officer determines that the party has shown good cause for failing to appear at the hearing.

§807.394. Motion for Rehearing.

- (a) A party has 30 calendar days from the date the decision is mailed to file a motion for rehearing. A rehearing shall be granted only for the presentation of new evidence.
- (b) A motion for rehearing shall be in writing and allege the new evidence to be considered. The party shall show a compelling reason why this evidence was not presented at the hearing.
- (c) If the hearing officer determines that the alleged, new evidence warrants a rehearing, a hearing shall be scheduled at a reasonable time and place.
- (d) The hearing officer shall issue a written decision in response to a timely filed motion for rehearing.
- (e) The Agency may assume continuing jurisdiction to modify, correct, or reform a decision until the expiration of 30 calendar days from the date of mailing of the hearing decision.

§807.395. Finality of Decision.

- (a) The decision of the hearing officer is the final decision of the Agency after the expiration of 30 calendar days from the mailing date of the decision unless within that time:
 - (1) a request for reopening is filed with the Agency;
 - (2) a request for rehearing is filed with the Agency; or
 - (3) the Agency assumes continuing jurisdiction to modify or correct the decision.
- (b) Any decision issued in response to a request for reopening or rehearing or a modification or correction issued by the Agency shall be final on the expiration of 30 calendar days from the mailing date of the decision, modification, or correction.