

## Chapter 807. Proprietary Schools

**PROPOSED RULE WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL NOT HAVE ANY SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.**

ON DECEMBER 23, 2003, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULE WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

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The Texas Workforce Commission (Commission) proposes amendments to Subchapter A. General Provisions, §§807.1-807.2; Subchapter B. Certificates of Approval, §§807.11-807.12, §§807.16-807.17; Subchapter C. Financial Requirements, §807.31, §807.33 and §807.35; Subchapter E. School Director and Administrative Staff, §807.61 and §807.65; Subchapter G. Courses of Instruction, §§807.103-807.104; Subchapter J. Admission, §807.144; Subchapter K. Progress Standards, §807.163; Subchapter M. Cancellation and Refund Policy, §807.191 and §§807.193-807.194; Subchapter Q. Closed Schools, §§807.251-807.252 of Chapter 807. Proprietary Schools. The Commission also proposes the repeal of §807.5 of Subchapter A. General Provisions and new §§807.271-807.282 of Subchapter R. Cease and Desist Orders, for Chapter 807. Proprietary Schools.

Background: Effective January 1, 1972, the Texas Legislature enacted the Texas Proprietary School Act (Act) to provide protection of students in proprietary schools and to provide certification and regulation of proprietary schools. The Act was located in Chapter 32 of the Texas Education Code, and was administered by the Texas Education Agency, Division of Proprietary Schools, Drivers Training, and Veterans Education.

In 1995, Senate Bill 1, the 74th Texas Legislature recodified Chapter 32 to Chapter 132, Texas Education Code, and required that the Texas Employment Commission assume the regulatory function of the system of proprietary schools. During the same legislative session, House Bill 1863 created the Commission to consolidate workforce employment and training related services and the licensing and regulation of proprietary schools. Consequently, as of March 1, 1996, references in the law to the Texas Employment Commission mean the Texas Workforce Commission.

In 2003, Senate Bills 280 and 1343, 78th Texas Legislature, Regular Session, revised Chapter 132, Texas Education Code, changing all references to “proprietary schools” to “career schools and colleges” and references to “correspondence” to distance education. The bills added the requirement that certain schools apply for, and receive, an exemption. The bills eliminated the requirement for surety bonds and the tuition protection fund and created the career school and college tuition trust account. The tuition trust account is a permanently dedicated trust fund. It is more flexible than the tuition protection fund in handling the payment of refunds to students of

closed schools and the teach-out expenses of schools that complete the training of the students of a closed school. The remaining balance in the tuition protection fund on August 31, 2003 was transferred to the tuition trust account.

The bills also gave the Commission the authority to issue a cease and desist order against a career school or college operating without a certificate of approval. The ability to issue a cease and desist order against an unlicensed school after an administrative hearing gives the Commission more flexibility in enforcing the Act's licensing requirements. Insuring that the licensing requirements are followed by all career schools and colleges increases the protections available for students, helps provide students with better quality training providers and supplies employers with an improved pool of trained employees and job applicants.

Through the Act and Career School and College Rules, the Commission Career Schools and Colleges Department licenses and regulates most private post-secondary career schools that offer vocational training or continuing education. The Department also 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 Career Schools and Colleges Department seeks to provide customer protection for Texas students as well as ensure quality training of the labor force to meet the needs of Texas employers.

The purpose of the rule amendments is to address changes in the statute as well as changes in the career school and college industry from the time when the rules were last revised. Since that time, methods to deliver education have evolved in a number of areas, particularly in the area of distance education. The Internet has created opportunities for new delivery techniques and also has provided new methods for advertising and enrolling students.

The proposed amendments to the Career School and College rules address these issues in order to remove unnecessary requirements and streamline processes in the regulation of Texas career schools and colleges. The proposed amendments completely implement the changes to the Act made by Senate Bills 280 and 1343, 78th Texas Legislature, Regular Session. These changes are consistent with the Governor's vision of limited and efficient State government.

Generally, throughout the chapter the amendments change references to "proprietary schools" to "career schools and colleges," "correspondence" to "distance education," and "protection fund" to "trust account" to be consistent with legislative changes to the statute. The other specific amendments as well as the reason and purpose of each is described as follows:

In §807.5, the amendment deletes this section regarding a school's requirement to apply for an exemption because it is now redundant of legislative changes to the statute.

In §807.11, the amendment deletes the requirement for a surety bond as legislative changes to the statute no longer require a school to obtain a surety bond.

In §807.12, the amendment deletes the requirement for a surety bond as legislative changes to the statute no longer require a school to obtain a surety bond.

In §807.16, the amendment deletes requirements for a school to offer associate degree programs, deferring to the authority of the Texas Higher Education Coordinating Board.

In §807.17, the amendment deletes surety bond claims as a form of penalty or sanction as legislative changes to the statute no longer require a school to obtain a surety bond.

In §807.31, the amendment deletes the reference to bonding as legislative changes to the statute no longer require a school to obtain a surety bond.

In §807.33, the amendment requires new schools to submit a projection of income in order to be assessed for the Tuition Trust Account in accordance with legislative changes to the statute.

In §807.35, the amendment deletes the reference to bonding and substitutes language that corresponds with legislative changes to the statutory definition of a small school.

In §807.61, the amendment requires school directors to be present the majority of the time the school is in operation so that they are accessible to students.

In §807.65, the amendment deletes certain requirements for a director of degree programs, deferring to the authority of the Texas Higher Education Coordinating Board.

In §807.103, the amendment deletes program requirements for degree granting schools, deferring to the authority of the Texas Higher Education Coordinating Board.

In §807.104, the amendment changes “program” to “course of instruction” to make it clear that both programs and seminars must comply with this section concerning penalties related to courses of instruction.

In §807.144, the amendment requires enrollment agreements for long-term seminars to facilitate investigations of student complaints and compute refunds.

In §807.163, the amendments change references to “correspondence” to “distance education” to be consistent with legislative changes to the statute.

In §807.191, the amendments change references to “correspondence” to “distance education” to be consistent with legislative changes to the statute.

In §807.193, the amendments change references to “correspondence” to “distance education” to be consistent with legislative changes to the statute.

In §807.251, the amendment makes technical corrections to language and adds the requirements for a teach-out from §807.252 for continuity.

In §807.252, the amendment changes references to “tuition protection fund” to “tuition trust account” to be consistent with legislative changes to the statute and clarifies the assessment method for new schools. It also removes references to bonds as legislative changes to the statute no longer require a school to obtain a surety bond and deletes the requirements for a teach-out which were moved to §807.251.

The recent legislative changes to the Act gave the Commission the ability to issue cease and desist orders to schools that are operating without a certificate of approval. The following new rules are proposed as a new Subchapter R with the reason and purpose of each described as follows:

§807.271, adds definitions used in the subsequent sections on cease and desist orders. This new subsection is added as required by §132.306 of the Act.

§807.272 identifies the Executive Director of the Commission as the individual that may issue a statement of charges and hearing notice for the issuance of a cease and desist order. This new subsection is added as required by §132.306 of the Act.

§807.273 states the required contents of the statement of charges and hearing notice. This new subsection is added as required by §132.306 of the Act.

§807.274 states how the statement of charges and hearing notice will be delivered. This new subsection is added as required by §132.306 of the Act.

§807.275 allows for a mutual agreement to postpone a hearing. This new subsection is added as required by §132.306 of the Act.

§807.276 states where and how the hearing will be conducted. This new subsection is added as required by §132.306 of the Act.

§807.277 states the rules of evidence for the hearing. This new subsection is added as required by §132.306 of the Act.

§807.278 states conditions under which the hearing officer may be disqualified or withdraw. This new subsection is added as required by §132.306 of the Act.

§807.279 states the hearing procedures. This new subsection is added as required by §132.306 of the Act.

§807.280 states the permissible conditions for the granting of a continuance of a hearing. This new subsection is added as required by §132.306 of the Act.

§807.281 states how the hearing decision will be rendered, becomes final and the procedures for appeal. This new subsection is added as required by §132.306 of the Act.

§807.282 states the effect of the cease and desist order. This new subsection is added as required by §132.306 of the Act.

As required of certificate issuing state agencies by Chapter 2005 of the Government Code, the Commission's minimum, maximum, and median times for processing applications from the date the Commission received the initial applications to the date of the final decision using the Commission's performance in the past 12 months are respectively as follows: The Original Certificate of Approval processing period is a maximum of 390 days, a minimum of 2 days, and a median of 28 days. The Renewal Certificate of Approval processing period is a maximum of 212 days, a minimum of 2 days, and a median of 49 days. The Change of Owner processing period is a maximum of 163 days, a minimum of 2 days, and median of 49 days. The Representative processing period is a maximum of 380 days, a minimum of 2 days, and a median of 16 days. The Instructor processing period is a maximum of 143 days, a minimum of 2 days, and a median of 60 days. The Director processing period is a maximum of 70 days, a minimum of 2 days and a median of 23 days. The Director of Education processing period is a maximum of 59 days, a minimum of 4 days and a median of 20 days. The data used to compile the processing periods is based on a mail tracking system. Based on limitations of the mail tracking system, the following qualifiers are provided: processing periods of one day were excluded from the calculations; in an indeterminate number of cases, the data reflects total processing times irrespective of whether additional information was needed to complete the applications; and errors may exist due to processing and data base conversion complications. The processing periods provided in §807.6 were based on a decrease in department staffing and an increase in the number of applications needing to be processed.

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 local governments as a result of enforcing or administering the rules; and

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

Randy Townsend, Director of Finance, and Michael De Long, Career Schools and Colleges Coordinator, have determined that there will be an effect on small businesses and anticipated economic costs to persons who are required to comply with the proposed rule amendments and new rules. The Commission submitted policy concepts and a draft of the amended and new Career School and College Rules to, as well as met with, the Career School and College

Workgroup, which included persons representing the interests of career schools and colleges. The purpose of the Workgroup was to discuss issues pertaining to the revisions of the rules and any costs incurred by the schools with respect to the changes in the rules. Written and oral responses were received on the draft and the concerns of career schools and colleges were also discussed at a Workgroup meeting. During the drafting stage of the proposed rule amendments and new rules, the Commission has worked with the career schools and colleges to incorporate provisions to reduce the costs to small businesses.

Furthermore, the Commission requested analysis from some career schools and colleges to determine the costs of complying with the amended and new rules and to determine whether adverse economic effect would result. Factors will cause the estimates to vary, such as the resources available to the school, the wage rate of the person performing the task, the size of the school, and numerous other variables which will bear upon the actual costs of compliance for a particular school. Incidental costs such as postage and telephone calls are not included because of their minimal nature.

For rules that do not add requirements on schools but merely detail how the schools should comply with the statute, there are no costs other than those required by the statute. Those costs are directly caused by the statute and not by any additional cost to small businesses caused by the rules. For example, the statute establishes a tuition trust account and states the method of financing the account, the rules merely state some administrative details.

With the exception of the rules listed in the chart below, the Commission anticipates the changes to the rules will present no costs other than those directly required by the statute

Anticipated Potential Additional Costs to Schools

Section Number	Section Title or the title of the Subchapter in which the rules are contained.	Costs of compliance provided by <u>small businesses</u> of the following:		Costs of compliance provided by <u>large businesses</u>
		<u>small proprietary schools</u> per Tex. Educ. Code §132.054	<u>large proprietary schools</u>	
807.33	Financial Requirements for Changes in Ownership <sup>1</sup>	\$0 - \$160.00 (0-16 hrs @ \$10/hr)	\$0 - \$160.00 (0-16 hrs @ \$10/hr)	\$0 - \$160.00 (0-16 hrs @ \$10/hr)
807.35	Financial Requirements for Renewal <sup>2</sup>	\$0 - \$100.00 (0-1hr @ \$100/hr)	\$0 - \$100.00 (0-1hr @ \$100/hr)	\$0 - \$100.00 (0-1hr @ \$100/hr)
807.144	Enrollment Agreement <sup>3</sup>	\$0 - \$50.00 (0-5 hrs @ \$10/ hr)	\$0 - \$50.00 (0-5 hrs @ \$10/ hr)	\$0 - \$50.00 (0-5 hrs @ \$10/ hr)
807.252	Tuition Trust Account (Tuition Protection Fund) <sup>4</sup>	\$75.00 (0-5 hrs @ \$15/hr)	\$75.00 (0-5 hrs @ \$15/hr)	\$75.00 (0-5 hrs @ \$15/hr)
807.275	Agreements to Hold the Hearing at a Later Date <sup>5</sup>	\$0 - \$7.50 (0-0.5 hr @ 15/hr)	\$0 - \$7.50 (0-0.5 hr @ 15/hr)	\$0 - \$7.50 (0-0.5 hr @ 15/hr)
807.276	Hearing <sup>6</sup>	\$360.00 (0-16 hrs @ \$20/hr)	\$360.00 (0-16 hrs @ \$20/hr)	\$360.00 (0-16 hrs @ \$20/hr)
807.277	Evidence <sup>7</sup>	\$0 - \$4000.00 (0-40 hrs @ \$100/hr)	\$0 - \$4000.00 (0-40 hrs @ \$100/hr)	\$0 - \$4000.00 (0-40 hrs @ \$100/hr)

807.279	Hearing Procedure <sup>7</sup>	\$0 - \$1600.00 (0-16 hrs @ \$100/hr)	\$0 - \$1600.00 (0-16 hrs @ \$100/hr)	\$0 - \$1600.00 (0-16 hrs @ \$100/hr)
807.280	Continuance of Hearing <sup>7</sup>	\$0 - \$800.00 (0-8 hrs @ \$100/hr)	\$0 - \$800.00 (0-8 hrs @ \$100/hr)	\$0 - \$800.00 (0-8 hrs @ \$100/hr)
807.281	Hearing Decision and Final Review by the Commissioners <sup>7</sup>	\$0 - \$500.00 (0-5 hrs @ \$100/hr)	\$0 - \$500.00 (0-5 hrs @ \$100/hr)	\$0 - \$500.00 (0-5 hrs @ \$100/hr)
807.282	Effect of the Cease and Desist Order <sup>8</sup>	\$0-\$1000.00/day dependent on the number of days to become compliant.	\$0-\$1000.00/day dependent on the number of days to become compliant.	\$0-\$1000.00/day dependent on the number of days to become compliant.

<sup>1</sup> The amount includes the time required to develop an estimate of the projected income for the first two years of operation.

<sup>2</sup> The amount includes fees charges by a CPA.

<sup>3</sup> The amount includes time to develop an enrollment agreement and initial printing costs.

<sup>4</sup> The amount includes time to prepare a statement of charges for teach-out expenses but does not include the amount of the assessment that the Commission may order. The assessment amount will vary depending of the amount of funds available in the Tuition Trust Account, the number of school closures, amount of student refunds and amount of student teach-out charges paid from the account for a given year.

<sup>5</sup> The amount includes time to prepare and consider an agreement to hold a hearing at a later date.

<sup>6</sup> The amount includes time to travel to and attend the hearing.

<sup>7</sup> The amount includes preparation time and legal fees.

<sup>8</sup> The amount is dependant on actions taken by the school. It is impossible to calculate with any certainty the costs of paying student refunds and the loss of business revenue to the unlicensed school during the time period it takes the school to get its certificate of approval.

The comparison between the costs estimated by the career schools and colleges for small and large businesses is apparent from the chart. For the costs which could not be estimated, those costs for small businesses are estimated as equal to or more than those costs of large businesses, due to the various resources available to larger businesses.

The majority of currently approved career schools and colleges are small businesses; however, many of these career schools or colleges are not defined as "small career schools or colleges" pursuant to § 132.054 of the Act relating to the Small School Exemption, which states that "The Commission may exempt small career schools and colleges from any requirement of this chapter to reduce the cost to small schools of receiving a certificate of approval." To lessen the costs on small businesses the Commission will continue to use the waiver provisions in §807.4 which would permit a school to request a waiver from all or part of these rules upon a showing of good cause due to undue economic hardship. The Commission intends to reduce the costs for small schools and small businesses in complying with the rules whenever feasible by applying §132.054 of the Act and §807.4 of the rules.

Mark Hughes, Director of Labor Market and Career Information, has determined that there is no foreseeable negative impact upon employment conditions in this state as a result of the proposed rule amendments and new rules.

Michael De Long, Career Schools and Colleges Coordinator, 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 rules shall be to provide rules that are easier to understand and follow, make the process simpler

for current and prospective school owners to obtain a certificate of approval and operate a school in compliance with the Act. Local workforce areas may experience economic benefits from increased training of qualified workers and job seekers. Additionally, existing or emerging businesses in the local areas will have the opportunity to access a more qualified workforce. A more qualified workforce may provide businesses with increased efficiencies, lower costs, better products and a growing customer base. The extent to which the economies of local workforce development areas will be affected by the changes in the Career Schools and Colleges Rules will vary greatly across the state and will depend on such factors as population, demographics, the technical experience of the existing workforce, the number of job seekers needing training and access to training resources.

Coordination Activities: In the development of these rules for publication and public comment, the Commission sought and received the involvement of each of Texas' twenty-eight Local Workforce Development Boards. The Commission provided policy concepts to the Boards for consideration and review pursuant to Texas Labor Code Section 302.064 and the Commission's Resolution Regarding Board Coordination in Policy Development adopted September 24, 2002. Prior and during this rulemaking process, the Commission considered the Boards' contributions. In addition, the Commission held discussions with the Career Schools and Colleges Workgroup and offered to present the policy concepts to the Workforce Leadership of Texas (WLT) Policy Committee regarding the development and implementation of these rules.

Comments on the proposed rule amendments and new rules may be submitted to John Moore, General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 608, Austin, Texas, 78778-0001; telephone number (512) 463-3041; facsimile number (512) 463-1426; e-mail address [ruleandpolicy.comments@twc.state.tx.us](mailto:ruleandpolicy.comments@twc.state.tx.us). The Commission will hold a public hearing if requested.

The amendments are proposed under Texas Labor Code, Title 4, §301.0015 and §302.002(d), which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Career Schools and Colleges, and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The proposed amendments affect the Texas Labor Code, Title 4, §301.0015 and §302.002(d), and Texas Education Code, Chapter 132, Career Schools and Colleges.

## **Chapter 807. ~~PROPRIETARY SCHOOLS~~ CAREER SCHOOLS AND COLLEGES**

### **SUBCHAPTER A. GENERAL PROVISIONS**

#### **§807.1. Title and Purpose**

- (a) These rules may be cited as the ~~Proprietary School~~ Career School and College Rules.

- (b) The purpose of these rules is to implement and interpret the provisions of the Texas Education Code, Chapter 132, ~~Proprietary Schools~~Career Schools and Colleges. The Commission shall evaluate each school according to the standards of practice set forth in the Act and this chapter. The Commission will provide assistance, whenever possible, in complying with this chapter.

**§807.2. Definitions.**

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 Commission.
- (2) Academic semester--A period of instruction that includes at least 15 weeks of instruction, unless otherwise approved by the Commission.
- (3) Accountant--An independent certified public accountant properly registered with the appropriate state board of accountancy.
- (4) Act--Texas Education Code, Chapter 132, ~~Proprietary Schools~~Career Schools and Colleges.
- (5) Advertising--Any affirmative act designed to call attention to a school or program for the purpose of encouraging enrollment.
- (6) Asynchronous distance education--Distance education training that the Commission determines is not synchronous.
- (7) Board--A local workforce development board as created under the Workforce and Economic Competitiveness Act.
- (8) Clock hour--Fifty minutes of instruction during a 60-minute period.
- (9) Commission--The Texas Workforce Commission.
- (10) Coordinating Board--The Texas Higher Education Coordinating Board.
- (11) ~~Correspondence course~~--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.
- (12) ~~Correspondence~~Distance education school--A school that offers only ~~correspondence~~distance education courses.
- (13) Course of instruction--A program or seminar.
- (14) Employment--A graduating or graduate student's employment in the same or substantially similar occupation for which the student was trained.
- (15) Good reputation--A person is considered to be of good reputation if the person:
  - (A) has never been convicted of a felony 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 Commission;

- (B) has never been successfully sued for fraud or deceptive trade practices within the last 10 years;
  - (C) does not own a school currently in violation of legal requirements, has never owned a school with repeated violations, and has never owned a school that closed with violations including, but not limited to, unpaid refunds; and
  - (D) has not knowingly falsified or withheld information from the Commission.
- (16) 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.
  - (17) 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.
  - (18) Program--A sequence of approved subjects offered by a school that teaches skills and fundamental knowledge required for employment in the stated occupation.
  - (19) 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.
  - (20) Residence school--A school that offers at least one program that includes classroom instruction or synchronous distance education.
  - (21) School--A "~~proprietary school~~ career school or career college," as defined in the Act, that includes each location where courses of instruction shall be offered.
  - (22) Secondary education--Successful completion of public, private, or home schooling at the high school level or obtainment of a recognized high school equivalency credential.
  - (23) 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.
  - (24) Seminar school--A school that offers only seminars.
  - (25) Small school--A "small career school or college" as defined in the Act.
  - (26) 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.
- (27) Student--Any individual solicited, enrolled, or trained in Texas by a school.
- (28) Subject--A component of a program that includes specific content designed to advance the practical skills and knowledge necessary to prepare a student for employment in the stated occupation. A subject in a school is similar to a course at a community or technical college.
- (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.
- (30) Synchronous distance education--The 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 clock hours 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 K and attendance standards of Subchapter L of this chapter.
- (31) Tour--An inspection of the facilities and equipment pertaining to a course of instruction.
- (32) Week--Seven consecutive calendar days.

### **§807.3. Memorandum of Understanding for Regulation of Schools**

The Act requires the Commission to execute a memorandum of understanding with the Texas Guaranteed Student Loan Corporation and each state agency regulating schools to reduce default rates at the regulated schools and to improve the overall quality of the programs. Said memorandum of understanding is set out at 40 TAC §800.205. Copies are available at the Texas Workforce Commission, 101 East 15th Street, Room 614, Austin, Texas 78778.

### **§807.4. Waivers**

- (a) Upon a showing of extreme extenuating circumstances, a school governed by this chapter may request a waiver from one or more requirements of this chapter. The Commission shall grant a waiver only upon a specific finding of good cause establishing that:
  - (1) the imposition of the rule requirement from which the waiver is sought would cause undue economic hardship to the school and have a negative impact on the ability of

- the school to provide the students with the skills and knowledge required for employment;
- (2) the quality of education shall in no way be diminished or sacrificed by the granting of the waiver; and
  - (3) the granting of the waiver will in no way limit the statutorily required application approval criteria contained in § 132.055 of the Act.
- (b) The Commission may revoke a waiver in the same manner as a revocation of a certificate of approval, if the Commission determines that the criteria contained in this section for a waiver no longer exists.
  - (c) A school may appeal a requested waiver denial or revocation in accordance with the provisions of Subchapter D of the Act.

#### **§807.5. Exemptions**

- ~~(a) A school desiring exemption from regulation pursuant to the Act shall make application and provide information deemed necessary by the Commission.~~
- ~~(b) The Commission may inspect a school or require such information to ensure continued operation in compliance with the exemption provisions.~~

#### **§807.6. Processing Periods**

- (a) The time periods for processing applications from schools, including small businesses, for certificates of approval, as well as approvals for representatives, school directors, and instructors, shall be in accordance with the following time periods.
  - (1) The first period is the time from the receipt of an application to the date of the issuance of a written notice approving the application or outlining the reasons why the application is unacceptable. The time periods for each application are:
    - (A) original certificate of approval - 40 days;
    - (B) renewed certificate of approval - 40 days;
    - (C) change in ownership certificate of approval - 40 days;
    - (D) original representatives - 21 days;
    - (E) renewed representatives - 21 days;
    - (F) school directors and instructors (approval contingent on issuance of school's approval) - 40 days; and
    - (G) school directors and instructors (approval not contingent on issuance of school's approval) - 55 days.
  - (2) The second period is the time from receipt of the last item necessary to complete the application to the date of issuance of written notice approving or denying approval of the application. The time periods for each application are:
    - (A) original certificate of approval - 40 days;

- (B) renewed certificate of approval - 40 days;
  - (C) change in ownership certificate of approval - 40 days;
  - (D) original representative (approval contingent upon issuance of school's approval) - 21 days;
  - (E) original representative (approval not contingent upon issuance of school's approval) - 21 days;
  - (F) renewed representative (approval contingent upon issuance of school's approval) - 21 days;
  - (G) school directors and instructors (approval contingent on issuance of school's approval) - 40 days; and
  - (H) school directors and instructors (approval not contingent on issuance of school's approval) - 55 days.
- (b) In the event the application is not processed in the time periods as stated in this section, the applicant has the right to request of the Commission full reimbursement of all filing fees paid in that particular application process. If the Commission does not agree that the established time periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied. Good cause for exceeding the period established is considered to exist if:
- (1) the number of applications for certificates of approval, representatives, school directors, or instructors as appropriate to be processed exceeds by 15% or more the number processed in the same calendar quarter of the preceding year;
  - (2) another public or private entity utilized in the application process caused the delay; or
  - (3) other conditions exist that give good cause for exceeding the established periods.
- (c) If the request for full reimbursement authorized in this section is denied, the applicant may then request a hearing by appealing to the Commission for a resolution of the dispute. The appeal will be processed in the same manner as other appeals involving schools pursuant to the Act.

## **SUBCHAPTER B. CERTIFICATES OF APPROVAL**

### **§807.11. Original approvals**

A complete application for an original certificate of approval shall consist of the following:

- (1) a completed application form provided by the Commission;
- ~~(2) a properly executed school bond;~~
- ~~(3)~~ complete and correct financial statements, as specified in this chapter, demonstrating the school is financially stable and capable of fulfilling its commitments for training;
- ~~(4)~~ the application fee as specified in this chapter; and

- (~~5~~4) any other revisions or evidence necessary to bring the school's application for approval to a current and accurate status as requested by the Commission.

#### **§807.12. Renewal**

- (a) For small schools, the certificate of approval shall be renewed at least every three years, or more frequently as determined by the Commission. A complete application for renewal of a certificate of approval shall consist of the following:
- (~~1~~) a properly executed school bond continuation certificate;
  - (~~2~~1) complete and correct annual financial statements, as specified in this chapter, demonstrating the school is financially stable and capable of fulfilling its commitments for training;
  - (~~3~~2) the renewal fee and the fee for the tuition ~~protection fund~~trust account, if applicable, specified in this chapter; and
  - (~~4~~3) any other revisions or evidence necessary to bring the school's application for approval to a current and accurate status as requested by the Commission.
- (b) For all other schools, the certificate of approval shall be renewed annually. A complete application for renewal of a certificate of approval shall consist of the following:
- (1) a completed application for renewal form provided by the Commission;
  - (~~2~~) a properly executed school bond;
  - (~~3~~2) complete and correct annual financial statements for the most recent fiscal year demonstrating the school is financially stable and capable of fulfilling its commitments for training;
  - (~~4~~3) the renewal fee and the fee for the tuition ~~protection fund~~trust account, if applicable, specified by this chapter; and
  - (5) any other revisions or evidence necessary to bring the school's application for approval to a current and accurate status as requested by the Commission.
- (c) The effective, expiration, and issuance dates are indicated on the certificate of approval. The Commission may reflect the date of renewal as the date following the date of expiration of the prior certificate of approval, if the school submitted a timely request for renewal and met all of the requirements contained in this chapter for renewal.
- (d) The complete renewal application shall be postmarked on or before the due date as indicated in the Act.

#### **§807.13. Change in ownership**

- (a) The Commission may consider the addition or deletion of any person defined as an owner under the Act as a change in school ownership. The school may notify the Commission of the change in ownership a minimum of 45 days before the change in ownership to request that the Commission in lieu of a full application accept a partial application.
- (b) The Commission may require submission of a full application for approval for a change in ownership if:

- (1) the Commission has a reasonable basis to believe the change in ownership of the school may significantly affect the school's continued ability to meet the criteria for approval; or
  - (2) the school fails to file notice of the change of ownership at least 45 days prior to the ownership transfer.
- (c) The Commission may require a partial application for approval for a change in ownership if the Commission reasonably believes the change in ownership will not significantly affect the school's continued ability to meet the criteria for approval.
  - (d) The purchaser of a school shall accept responsibility for all refund liabilities.
  - (e) Management Agreements must be disclosed to the Commission. Parties to a management agreement shall be of good reputation and character.

#### **§807.14. Locations**

- (a) A school shall obtain a certificate of approval for each location where courses of instruction will be offered, unless the school has a certificate of approval and meets one of the exceptions in this section.
- (b) The Commission may approve the following as exempt from applying for approval for a new or additional location, if requested at least 30 days in advance:
  - (1) seminars, including preparation for licensing examinations, educational institution entrance examinations, and reading improvement;
  - (2) classes in no more than one location at a time as an itinerant school;
  - (3) classes at facilities used for additional classrooms for instructional services only, which are within a one-mile radius of the main campus and are dependent on the main campus for administration, supervision, fiscal control, and student services; or
  - (4) short-term programs. Short term programs:
    - (A) include 200 clock hours or less of instruction; and
    - (B) are conducted with at least a 90-day interval between cessation of one program and the beginning of the next.
- (c) The school shall file an application for a certificate of approval to reflect a new or additional location, including all documents deemed necessary by the Commission, and the appropriate fee. The Commission may issue the certificate of approval after inspection of the new facilities.
- (d) If the Commission determines that a move of the school presents an unreasonable transportation hardship which would prevent a student from completing the training at the new location, the school shall provide a full refund of all monies paid and a release from all obligations to the student.

### **§807.15. Notification of Legal Action**

- (a) Unless otherwise instructed by the Commission, a school shall notify the Commission in writing of any legal action to which the school, any of its owners, representatives, or management employees is a party.
- (b) A school shall notify the Commission in writing of any legal action described in this section no later than five business days after the action is known to be filed or the school, owner, representative, or management employee is served.
- (c) A school shall include, with the notice required in this section, a file-marked copy of the petition, complaint, or other legal instrument, including copies of any judgments.

### **§807.16. Associate Degrees**

- (a) If a school desires authorization to grant associate degrees, the school shall make application to the Coordinating Board ~~and have:~~
  - ~~(1) a current certificate of approval from the Commission;~~
  - ~~(2) an accreditation by an agency or association recognized by the United States Secretary of Education;~~
  - ~~(3) a history of conducting classes for the past two years in Texas and compliance with the Act as a non-degree granting school; and~~
  - ~~(4) an ability to fully operate as a degree granting school in compliance with the Coordinating Board's requirements.~~
- ~~(b) A certified and accredited branch campus of a fully and separately accredited school approved to grant a degree in Texas may apply to grant the same degree, provided that the branch campus is also in compliance with all other minimum standards, except for the history of conducting classes for the past two years.~~
- (eb) The Commission may recognize the authorization to grant degrees upon receipt of a copy of the letter of authorization issued by the Coordinating Board.

### **§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) filing a claim against the school's surety bond;~~
- ~~(7)~~ collecting a late refund penalty from the school;

- (87) assessing an administrative penalty;
- (98) applying for an injunction against the school;
- (109) asking the Attorney General to collect a civil penalty from any person who violates the Act or this chapter;
- (110) ordering a peer review of the school;
- (121) revoking a program approval;
- (1312) denying a program approval;
- (1413) requiring full or partial refunds to students for program violations or deficiencies;
- (1514) suspending the admission of students to the school;
- (1615) charging the school an investigation fee to resolve a complaint against the school;  
and
- (1716) charging the school interest and penalties on late payments of fee installments.

## **SUBCHAPTER C. FINANCIAL REQUIREMENTS**

### **§807.31. Definitions Relating to Financial Requirements**

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

- ~~(1) **Alternative bonding**--A situation in which the school's bond amount exceeds the highest amount of unearned tuition as shown on the unearned tuition affidavit.~~
- (21) **GAAP**--Generally Accepted Accounting Principles.
- (32) **GAAS**--Generally Accepted Auditing Standards.
- (43) **Sworn statement**--A notarized statement including the following language: "I swear or affirm that the information in these statements is true and correct to the best of my knowledge."
- (54) **Unearned tuition affidavit**--A statement of the highest amount of unearned tuition at any time during the most recent fiscal year, the projected highest unearned tuition at any time during the next fiscal year, and the gross amount minus refunds of student tuition and fees earned during the fiscal year in all programs approved under the Act.

### **§807.32. Financial Standards**

- (a) The balance sheet required in this subchapter shall reflect the following:
  - (1) positive equity or net worth balance;
  - (2) unearned tuition as a current liability;
  - (3) a current ratio of at least one-to-one; and

- (4) stockholder's equity or net worth exceeding the amount shown for goodwill, if applicable, under assets in the balance sheet.
- (b) Compilations shall be accompanied by the owner's sworn statement.
- (c) All financial statements shall identify the name, license number, and licensing state of the accountant associated with the statements and be in accordance with GAAP.
- (d) A school that maintains a financial responsibility composite score that meets the general standards established in federal regulations by the U.S. Department of Education for postsecondary institutions participating in student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, shall be considered to have met the financial standards of this subchapter. A school that qualifies under an alternative standard but not the general standard of these federal regulations will not be considered to have met the financial standards of this subchapter unless the school meets the other requirements stated in this subchapter.

### **§807.33. Financial Requirements for Original Approvals**

- (a) The prospective owner shall furnish the Commission with the following:
  - (1) for a school owned by a sole proprietor, a reviewed personal balance sheet with notes that disclose the amount of payments for the next five years to meet debt agreements as required by GAAP; or
  - (2) for all other ownership structures, an audited balance sheet consistent with GAAP and GAAS and certified by an accountant.
- (b) The school shall submit a balance sheet, a list of the expected school-related expenses for the first three months of operation of the school, and a sworn statement signed by the owner affirming the availability of sufficient cash to cover projected expenses at the date of licensure. A school currently operating, or proposing to operate, on a reimbursement contract basis may request a waiver of this section from the Commission. Projected expenses may include the following:
  - (1) employee salaries, listed by position title, including withholding, unemployment taxes, and any other related expenses;
  - (2) lease payments for equipment listed by the name of the equipment;
  - (3) lease payments for facilities;
  - (4) accounting, legal, and other specifically identified professional fees; and
  - (5) an estimate of other expenses such as advertising, travel, textbooks, office supplies, classroom supplies, printing, telephone, utilities, taxes, and sales commissions.
- (c) The school shall submit a projection of the gross amount of tuition and fees to be collected during each of the first two years of operation.
- (ed) The prospective owner shall also furnish such other evidence as may be deemed appropriate by the Commission to establish financial stability.

#### **§807.34. Financial Requirements for Changes in Ownership**

Prior to a change in ownership of a school, the purchaser shall furnish the Commission a balance sheet meeting the requirements outlined in this subchapter for original approvals, excluding the sufficient cash requirement for initial expenses. The purchaser shall furnish any other evidence deemed appropriate by the Commission to establish financial stability.

#### **§807.35. Financial Requirements for Renewal.**

- (a) A school shall submit annual financial statements as set forth in this section that shall be:
  - (1) audited by an accountant and consistent with GAAP;
  - (2) reviewed by an accountant and consistent with GAAP (except for the first renewal, which must be audited or compiled); or
  - (3) compiled by an accountant, containing an unearned tuition affidavit and at least one note disclosing the current and long-term liabilities. This note shall be similar to that required by GAAP for reviewed and audited statements. Compiled statements are acceptable under the following conditions:
    - (A) the gross annual revenue from student tuition and fees ~~is \$50,000 or less, less~~ refunds, is less than or equal to \$100,000, or;
    - (B) the courses of instruction are less than one month in length; ~~or;~~
    - ~~(C) the school maintains alternative bonding.~~
- (b) Each school shall furnish financial statements in association with an accountant annually and not later than 180 days from the close of the school's fiscal year. These statements shall include the following:
  - (1) balance sheet;
  - (2) statement of results of operation, which includes a statement of income and retained earnings;
  - (3) statement of cash flows; and
  - (4) the gross amount minus refunds of annual student tuition and fees for each school, separated from other revenues unrelated to training.
- (c) ~~An alternative bonded school.~~ A school with a gross annual revenue from student tuition and fees, less refunds, less than or equal to \$100,000 may submit all of the following in lieu of the financial statements required in this section:
  - (1) an unearned tuition affidavit;
  - (2) a copy of the annual income tax form filed specifically for the business; and
  - (3) an owner's sworn statement certifying that the unearned tuition affidavit and the copy of the annual income tax form are true and correct.
- (d) A school that is a subsidiary of a corporation may submit, in lieu of the statements required in this section, the annual audited financial statements of the parent corporation provided that:

- (1) said statements are accompanied by an audited list of any student tuition refunds payable by the subsidiary school at the close of its fiscal year. The statements shall also be accompanied by an owner's sworn statement reflecting the gross amount minus refunds of student tuition and fees earned during the fiscal year on all programs approved under the Act; and
- (2) the parent corporation ensures that each student enrolled in the subsidiary school receives either the training agreed upon or a refund as provided in the Act, and submits either a certified resolution of its board of directors to this effect or any other evidence as deemed appropriate by the Commission to establish financial responsibility by the parent corporation.

#### **§807.36. Interim Financial Statements.**

If a school chooses to submit interim financial statements in addition to the annual financial statements to establish financial stability, those interim statements shall meet the minimum requirements of this subchapter.

#### **§807.37. Commission Ordered Audits**

If the Commission determines that reasonable cause exists to question the validity of any financial information submitted, or the financial stability of the school, the Commission may require at the school's expense:

- (1) an audit of a school that has been certified by an accountant; or
- (2) the owner to furnish any other evidence deemed appropriate by the Commission to establish financial stability.

### **SUBCHAPTER D. REPRESENTATIVES**

#### **§807.51. Representative Requirements**

- (a) The school shall apply annually to register representatives on forms provided by the 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. Any contract signed by a prospective student as a result of solicitation or enrollment by an unregistered representative is null and void and unenforceable.

#### **§807.52. Representative Standards**

A representative shall:

- (1) have sufficient knowledge of the school to provide complete and accurate information regarding the school to prospective students;

- (2) refer questions about financial aid and entrance testing to the appropriate school officials; and
- (3) invite the student applicant to tour the school's facilities, inspect equipment, and speak with students.

### **§807.53. Representative Limitations**

- (a) The representative shall not begin solicitation of students until the school receives notice of approval for the school and registration of the representative from the Commission.
- (b) Employees and other agents of recruiting firms shall not serve as representatives.
- (c) A representative shall not:
  - (1) solicit in public places other than educational settings, job fairs, or organized meetings;
  - (2) offer as an inducement or enticement any material consideration to a prospective student prior to enrollment, such as cash, food, housing, or gifts;
  - (3) administer the entrance test;
  - (4) advise students about financial aid, other than informing the students of the general availability of financial aid;
  - (5) give false, misleading, or deceptive information about any aspect of the school's operation, programs, completion or employment rates, examination success rates, job placement, or salary potential;
  - (6) concurrently solicit for or represent more than one school, unless the owner of each school being represented is informed that the representative is also soliciting for or representing other schools;
  - (7) engage in acts or practices that have a tendency to intimidate, coerce, or mislead a prospective student into accepting an enrollment;
  - (8) represent that a school or program has sponsorship, credentials, approval, characteristics, credit transferability, uses, benefits, or qualities that it does not have;
  - (9) discredit another school or its programs by false or misleading representation of facts;
  - (10) solicit enrollments in a program that has not been approved by the Commission;
  - (11) solicit students for a school through an employment agency; or
  - (12) violate any legal requirement or prohibition contained in the Act or this chapter.

## **SUBCHAPTER E. SCHOOL DIRECTOR AND ADMINISTRATIVE STAFF**

### **§807.61. School Director Requirements**

- (a) Each school shall designate one person as the school director.
- (b) ~~(b)~~—A person may not concurrently serve as a school director for more than one school.

- (c) A school director must be physically present at the school's location for a majority of the time the school is open for regular operation.

#### **§807.62. School Director Qualifications and Duties**

- (a) A school director of a small school shall have administrative or management experience. A school director of a small school shall be of good reputation and is not required to attend a Commission-sponsored workshop prior to initial approval by the Commission.
- (b) A school director of other than a small school shall be of good reputation and have a total of five years of administrative or management experience. An equivalent duration of higher education, college or university, may be substituted for each year of experience.
- (c) The school shall obtain Commission approval for the school director before employment of the school director.
- (d) A school director shall attend a Commission-sponsored workshop and demonstrate a proficiency of the knowledge required to operate a school before final Commission approval may be granted. The Commission may require a school director to attend additional workshops scheduled by the Commission in order to maintain skills and continue as an approved school director.
- (e) The school director is responsible for the courses of instruction, organization of classes, designation of a liaison for Commission compliance visits, maintenance of the school facilities and proper administrative records, and all other matters related to the administration of the school, as determined by the Commission.
- (f) The school director shall sign and agree to the terms of the Director's Statement.
- (g) The Commission may require the school director to attend additional training to continue approved director status if a school has more than one substantiated complaint from students during a one-year period. If the school has repeat violations from a previous year under the same director, the Commission may revoke the approval of the school director.
- (h) The school director shall:
- (1) ensure that all facilities, including housing endorsed by the school, comply with local, city, county, municipal, state, and federal regulations such as, but not limited to, fire, building, and sanitation codes; and
  - (2) inspect facilities, including housing, before endorsement.
- (i) The Commission shall grandfather the director of a school from meeting the requirements contained in this section, providing that the school has submitted the application for that school director to the Commission prior to the effective date of this section, and the application results in approval by the Commission.

#### **§807.63. Acting School Director**

- (a) The Commission may allow a school to designate an acting school director for a period not to exceed 90 days or as otherwise approved by the Commission, who is:

- (1) a currently approved school director at another location with the same owner to facilitate the approval process at a new location;
  - (2) a new school director pending approval by the Commission; or
  - (3) required by an emergency as determined by the Commission.
- (b) The school shall provide written notice to the Commission, delivered by the end of the first day following the appointment of the acting school director.

#### **§807.64. Director of Education Requirements**

- (a) A school may have a director of education. The Commission shall grandfather schools from meeting the director of education requirements contained in this section for a particular director of education provided that the school has submitted the application for approval of the director of education to the Commission prior to the effective date of this section and the application results in approval by the Commission.
- (b) If the school employs a director of education, the director shall meet the same qualifications as an instructor and, in addition, shall have:
- (1) one year of employment as a postsecondary instructor;
  - (2) one year of employment as a supervisor; and
  - (3) a bachelor's degree, appropriate for the skills required, as determined by the Commission.

#### **§807.65. Director of Degree Programs Requirements**

- (a) A school with a degree program shall have a director of the degree programs as required by the Coordinating Board. ~~The Commission shall grandfather schools from meeting the director of degree programs requirements contained in this section for a particular director of degree programs provided that the school has submitted the application for approval of the director of degree programs to the Commission prior to the effective date of this section and the application results in approval by the Commission.~~
- (b) A director of degree programs shall be of good reputation, ~~and have:~~
- ~~(1) a master's degree with three years of work related or administrative experience within the ten years immediately preceding employment by the school; or~~
  - ~~(2) a bachelor's degree with five years of work related or administrative experience within the ten years immediately preceding employment by the school.~~

### **SUBCHAPTER F. INSTRUCTORS**

#### **§807.81. Instructor Qualifications**

- (a) The instructor shall be of good reputation and shall not be a current student in the same or similar program, as determined by the Commission, in which the instructor teaches.
- (b) Instructors shall possess and affirm on forms provided by the Commission that the instructor has one of the following qualifications that applies to the subject area to be

taught. In such cases where the practical experience is gained on a seasonal basis as an industry standard, the season of at least three months of experience shall be considered as one year of experience.

- (1) The instructor has a master's degree or higher that:
  - (A) includes satisfactory completion of six semester credit hours or eight quarter credit hours in the subject to be taught;
  - (B) includes satisfactory completion of three semester credit hours or four quarter credit hours in the subject area and one year of related practical experience within the ten years immediately preceding employment by the school, if the subject to be taught is in a technical field;
  - (C) includes satisfactory completion of three semester credit hours, or four quarter credit hours in the subject area to be taught, if the subject to be taught is in a non-technical field; or
  - (D) includes one year of related practical experience in the subject to be taught within the ten years immediately preceding employment by the school, if the subject to be taught is in a non-technical field.
- (2) The instructor has a bachelor's degree that:
  - (A) includes nine semester hours or 12 quarter hours related to the subject area to be taught;
  - (B) includes satisfactory completion of six semester credit hours or eight quarter credit hours in the subject area to be taught and one year of related practical experience within the ten years immediately preceding employment by the school, if the subject to be taught is in a technical field;
  - (C) includes satisfactory completion of three semester credit hours or four quarter credit hours in the subject area and one year of related practical experience within the ten years immediately preceding employment by the school, if the subject to be taught is in a non-technical field; or
  - (D) includes two years of related practical experience within the ten years immediately preceding employment by the school.
- (3) The instructor has an associate's degree that:
  - (A) includes satisfactory completion of nine semester credit hours or 12 quarter hours in the subject area to be taught and two years of related practical experience within the ten years immediately preceding employment by the school; or
  - (B) includes three years of related practical experience within the ten years immediately preceding employment by the school.
- (4) The instructor has a secondary education if it includes a certificate of completion from a recognized postsecondary school for at least a 900 clock-hour program in a

relevant subject area and four years of related practical experience within the ten years immediately preceding employment by the school; or

- (5) The instructor has proof of satisfactory completion of secondary education if accompanied by five years of related practical experience within the ten years immediately preceding employment by the school.
- (c) In addition to the other applicable requirements for instructors, including the good reputation requirement, the following qualifications apply to the specific instructors listed in this subsection.
- (1) The Commission requires that a court reporting instructor of only machine shorthand theory and speedbuilding shall have:
    - (A) an associate's degree or higher and certificate of completion of machine shorthand theory requirements in an accredited court reporting program;
    - (B) an associate's degree in court reporting from any state-recognized school;
    - (C) a Registered Professional Reporter or Certified Shorthand Reporter certification from any state; or
    - (D) a certificate of completion of a court reporting program from a state-certified school.
  - (2) The Commission requires that a court procedures and technology instructor shall have:
    - (A) a Registered Professional Reporter or Certified Shorthand Reporter certification; and
    - (B) one year of court reporting experience.
  - (3) The Commission requires that a modeling instructor shall have, at a minimum:
    - (A) a secondary education and certificate of completion from a modeling program of at least 45 clock hours from a state recognized school and at least five verifiable paid modeling jobs completed within the past five years; or
    - (B) a secondary education and at least ten verifiable paid modeling jobs completed within the past five years.
  - (4) The Commission requires that a truck driving instructor shall have, at a minimum:
    - (A) a secondary education;
    - (B) certified proof of successful completion of 40 clock hours in safety education and driver training as required by this chapter; and
    - (C) three years of full-time tractor trailer driving experience within the ten years immediately preceding employment by the school.
  - (5) The Commission requires that a bartending instructor shall be certified by the Texas Alcoholic Beverage Commission as having completed the required awareness course.

- (d) The director shall ensure that an instructor applicant demonstrates sufficient language to teach the subject for which the instructor is applying to teach.
- (e) The Commission shall grandfather schools from meeting the instructor requirements contained in this section for a particular instructor provided that the school has submitted the application for approval of the instructor to the Commission prior to the effective date of this section and the application results in approval by the Commission.
- (f) For those instructors who return to the school prior to one full year of absence, and who will be teaching the same subjects as previously approved, the school shall document the leave and reinstatement dates in the instructor's personnel file. When an instructor begins teaching new subjects or the absence was more than one year, the school shall submit a new application to the Commission.

**§807.82. Temporary Instructors**

- (a) The Commission 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 Commission.
- (b) In such circumstances, the school shall provide written notice to the Commission delivered no later than the first day the temporary instructor begins teaching. The notice shall include:
  - (1) the subject 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 Commission shall result in penalties for the use of an unapproved instructor.
- (d) The temporary instructor shall have practical experience or education in the subject area to be taught, and shall not have been previously disapproved to teach the subject.
- (e) There shall be no more than one temporary instructor per grading period in an individual subject, unless specifically approved in advance by the Commission.
- (f) Failure to comply with this section shall result in penalties, up to and including, a full refund to all students attending such classes.

**§807.83. Instructor Application**

- (a) A school that has been licensed for at least one year and is accredited by an agency recognized by the U. S. Secretary of Education is not required to submit instructor applications to the Commission for approval. Documentation that the instructor meets the requirements of this chapter must be kept on file at the school and available for review immediately upon request.

- (b) The school shall file an application for approval of an instructor on forms provided by the Commission in accordance with the following criteria and ensure that the instructor is of good reputation.
  - (1) The application shall be postmarked within five calendar days of employment as an instructor subject to the conditions outlined in this subchapter. A school may employ an instructor pending approval by the Commission.
  - (2) Depending upon the qualifications indicated on the application, the application shall include one or more of the following:
    - (A) a legible copy of the postsecondary certificate or degree, or a transcript indicating appropriate coursework completed, as applicable;
    - (B) proof of a current occupational license; and
    - (C) proof of secondary education.
- (c) A school with degree programs shall ensure that instructors are of good reputation and meet all the qualifications required by the Coordinating Board.
- (d) The Commission may approve a variance from the specific qualifications contained in Section 807.81 of this subchapter with sufficient justification and an assurance that the program quality will not be lessened.
- (e) The Commission may consider current approvals of instructors by other Texas state agencies responsible for approval and regulation of the program, or any professional certifications held by the instructor when submitted with the Commission's instructor application. The Commission will accept notification, in lieu of a new instructor application, for any instructor that has a current approval by the Commission to teach the same subjects at other schools that have the same owners.
- (f) The Commission may require the school director of an accredited school to file applications for instructors if there have been two substantiated complaints regarding instructors in the previous year, or if the school is unable to produce, when requested, documentation that all instructors meet the requirements of this subchapter.
- (g) The Commission may require a school director to submit and receive approvals for instructor applications in advance of employing the instructors for a period of one year if the school has had three instructor applications finally disapproved within the previous two years.

#### **§807.84. School Responsibilities Regarding Instructors**

- (a) The school shall ensure that an appropriate number of instructors, as determined by the Commission, have proper licensure or certificates required for the stated occupation's objective. The holder of the license or certificate shall actively participate in program development and revisions.
- (b) The school shall ensure continuity of instruction through reasonable retention of instructors to provide students with a quality education.

- (c) The school shall implement, maintain, and update annually a written plan for staff development, which includes, at a minimum, continuing education, staff meetings, attendance at trade and professional conferences, and observation of, or participation in, on-the-job activities.
- (d) The school director or director of education shall formally evaluate each instructor in writing at least annually, subject to review by the Commission.
- (e) The school director or director of education shall ensure that students are allowed the opportunity to formally evaluate each instructor in writing at least annually and incorporate said evaluation in the instructor's overall evaluation. These student evaluations are subject to review by the Commission.
- (f) The school shall provide in-service training within the first three months of teaching to those instructors hired lacking teaching experience. In-service training includes planned professional development opportunities that enable inexperienced instructors to learn and develop effective teaching strategies and skills. Topics shall include competency-based training, instructional methods, adult learning styles, and student learning and skills assessment. Competency-based training specifies the skills and skill levels required to complete a training program, develops and organizes teaching and learning methods to enable students to achieve the identified skills and levels of proficiency, and uses criterion-referenced evaluation to measure achievement.
- (g) The school shall provide and document in-service training that provides updates on skills, knowledge, and technology required by business and industry for those instructors who have taught for two years, but have not gained relevant work experience during the two-year period.

## **SUBCHAPTER G. COURSES OF INSTRUCTION**

### **§807.91. Definitions Relating to Courses of Instruction**

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

- (1) **Externship**--Practical, program-related, off-campus training under direct or indirect instructor supervision, with a preplanned outline of experiences and competencies.
- (2) **Laboratory experience**--A specific experience of observation, experimentation, practice, study, technical investigation, analysis, and practical application of theory or verbal instruction involving hands-on supervised study in a selected vocation or subject.
- (3) **Lecture**--A presentation of theories, concepts, procedures, or information about a particular subject.
- (4) **New program**--A program:
  - (A) not previously offered;
  - (B) previously offered and then discontinued;

- (C) with a revised objective such that the program provides preparation for different jobs than those for which the program was originally approved (examples: legal secretary to paralegal; dental technician to medical technician; computer operator to computer programmer); or
  - (D) with a 25% or more change within a 12-month period to the total number of hours, content, or lessons (examples: from 1,000 clock hours to 750; 20 lessons to 30; 600 clock hours to 900, 60 semester credit hours to 80).
- (5) **New seminar**--A seminar:
- (A) not previously offered;
  - (B) previously offered and then discontinued;
  - (C) with a revised objective; or
  - (D) with a 25% or more change in a 12-month period to the total number of hours of the approved seminar.
- (6) **Revised program or seminar**--Revisions include changes in admission requirements, title, subject title, objective description (but not the detailed objective), subject clock or credit hours, or subject hours of lecture, laboratory, or externship. Scheduling and price changes are catalog changes, not revisions.

#### **§807.92. General Information for Courses of Instruction**

- (a) A school submitting applications for approval of seminars shall use abbreviated forms provided by the Commission.
- (b) No subject or program shall be approved by the Commission unless the school demonstrates that the program's quality, content, and length reasonably and adequately impart the job skills and knowledge necessary for the student to obtain employment in the stated occupation.
- (c) A school may not solicit students, otherwise advertise, or conduct classes for a course of instruction prior to the Commission's approval of the course of instruction. Any such activity by the school, prior to the Commission's approval of the course of instruction, shall constitute a misrepresentation by the school and shall entitle each student in the course of instruction to a full refund of all tuition and fees paid by the student and release from all obligations.
- (d) The school shall establish and maintain a formal advisory committee of at least five members, unless the Commission approves a lesser number of persons in advance, for each type of program in excess of 200 clock hours in length. At least annually, the committee shall evaluate the curriculum, instructional materials and media, equipment, and facilities to ensure they meet the needs of the job market. The school shall have written documentation of the evaluation available for review by the Commission. If the school does not follow an advisory committee recommendation, the school shall maintain written documentation of the justification for not following the recommendation.
- (e) If the applicant requests approval to measure programs in credit hours, the following conversion table shall be used.

- (1) One academic quarter credit hour equals a minimum of:
  - (A) 10 clock hours of classroom lecture;
  - (B) 20 clock hours of laboratory experience; or
  - (C) 30 clock hours of externship.
- (2) One academic semester credit hour is equal to a minimum of:
  - (A) 15 clock hours of classroom lecture;
  - (B) 30 clock hours of laboratory experience; or
  - (C) 45 clock hours of externship.
- (3) The school shall calculate lecture, laboratory, and externship credit hour conversions individually for each subject, rounding down to the nearest half credit hour. The school shall add the total for the credit hours for lecture, laboratory, and externship to determine the total credit hours for a subject.

#### **§807.93. Applications for Additional Courses of Instruction**

- (a) A school applying for approval of an additional course of instruction, after receiving an original certificate of approval, shall submit a complete application that includes:
  - (1) the appropriate fee;
  - (2) a completed application for approval on forms provided by the Commission; and
  - (3) any other revisions or evidence as requested by the Commission.
- (b) The Commission may require an abbreviated program application if:
  - (1) the school has the exact program approved at another location;
  - (2) the program objective changes;
  - (3) the program length changes 25% or more; or
  - (4) the school's completion and employment rates are exemplary, as determined by the Commission.
- (c) The Commission may deny an application for approval of an additional course of instruction if the school is not in full compliance with the Act or this chapter.

#### **§807.94. Stated Occupation**

- (a) The school shall ensure that each program prepares the student for the stated occupation.
- (b) The school shall demonstrate that a student who successfully completes the program is more likely to be employed in the stated occupation than an individual who does not complete the program, all other things being equal.
- (c) The school shall identify a demonstrable occupational demand for the stated occupation. The Commission may consider the following in evaluating the school's statement of occupational demand:

- (1) publications of established relevant occupational associations;
- (2) targeted occupation lists of boards, if approved by the Commission, or other local or state entities;
- (3) references to advertisements in media for employment;
- (4) occupation employment rate of students;
- (5) percentage of graduating students who have previously completed the same or substantially similar program and who have obtained employment in the same or substantially similar stated occupation for which they have been trained;
- (6) relative supply and demand for the stated occupation, including letters from potential employers that describe their need for trained employees; and
- (7) reports or publications relating to the specific occupational demand.

**§807.95. Curriculum Content**

- (a) The school shall:
  - (1) provide competency-based programs;
  - (2) assess skills using primarily performance-based methods;
  - (3) use instructional media, methods, and materials appropriate for the program content and students' knowledge and abilities;
  - (4) offer programs in a logical sequence of knowledge and skills; and
  - (5) if deemed appropriate by the Commission, provide an externship or a simulation of the workplace for the program.
- (b) Each subject in the program shall teach the practical skills and knowledge required for employment in the stated occupation. The proportion of lecture, laboratory, and externship hours for each subject and for the program shall be reasonable for the skills and knowledge to be learned for the stated occupation.
- (c) The Commission may use or validate existing skill standards or competencies, or develop statewide skill standards with the assistance of industry, schools, and other relevant entities as determined by the Commission.

**§807.96. Curriculum Length**

- (a) Each subject submitted for approval shall identify the clock or credit hours allocated to that subject. A subject or program that exceeds a length reasonable to prepare the student for the stated occupation shall not be approved.
- (b) The Commission may establish minimum and maximum program lengths for stated occupations consistent with the intent of the Act.

**§807.97. Program Title**

- (a) Each program submitted for approval shall be identified by a title.

- (b) The title shall clearly identify the stated occupation and shall be a title commonly used by business or industry.
- (c) The Commission shall not approve false, misleading, or deceptive program titles.

**§807.98. Equipment**

- (a) Equipment required for instruction shall be comparable to that commonly found in the stated occupation.
- (b) The school shall remove equipment not in working order from the instructional area, mark it as out-of-order, or properly identify it as awaiting repair.
- (c) The school shall provide equipment of sufficient quality and quantity to meet the maximum use requirements of the current students, as demanded by the activity patterns of the training program.

**§807.99. Facilities**

- (a) In determining adequate space for lecture and laboratory experiences, the Commission shall consider that the amount of lecture and laboratory space meets the use requirements of the maximum number of current students in class with appropriate seating facilities and/or workstations, as needed by the activity patterns of the program.
- (b) Enrollment shall not exceed the design characteristics of the available workstations.

**§807.100. Admission Requirements Relating to Programs**

- (a) The school shall submit, for approval by the Commission, its admission requirements for each program with justification for the requirements.
- (b) The school shall ensure that the student demonstrates to the school sufficient proficiency in the language of instruction to successfully complete the training program.

**§807.101. School Responsibilities Regarding Programs**

- (a) As a condition of program approval or renewal, the school shall identify any portion of instruction that is self-paced or not conducted in English.
- (b) To maintain program approval, the school shall demonstrate the following:
  - (1) a reasonable student completion rate for each program; and
  - (2) a minimum employment rate for program graduates in jobs related to the stated occupation.
- (c) When a school is approved to offer a program, the school shall maintain sufficient instructors to teach all subjects for completing the program during the length of time stipulated in the school catalog, regardless of the size of the class.
- (d) The school shall schedule classes so that students will be able to complete the program during the length of time stipulated in the school catalog.

- (e) The school shall ensure that students receive the lecture and laboratory experience hours with sufficient instructors and scheduling. An instructor may not be simultaneously supervising a laboratory experience and a lecture even if they are in the same room.
- (f) A school shall provide course outlines to students at the beginning of each subject which lists students' performance objectives, references and resources, and a general content outline for the subject.
- (g) A school shall have and use lesson plans for all subjects.
- (h) A school may not use subjects from one or more approved programs to create a new program and award a certificate of completion without prior approval.
- (i) The student-to-instructor ratio shall be sufficient for students to learn, practice, and demonstrate the necessary knowledge and skills. These ratios may be varied at the discretion of the Commission to conform to conditions in an individual school. The following student-instructor ratios may be acceptable for single subject classes:
  - (1) business lecture or laboratory--30 to one;
  - (2) technical, vocational, or allied health lecture--30 to one;
  - (3) technical lab (examples: computer programming, data processing, electronics)--20 to one;
  - (4) vocational lab (examples: auto mechanics, air conditioning and refrigeration, drafting)--20 to one; and
  - (5) intensive language instruction (beginning)--15 to one; (intermediate to advanced)--20 to one.

**§807.102. Program Revisions**

- (a) The school shall submit a revised program application for any proposed changes in the program that shall be reflected in the school catalog's program information.
- (b) The school shall receive approval of proposed program revisions in writing from the Commission before implementing the revisions.
- (c) The school shall work closely with employers in its job market to ensure that the program meets employers' needs.

**§807.103. Program Requirements for Degree Granting Schools**

- ~~(a) The quality, content, and sequence of each subject or program shall be appropriate for the purpose of the school and shall be such that the school may reasonably and adequately achieve the stated objectives of the subject or program by providing graduates of these programs with marketable skills.~~
- ~~(b) Prior to graduation students shall demonstrate the attainment of advanced skills as appropriate to the degree.~~
- ~~(c) At least 95% of the subjects required for each degree shall be offered in organized classes.~~

- (d) ~~A school may contract with another school for the instruction of general education or applied foundation courses if the Coordinating Board has approved that contract. A school shall provide evidence to the Commission that they are authorized by the Coordinating Board to offer degree programs.~~

#### **§807.104. Penalties Relating to Courses of Instruction**

- (a) If an approved ~~program~~ course of instruction is discontinued for any reason, the 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 ~~program~~ course of instruction due to discontinuance. Should the school fail to make arrangements satisfactory to the students and the Commission for the completion of the ~~program~~ course of instruction, the full amount of all tuition and fees paid by the students are then due and refundable. Any ~~program~~ course of instruction discontinued will be removed from the list of approved ~~programs~~ courses of instruction.
- (b) The Commission may suspend enrollments in a particular ~~program~~ 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 ~~program~~ course of instruction or revised course of instruction ~~program~~ that has not been approved by the Commission, the Commission 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 ~~program~~ approval, the Commission determines that the applicant fails to meet the requirements in the Act or this chapter, the Commission 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 ~~programs~~.
- (e) The Commission may revoke approval of a school's course of instruction ~~program~~ at any time the Commission 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 ~~program~~ approval which is untrue;
  - (2) the school's failure to maintain the instructors, facilities, equipment, or courses of instruction ~~programs~~, or course of instruction ~~program~~ 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 word "associate" to describe a degree other than those approved by the Coordinating Board;
  - (4) courses of instruction programs—without clearly stated limited transferability if there are no articulation agreements with other postsecondary institutions in the same geographic area;
  - (5) courses of instruction programs—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 program; or
  - (7) violations by the school of any applicable provision of the Act or this chapter.
- (f) A school whose course of instruction program approval is denied or revoked shall have the right to appeal. The Commission will conduct hearings in accordance with Commission policies and procedures applicable to the appeal.

## **SUBCHAPTER H. APPLICATION FEES AND OTHER CHARGES**

### **§807.111. Fee Schedule**

The Commission shall collect fees according to the following schedule.

- (1) The initial fee for a certificate of approval for a small school is \$1,001.
- (2) The initial fee for any other school is \$3,000.
- (3) In the event of a change in ownership of the school, the new owner shall pay the same fee as that charged for an initial fee for a school.
- (4) The initial registration fee for a representative is \$90.
- (5) The annual renewal fee for a representative is \$45.
- (6) The fee for a change of name of the school or owner is \$150.
- (7) The fee for a change of address of a school is \$270.
- (8) The fee for a change in the name or address of a representative or a change of the name or address of a school that causes the reissuance of the notice of permitted representative is \$15.
- (9) The application fee for a course of instruction that is an additional program is \$225.
- (10) The application fee for a course of instruction that is a seminar program is \$35.
- (11) The application fee for a school director, administrative staff member, or instructor is \$20.
- (12) The fee for an inspection of classroom facilities that are separate from the main campus is \$375.
- (13) The fee for an investigation of a complaint against a school is \$400, if assessed.

### **§807.112. Renewal Fees**

- (a) For small schools, if a certificate of approval is issued for more than one year, the renewal fee is \$1,001, which may be paid with \$501 the first year and \$250 on the anniversary date of the certificate for each subsequent year.
- (b) For all other schools, the renewal fee is based on the gross amount minus refunds of annual student tuition and fees. The renewal fee is the greater of:
  - (1) 0.31% of the school's gross tuition and fees, excluding refunds as provided by the Act; or
  - (2) \$500.
- (c) For all schools, the Commission shall assess a penalty of 10% of the renewal fee, not less than \$200 or more than \$1,000, if the school fails to file a complete application for renewal at least 30 days before the expiration date of the certificate of approval.

### **§807.113. Installment Payments**

- (a) With the exception of the renewal installment schedule for small schools, a school may elect to pay any single fee in excess of \$1,000 by quarterly installment. A service charge of 10% of the fee shall be added, and the total divided into equal quarterly installment payments. The first payment shall be due on the date the fee is due. The successive payments shall be due in 90-day increments.
- (b) Failure to pay any installment by the due date may result in one or more of the following:
  - (1) a penalty being assessed in the amount of 50% of the total amount of the fee;
  - (2) full payment of the penalty and outstanding balance due within 30 days; or
  - (3) suspension of participation in the installment payment plan for the next renewal period.

## **SUBCHAPTER I. ADVERTISING**

### **§807.121. General Information for Advertising**

- (a) A school shall not make deceptive statements in attempting to enroll students.
- (b) The Commission may require a school to furnish proof to the Commission of any of its advertising claims, when requested.

### **§807.122. Advertisement Method**

- (a) A school may advertise for prospective students under "instruction," "education," "training," or a similarly titled classification.
- (b) A school shall not be advertised under any "help wanted," "employment," or similar classification.
- (c) No school advertisements shall use the word "wanted," "help wanted," or "trainee," either in the headline or the body of the advertisement, nor shall any advertisement indicate, in

any manner, that the school has or knows of employment of any nature available to prospective students; only "placement assistance," if offered, may be advertised.

- (d) A school shall not use terms to describe the significance of the approval that specify or connote greater approval. Terms that schools may not use to connote greater approval by the Commission include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended." A school shall not use the words "guarantee," "guaranteed," or "free" unless approved in writing by the Commission.
- (e) Any advertisement that includes a reference to awarding of credit hours shall include the statement, "limited transferability." Where a school has an arrangement with a college or university to accept transfer hours, such information may be advertised, but any limitations shall be included in the advertisement.

### **§807.123. Advertisement Content**

- (a) Advertisement content shall include, and clearly indicate, the full and correct name of the school and its address, including city, as they appear on the certificate of approval.
- (b) Advertisements shall not include:
  - (1) statements that the school or its programs are accredited unless the accreditation is that of an agency recognized by the United States Department of Education;
  - (2) statements that the school or its courses of instruction have been approved unless the approval can be substantiated by an appropriate certificate of approval issued by an agency of the state or federal government; or
  - (3) representation of the school as an employment agency under the same name, or a confusingly similar name, or at the same location of the school.
- (c) A school holding a franchise to offer specialized programs or subjects not available to other schools shall not advertise such programs in such a manner as to diminish the value and scope of programs offered by other schools not holding such a franchise. Advertising of special subjects or programs offered under a franchise shall be limited to the subject or programs offered.
- (d) A school shall not use endorsements, commendations, or recommendations by students in favor of a school except with the consent of the student and without any offer of financial or other material compensation. Endorsements shall bear the legal or professional name of the student.
- (e) A school shall not use a photograph, cut, engraving, illustration or graphic in advertising in such a manner as to:
  - (1) convey a false impression of size, importance, or location of the school, equipment, or facilities associated with the school, or
  - (2) circumvent any of the requirements of this chapter regarding written or oral statements.

- (f) Every advertisement must clearly indicate that training is being offered, and shall not, either by actual statement, omission, or intimation, imply that prospective employees are being sought.

**§807.124. Financial Incentives**

- (a) Advertisements shall not:
  - (1) state that students shall be guaranteed employment while enrolled in the school;
  - (2) state that employment shall be guaranteed for students after graduation; or
  - (3) misrepresent opportunities for employment upon completion of any program.
- (b) Advertisements shall not contain dollar amounts as representative or indicative of the earning potential of graduates unless those dollar amounts have been published by the United States Department of Labor. This provision shall not be construed as prohibiting the school from providing earning potential to the student individually on the student's receipt of enrollment policies or other such Commission-approved document.
- (c) Advertisements for student tuition loans shall:
  - (1) contain the language "financial aid available, if qualified"; and
  - (2) appear in type no larger than the font used for the name of the school and in similar color and style.
- (d) Advertising of student tuition loans as described in this section does not preclude disclosure of the school's eligibility under the various state and federal loan programs.

**§807.125. Catalog**

- (a) The catalog shall include the following:
  - (1) table of contents or index;
  - (2) name and complete street address of the school;
  - (3) volume number, date of publication, and effective dates;
  - (4) history of any accreditations or approvals, including statement of approval and regulation by the Commission;
  - (5) description of space, facilities, and equipment;
  - (6) list of all trustees, directors, officers of the corporation, and owners;
  - (7) list of management staff and faculty, including education relating to the areas of instruction;
  - (8) tuition, fees, other charges, and applicable scholarship terms;
  - (9) school calendar;
  - (10) school hours of operation and class schedule, including the amount of time allocated for breaks and mealtimes;

- (11) policies regarding enrollment, including entrance requirements, previous education credit, cancellation and refund, progress, attendance, leave of absence, and conduct;
- (12) veterans administration refund policy, if applicable;
- (13) description of courses of instruction, including the number of clock hours of a seminar, seminar topic, lecture, lab, and externship, as well as credit hours in each subject, if applicable;
- (14) description of each subject;
- (15) description of the grading policy, including requirements for graduation;
- (16) description of placement assistance, if available;
- (17) statement of policies regarding grievances; and
- (18) a statement signed by the owner or director indicating that all of the information contained in the catalog is true and correct.

(b) Any subjects defined as self-paced shall be noted as such in the catalog.

#### **§807.126. Advertisement Monitoring**

- (a) The Commission may order corrective action to counteract the effect of advertising in violation of the Act or rules, including:
  - (1) retraction by the school of such advertising claims published in the same manner as the claims themselves; and
  - (2) cancellation of telephone numbers without an automatic forwarding message.
- (b) As corrective action for violations of the Act or rules, the Commission may require schools to submit all advertisements to the Commission for pre-approval at least 30 days before proposed submission of the advertisements to the advertising medium.
- (c) Nothing in these guidelines shall prohibit release of information to students as required by a state or federal agency.

### **SUBCHAPTER J. ADMISSION**

#### **§807.141. General Information for Admission**

- (a) The Commission may approve specific admission requirements for seminars and small schools.
- (b) Small schools with programs of 40 clock hours or less, individual subject offerings, and seminars are not required to grant credit for previous education and training.
- (c) The school shall make appropriate adjustments to the program length and price based upon credit granted for previous education and training, where warranted.
- (d) For a school having specific term-beginning dates, a school may not start students after the third day of classes during any given term, except in those cases where appropriate

credit for previous education and training has been given according to the Act and this chapter.

- (e) A continuously enrolled student has the right to graduate under the academic requirements stated in the catalog in effect at the time of the student's enrollment.

#### **§807.142. Admission Requirements**

- (a) The school shall require for admission into its programs proof of one of the following:
  - (1) secondary education;
  - (2) successful completion or the equivalent of one full-time academic semester (12 academic semester hours) or academic quarter (18 academic quarter hours) at an accredited college, university, or other postsecondary school; or
  - (3) for certificate programs only, proven ability-to-benefit by obtaining a satisfactory score on the approved entrance test.
- (b) Entrance test requirements shall be in accordance with the following provisions.
  - (1) Any entrance test shall be a nationally recognized standardized test or a nonstandardized test developed by the appropriate industry and approved by the Commission. A nonstandardized test shall be validated by a qualified third party, such as an expert in tests and measurements, for both appropriateness and the specific score level required for admission into the program. The name of the test and its publisher, any time limitations, a minimum acceptable score, and an explanation of score meanings, as referenced in the test material, shall be provided to the student with a copy of the test, if the test is not already on file with the Commission.
  - (2) If multiple opportunities are allowed for retaking the same entrance test, such students shall wait a minimum of five calendar days prior to retaking the test. A student may take a second entrance test on the same day provided a substantially different test is administered. This shall be stated in the admissions policy published in the school catalog.
  - (3) A representative is not allowed to administer the test, nor is anyone allowed to assist the student in answering the questions.
  - (4) If the entrance test reveals the student to be ineligible as an ability-to-benefit student, the student may be enrolled as a remedial student. The school shall have an evaluation procedure approved by the Commission to determine remedial needs and to determine when the required level of remediation has been reached. The school shall also have a remediation plan for such students consisting of subjects approved by the Commission as a part of the program. The students may be charged for the remedial portion of the program on an hourly pro rata basis, but the student is not obligated for the tuition and fees of the program until the entrance requirements are met.
- (c) Evidence shall be maintained in each student's file to show the admissions requirements have been met. A full refund of all monies paid and a full release from all obligations

shall be due, as determined by the Commission, to any student for whom the school cannot establish that the admission requirements were met.

**§807.143. Receipt of Enrollment Policies**

- (a) For all enrollments other than for seminars, individual subjects, and small schools with programs of 40 clock hours or less, each school shall use a form provided by the Commission to verify the prospective student's receipt of the information required in this section.
- (b) Unless otherwise required in this chapter, prior to enrollment the school shall furnish the following to each prospective student:
  - (1) a school catalog and program outline, unless the prospective student enrolls in a seminar;
  - (2) a schedule of tuition, fees, and other charges;
  - (3) the cancellation and refund policy;
  - (4) the attendance, progress, and grievance policies;
  - (5) the rules of operation and conduct;
  - (6) if available, the average starting salary per pay period and annually for the prospective student's stated occupation, and information regarding the number of job openings in the program objective field in a specified area within the last 12 months, including the name of the information source;
  - (7) the regulations pertaining to incomplete grades;
  - (8) written and verbal information regarding loans and grants and their differences, if the school participates in a loan or grant program;
  - (9) the requirements, if any, for any state or national licensing, certifications, or registrations;
  - (10) the exam passage rates for programs that prepare students for state licensing, certification, or registration exams; and
  - (11) the job placement and employment data for the stated occupation as required in this chapter.
- (c) Any school that refers to the awarding of credit hours shall explain to each student during the enrollment process that transferability of such hours may be limited. Each student shall sign a statement indicating such an explanation has been provided.
- (d) Should a school have an articulation agreement with an accredited college or university, or other postsecondary school, such information shall be provided to the student, including any known agreement limitations. Such schools shall also provide a list of known Texas postsecondary schools that accept any or all of the credit hours so earned.
- (e) Students shall acknowledge receipt of each piece of information or documentation as set forth in this section by initialing each page and providing a complete signature at the end of the receipt of the enrollment policy form.

- (f) A copy of the receipt of the enrollment policies form shall be given to the student and a copy maintained as a part of the student's files.

**§807.144. Enrollment Agreement**

- (a) A school does not need an enrollment agreement to enroll a student in a seminar that will be completed within three consecutive calendar days.
- (b) For ~~correspondence~~ distance education schools, the enrollment agreement shall specify the amount of time allotted to the student to complete the program.
- (c) A school shall submit an enrollment agreement to the Commission for approval.
- (d) A school shall use only an approved enrollment agreement to enroll students.
- (e) The executed enrollment agreement shall include, but is not limited to, the following:
  - (1) full and correct name and location of the school;
  - (2) program title, tuition, fees, reasonable estimate cost of books and supplies, any other expenses, total cost of the program, items subject to cost change, method of payment and payment schedule, disclosure statement if interest is charged on more than three payments, and detachable buyer's right to cancel if enrollment is procured off campus;
  - (3) date training is to begin and program length;
  - (4) name, address, and signature of the student;
  - (5) statement by the school that the student will receive a copy of the school enrollment agreement and catalog at the time of signing by the student;
  - (6) cancellation and refund policy; and
  - (7) a Federal Trade Commission statement for holder in due course, unless no loans, grants, or installment payments are involved.
- (f) The school shall provide a notice of cancellation, attached to the enrollment agreement, for any student enrolled off the school premises. The notice shall:
  - (1) be in duplicate;
  - (2) be easily detachable;
  - (3) be printed in boldface type, with a minimum font of 10 point;
  - (4) contain the date of the enrollment agreement, name and address of school, the date on which the statutory 72-hour cancellation privilege will expire, and any other provisions as determined by the Commission;
  - (5) be printed in the same language as used in the enrollment agreement; and
  - (6) be in such a form that can be used by the student to notify the school of the student's desire to cancel by dating, signing, and mailing or otherwise delivering the form to the school's address shown.

- (g) A copy of the enrollment agreement form shall be given to the student and a copy maintained as a part of the student's file.
- (h) The Commission may permit a school to submit an abbreviated enrollment agreement for students enrolled on a reimbursement contract basis.

**§807.145. Conduct Policy**

The school shall submit for approval a copy of the rules and regulations pertaining to conduct, which shall include statements regarding:

- (1) conditions for dismissal; and
- (2) conditions for reenrollment of those students dismissed for violating the conduct policy.

**§807.146. Tuition and Fees**

- (a) A school shall disclose to potential students all tuition, fees, and other charges, and state such information in the school's application for a certificate of approval. The school may not use an estimated tuition amount, nor may the school increase the student's tuition if the student remains continuously enrolled and completes the training as approved at the time of admission. If the school charges to repeat subjects, the amount of the charges must be disclosed to the student.
- (b) A school shall make available for review by the Commission upon request:
  - (1) a description of the methods of payment that are available to enrolling students;
  - (2) the names and addresses of lending institutions used by the school for student tuition loans; and
  - (3) the true annual percentage rate and any other fees or charges associated with student tuition loans.
- (c) A school shall refund or forfeit any tuition, fees, or other charges not previously disclosed to the Commission.
- (d) A school may offer scholarships providing the terms of scholarships are disclosed to the Commission.
- (e) The school shall maintain, in a permanent format that is acceptable and readily accessible to the Commission, a record of any funds received from, or on behalf of, the student. A school shall clearly identify the payor, the type of funding, and the reason for the charges. These records shall be posted and kept current.
- (f) A school shall issue written receipts of any charges or payments to the student and maintain such records for review upon request by the Commission. Each separately charged item shall be clearly itemized on a student-signed receipt.

### **§807.147. Admission Requirements for Degree Granting Schools**

- (a) Students who transfer from other postsecondary schools shall complete at least 20 academic semester hours or 30 academic quarter hours in residency at the school that will grant the degree. This does not apply to transfers within the same school system.
- (b) A school shall allow students attending at the time a school becomes a degree granting school to earn a degree, providing the student:
  - (1) meets all the prerequisites for acceptance into the degree program; and
  - (2) satisfactorily completes all courses or equivalent courses of the degree program.
- (c) Former students shall meet all the prerequisites for acceptance into the degree program and shall satisfactorily complete all courses or equivalent courses in the approved degree program to qualify for a degree.

## **SUBCHAPTER K. PROGRESS STANDARDS**

### **§807.161. General Requirements for Progress Standards**

- (a) The Commission may approve specific progress standards for self-paced, competency-based programs.
- (b) Seminars, because of their nature and duration, are not required to have progress standards.
- (c) The progress evaluation records shall be of the type and nature to reflect whether the student is making satisfactory progress to the point of being able to complete all subject matter within the allotted time provided in the course curriculum.
- (d) The school shall submit its policies pertaining to incomplete grades to the Commission for approval and publish those policies in the school's catalog. The policies shall address the possibility of the subjects being discontinued when the student returns and clarify options available to that student pursuant to the Act.
- (e) Approved court reporting program students may receive one grade of "IP" (in progress) in any speedbuilding subject if they have not achieved the required speed at the end of the grading period.

### **§807.162. Progress Requirements for Residence Schools**

- (a) For programs of 40 clock hours or less, the school is only required to give a final exam at the end of the program to determine whether the student has sufficient knowledge to warrant a certificate of completion, in lieu of a progress evaluation.
- (b) For programs of 41 to 200 clock hours, the school shall record a student's grades at the midpoint and end of each progress evaluation period. A student not making satisfactory progress at the midpoint shall be placed on academic probation for the remainder of the progress evaluation period. If the student does not achieve satisfactory progress by the end of the probationary period, the student's enrollment shall be terminated.

- (c) For schools approved on a clock hour basis and offering programs in excess of 200 hours, the school shall evaluate progress at least every eight weeks. A school approved on a credit hour basis shall evaluate progress at the midpoint and end-of-term for academic semester or academic quarter or at least every eight weeks. For programs in excess of 200 clock hours, the following shall apply.
  - (1) The school shall place a student making unsatisfactory progress for the program at the end of a progress evaluation period on academic probation for the next progress evaluation period. If the student on academic probation achieves satisfactory progress for the subsequent progress evaluation period, but does not achieve the required grades to meet overall satisfactory progress for the program, the student may be continued on academic probation for one more progress evaluation period.
  - (2) If a student on academic probation fails to achieve satisfactory progress for the first probationary progress evaluation period, the student's enrollment shall be terminated.
  - (3) The enrollment of a student who fails to achieve overall satisfactory progress for the program at the end of two successive probationary progress evaluation periods shall be terminated.
- (d) When a student is placed on academic probation, the school shall counsel the student prior to the student returning to class. The date, action taken, and terms of probation shall be clearly indicated in the student's permanent file.
- (e) The school may allow a student whose enrollment was terminated for unsatisfactory progress to reenroll after a minimum of one progress evaluation period. Such reenrollment does not circumvent the approved refund policy.
- (f) The school shall place a student who returns after their enrollment was terminated for unsatisfactory progress on academic probation for the next grading period. The school shall advise the student of this action and document the student's file accordingly. If the student does not demonstrate satisfactory progress at the end of this probationary period, that student's enrollment shall be terminated.

**§807.163. Progress Requirements for ~~Correspondence~~Distance Education Schools**

- (a) ~~Correspondence~~Distance education schools shall evaluate progress as the school receives each lesson assignment. The school shall maintain the record of progress on forms approved by the Commission. Forms shall include:
  - (1) the date course materials are mailed to the student;
  - (2) the date the lesson assignment is received from the student;
  - (3) the grade on a per-lesson basis;
  - (4) the instructor's name;
  - (5) the date graded assignments are returned to the student; and
  - (6) the final grade for the program with completion date indicated.

- (b) If at the end of the time period specified in the enrollment agreement, the student has not completed the program, the student's enrollment shall be terminated.

#### **§807.164. Progress Requirements for Degree Granting Schools**

For a school offering degree programs, the progress standards shall include the following:

- (1) a student progress evaluation every academic semester, academic quarter, or at least every eight weeks in block-time programs;
- (2) a minimum grade point average for graduation from all degree programs of 2.0 based on a 4.0 scale, and that a student achieve a passing grade in all required subjects;
- (3) a probationary period of one academic semester, academic quarter, or approved grading period following the end of the academic semester, academic quarter, or approved grading period in which the student's grades become unsatisfactory; and
- (4) provisions for termination at the end of not more than two consecutive probationary periods if the student's cumulative grade point average does not improve to the level required for graduation.

### **SUBCHAPTER L. ATTENDANCE STANDARDS**

#### **§807.171. General Requirements for Attendance**

- (a) Seminar programs that begin and end during one day are not required to maintain an attendance policy.
- (b) The Commission may approve specific attendance requirements for self-paced, competency-based programs.
- (c) No provision in this subchapter shall require a school to terminate the enrollment of a student for lack of attendance at a point at which a refund would not be due.
- (d) A school shall charge for a full day of absence when the student fails to attend all of the scheduled classes on that day. The school shall charge for a partial day of absence for any period of absence during the day.
- (e) A school shall not consider school holidays, such as summer vacation and Christmas holidays, etc., as days of absence.

#### **§807.172. Attendance Requirements for Degree Granting Schools**

For a school offering degree programs, the attendance standards shall include the following:

- (1) provisions for termination or probation during the next academic quarter, academic semester, or approved term when a student is absent for more than 20% of the scheduled clock hours during an academic quarter, academic semester, or approved term;
- (2) provisions for termination when a student is absent for more than 20% of the scheduled clock hours during the probationary academic quarter, academic semester, or approved term; and

- (3) provisions for termination prior to the last quarter, when a student is absent in excess of 10 consecutive school days or 20% of the total clock hours in the course, whichever occurs first.

**§807.173. Termination of Enrollment**

- (a) A school shall terminate the enrollment of a student who accumulates the lesser of the following amounts of absences:
  - (1) more than 10 consecutive school days;
  - (2) more than 20% of the total clock hours in a program of more than 200 clock hours;
  - (3) more than 25% of the total clock hours, if the program or individual subject is 41 to 200 clock hours in length;
  - (4) more than 25% of the total clock hours for seminars, individual subjects, or programs of 40 clock hours or less; or
  - (5) any number of days if the student fails to return as scheduled from an approved leave of absence.
- (b) Students whose enrollments are terminated for violation of the attendance policy may not reenroll before the start of the next progress evaluation period. This provision does not circumvent the approved refund policy.

**§807.174. Make-up Work**

- (a) No more than 5% of the total clock hours for a program may be made up.
- (b) The school shall submit make-up work policies to the Commission for approval.
- (c) Make-up work shall:
  - (1) be supervised by an instructor approved for the subject being made up;
  - (2) require the student to demonstrate substantially the same level of knowledge or competence expected of a student who attended the scheduled class session;
  - (3) be completed within two weeks of the end of the grading period during which the absence occurred;
  - (4) be documented by the school as being completed, recording the date, time, duration of the make-up session, and the name of the supervising instructor; and
  - (5) be signed and dated by the student to acknowledge the make-up session.

**§807.175. Leaves of Absence**

- (a) Seminars and small schools with programs of 40 clock hours or less shall not grant leaves of absence.
- (b) A school director may grant a leave of absence after determining that good cause is shown.
- (c) In a 12-month calendar period, a student may have no more than two leaves of absence. For a program of 200 clock hours or less, a student may be on leave of absence for a total

of 30 calendar days. For programs of more than 200 clock hours, a student may be on leave of absence for a total of 60 calendar days.

- (d) School attendance records shall clearly define the dates of the leave of absence. A written statement as to why the leave of absence was granted, signed by both the student and the school director indicating approval, shall be placed in the student's permanent file.
- (e) In addition to the requirements concerning leaves of absence in this subchapter, a school offering degree programs that schedules their courses on an academic quarter or academic semester basis may include in their attendance policies provisions for summer leaves of absence. These leaves of absence shall not exceed the lesser of 120 days or the interval between the end of the spring academic quarter or academic semester and the start of the fall academic quarter or academic semester.

## **SUBCHAPTER M. CANCELLATION AND REFUND POLICY**

### **§807.191. Right to Cancel after Tour**

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

### **§807.192. 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 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 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 consummate a refund, the school is unable to consummate the refund, the school shall forward to the Commission the appropriate refund amount and any pertinent student information to assist the Commission in locating the student.

#### **§807.193. Refund Requirements for Residence Schools**

- (a) Students are entitled to a full refund for classes attended if the school does not provide a class with:
  - (1) an approved instructor;
  - (2) an instructor for whom an application has been properly submitted to the Commission; or
  - (3) a temporary instructor for whom the school submitted notice to the Commission.
- (b) If 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 school shall calculate refunds for students based upon scheduled hours of classes through the last date of attendance. A school shall not 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 ~~correspondence~~distance education, combination ~~correspondence~~distance education-residence, and seminars, a student may cancel enrollment, request a full refund, and request a release from any obligations to the school within three 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.

#### **§807.194. Penalties Relating to Refunds**

- (a) A penalty shall be paid on any refund not 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 consummated.
- (b) Penalties assessed on late refunds for grants shall be paid to the tuition ~~protection fund~~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 ~~protection fund~~ trust account for any remaining balance of assessed penalty.
- (c) If the 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 Commission's request:
- (1) student information, including name, address, and 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 N. RECORDS**

### **§807.211. General Information for Records**

- (a) A school shall permanently maintain a master student registration list (MSRL). If the school maintains the MSRL in electronic form, the school must be able to produce a printed copy immediately upon request. The MSRL must contain at least the following information:
- (1) date of applicable entry;
  - (2) name of student;
  - (3) address of student including city, state, and zip code;
  - (4) telephone number;
  - (5) social security number;
  - (6) date of birth; and
  - (7) name of program.
- (b) A school shall maintain current records and necessary data for each student required to be on the master student registration list to show compliance with the Act and this chapter. These records shall be:
- (1) maintained on-site; and
  - (2) made available to the Commission for inspection.

- (c) If applicable, the school shall maintain and ensure that copies of the accreditation authorization and letter of eligibility from the United States Department of Education are available for Commission review.
- (d) Degree granting schools shall maintain a copy of the certificate of authorization from the Coordinating Board for each authorized degree program.
- (e) The Commission may conduct unannounced compliance inspections.
- (f) A school shall maintain complete records of all advertising, sales, and enrollment materials used by or on behalf of the school for a five-year period. Materials maintained shall include, but not be limited to, direct mail pieces, brochures, printed literature, films, leaflets, handbills, fliers, video and audio tapes disseminated through the broadcast media, materials disseminated through the print media or Internet, and sales and recruitment manuals used to instruct sales personnel.

### **§807.212. Student Records**

- (a) A school shall permanently maintain student transcripts of academic records. A school shall provide such transcripts to students and prospective employers at a reasonable charge if the student has fulfilled the financial obligation to the school and is neither in default nor owes a refund to any federal or state student financial aid program.
- (b) A school shall retain financial records in accordance with federal retention requirements.
- (c) A school shall retain all student records for at least a five-year period and these records shall include:
  - (1) a written record of previous education and training on a form provided by the Commission; and
  - (2) official transcripts from all previous postsecondary schools attended by the student.

### **§807.213. Attendance Record Keeping**

- (a) Schools are not required to take attendance. However, if a school does not take attendance, it must develop an alternative method to accurately determine a student's last date of attendance for refund purposes and to monitor absences. This alternative method must be approved in writing by the Commission.
- (b) A school offering seminars or other programs where students do not change instructors during the school day, are not required to maintain a separate master record of attendance, if the school voluntarily takes attendance.
- (c) A school shall maintain a master record of attendance on each student that clearly indicates the number of scheduled hours each day and the hours of absence, if the school voluntarily takes attendance.
- (d) If the school voluntarily takes attendance, each instructor shall maintain a record of attendance, which shall indicate a positive record of each student's attendance. Entries in the record of attendance shall be made in ink or other permanent medium, including

scantron or other permanent computer records, and shall not be changed in a manner that precludes reading the original entry.

#### **§807.214. 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.

### **SUBCHAPTER O. COMPLAINTS**

#### **§807.221. School Policy Regarding Complaints**

The school shall:

- (1) submit a written grievance procedure designed to resolve disputes between current and former students and the school for Commission approval;
- (2) provide a copy of the grievance procedure to each student and maintain proof of such delivery;
- (3) maintain records regarding grievance filings and resolutions; and
- (4) diligently work to resolve all complaints at the local school level.

#### **§807.222. Complaints and Investigations**

- (a) The 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) any other reasonable matter deemed appropriate.
- (b) The Commission may require documentation or other evidence of the violation before initiating a complaint investigation.
- (c) 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 P. TRUCK DRIVER TRAINING PROGRAMS**

### **§807.231. General Information Relating to Truck Driver Training**

A school providing truck driver training shall ensure that the truck driver instructors complete a 40 clock hour truck driver instructor development course.

### **§807.232. Truck Driver Instructor Development Course**

- (a) A school shall apply to the Commission for approval to provide a truck driver instructor development course.
- (b) The instructor development course shall consist of 40 clock hours, which includes at least the following topics.
  - (1) Five hours shall cover techniques of instruction including: qualities of a competent instructor, the learning process, methods of teaching, development of efficient teaching habits, demonstration teaching, the use of instruction material and training aids, course preparation, lesson plans, testing and evaluation, and the duration and frequency of lessons.
  - (2) Two hours shall cover personality factors affecting the driver and pedestrian including: natural abilities; senses; mind and nerves; bones and muscles; knowledge of vehicle, road, traffic, and self; attitudes and emotions; reaction time; and reactions to alcohol, carbon monoxide, over-the-counter drugs, prescription drugs, illegal drugs, heart ailments, epilepsy, diabetes, insanity, exhaustion, tension, and monotony.
  - (3) Six hours shall cover state laws as located in the Texas Motor Vehicle Law book relating to the operation of motor vehicles including: driver's license, vehicle registration, certificate of title, operation of vehicles, uniform act, miscellaneous offenses, and safety responsibility.
  - (4) Eight hours shall cover driving procedures including: handling--city, rural, night, mountain, and freeway driving; fog, rain, sandstorms, and other hazardous weather conditions; road hazards and recovery procedures for slick roads; blowout hazards and running off the road; traffic signs, markings, and signals; use of rearview mirrors; vehicle braking and stopping distances; following distances; right-of-way, when and how to yield it; vehicle acceleration and deceleration; yielding right-of-way to emergency vehicles; driver signals; proper passing procedures; procedures and problems for passing on two and three-lane roadways; and super-size motorized equipment.
  - (5) Three hours shall cover physical forces affecting the motor vehicle in motion including: forces of gravity; friction; acceleration, mass, and force; inertia and centrifugal force; kinetic energy and momentum; kinetic energy and braking; and horsepower and acceleration.
  - (6) Two hours shall cover highway characteristics including: primary, secondary, expressway, freeway, farm or ranch road, two-way two-lane, two-way three-lane, two-way multilane, two-way multilane divided, one-way multilane, parking, and traffic controls. Traffic control topics consist of the following:

- (A) sign topics including shape, color, location and importance;
  - (B) traffic marking topics including center and lane lines, no passing zone, transition markings, turn lane marking, stop lines, crosswalk lines, etc.; and
  - (C) signal topics including classification, location, type, timing.
- (7) Two hours shall cover automobile systems and maintenance including: electrical system--generator, alternator, battery, lighting, and electric-powered equipment; cooling system--lubrication and fuel systems; power train--engine, transmission, and differential; brake system--wheels and tires, caster, camber, toe-in, balance, inflation, tire condition, and care; exhaust system; instruments and gauges; compartment adjustments--seat, ventilation, mirrors, headrests, seat belts, and shoulder harness; starting the engine and warm-up procedures; safety devices--door locks, headrests; and miscellaneous features--windshield wipers, heater, and defroster.
  - (8) Two hours shall cover behind-the-wheel elementary lessons with demonstration in an appropriate vehicle and practice to be performed in the presence of the instructor including: starting; steering; stopping; shifting gears; backing; turning--right and left; and parking and starting on grade.
  - (9) Six hours shall cover behind-the-wheel driving safety lessons with demonstration in an appropriate vehicle and practice to be performed in the presence of the instructor including: developing good seeing habits; speed control; safe following; lane driving and lane changing; intersections and right-of-way; proper signaling; correct turn procedures; detecting of and handling problems--vehicle, cycle, pedestrian; freeway driving--ramp use, entering, exiting, lane use, emergency stopping; parking procedures; entering traffic from parked position; and night driving.
  - (10) Two hours shall cover school and instructor approval requirements including the following: school approval requirements, instructor approval requirements, classroom and automotive equipment requirements, required student records, contract requirements, and department of instructors.
  - (11) Two hours shall cover specialized training regarding the following: students with physical, mental, or emotional handicaps; illiterate students; non-English-speaking students; and habitual violators and problem drivers.

### **§807.233. Behind-the-Wheel Instruction**

A school providing behind-the-wheel instruction shall ensure that the instruction includes:

- (1) actual driving practice while the motor vehicle is in motion;
- (2) no more than four persons, excluding the instructor, occupying any motor vehicle during the behind-the-wheel instruction;
- (3) notice in all contracts and advertisements of behind-the-wheel instruction being conducted with groups of students, if applicable; and
- (4) credit toward satisfying minimum standards for behind-the-wheel instruction for only actual time spent behind the wheel in vehicle operation.

### **§807.234. Motor Vehicle Insurance**

A school providing truck driver training shall ensure that:

- (1) a current list of vehicles used in truck driver training is filed with the Commission on a form provided by the Commission;
- (2) an insurance certificate accompanies each motor vehicle used in training and is filed with the Commission on or before the date the school files an original or renewal application for approval of the program with the Commission;
- (3) an insuring company or carrier issues an insurance certificate on a form furnished by the Commission directly to the Commission, which states the insurance company or carrier has issued a policy or policies of insurance, and the amounts of insurance for each vehicle listed on the list of vehicles used in truck driver training;
- (4) a written notice is provided to the Commission by registered or certified mail at least 10 days prior to the expiration date of insurance coverage of a listed vehicle; and
- (5) a copy of the written notice of cancellation of insurance on any listed vehicle is provided to the Commission by registered or certified mail immediately upon receipt of notice by the school.

### **§807.235. Prohibited Activities Regarding Truck Driver Training**

- (a) A school, a trainer of truck driver instructors, or a truck driver instructor shall not:
  - (1) allow an instructor to give instruction or allow a student to secure instruction in the classroom or in a motor vehicle if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, or other such impairment;
  - (2) permit a student to operate a motor vehicle without a valid driver's license or instruction permit in the student's possession during behind-the-wheel instruction;
  - (3) permit more than a ratio of four students per vehicle and three vehicles per instructor on truck driving ranges;
  - (4) permit more than four students per vehicle per instructor during street instruction for truck driver training; or
  - (5) advertise or otherwise state or imply that a driver's license or permit is guaranteed or assured to any student or individual who may take or complete any instruction or course of instruction, enroll, or otherwise receive instruction in any truck driver training school.
- (b) The Commission may suspend, revoke, or refuse to renew approval of a truck driver instructor or a trainer of truck driver instructors, upon determining that the applicant or instructor has been:
  - (1) convicted under the laws of this state, another state, or the United States of any felony; of an offense of criminally negligent homicide committed as a result of the person's operation of a motor vehicle; of an offense involving driving while

intoxicated or under the influence; or of an offense involving tampering with a governmental record; or

- (2) found incompetent or is incompetent to:
  - (A) safely operate a motor vehicle; or
  - (B) properly conduct classroom or behind-the-wheel instruction.

## **SUBCHAPTER Q. CLOSED SCHOOLS**

### **§807.251. School Closures**

- (a) The Commission may declare a school to be closed when:
  - (1) written notification is received by the Commission from the school owner stating the school will close;
  - (2) Commission ~~staff~~ determines that the school facility has been vacated without prior notification of a change of address given to the Commission;
  - (3) an owner with multiple school locations transfers all students from one school location to another school location;
  - (4) the school dismisses all students, contrary to the school's class schedule as printed in the school catalog; or
  - (5) the school fails to maintain the faculty, facilities, equipment, or courses of instruction programs on the basis for which approval was issued.
- (b) ~~(b)~~—After the Commission determines that a school will close or ~~has~~ is closed, the Commission will attempt to notify students concerning their options to accept a teach-out ~~program~~ or to receive a proportional tuition refund based on available funds. Notification to students may include constructive notice in news media, student meetings, or mailings to students.
- (c) Each teach-out requires approval of the Commission to determine whether the course of instruction is available, reasonable, and comparable with the course of instruction of the closed school. The teach-out is subject to the following conditions:
  - (1) Transfers of students from a closed school to another school under the same ownership shall not constitute a teach-out.
  - (2) In order to be eligible for a teach-out, students shall submit a signed statement of acceptance to the teach-out school by the deadline as established by the Commission.
  - (3) The school offering the teach-out shall give credit for all comparable training received at the closed school, as determined by the Commission.

### **§807.252. Tuition ~~Protection Fund~~ Trust Account**

- (a) In a year in which the Commission determines it is necessary to charge a fee under §132.2415(b) of the Act, each school shall make a payment to the tuition trust account at the time the school renewal fee is paid. ~~Each school shall make a payment to the tuition~~

~~protection fund at the time the school renewal fee is paid if the accrued balance of the tuition protection fund is less than \$200,000.~~

~~(b) -The amount in the tuition trust account, as provided in the Act, is an accrued balance. The accrued balance is the remaining cash balance of the tuition ~~protection fund~~trust account less the sum of the accrued liabilities ~~amount offrom~~ unpaid student refunds and teach-out claims ~~not yet disbursed from the tuition protection fund~~. The amount in the tuition protection fund, as provided in the Act, is the accrued balance as described herein.~~

~~(b)~~ Disbursements shall be made from the tuition ~~protection fund~~trust account for student refunds and reimbursable teach-out expenses incurred during each 12-month period ending August 31, and shall be:

- ~~(1) made first for student refunds in accordance with §132.2415(d) of the Act on a proportional basis;~~
- (2) disbursed for reimbursable teach-out expenses based upon remaining funds; and
- (3) calculated after ~~anticipated bond funds and~~ other funding sources have been determined.

~~(c) Each teach-out program requires approval of the Commission to determine whether the program is available, reasonable, and comparable with the program of the closed school. The teach-out program is subject to the following conditions:~~

- ~~(1) Transfers of students from a closed school to another school under the same ownership shall not constitute a teach-out program.~~
- ~~(2) In order to be eligible for a teach-out program, students shall submit a signed statement of acceptance to the teach-out school by the deadline as established by the Commission.~~
- ~~(3) The teach-out school shall give credit for all comparable training received at the closed school, as determined by the Commission.~~

(d) Following the graduation or termination of the students from the teach-out school, the teach-out school shall determine actual expenses and submit a claim for reimbursement to the Commission on or before the date provided in the application packet. The teach-out school shall:

- (1) not claim expenses for facilities, equipment, utilities, or other items which were owned, rented, used, or otherwise obligated by the school prior to the Commission's approval of the teach-out program, even though such items may be used for the teach-out program;
- (2) be limited to expenses for tuition and fees that are non-recoverable from all financial resources, including grants and loans; and
- ~~(3)~~ (3) ensure that the sum of the tuition and fees paid to the student's account at the closed school and the teach-out school is the lesser amount the student would have been charged for the complete program at the closed school or the teach-out school.

(e) For schools in their first two years of operation that have not been required to furnish financial statements to comply with §807.35(b), the payment to the tuition trust account shall be calculated at the rate determined by the Commission using the projected gross amount of tuition and fees, as required in §807.33(c), to be charged by the school for the year in which the payment is collected. Once the school has submitted the actual amount of tuition and fees collected by the school in compliance with §807.35(b), the Commission shall reconcile the projected and actual amounts of tuition and fees collected. Upon reconciliation, the Commission shall determine if the school is entitled to a refund or must pay an additional amount to the tuition trust account.

## **SUBCHAPTER R: CEASE AND DESIST ORDERS**

### **§807.271. Definitions Relating to Cease and Desist Orders**

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

- ~~(3)~~**(1) Hearing**--hearing is an informal, orderly, and readily available proceeding held before an impartial hearing officer. At hearing, a party may present evidence to show that the request for the issuance of a cease and desist order should be granted or denied.
- ~~(4)~~**(2) Hearing officer**--hearing officer is a Commission employee designated to conduct a fair hearing and issue written findings of fact, conclusions of law and an administrative decision concerning the request for the issuance of a cease and desist order.
- ~~(5)~~**(3) Party**--the person or Commission, with the right to participate in the hearing authorized by the Act.
- ~~(6)~~**(4) Person**--Any individual, firm, partnership, association, corporation or other private entity or combination that is allegedly operating a career school or college without a certificate of approval issued by the Commission under the Act.

### **§807.272. Statement of Charges and Notice of Hearing on Cease and Desist Orders**

Upon application by the staff of the Commission if it is believed a person is operating a career school or college without a certificate of approval in violation of ~~Education Code, §132.151~~ of the Act, the Executive Director may issue a statement of charges and notice of hearing to consider the issuance of a cease and desist order

### **§807.273. Contents of Statement of Charges and Notice of Hearing**

The statement of charges and notice of hearing issued by the Executive Director must contain the following information:

- (a) the name and last known address of the person against whom the order may be entered;

- (b) a short and plain statement of the reasons the Commission believes the person is operating a career school or college without a certificate of approval;
- (c) a copy of the Commission's Career School and College Rules, Title 40, Chapter 807 of the Administrative Code; and,
- (d) the date, time and location of the hearing.

**§807.274. 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 may be entered. Notice is presumed received 5 days from the date it is mailed by the Executive Director.

**§807.275. Agreements to Hold the Hearing at a Later Date**

Agreements to hold the hearing at a later date must be mutual, in writing and submitted to the designated hearing officer no later than 2 days prior to the date of the scheduled hearing.

**§807.276. Hearing**

- ~~(b)~~(a) The hearing for consideration of the issuance of a cease and desist order shall be held in person before a hearing officer appointed by the Commission and conducted in Austin, Texas.
- (b) At the hearing, the Commission shall present evidence in support of its request for the issuance of the cease and desist order demonstrating that the person is operating a career school or college without a certificate of authority.
- (c) The person or the person's hearing representative may present evidence to rebut the Commission's request for the issuance of the cease and desist order.

**§807.277. Evidence**

- (a) Evidence Generally. The parties are not bound by technical rules of evidence. Evidence will be admitted and given probative effect if it possesses probative value and is relevant as determined by the hearing officer.
- (b) Exchange of Documentary Evidence. Any documentary evidence to be presented during the hearing shall be exchanged with all parties with a copy to the hearing officer 5 days in

advance of the hearing. A party has the right to review, upon request, any documentary materials submitted to or by the hearing officer.

- (c) Stipulations. The parties, with the consent of the hearing officer, may agree in writing to the facts involved.
- (d) Discovery. The hearing officer may order other forms of discovery deemed appropriate.
- (e) Experts and Evaluations. The hearing officer may order, on its own motion or at a party's request and expense, if relevant and useful, an independent expert or a professional evaluation from a source satisfactory to the parties and the Commission.
- (f) Ex parte communications. Private (ex parte) communications of information, whether oral or written, about the substantive issues concerning the hearing are allowed only if the substance is shared with all parties. The hearing officer will provide all parties with the oral or written information.
- (g) Confidential information. Statutorily confidential information shall be protected in accordance with state and federal law.

#### **§807.278. Hearing Officer Disqualification and Withdrawal**

- (a) A hearing officer is disqualified if the hearing officer directly participated in the recommendation to set the hearing to consider the issuance of a cease and desist order. The hearing officer participated if the hearing officer:
  - (1) reviewed either the file or a summary of it to assist in making the recommendation; or,
  - (2) has a personal interest in the outcome of the hearing.
- (b) The hearing officer may withdraw from the hearing to avoid the appearance of impropriety or partiality. Upon withdrawal, the Commission will select an alternate hearing officer.

#### **§807.279. Hearing Procedure**

- ~~(b)~~(a) General Procedure. All hearings shall be conducted informally and in such manner as to ascertain the substantial rights of the parties. The hearing officer shall develop the evidence. All issues relevant to the request for the issuance of a cease and desist order shall be considered and addressed.
  - (1) Presentation of Evidence. When a party appears, the hearing officer shall place the party and any witnesses under oath, examine such party and the party's witnesses, if any, and allow presentation of witnesses and other evidence by each party as may be pertinent.

(2) Cross-Examination. The parties, witnesses and evidence are subject to cross-examination by the other parties or the hearing officer. A party has the right to object to and confront evidence offered at hearing by the hearing officer or the other parties.

(3) Additional Evidence. The hearing officer, with or without notice to any of the parties, may request, receive and enter into the record such additional evidence as necessary for a full and fair hearing on the matter, provided that a party shall be given an opportunity to rebut such evidence if it is to be used against the party's interest.

(b) Hearing Representative. Each party may authorize a hearing representative to assist in presenting the argument and evidence of the party. A hearing representative is any individual authorized by a party who assists the party in presenting its argument and evidence.

(c) Records.

(1) The hearing shall be tape-recorded and the hearing record will include the audio-tape of the proceeding and any relevant evidence relied on by the hearing officer in reaching the decision, including any electronic printouts.

(A) A party may request a copy of the audio-taped hearing at no cost.

(B) A party requesting a transcript of a proceeding must pay the cost of transcription.

(2) The hearing record must be maintained as long as required by federal or state law.

### **§807.280. Continuance of Hearing**

(a) A continuance of a hearing may be ordered at the discretion of the hearing officer if:

(1) there is insufficient evidence upon which to make a decision;

(2) a party needs additional time to examine evidence presented at the hearing;

(3) the hearing officer considers it necessary to consult additional sources for information or testimony; or

(4) any other reason deemed appropriate by the hearing officer.

(b) The hearing officer must advise the parties of the reason for the continuance and any additional information required. Any testimony taken by the hearing officer at the continuance of the hearing must be taken under oath and recorded. The parties will have an opportunity to rebut any additional evidence.

### **§807.281. Hearing Decision and Final Review by the Commissioners**

- (b)(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 5 days from the date it is mailed. The hearing officer's decision is final unless an appeal is filed under subsection (b).
- (e)(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 15<sup>th</sup> 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 within 30 days. If oral argument is requested by a party and approved, the Commission shall schedule and hold oral argument within 20 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.

### **§807.282. Effect of the Cease and Desist Order**

- (a) If the request for the issuance of a cease and desist order is granted, the Executive Director 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 ~~Education Code~~, §132.151 of the Act.
- (b) The cease and desist order ~~is~~ shall be delivered by Certified Mail, Return Receipt Requested, and is presumed received 5 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, or unless otherwise provided by the order of the Commission.